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Reading Supplement

April - 2020

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This Supplement is a compilation of Suggestive Reading Material for CLAT Aspirants. This will help you develop your legal acumen and hone your comprehension Skills.

The list of CLAT Relevant Reading Material (in the form of articles) covered in this module is as under:

1. Andhra Pradesh: SC Scraps 100% Reservation in Scheduled Areas, Fueling Debate

*By Gali Nagaraja

2. No 100% quota: On overzealous reservation

*By – The Hindu Editorial

3. The Legal Charter of PM CARES is Unsound, the Government Must Frame Rules At Once

*By Shreenath A. Khemka

4. Why It's Wrong to Invoke 'Attempt to Murder' Against Tablighis

*By Pradyuman Kaistha

5. Quarantine and the law

*By L.S. Sathiyamurthy

6. SC order on migrant labour is premised on unchallenged claims of govt, it curtails press freedom

*By Dushyant Dave

7. Democracy should not permit a trade-off

*By Neera Chandhoke

8. No dissent, no democracy

*By A.S. Panneerselvan

9. Why it is necessary to decriminalise offences under the Companies Act to help businesses

*By Dheeraj Nair

10. Need to strike right balance between public health and individual's right to privacy

*By Venkatesh Hariharan

10 A. Privacy concerns during a pandemic

*By Suhrith Parthasarathy, Gautam Bhatia & Apar Gupta

11. Nations must not ignore principles of existing international law in fight against COVID-19

*By Upendra Baxi

12. Accessing justice online

*By N.L. Rajah

13. Implement Aarogya Setu, but only through law

*By Kashish Aneja & Nikhil Pratap

14. Pre-retirement judgments and post-retirement jobs

*By N.G.R. Prasad & K.K. Ram Siddhartha

15. Mockery of justice: On Daniel Pearl murder case acquittals

*By The Hindu Editorial

16. Prolonged injustice: On Mehbooba Mufti's detention

*By The Hindu Editorial

17. Unlocking justice in the lockdown

By G.S. Bajpai & Ankit Kaushik

18. MPLADS is nimble tool for targeted intervention, scrapping it in crisis is counterproductive

*By Manish Tewari

19. It is our constitutional duty to ensure a safety net for the economically weaker sections of society

*By A K Patnaik and Abhinash Borah

20. Insolvency code should be suspended for six months to help companies recover

*By Arvind P. Datar , Rahul Unnikrishnan

21. Uddhav Thackeray's Nomination: Least Risky Option or Subversion of Democratic Process? *By Sughosh Joshi and Sushrut Kaplay

22. Strange and Arbitrary Bail Orders: Are Indian Judges Going Too Far?

*By Faizan Mustafa

23. The Supreme Court Is Locked Down and Justice Is in 'Emergency' Care

*By Prashant Bhushan

24. Madhya Pradesh Case: Ignoring Coronavirus Threat, SC Makes Floor Test Sacrosanct

*By The Wire Analysis

25. Indians have always stepped up to a crisis, reaffirmed commitment to shared constitutional values

*By Ravi Shankar Prasad

26. India Needs an Urgent Law to Protect All Health Workers From Violence

*By Rushab Aggarwal

27. The Centre Is Back to Using the Bogey of 'Fake News' to Try and Suppress Press Freedom

*By Devika Tulsiani and Soutik Banerjee

28. Sorry Mr Gogoi, We Need 'Constitutional Distancing', Not Court-Government Bonhomie

*By Sanjoy Ghose

29. As Poor Indians Suffer Amidst Lockdown, Constitutional Morality Leaves the Country

*By S S Ray

30. UK Court Rejects Fugitive Economic Offender Vijay Mallya's Appeal Against Extradition Order * By Live Law

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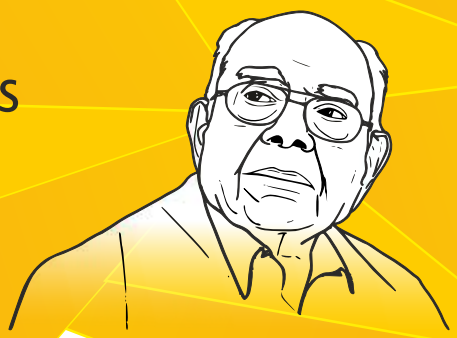
Legal Legend **Mr. Ram Jethmalani**



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Mr. Ram Jethmalani interacting with Director Bahul Shastri while launching Vidhigya Online Portal at VIDHIGYA Campus

Prof. (Dr.) R Venkata Rao, Ex VC, NLSIU Bengaluru inaugurating Vidhigya Campus.

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Sneak Peek:

No. of Words: 830

Level: Moderate

Estimated time: 5 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 40 / 45 minutes

Note: This article about scrapping of 100% reservation, shall be followed and go for that Vidhigya 360 degree analysis. Make own short notes too.

Article: 1

Andhra Pradesh: SC Scraps 100% Reservation in Scheduled Areas, Fueling Debate

A government order had provided absolute reservation in teaching jobs for Scheduled Tribes in the scheduled areas.

Vijayawada: The Supreme Court's judgement against 100% reservation of teachers of the Scheduled Tribes (ST) in primary schools located in the Scheduled Areas brings to the fore a debate over the prospects of the interests of Adivasis protected under the Fifth Schedule of the Constitution coming in conflict with that of the other categories within the quota system.

A five-judge constitution bench led by Justice Arun Mishra on April 22 struck down a government order issued by Andhra Pradesh governor Biswabushan Harichandan which had provided absolute reservation for members of the STs for teaching jobs in the scheduled areas. The apex court has also reiterated the Indra Sawhney vs Union of India judgement, which capped reservations at 50%. The issue has reached the Supreme Court after an appeal was filed against the Andhra Pradesh high court ruling which had upheld the government order providing for 100% reservations for tribal teachers in the Scheduled Areas. The five-judge constitution bench has also interpreted its judgement prospectively not "retrospectively" and held that the existing appointments made in excess of 50% reservation shall survive but shall cease to be effective in the future, providing relief to the tribal teachers who have already been appointed.

One Chebrolu L. Prasad had filed an appeal against the high court order contending that the governor's order was discriminatory since it affected not only the open category candidates but also the other reserved categories' candidates and reservation under Article 16 (4) of the Constitution shall not exceed the 50% cap.

The bench, also comprising Justices Indira Banerjee. Vineet Saran, M.R. Shah and Ravindra Bhat, observed:

"100% reservation would amount to unreasonable and unfair and cannot be termed except as unfair and unreasonable. Thus we are of the considered opinion that providing 100 % reservation to the Scheduled Tribes and Scheduled Castes were not permissible. The Governor in the exercise of the power conferred by para 5(1) of the Fifth Schedule of the Constitution cannot provide 100% reservation."

The bench further ruled, "By providing 100 percent reservation to the Scheduled Tribes has deprived the Scheduled Castes and the Other Backward Classes (OBCs) also of their due representation. It also impinges upon the right of open category and scheduled tribes who have settled in the Scheduled Areas after January 26, 1950. The rights of the Scheduled Tribes who are not residents of the scheduled areas shall also be adversely affected if the impugned order is allowed to become operational."

Ravindra Reddy, president of the EBC (Economically Backward Classes) Association, welcomed the judgement, highlighting the need to keep the quota well below the 50% ceiling. The CPI (M) state unit requested the state government to file a review petition in the Supreme Court.

Call for safeguarding tribals' interests

Tribal advocacy groups, however, contend that social justice cannot be delivered if tribals in the scheduled areas and the other marginalised sections living elsewhere are seen as being on the same page. Lawyer and tribal activist Palla Trinadha Rao told The Wire that the quashing of the government order will run counter to the principal objective of the Fifth Schedule of the Constitution. The schedule is framed to give protection to the tribals living in the scheduled areas from alienation of their lands and natural resources to non-tribals, he said.

Midiyam Babu Rao, a tribal leader of the CPI (M) and a former MP representing the Bhadhrachalam constituency currently in Telangana, said tribals in both Telangana and Andhra Pradesh have already been subjected to alienation of their lands and jobs. This, he said, has happened through flouting of the Land Transfer Regulation Act and producing fake caste and nativity certificates.

Other governments also faced challenges

In an unrelated development, the division bench of the AP high court on March 2 had dismissed a government order to take the limit of quota in elections for urban and rural

bodies for Backward Classes, SCs and STs up to 59.85%. The division bench, headed by Chief Justice Jitendra Kumar Maheswari, and judge Naina Jayasurya, struck down the GO on the same ground as the Supreme Court, that reservations cannot extend beyond the 50% cap.

The former chief minister of undivided Andhra Pradesh, Y.S. Rajasekhara Reddy, was forced to reduce the quota for Muslims from 5% to 4, following a direction from the high court not to exceed the limit of 50%. Telangana chief minister K. Chandrasekhar Rao passed a couple of bills in the state assembly—one seeking to increase reservations for Muslims from 4% to 12% and the other to take the quota for STs from 6% to 10%, taking the total quota well above 50%. These bills were passed before the state elections in 2018, but have remained pending with the Central government. Similarly, the previous TDP government's 5% quota move for the Kapu caste failed to see the day of light yet, for want of the Central government's approval.

Courtesy: The Wire, as extracted from : https://thewire.in/law/supreme-court-andhra-pradesh-100-percent-reservation-scheduled-areas

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Sneak Peek:

No. of Words: 497

Level: Easy - Moderate

Estimated time: 2- 3 minutes (maximum time on D- day to crack this one)

Estimated Analysis time: 30 minutes (Same issue as previous)

Note: This article about scrapping of 100% reservation, shall be followed and go for that Vidhigya 360 degree analysis. It is in furtherance with your last article.

Article: 2

No 100% quota: On overzealous reservation

Supreme Court ruling stresses that overzealous reservation tends to affect rights of other communities

The Supreme Court is right in considering cent per cent reservation as anathema to the constitutional scheme of equality even if it is for the laudable objective of providing representation to historically deprived sections. The verdict quashing the reservation of 100% of all teaching posts in 'Scheduled Areas' of Andhra Pradesh for local Scheduled Tribes is not against affirmative programmes as such, but a caution against implementing them in a manner detrimental to the rest of society. A five-judge Constitution Bench found

that earmarking teacher posts in areas notified under the Fifth Schedule of the Constitution adversely affected the interests of other candidates not only from Scheduled Castes and other backward communities but also other ST communities not native to those areas. Of course, what the State government did, in its original orders of 1986, and thereafter, in a subsequent order in 2000, was not without its own rationale. It found that there was chronic absenteeism among teachers who did not belong to those remote areas where the schools were located. However, its solution of drafting only members of the local tribes was not a viable solution. As the Bench noted, it could have come up with other incentives to ensure the attendance of teachers. Another aspect that the court took into account was that Andhra Pradesh has a local area system of recruitment to public services. The President, under Article 371D, has issued orders that a resident of a district/zone cannot apply to another district/zone for appointment. Thus, the 100% quota deprived residents of the Scheduled Areas of any opportunity to apply for teaching posts.

Affirmative action loses its meaning if it does not leave the door slightly ajar for open competition. Dr. B.R. Ambedkar observed during the debate in the Constituent Assembly on the equality clause, that any reservation normally ought to be for a "minority of seats". This is one of the points often urged in favour of the 50% cap imposed by the Court on total reservation, albeit with some allowance for relaxation in special circumstances. It is still a matter of debate whether the ceiling has innate sanctity, but it is clear that wherever it is imperative that the cap be breached, a special case must be made for it. Such a debate should not divert attention from the fact that there is a continuing need for a significant quota for STs, especially those living in areas under the Fifth Schedule special dispensation. In this backdrop, it is somewhat disappointing that courts tend to record obiter dicta advocating a revision of the list of SCs and STs. While the power to amend the lists notified by the President is not in dispute, it is somewhat uncharitable to say that the advanced and "affluent" sections within SCs and STs are cornering all benefits and do not permit any trickle-down. Indian society is still some distance from reaching that point.

Courtesy: ' The Hindu ' as extracted from :

https://www.thehindu.com/opinion/editorial/no-100-quota-the-hindu-editorial-on-overzealous-reservation/article31427747.ece

Sneak Peek:

No. of Words: 1500

Level: Difficult | Essay type

Estimated time: 10 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 90 minutes or even more

Note: This article about Prime Minister's Citizens Assistance and Relief in Emergency Situations (PM CARES) and the legal intricacies. A bit technical and difficult, but yes you should have a good legal insight about this topic. Even if you could not follow it in toto, do follow this topic for general insight.

Article: 3

The Legal Charter of PM CARES is Unsound, the Government Must Frame Rules At Once

Successive governments at the Centre have treated funds like the PMNRF (and now PM CARES) as 'private' trusts, exempt from public scrutiny and accountability. This approach is bad in law, and unconstitutional.

Disasters demand novel administrative measures, often requiring heightened public spending on healthcare, subsistence allowances, and stimulus packages. For a developing economy, such measures often prove to be financially onerous, as the executive finds it difficult to mobilise funds in a short time frame. Faced with the need to help displaced persons from Pakistan after partition, an ad-hoc solution was evolved in 1948 through the creation of the Prime Minister's National Relief Fund (PMNRF) – a fund open to direct contributions from the public. Sadly, this ad-hoc fund was never put on a proper legal footing. and now, this unsound model has been replicated by the Prime Minister's Citizens Assistance and Relief in Emergency Situations (PM CARES) fund, for dealing with the novel coronavirus pandemic.

While many in the opposition saw the creation of PM CARES as a needless duplication of the PMNRF, the government defended its decision, citing the narrow objectives of the existing fund, which, it said, did not encompass pandemics. But asserting the bona fides of a new fund by its nomenclature alone is to judge a book by its cover. Both PMNRF and PM CARES operate mutatis mutandis, and are therefore Siamese-twins. If one can work, so can the other. But if one is infirm – as I believe it – so is the other.

Public authority vs private trust

The question of infirmity was first raised in 2016 before the Delhi high court in Aseem Takyar v. Prime Minister National Relief Fund. The petitioner claimed that the PMNRF, being a 'public authority', must come under the jurisdiction of the RTI, Act.

Opposing this plea, the government took the view that the fund, although created at the instance of public office, was not the product of any executive instruction or order, and therefore operates in the nature of a 'private trust' with high constitutional functionaries as ex officio 'trustees'. Although this official reasoning was rejected and the petitioner's plea accepted by the single bench, the consequential split among the division bench in the appeal (2018) meant the matter did not attain finality and so the PMNRFs status as a 'public authority' has still not been settled.

Even as 'private' trust, the public has right to know

Ironically, the government's stand that the PMNRF – and by extension, PM CARES – are in the nature of 'private trusts' still cannot justify the denial of information to the public under other provisions of law.

Section 19 of the Indian Trusts Act mandates the trustees to present full and accurate information of the amount and state of the trust property to the beneficiaries. Because any 'private trusts' the prime minister heads are created for the benefit of the public at large, every citizen is a constructive beneficiary; hence the 'private trust' is a 'public charity' under Section 92 of the Code of Civil Procedure.

Consequently, such 'public charities' are amenable to judicial administration upon application by two or more members of the public. Hence a decree can be sought seeking alteration in the composition of trustees, directing disclosure of trust accounts, or even redirecting trust property cy-pres.

Notwithstanding this, the sweeping 'privacy' protection extended to such funds is legally suspect as it enables the government to run an account immune from the constitutional rigours of parliamentary regulation under Article 283, exempt from audit by the Comptroller and Auditor-General under Article 151, and fair public disclosure under Article 19 (1)(a) of the constitution.

An effort was made earlier this month in Manohar Lal Sharma v. Narender Damodardash Modi & Ors. (2020) to assail PM CARES on the ground that the fund was created without following constitutional procedures dealing with the Consolidated Fund of India and

Contingency Fund of India. However, the petition was summarily dismissed by the Supreme Court as lacking merit. Ostensibly, the petitioner jumped the gun in seeking a declaration of unconstitutionality, without first demonstrating that the fund was not 'private', and was therefore bound by constitutional rigour. However, a careful consideration of the law and constitution yields a different appraisal of the controversy altogether.

'Private' veils masks public fund

The 'private' nature of such funds is a straw man that can be assailed on three broad principles.

First, the mere 'receipt' of deposits into a 'private trust' does not change the fact that they were raised on the basis of public office. Because such trusts are established by public officials, funds invited on the basis of public notice and subject to the ex officio control of public office, they gain a conspicuous public character. Additionally, their very nomenclature – a "Prime Minister's" fund – imparts them with the unequivocal impression of being governmental creatures. Hence, the 'private' character of such trusts is a mere ruse that veils the public character of the raising and administration of such funds.

Secondly, appointing cabinet members as trustees to administer the funds impermissibly expands the scope of ministerial office in excess of the mandate determined by the constitution. Such positions are held ex officio, being attached to the public office, and therefore not of a private character. Moreover, the deep and pervasive control of these funds by cabinet members as ex officio trustees yields an unflinching 'state' character, amenable to the writ jurisdiction of the courts.

Thirdly, the choicest exemptions granted under fiscal laws and public expenditure on advertisements to incentivise collection is suggestive of a conflict of interest, if done for a 'private trust'. This conflict becomes conspicuous in light of the various notifications creating an automatic opt-in for the salaries of public employees to be directed into such 'private trusts'. More odiously, it allows for public officials to raise private funds, through inducement of public office – which may invite claims of moral perversion or lapse of integrity.

Parliament's oversight a must

As far as the constitution is concerned, the executive cannot spend what the legislature cannot vote upon; therefore, all monies must be regulated by the vote of parliament. Under

Article 283 of the constitution, three distinct heads are envisioned – the Consolidated Fund of India, the Contingency Fund of India, and public accounts. There exists no other head under which monies can be received by the Union.

The Consolidated Fund under Article 266 (1) is the repository of all revenue and capital receipts, a Contingency Fund under Article 267 is an imprest for unforeseen expenditures, and a public account under Article 266 (2) is the residuary corpus under government deposit. Article 266 (2) read with 284 (a) provides that monies received or deposited with the government, other than revenues or public monies raised, are payable into a public account. Therefore, monies not per se under the ownership of the government, but deposited under its administration are constitutive of a public account. Hence, public donations, deposited on representation of public office and administered through a deep and pervasive governmental control, invariably fall under Article 266 (2).
Incidentally, such an understanding fits in seamlessly with the character of these funds as 'trusts'. Under Sections 5, 6, and 8 of the Indian Trusts Act, the trustees merely hold and administer the trust property for the ultimate transfer to the beneficiaries. Therefore, in case of funds such as PMNRF and PM CARES, once the trusteeship is de facto transposed to the state, the trust property is de jure transposed as a public account under Article 266 (2) of the constitution.

Ostensibly, the rationale behind creating such 'trusts' has been to maximise operational flexibility during crises. However, unlike the Consolidated Fund of India, which requires an ex ante vote, and the Contingency Fund of India, which requires an ex post vote, a public account is operationally exempt from routine legislative rigours. Therefore, administrative expediency that crises like a national disaster or a pandemic require does not run antagonistic to the constitutional framework.

From a financial perspective, funds in a public account result in net gains to the government on account of the interest rate difference between what it pays on its domestic borrowings and the interest it is able to earn on the amount lying unspent in such funds. For instance, the PMNRF alone has an accumulated unspent balance of Rs 3,800 crore as on March 31, 2019, which at a modest arbitrage of 2% would yield Rs 76 crore per annum. The need of the hour is to regularise all such funds by framing appropriate rules for their administration under Article 283 of the constitution. Although Haryana has notified the

Haryana Corona Relief Fund Rules 2020 in the Government Gazette, it has left ambiguous whether the fund will be administered as a public account. It is hoped that steps would be taken by the prime minister to regularise all such funds as a public account through appropriate rules.

Courtesy: ' The Wire' as extracted from: https://thewire.in/law/the-legal-charter-of-pm-cares-is-unsound-the-government-must-frame-rules-at-once

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Sneak Peek:

No. of Words: 1000

Level: Moderate – Difficult | Essay type

Estimated time: 7-8 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 60-70 minutes or even more

Note: This article about the evaluation of legal treatment of the members of Tablighi Jamaat congregation who fail to disclose their travel history and allegedly have been instrumental in spread of this disease.

Article: 4

Why It's Wrong to Invoke 'Attempt to Murder' Against Tablighis

Top officials of several states, including the Chief Minister of Himachal Pradesh and the Home Minister of Haryana, announced that attendees of the Tablighi Jamaat congregation who fail to come forth and disclose their travel history, will be booked for Attempt to Murder under Section 307 of the Indian Penal Code 1860. Following a similar announcement in Uttarakhand, five attendees were booked under Section 307, after they failed to present themselves before the authorities.

The underlying prejudice against a particular community, which has prompted calls for invoking Section 307 only against attendees of the congregation and not against all persons hiding their history of contact with infected persons, needs no explanation.

Arbitrary Invocation of Section 307 of IPC

Such an arbitrary invocation of Section 307 is not only based on an incorrect interpretation of law, but also amounts to an abuse of process. Chapter XIV of the Penal Code titled 'Offences Affecting the Public Health, Safety, Convenience, Decency and Morals' contains tailored provisions which criminalise acts likely to spread infection of a

diseases that are dangerous to life. Negligently spreading such infections is punishable with imprisonment up to six months under Section 269, while intentionally spreading the infection invites imprisonment of up to two years under Section 270. These Sections have been invoked in the past with respect to small pox and cholera, and were rightly applied against the singer Kanika Kapoor.

Additionally, Section 271 imposes a punishment up to six months for disobedience of any government rule made for regulating travel between places where an infectious disease prevails and other places. In a similar vein, disobedience of an order of a public servant which endangers human life, health or safety is a separate offence under Section 188, and punishable with imprisonment up to six months. Therefore, circumstances such as the present had been envisaged by the drafters of the Penal Code and stand adequately addressed.

The difference in gravity between these offences and Attempt to Murder is evident from the fact that the latter invites imprisonment of up to ten years.

In addition to the longer sentence, accusing people of 'Attempt to Murder' has more immediate practical concerns.

Safeguards & Bail Can't Be Availed By Person Accused of 'Attempt to Murder'

First, under the Criminal Procedure Code, special safeguards from arrest are available to persons accused of offences punishable with imprisonment of seven years or less, and such persons cannot be arrested by the police merely on its satisfaction that the person has committed the offence.

To affect arrest of such persons, a police officer must be satisfied that the arrest is necessary to prevent the person from committing any further offence, or for proper investigation, or to prevent the accused from tampering with evidence or threatening witnesses, or to secure the presence of the accused in court.

These safeguards cannot be availed by someone accused of Attempt to Murder. Second, offences under Sections 188, 269 and 270 are bailable in nature, which means that any person arrested for these offences must be released on bail by the police. In contrast, Section 307 is non-bailable.

Grant of bail in non-bailable cases is a discretionary power of the court, and in practice, bail is not ordinarily granted to persons accused of serious offences.

Therefore, unwarranted application of Section 307 seriously affects a person's liberty by making it easier for the police to arrest the person, while simultaneously making it harder for the person to secure release on bail.

Mere 'Negligence' Can't Amount to 'Attempt to Murder'

Insofar as ingredients of Attempt to Murder are concerned, as per the IPC, a person must do an act (actus reus/ physical element) with the intention of killing someone (mens rea/ mental element) to be liable for the offence. Instances where a pellet fired only grazed against the head of the victim or a firearm injury was inflicted on the shoulder and not a vital part of the body, have been held by the Supreme Court to not meet the requirements of Attempt to Murder.

A bare comparison with such instances brings forth the absurdity of the claims to prosecute Tablighi Jamaat attendees under Section 307.

Both the ingredients of the offence, namely, mens rea and actus reus, are completely absent. First, people hiding have presumably not been tested and would not be aware that they have contracted COVID-19. Thus, these perpetrators are unsure if they are even wielding the weapon with which they supposedly intend to kill. Second, these persons are merely hiding without engaging in any overt act and therefore not even using the weapon that the wield. Such inaction, albeit negligence, cannot amount to attempting murder.

Wrong to Implicate Both Sets: Those 'Intentionally' Spreading COVID, & Those 'Hiding'

Even in circumstances where a person is aware that they suffer from COVID-19 and they intentionally attempt to infect someone, it would be incorrect to invoke Section 307. In order to constitute Attempt to Murder, all facets of murder must be satisfied, but for the actual death of the intended victim. Therefore, the degree of intention required is the same as that for murder, which would only be met if there is a proximate link between the action and the intended consequence of death. For instance, this requirement of proximity has been articulated in the definition of murder as causing such bodily injury as is "sufficient in the ordinary course of nature to cause death."

It must be pointed out that this is a very high legal threshold and even an injury inflicted on the abdomen with a spear, causing incisions on the liver has been held to NOT be sufficient to cause death in ordinary course.

Given the low mortality rate of COVID-19 infection, it cannot possibly meet the legal standard for Attempt to Murder. Death is not the ordinary consequence of the infection

nor is the infection itself sufficient to cause death since numerous other factors such as age and presence of chronic diseases play a determinative role in the survival of an infected patient. Therefore, it would be incorrect to implicate someone who is intentionally spreading the infection under Section 307, let alone people who are hiding.

Courtesy: ' The Quint ' as extracted from :
https://www.thequint.com/voices/opinion/tablighi-jamaat-nizamuddin-coronavirus-contagion-ipc-attempt-to-murder-wrong-charges-law

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Sneak Peek:
No. of Words: 1200
Level: Moderate | Essay type
Estimated time: 7-8 minutes (maximum time on D- day to crack) this one
Estimated Analysis time: 70-90 minutes or even more
Note: This article gains prominence as it explains the evolutions and development of law dealing with the issue of 'Quarantine' which is a global buzz word in the times of recent COVID- 19 crises. It will help you explore the journey of the legal developments. As a CLAT aspirant you are not expected to mug up the facts but just to have a fair idea about the topic and its implications.

Article 5

Quarantine and the law

Courts have the power to review movement curbs during disease outbreaks, but have upheld them in public interest
It was about 196 years ago (1824) that the U.S. Supreme Court, in an en banc sitting led by Chief Justice John Marshall, affirmed the powers of the state to enact quarantine laws and impose health regulations. The world has since faced many health emergencies caused by dangerous diseases. This virus crisis is also not new.
Quarantine is considered the oldest mechanism to reduce the rapid spread of bacterial infections and viral onslaughts. It has been legally sanctioned by all jurisdictions in the world for the maintenance of public health and to control the transmission of diseases. Since ancient times, societies have practised isolation, and imposed a ban on travel or transport and resorted to maritime quarantine of persons.
These measures were often forcibly enforced to prevent or reduce the wider spread of disease and to safeguard the health of citizens not yet exposed to such diseases. In the

list of diseases that may require quarantine, issued by the Centers for Disease Control and Prevention, the Severe Acute Respiratory Syndrome that can go on to become pandemic has been recently added to the existing ones — cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever and viral hemorrhagic fever. It shows that quarantine is a medically accepted mode to reduce community transmission. However, a constructive alternative method of treating patients exposed to infectious diseases is the imperative need in the arena of public health.

'Trentino' to quarantine

The first law on medical isolation was passed by the Great Council in 1377, when the plague was rapidly ruining European countries. Detention for medical reasons was justified and disobedience made a punishable offence. The law prescribed isolation for 30 days, called a 'trentino'. Subsequently, many countries adopted similar laws to protect the people. When the duration of isolation was enhanced to 40 days, the name also changed to 'quarantine' by adopting the Latin quadraginta, which referred to a 40-day detention placed on ships.

In common parlance, 'quarantine' and 'isolation' are used interchangeably, but they convey two different meanings and are two different mechanisms in public health practice. Quarantine is imposed to separate and restrict the movement of persons, who may have been exposed to infectious disease, but not yet known to be ill. But, isolation is a complete separation from others of a person known or reasonably believed to be infected with communicable diseases.

The current COVID-19 crisis, with its closure of shops, academic institutions and postponement of public examinations, has put the people in a de facto quarantine. Nonetheless, the question whether a public authority or state can promulgate an order for quarantine is a legal issue.

When an employee of the World Wildlife Federation was diagnosed with Human Immunodeficiency Virus (HIV) in 1990, he was terminated from service and detained for 64 days in quarantine-like isolation under Goa Public Health (Amendment) Act, 1957 (GPH). The Bombay High Court (1990) felt that solitary detention was a serious infringement of basic human rights guaranteed to the individual, but held that under unusual situations and exceptional exigencies, such isolated detentions are justifiable for the cause of public health. Such isolation, undoubtedly, has several serious consequences. It is an invasion upon the liberty of a person. It can affect a person very adversely in many matters, including economic condition.

But in matters involving a threat to the health of the community, individual rights have to be balanced with public interest. In fact, individual liberty and public health are not opposed to each other but are well in accord. The reason assigned by the High Court to uphold the quarantine was that even if there was a conflict between the right of an individual and public interest, the former must yield to the latter.

In 2014, Kaci Hickox, a nurse and health worker who voluntarily rendered service to Ebola patients and returned to New Jersey, was quarantined in the U.S.. It was opposed by her peers serving in public health. But the dreadful consequences of the disease, and the possibility of its spreading at an alarming rate, made the forcible isolation rational and reasonable.

In India, the Epidemic Diseases Act, 1897, a law of colonial vintage, empowers the state to take special measures, including inspection of passengers, segregation of people and other special steps for the better prevention of the spread of dangerous diseases. It was amended in 1956 to confer powers upon the Central government to prescribe regulations or impose restrictions in the whole or any parts of India to control and prevent the outbreak of hazardous diseases. Quarantine is not an alien concept or strange action and it has been invoked several times during the bizarre situations caused by the cholera, smallpox, plague and other diseases in India.

Judicial review

The Director of World Health Organization (WHO) on March 30 determined that the outbreak of COVID-19 constitutes a public health emergency of international concern and issued interim guidance for quarantines of individuals. The guidance permitted the restriction of activities by separation of persons who are not ill, but who may have been exposed to an infectious disease within the legal framework of the International Health Regulations (2005). It also distinguished quarantine from isolation, which is the separation of ill or infected persons from others, so as to prevent this spread of infection or contamination. As per the WHO guidelines, possible quarantine settings are: hotels or dormitories and well-ventilated single rooms or homes, where a distance of at least one metre can be maintained from other members.

The Centers for Disease Control and Prevention, U.S., in its order on quarantine, expressly made it clear (Rule 9) that the people whose right is affected by an order of quarantine by a public health authority have the right to seek judicial review including the right to habeas corpus. Previously, it was in 1900, in response to an outbreak of bubonic plague, that an order of quarantine imposed on a Chinese citizen was struck down by the Federal

Court in the U.S. because it was racially motivated and ill-suited to stop the outbreak. Therefore, courts have exercised their jurisdiction and powers to review and reverse quarantine orders.

The Supreme Court suo motu took cognisance of fears over the COVID-19 pandemic affecting overcrowded prisons in India, on March 16. The difficulties in observing social distancing among prison inmates, where the occupancy rate is at 117.6%, were highlighted and directions issued to prevent the spread of COVID-19 in prisons in India. The setting up of isolation cells within prisons across Kerala, and the decision of the Tihar Jail authorities to screen new inmates and put them in different wards for three days are appreciated as reasonable preventive measures. Further, notices were issued to all States to deal with the present health crisis in prisons and juvenile observation homes.

Quarantine rooms may have strong closed doors or may be water and air tight compartments, but the rays of justice from the courtrooms have the powers to intrude in them. Of course, under the sun every object is subject to judicial review and quarantine orders are not exempted from it.

Courtesy: ' The Hindu ' as extracted from
https://www.thehindu.com/opinion/lead/quarantine-and-the-law/article31241185.ece

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Sneak Peek:

No. of Words: 1055

Level: Easy - Moderate

Estimated time: 5 - 6 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 60 - 70 minutes or even more

Note: This article gains prominence as it criticises the stance of the Apex court portraying it contrary to freedom of press which is a constitutional guarantee. This legal development was most talked about story in the corridors of media in the month of April 2020. It is suggestive to have fair idea about this development.

Article 6

SC order on migrant labour is premised on unchallenged claims of govt, it curtails press freedom

The SC should not have made all media subservient to the government by directing that the former "refer to and publish the official version about the developments". Such an

order could be justified only during an emergency and that too by the executive, subject to challenge before the courts.

On March 31, the Supreme Court of India (SC), entertaining a writ petition under Article 32, passed an order which raises more questions than it seeks to answer. The writ petition was purportedly filed in the public interest, "for redressal of grievances of migrant workers in different parts of the country". However, the Court has proceeded to issue several directions which are clearly in favour of the respondent, the Union of India. Amongst others, the following three directions were uncalled for:

One, that under section 54 of the Disaster Management Act, 2005, persons can be punished with imprisonment, which may extend to one year, or with a fine for making or circulating a false alarm or warning. Disobedience of the order including an advisory by a public servant would result in punishment under section 188 of the IPC. Two, all concerned, that is the state government, public authorities and citizens, will faithfully comply with directives, advisory and orders issued by the Union of India in letter and spirit in the interest of public safety. Three, the media should only refer to and publish the official version of the Government of India, publishing a daily bulletin.

After giving substantial reliefs to the Union of India, the SC proceeded to make mere observations about migrant labourers by directing that they should be dealt with "in a humane manner" and that "trained counsellors, community leaders and volunteers must be engaged along with the police to supervise the welfare activities of migrants". The SC has virtually absolved the government for its handling of the situation.

The basis of the directions is a statement made by the Solicitor General of India and some status reports to the effect that "the exodus of migrant labourers was triggered due to panic created by some fake/misleading news and social media". The SC has proceeded on assumptions and surmises which were untested and unchallenged. In a matter of such seriousness, the least it should have done was to have appointed an amicus curiae (a friend of the court) to assist it rather than simply accept the self-serving status reports and statements made before it.

The Court overlooked the fact that in India, hundreds of millions of people work during the day and are paid at the end of the day and then go and buy their foodstuffs. They have no savings, nor do they have foodgrains stored. It is surprising that the Court, the custodian of fundamental rights, should be oblivious to this reality. Even workers in the manufacturing or service sectors do not have sufficient means to survive beyond a short period.

The Court should have been mindful that the government should have taken effective measures to prevent this human tragedy since January when China had reported the epidemic. Those in power should have known the peculiar nature of Indian society and the precarious life of its citizens. Even by March 11, when the WHO had declared a pandemic, the Indian government did not stir into action.

When the prime minister called for a janata curfew on March 20, government officials did not take precautionary measures. If the government had directed by then that all the employers should pay advance salaries for March and April and all landlords were prohibited to collect rent for two months and all ration shops were kept open for those below the poverty line, the crisis could have been mitigated. Even as a layman, I could have foreseen the suffering of the people and thought of a few steps to ameliorate it. So, why could the experts in the government not do so? They have a constitutional responsibility to look after the people. The Court should have challenged the Union of India on all these grounds. Instead, it has allowed the Union of India to get away under the premise of "fake news and social media".

Citizens have the right to freedom of speech and expression. Press freedom is a part of this. Citizens have the right to receive information as well. Article 13 (2) of the Constitution says that the state cannot make any law which takes away or abridges the fundamental rights. If Parliament cannot do so, the Supreme Court — the upholder of the constitutional rights — surely cannot do so.

The SC has itself held in M Nagraj (2006): "A right becomes a fundamental right because it has foundational value. Fundamental right is a limitation on the power of the State. A Constitution, and in particular that part of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled, is to be given a generous and purposive construction."

One wonders why despite disowning the majority judgment in the infamous ADM Jabalpur, the Court has not been mindful of Justice H R Khanna's powerful dissent. He said: "The greatest danger to liberty lies in insidious encroachment by men of zeal, well-meaning but lacking in due deference for the rule of law... Extraordinary powers are always assumed by the government in all countries in times of emergency because of the extraordinary nature of emergency. More is at stake in these cases than the liberty of a few individuals or the correct construction of wording of an order. What is at stake is the Rule of Law."

The SC has given a carte blanche to the authorities, and citizens appear to have no avenues of redress. Most of all, by condemning the media and social media, holding them responsible for fake news, the SC has done a great disservice to the institution which provides information to citizens and upholds democracy.

The SC should not have made all media subservient to the government by directing that the former "refer to and publish the official version about the developments". Such an order could be justified only during an emergency and that too by the executive, subject to challenge before the courts

Courtesy: ' The Indian Express ' as extracted from:
https://indianexpress.com/article/opinion/columns/supreme-court-migrants-coronavirus-india-6344647/

Sneak Peek:

No. of Words: 1244

Level: Easy - Moderate

Estimated time: 6 - 7 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 60 - 70 minutes or even more

Note: This article gains prominence as the author alleges human right violations including instances of lathi charge etc. and criticizes the restrictions imposed upon media during COVID- 19 outbreak.

Article 7

Democracy should not permit a trade-off

Measures taken during emergencies cannot come at the cost of institutional checks and balances

Independent India inherited a legal system which was designed to control the colonised. Caught in the relentless grip of COVID-19, several State governments have invoked the Epidemic Diseases Act, first drafted to deal with bubonic plague that swept Maharashtra in 1897. The Act prohibited public gatherings, and regulated travel, routine screening, segregation, and quarantine. The government was given enormous powers to control public opinion. Bal Gangadhar Tilak, described as the 'father of Indian unrest' by

Valentine Chirol of The Times (London) was imprisoned for 18 months. His newspaper, Kesari, had criticised measures adopted by the government to tackle the epidemic. The law was stark. It did not establish the right of affected populations to medical treatment, or to care and consideration in times of great stress, anxiety and panic.

Silence on these crucial issues bore expected results. In June 1897, the brothers, Damodar Hari Chapekar and Balkrishna Hari Chapekar, assassinated W.C. Rand, the plague commissioner of Poona, and Lieutenant Charles Egerton Ayerst, an officer of the administration. Both were considered guilty of invading private spaces, and disregarding taboos on entry into the inner domain of households. The two brothers were hanged in the summer of 1899. The assassination heralded a storm of revolutionary violence that shook the country at the turn of the twentieth century.

Today our world should have been different. The government could have paid attention to migrant labour when it declared a lockdown on economic activities, roads, public spaces, transport, neighbourhoods and zones in which the unorganised working class ekes out bare subsistence. The result of this slip-up was tragic. Thousands of workers and their families were forced to exit the city, and begin an onerous trek to their villages. The unnerving spectacle of a mass of people trudging across State borders carrying pitiful bundles on their heads and little babies in their arms, without food or money, shocked the conscience of humankind. The neglect of workers upon whose shoulders the Indian economy rests, exposed the class bias of regulations. Confronted with the unexpected sight of people defying the lockdown, State governments and the Central government rushed to announce remedial measures. The afterthought came too late and gave too little.

Dispensing with rights

On March 31, at a hearing of the Supreme Court of India on two petitions relating to the welfare of migrants, the Central government demanded that the Court should allow the imposition of censorship over media reports on measures adopted by the state. The government claimed that panic over the migration of thousands of bare-footed people was based on fake news, and that the scale of migration was over-estimated. Therefore, the Court should support rules that no news will be published or telecast without checking with the Central government. The plea was rejected, and the Court suggested that responsible journalism should rely on daily official bulletins. Witness the irony. The government is concerned about reports of involuntary migrations. It is not concerned with the reason why people were forced to walk out of the city in the first place.

The issue at hand is not the lockdown or other measures taken by the government. We recognise with great unease that governments easily dispense with basic human rights in the name of managing pandemics. We bear witness to the fact that a group of helpless workers were hosed down with chemical solutions in Bareilly, Uttar Pradesh. The decision to close down an entire country without simultaneously recognising the specificities of Indian society has resulted in brutality and violence. Consider scenes of the police swinging their lathis indiscriminately to punish individuals who are forced to defy the lockdown.

'Overreach' of power

There is another cause for unease. Admittedly in emergencies governments have to adopt extraordinary measures. Yet, reports of authoritarian leaders across the world, giving to themselves unprecedented power at the expense of legislatures, judiciaries, the media, civil society, and civil liberties have set off ripples of doubt. When the disease has run its course, will these leaders abdicate the power they have amassed in the time of the coronavirus? Will they restore institutions that inspire public confidence, because they act as brakes on the exercise of unbridled power?

The prospect seems remote. If democratic India continues to invoke draconian colonial laws that were drafted in another time and for another purpose, why should we expect anything different in the future?

On March 16, United Nations human rights experts issued a statement expressing deep concern with the way leaders were amassing power ostensibly for dealing with the pandemic. The statement urged governments to avoid an 'overreach' of security measures when they respond to the coronavirus outbreak. Emergency powers, the experts insisted, should not be used to quash dissent. More significantly, these measures have to be proportionate, necessary and non-discriminatory. Some states and security institutions, continued the statement, will find the use of emergency powers attractive because it offers shortcuts. There is need to ensure that excessive powers are not hardwired into legal and political systems. Care should be taken to see that restrictions are narrowly tailored. Governments should deploy the least intrusive method to protects public health. "We encourage States," concluded the statement, "to remain steadfast in maintaining a human rights-based approach to regulating this pandemic, in order to facilitate the emergence of healthy societies with rule of law and human rights protections."

The rights experts have good reasons to issue this warning. Around the world, we witness the sorry spectacle of leaders — not precisely known for their commitment to democracy

or human rights — steadily unravelling every check on the use of unmitigated power by the executive. In Israel, Prime Minister Benjamin Netanyahu, who is facing court cases for corruption and breach of trust, has closed the judiciary and postponed his own trial. The government has been given immense powers of surveillance. And a newly constituted Parliament, or Knesset, is not allowed to meet.

In Hungary, Prime Minister Viktor Orbán, notorious for his anti-migrant tirades, has personalised immense power. He now rules by decree. Existing laws and parliamentary oversight have been suspended. In the Philippines, President Rodrigo Duterte has appropriated broad emergency powers in order to take effective decisions to tackle the virus. Again, he is not known for his commitment to civil liberties or to the Constitution. In Chile, the declaration of a 'state of catastrophe' has repressed anti-government dissent that has been raging on the streets since last year.

No counter-balancing steps

States are the product of history, composed of layers of meaning some of which have been fashioned for another time. The nature of the state is historically specific. Yet modern states share a common determination; a ruthless ambition to control the minds and bodies of citizens. Epidemics provide an opportunity to accomplish precisely this, to do away with inconvenient checks and balances institutionalised in the media, the judiciary, and civil society. The dismantling of constitutions and institutions will have a major impact on societies. Do decisions to control the pandemic have to be at the expense of human rights and democracy? On March 6, Michelle Bachelet, the UN High Commissioner for Human Rights, advised governments to ensure that the measures they adopt to control the virus do not adversely impact people's lives. "The most vulnerable and neglected people in society," she recommended, "must be protected both medically and economically." She gave sage advice, democracy does not permit trade-offs.

Courtesy: ' The Hindu ' as extracted from:

https://www.thehindu.com/opinion/lead/democracy-should-not-permit-a-trade-off/article31274449.ece

Sneak Peek:
No. of Words: 713
Level: Easy - Easy
Estimated time: 6 - 7 minutes (maximum time on D- day to crack) this one
Estimated Analysis time: 60 - 70 minutes or even more
Note: This article is a mere opinion of author backed by the factual occurrences. The author argues about decent room for dissent for healthy democracy.

Article 8
No dissent, no democracy

No government, whatever be the circumstances, has the right to take away our freedoms, justice and equality

This newspaper carried a powerful editorial, "Perverse zeal" (February 17), on paediatrician Dr. Kafeel Khan's arrest. As the novel coronavirus is taking its deadly toll on lives and economies across the world, one would imagine that the focus of the government would be on containing the spread of the virus and coming up with ameliorative measures to reduce the burden on the people. But the dominant mood seems to be to hand out punitive punishments to dissenters. To make matters worse, the courts are not at the forefront of defending rights and limiting excesses.

Fate of dissenters

On the birth anniversary of the framer of the Indian Constitution, B.R. Ambedkar, civil rights campaigner Gautam Navlakha and scholar and activist Anand Teltumbde were forced to surrender to the National Investigation Agency for their alleged involvement in the Bhima-Koregaon riots of 2018. The Uttar Pradesh government has filed a case against the founding editor of the news portal The Wire, Siddharth Varadarajan, for allegedly spreading fake news against Chief Minister Adityanath and making an "objectionable comment" about him. Scholars who condemned the excess of the U.P. government said: "A medical emergency should not serve as the pretext for the imposition of a de facto political emergency." In India, dissenters seem to either be killed, as we saw in the case of Narendra Dabholkar, Govind Pansare, M.M. Kalburgi and Gauri Lankesh, or are subject to an unfair judicial process, as is happening to Dr. Khan, Mr. Navlakha, Mr. Teltumbde and Mr. Varadarajan. And comedians risk being on the no-fly list.

While the courts over the past decade may not have delivered on protecting crucial rights as enshrined in the Constitution, there is a fine display of scholarship documenting India's glorious history of individuals and groups questioning, censuring and debating authority for over 3,000 years. India Dissents is an anthology that documents some of the sharp arguments, doubts and expressions of differences over three millennia. From the Charavaks and Gautama Buddha to contemporary public intellectuals like Romila Thapar and Amartya Sen, the anthology speaks of the many defining texts by these writers that enabled people to question and hold those in power accountable. Ashok Vajpeyi, who established the Bharat Bhavan in Bhopal, and is a well-known administrator of cultural institutions, has not only edited this volume but has also written a very moving introduction. It is my earnest desire that all our elected representatives, learned judges, journalists and others read this anthology to understand the crucial role of dissent in a democracy. They need to move away from the comfort of patronage and return to the core calling of their respective vocations.

A couple of excerpts

I am sharing only excerpts from a couple of texts mentioned in the anthology as the paucity of space here prevents me from exploring the book in its entirety. At this time of rampant engineered social fissures, let us first look at a poem from Purananuru, a Sangam period Tamil anthology, written by Kovoor Kilar and translated by A.K. Ramanujan. It is a clarion call to warring clansmen Netunkilli and Nalankilli to stop fratricidal war:

"Your enemy is not the kind who wears
the white leaf of the tall palmyra
nor the kind who wears garlands
from the black-branched neem trees.
Your chaplets are made of laburnum
your enemies are made of laburnum too.
When one of you loses
the family loses,
and it is not possible
for both to win
Your ways show no sense of family:
they will serve only to thrill
alien kings
whose chariots are bannered

like your own."

The second is an excerpt from a letter written by Jayaprakash Narayan from prison during the Emergency to Prime Minister Indira Gandhi: "Having muzzled the press and every kind of public dissent, you continue with your distortions and untruth without fear of criticism or contradiction. If you think that in this way you will be able to justify yourself in the public eye and damn the Opposition to political perdition, you are sadly mistaken."

What the anthology teaches us is that no government, whatever be the circumstances, has the right to take away our freedoms, creative impulses, justice, dignity and equality.

Courtesy: https://www.thehindu.com/opinion/Readers-Editor/no-dissent-no-democracy/article31382687.ece

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Sneak Peek:

No. of Words: 1028

Level: Easy - Difficult

Estimated time: 7 - 8 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 70- 80 minutes or even more

Note: The author in this article argues about the need of reforms in our corporate law regime. The author stress upon the need to decriminalise offences under the Companies Act to help businesses. As a CLAT aspirant you are not expected to mug up the facts but just to have a fair idea about the topic and its implications.

Article 9

Why it is necessary to decriminalise offences under the Companies Act to help businesses

The Companies (Amendment) Bill, 2020 was approved by the Cabinet and introduced in the Lok Sabha on March 17, 2020. Over the past year, this Bill has been the second attempt of the Ministry of Corporate Affairs to decriminalise offences under the Companies Act, 2013, the first being the passing of the Companies (Amendment) Act, 2019.

To facilitate ease of doing business in India, the Ministry of Corporate Affairs has sought to decriminalise the Companies Act, 2013 by introducing the Companies (Amendment) Act, 2019, and the Companies (Amendment) Bill, 2020. While the Novel COVID-19 will inevitably have a wide-ranging impact on companies in India, hopefully these timely amendments will foster faith, improve corporate compliance, and facilitate investments.

The Companies (Amendment) Bill, 2020 was approved by the Cabinet and introduced in the Lok Sabha on March 17, 2020. Over the past year, this Bill has been the second attempt of the Ministry of Corporate Affairs to decriminalise offences under the Companies Act, 2013, the first being the passing of the Companies (Amendment) Act, 2019.

Companies (Amendment) Act, 2019

Following the recommendation of 'Report of the Committee to Review Offences under the Companies Act, 2013', the 2019 Amendment decriminalised 16 sections of the Act to civil violations. The 2019 Amendment eliminates the criminality of these violations by levying monetary penalties instead of criminal fines. Levying these penalties has also been shifted from courts to in-house adjudication mechanisms (IAM) under Section 454 of the Act, whereby adjudicating officers appointed by the Central Government determine the offences and enable companies to promptly communicate, represent, and resolve defaults. Though these amendments were initially brought in by the Companies (Amendment) Ordinance, 2018, the Companies (Amendment) Ordinance, 2019, and the Companies (Amendment) Second Ordinance, 2019, it finally received Parliament assent by the 2019 Amendment.

The Company Law Committee, 2019 for "greater ease of living to law abiding companies"

The Company Law Committee (CLC) was constituted to further decriminalise the Act, as a concomitant measure to support the ministry's objectives. The recommendations of the report of the CLC, as is now in the Bill, moots the fact that decriminalisation of minor non-compliance instils confidence in both domestic and global players and boosts foreign investments.

The CLC observes that despite the rigours of criminal law, the efficiency of criminal law with regard to corporate misconduct is open to question. Criminal prosecutions are time-consuming and complex. Accordingly, some scholars argue for corporate criminal offences to be completely replaced by civil prosecution. Another school of thought recommends that penalties not commensurate with the offence/default may be counter-productive and, instead, could incentivise non-compliance. Accordingly, the report recommends decriminalising technical and minor non-compliance, while retaining strict criminal enforcement for serious, fraudulent offences that jeopardise and prejudice public interest.

The Companies (Amendment) Bill, 2020

Based on the recommendations of the report, the Bill proposes to, decriminalise the Act under the following framework:

Re-categorization of 23 compoundable offences to the IAM

Offences such as non-maintenance of company records at the registered office, non-issuance of statutory notices, non-compliance of disclosure obligations, etc. do not involve objective determination, exercise discretion, are easily determined by the MCA21 system and, hence, may be treated as civil wrongs, determined by the IAM framework.

Omission of the 7 compoundable offences

The offences proposed to be omitted are those that may be dealt with through other laws. For instance, offences related to non-compliance with orders of the National Company Law Tribunal (NCLT) may be dealt with by NCLT contempt jurisdiction, instead of being treated as separate offences. Similarly, non-compliance by company liquidators can be dealt with through the relevant provision of the Insolvency & Bankruptcy Code, 2016.

Limiting 11 compoundable offences to fine only

It is proposed that only a criminal fine be imposed for offences that are substantial enough to warrant criminal liability, but do not warrant punishment by incarceration upon conviction, particularly if the compoundable offences do not involve substantial public interest. Accordingly, punishment for non-maintenance of account books at the registered office, non-compliance/contravention of public-offer and buy-back requirements, etc. may be accordingly restricted.

Alternate framework for 5 offences

It is proposed that alternate frameworks could better achieve the intended aim of certain penal provisions in the Act, such as non-cooperation by promoters, directors, etc. with the company liquidator, for which corresponding provisions of the Insolvency and Bankruptcy Code (IBC) may be inserted. Similarly, the maximum permissible fine for the initial offence for which a compounding application has been made may be doubled for non-compliance of an NCLT, or Regional Director's order of compounding by an employee or officer of the company.

Significance

Lesser penalties for certain offences: Section 446B is amended to provide that non-compliance by One Person Companies, Small Companies, Start-up Companies or Producer Companies, or by any of its persons or officer in default, are only liable to one-half the penalty specified in the respective provisions, subject to a maximum of Rs. 2 lakh in case of a company and Rs. 1 lakh in case of person or default officer.

Benefit to Independent Directors (ID): IDs have been recently in the spotlight for corporate lapses and violations. The amendments are vital for IDs to dissociate them from personal liabilities of the operational lapses and violations, especially when the offence has been committed without any evidence attributing knowledge, consent, connivance, or lack of diligence of the IDs. The Ministry's notification dated March 02, 2020 (being F.No.16/1/2020-Legal) is a welcome step in this direction. It directs that civil or criminal proceedings not be unnecessarily initiated against the IDs, unless there is sufficient evidence, and if already initiated, must be reviewed.

The aforementioned recommendations endeavour to simplify and accelerate the processes of rectifying defaults by paying penalties, instead of fighting a criminal trial. It also benefits the State by reducing the burden on courts, allowing them to focus on serious offences.

These amendments are admirable steps towards the three-pronged goal of:

(i) reducing the burden on company courts,

(ii) ensuring investor interests, and

(iii) facilitating the ease of doing business while collaterally safeguarding and incentivizing senior management to remain invested. This could well be the step towards showing intent to incentivize domestic and global investments, especially post COVID-19.

Courtesy: ' The Indian Express ' as extracted from
https://indianexpress.com/article/opinion/why-it-is-necessary-to-decriminalise-offences-under-the-companies-act-to-help-businesses-6353613/

Sneak Peek:

No. of Words: 900

Level: Easy

Estimated time: 3 - 4 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 40- 60 minutes or even more

Note: The author in this article argues about the privacy issues popping up while confronting COVID- 19 outbreak. Aarogya Setu App is in news, do follow it as well. As a CLAT aspirant you are not expected to mug up the facts but just to have a fair idea about the topic and its implications.

Article 10

Need to strike right balance between public health and individual's right to privacy

No state should take its citizens' trust for granted. If citizens do not trust the state as the custodian of their data, there will be digital disobedience.

The novel coronavirus outbreak has brought into sharp focus the promise and perils of data surveillance in the healthcare sector. As India faces an unprecedented public health crisis that has resulted in a countrywide lockdown, policymakers are trying to figure out exit strategies. Ultimately, lockdowns are brute force instruments and are unsustainable over long periods of time. To bring daily life back to normal at the earliest, some governments are deploying apps for self-diagnosis, contact tracing, quarantine and curfew passes as mitigation strategies. For example, the Indian government has launched the Aarogya Setu app for contact tracing, and as a medium for sharing authentic information with citizens.

At this moment, when all of India is faced with a 21-day lockdown (and perhaps a partial lockdown after 21 days), that is estimated to cost $120 billion, privacy seems to be the least of our worries. However, privacy is a fundamental right of every citizen and the state has the primary responsibility of upholding this right. For example, when the COVID quarantine lists that help identify affected individuals are released in the public domain, the privacy of those individuals is violated, leading to social ostracisation. Commentators as diverse as Yuval Noah Harari and Edward Snowden have warned that heightened surveillance during healthcare emergencies can make the surveillance state the "new normal" with frightening possibilities for individual liberty

In the wake of corona, governments have released apps for self-diagnosis, contact tracing and curfew passes. These apps can help bring daily life back to normalcy soon. Self-diagnosis apps can help individuals do a quick check and see if the sore throat, fever or other symptoms they have are minor problems or symptoms of coronavirus. These apps can be the first line of defence, and can protect our underfunded medical system from being overloaded by panic-stricken individuals seeking to be tested for the virus.

Contact tracing can help with one of the most difficult challenges in dealing with a highly infectious and asymptomatic pathogen like the coronavirus. If a person is diagnosed with the virus, they may not be able to remember all those they came in contact with in the 14 days that it takes for the symptoms to manifest. Widespread use of contact tracing apps in the early days of the virus can minimise the need for prolonged lockdowns.

In times of lockdowns, people still need their daily essentials like grains, eggs, milk and other supplies. If those supply chains are hit by the shutdown, prices of essential commodities rise sharply, leading to panic buying. Many individuals may also have legitimate reasons for stepping out of their homes — visiting a family member in a hospital, for instance. Curfew pass apps can help the police quickly issue passes to doctors, caregivers, delivery services, couriers and others who keep the wheels of our economy running.

However, the data collected through these apps also provides huge surveillance capabilities to the state. Therefore, as Harari points out, "When choosing between alternatives, we should ask ourselves not only how to overcome the immediate threat, but also what kind of world we will inhabit once the storm passes?"

Where the collection of data through such apps is done by the state, the state must recognise that it is not the owner of the collected data, but merely the custodian of data. Secondly, as compared to the private sector, the state has a much higher responsibility for safeguarding data, because its control of the police, tax authorities and other instruments gives it great coercive power. The threats of state misuse of data are, therefore, much higher than its misuse by the private sector. The only way to mitigate this is by putting privacy and good data governance practices at the centre of such data collection, and by instituting checks and balances on state power.

Wherever data is collected by the state, it must be the minimum required to get the job done. For example, self-testing apps should not collect personally identifiable information, except essential information like age, and gender. This data should be deleted after the crisis is over.

Singapore seems to have set a good example with its Trace Together app — a voluntary app that uses bluetooth technology to detect proximity to other users having this same app. When the app is downloaded, a random number is assigned to the user, and the data is stored on the phone itself in an encrypted manner. Singapore's Ministry of Health (MoH) is the only entity that can decrypt this data, and it can request the users to share it if the user is diagnosed with COVID-19. This enables MoH's contact tracing team to quickly identify other individuals who are at risk. By requiring the data to be shared only when the individual has been identified as infected with COVID-19, Trace Together strikes a good balance between public health and protecting an individual's privacy.

Ultimately data collection practices by the state boil down to the social contract for data between citizens and the state. A responsible state will collect the minimum amount of data required for a specific purpose and delete it after the purpose has been served. No state should take its citizens' trust for granted. If citizens do not trust the state as the custodian of their data, there will be digital disobedience. Nuanced data collection and governance practices combined with independent audits of these practices will help the state win the trust and collaboration of its citizens. Without such sensitivity, a healthcare crisis could be compounded into a human rights disaster.

Courtesy: 'The Indian Express'

https://indianexpress.com/article/opinion/columns/india-lockdown-coronavirus-data-surveillance-healthcare-sector-public-health-crisis-venkatesh-hariharan-6355479/

Sneak Peek:

No. of Words: 953

Level: Easy - Moderate

Estimated time: 3 - 4 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 40- 60 minutes or even more

Note: It is in furtherance with last Article (another author's view on the same topic). The author in this article argues about the privacy issues popping up while confronting COVID- 19 outbreak. Aarogya Setu App is in news, do follow it as well. As a CLAT aspirant you are not expected to mug up the facts but just to have a fair idea about the topic and its implications.

Article10 A.

Privacy concerns during a pandemic

The government's technology solutions to fight COVID-19 do not meet minimum legal requirements

In his now-legendary dissenting judgment, delivered at the height of Indira Gandhi's Emergency, Justice H.R. Khanna, invoking Justice Brandeis of the U.S. Supreme Court, wrote that "[the] greatest danger to liberty lies in insidious encroachment by men of zeal, well-meaning but lacking in due deference for the rule of law." Justice Khanna was not speaking about the crushing of freedom at the point of a bayonet. He was concerned, rather, about situations where the government used the excuse of a catastrophe to ignore the rule of law. Quoting Brandeis, he said, "experience should teach us, "to be most on our guard to protect liberty when the Government's purposes are beneficent."

Today we live in the midst of a grave public health crisis. There is little doubt that the government is best placed to tackle the COVID-19 pandemic. Doing so requires it to take extraordinary actions. This is why the efforts of the Central and State governments to maintain a nationwide lockdown, to enforce norms of physical distancing and to restrict movement, have been met with support.

It can be tempting in these circumstances to argue that the executive's powers are limitless; that, if the government so chooses, fundamental rights can be suspended at will. The pandemic, the argument goes, is an existential threat and the paramount need to save lives takes precedence over all other interests. Appealing though it is, this argument is not only wrong but also dangerous, for precisely the reasons that Justice Khanna outlined: when faced with crises, governments — acting for all the right reasons — are invariably prone to overreach. Any temporary measures they impose have a disturbing habit of entrenching themselves into the landscape and creating a 'new normal' well after the crisis has passed. Paying close attention to civil rights, therefore, becomes critical, not to impede the government's efforts, but to ensure that rights — fragile at the best of times, and particularly vulnerable in a crisis — are not permanently effaced.

Data and public health

The state's most significant responses to the pandemic have been predicated on an invasive use of technology that seeks to utilise people's personal health data. While the measures deployed intuitively sound reasonable, the mediums used in implementing the programme overlook important concerns relating to the rights to human dignity and privacy.

Broadly, technology has been invoked at three levels. First, in creating a list of persons suspected to be infected with COVID-19; second, in deploying geo-fencing and drone imagery to monitor compliance by quarantined individuals; and third, through the use of contact-tracing smartphone applications, such as Aarogya Setu.

Each of these measures has induced a miasma of despair. In creating a list of infected persons, State governments have channelled the Epidemic Diseases Act of 1897. But this law scarcely accords the state power to publicise this information. What's more, these lists have also generated substantial second-order harms. As the director of the All India Institute of Medical Science, Dr. Randeep Guleria, pointed out, the stigma attached to the disease has led to an increase in morbidity and mortality rates, since many with COVID-19 or flu-like symptoms have refused to go to hospitals.

The use of geo-fencing and drone technologies is similarly unsanctioned. While cell-phone based surveillance might be plausible under the Telegraph Act of 1885, until now the orders authorising surveillance have not been published. Moreover, the modified surveillance drones used are equipped with the ability to conduct thermal imaging, night-time reconnaissance, and also — as some private vendors have claimed — the ability to integrate facial recognition into existing databases such as Aadhaar. Contrary to regulations made under the Aircraft Act of 1934, the drones deployed also do not appear to possess any visible registration or licensing. Indeed, many of the models are simply not permitted for use in India.

Most concerning amongst the measures invoked is the use of contact-tracing applications that promise to provide users a deep insight into the movements of a COVID-19 carrier. The purported aim here is to ensure that a person who comes into contact with a carrier can quarantine herself. Although the efficacy of applications such as these have been questioned by early adopters, such as Singapore, the Union government has made Aarogya Setu, its contact-tracing application, its signal response to the pandemic.

Thus far, details of the application's technical architecture and its source code have not been made public. The programme also shares worrying parallels with the Aadhaar project in that its institution is not backed by legislation. Like Aadhaar it increasingly seems that the application will be used as an object of coercion. There have already been reports of employees of both private and public institutions being compelled to download the application. Also, much like Aadhaar, AarogyaSetu is framed as a necessary technological invasion into personal privacy, in a bid to achieve a larger social purpose. But without a

statutory framework, and in the absence of a data protection law, the application's reach is boundless. One shudders to think how the huge tranches of personal data that it will collect will be deployed.

The importance of civil rights

The Supreme Court's judgment in K.S. Puttaswamy v. Union of India (2017) is renowned for its incantation, that each of us is guaranteed a fundamental right to privacy. But the Court also recognised that the Constitution is not the sole repository of this right, or indeed of the right to personal liberty. For these are freedoms that inhere in all of us. The Court additionally thought it important, as Justice S.K. Kaul wrote, that the majority opinions of Justice Khanna's brethren be buried "ten fathom deep, with no chance of resurrection."

To be sure, the right to privacy is not absolute. There exist circumstances in which the right can be legitimately curtailed. However, any such restriction, as the Court held in Puttaswamy, must be tested against the requirements of legality, necessity and the doctrine of proportionality. This will require government to show us, first, that the restriction is sanctioned by legislation; second, that the restriction made is in pursuance of a legitimate state aim; third, that there exists a rational relationship between the purpose and the restriction made; and fourth, that the State has chosen the "least restrictive" measure available to achieve its objective.

In this case, not only are the government's technological solutions unfounded in legislation, there is also little to suggest that they represent the least restrictive measures available. A pandemic cannot be a pretext to abnegate the Constitution. Inter arma silent leges, said Cicero: "For among [times of] arms, the laws fall mute". But our fight against COVID-19 is no war. Even if it were, our Constitution is intended for all times — for times of peace and for times of crises.

Courtesy: ' The Hindu ' as extracted from: https://www.thehindu.com/opinion/op-ed/privacy-concerns-during-a-pandemic/article31456602.ece

Sneak Peek:

No. of Words: 940

Level: Indeed Difficult

Estimated time: 5 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 60 – 80 minutes or even more

Note: In this article the author clarifies the position of International law framework and suggest that during this outbreak of COVID- 19 the international legal obligations shall not be given a go by. A lot of technical terms and the names of International covenants have been used by the author, try to get familiarized with the broad meaning of it instead of involving in the intricacies. Also this article will upgrade your level of vocabulary. As a CLAT aspirant you are not expected to mug up the facts and the names of the international covenants but just to have a fair idea about the topic and its implications.

Article11

Nations must not ignore principles of existing international law in fight against COVID-19

The coronavirus epidemic has now enveloped the globe and generated new forms of governmentality and bio-legitimation practices in its wake. But only new forms of human compassion and solidarity can help overcome this lethal and formidably grim challenge.

Even amidst the disease and death caused by the pandemic, theoretical discourse rages, on the one hand on the intensification of the state of exception in combating COVID-19 and, on the other, the projection of the crisis as an opportunity for building a new future for global politics marked by empathy, fraternity, justice, and rights.

We engage here with only one facet of the new developments: How to read international law in the context of the pointers to the future?

Respect for the norms and standards of international law is among the paramount constitutional duties of the state under Article 51 of the Constitution, regardless of the quibbles on whether the language here refers only to treaty/obligations or also to customary international law. And despite US President Donald Trump's recent threat of actions against the WHO, international norms, standards, and doctrines remain relevant to making national policy and law.

The difference between the United Nations as a site of normative discursivity and as a site of doing global power politics is sadly manifest even now in the accelerated pace of the

pandemic. President Trump's insistence on calling it a "Chinese virus" renders it extremely unlikely that the pandemic will be discussed during the current monthly presidency of the UN Security Council by China. The threat of veto by China and Russia will always loom large whenever the matter is placed for discussion.

But the UN is also a site of systems of norm enunciation. Along with the International Law Commission, it is responsible for the progressive codification of law. The UN system has developed lawmaking and framework treaties as well as provided auspices for systems of "soft" law that may eventually become the binding law.

Some of the norms of international law are robust and deeply relevant. For example, the peremptory jus cogens — a few fundamental, overriding principles of international law such as crimes against humanity, genocide, and human trafficking apply to all states. And Article 53 of the Vienna Convention on the Law of Treaties goes so far as to declare that a "treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law". And even when ingredients of genocide remain difficult to prove, the International Court of Justice (ICJ) has held, in 2007, that states have a duty to prevent and punish acts and omissions that eventually furnish elements for the commission of crime of genocide. There also exist erga omnes rules prescribing specifically-determined obligations which states owe to the international community as a whole. This was enunciated by the ICJ in 1970 for four situations — the outlawing of acts of aggression; the outlawing of genocide; protection from slavery; and protection from racial discrimination. A great significance of this judicial dictum is that it lays down obligations which transcend consensual relations among states.
In addition, there are three other sets of international law obligations. These are primarily derived from the no-harm principles crystallised in the International Law Commission's 2001 Draft Articles on the Prevention of Transboundary Harm (DAPTH) and the Paris Framework Agreement on Climate Change, 2015.

The DAPTH has carefully developed norms of due diligence, stressing all the way that these may be adapted to contextual exigencies. But due diligence obligations certainly extend beyond local and national boundaries, especially because the environmental problems have a transboundary impact. Each state is obliged to observe these standards in the fight against COVID-19 as a matter of international law.

The second set of obligations relates to the other core human rights measures — no law or policy to combat epidemics or pandemic can go against the rights of migrant workers, internally displaced peoples, and refugees and asylum seekers. Respect for the inherent dignity of individuals in combating COVID-19 and for the rights of equal health for all, non-discrimination, and the norms of human dignity further reinforce accountability and the transparency of state and other social actors. Panicky and sadist policing, including shoot at sight orders in collective exodus situations, and militaristic responses to food riots de-justify health lockouts and curfews.

The third set of obligations arises out of international humanitarian law. The Biological and Toxin Weapons Convention (BTWC) is pertinent here. India did not subscribe to any conspiracy or racist theory about the origins of COVID-19 — in fact, India's foreign minister rightly affirmed the BTWC obligations on March 26 (on the 40th anniversary of that Convention). Surely, this global and non-discriminatory disarmament convention deserves applause because it outlaws a whole range of weapons of mass destruction. India has, and rightly so, called for "high priority" to "full and effective implementation by all states parties".

Multinational and domestic corporations are also liable before an increasing number of domestic courts. As if to confirm this, the Canadian Supreme Court, on February 28, held that customary international law can give rise to a direct claim in Canada if obligations pertaining to forced labour, slavery, cruel, inhumane and degrading treatment, and crimes against humanity are violated.

The starting point of a determined fight against COVID-19 has to be a full-throated repudiation of an ancient Latin maxim, inter arma enim silent leges (in times of war, the law falls silent). Combating this fearsome pandemic calls for re-dedication to nested international law obligations and frameworks.

Courtesy: 'The Indian Express ' as extracted from
https://indianexpress.com/article/opinion/columns/india-lockdown-quarantine-coronavirus-cases-upendra-baxi-6355478/

Sneak Peek:

No. of Words: 774

Level: Easy

Estimated time: 3 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 40 minutes or even more

Note: In this article the author clarifies the significance of access to justice. The author argues about the inability of conventional courts to deliver timely justice and suggests need for reforms which include the idea of e - courts. A must read for every law aspirant as it is next.

Article 12

Accessing justice online

There are many ways in which citizens can get greater access to justice while the burden on conventional courts is reduced

With Indian courts too under a lockdown for three weeks (and probably more), citizens have severely restricted access to justice for this period. However, the deeper malaise is the complete inability of the conventional court system to deliver timely justice. This shakes the very foundation of the polity on which we rest our constitutional promises. Collectively, the conventional court system appears to have heaved a frustrated sigh and dropped the challenge instead of picking up the gauntlet.

Technology, however, now provides us an opportunity to meet the challenge headlong. The Kerala High Court did exactly that on March 30, 2020. It created history by not only conducting proceedings through video conferencing but also live streaming the proceedings. The judges conducted the hearing from their homes. Nearly 30 urgent matters were taken up for hearing, including bail applications and writ petitions, and were disposed of. The advocates concerned and law officers also participated in the proceedings from their respective offices. This is truly epochal. This example must be institutionalised and eternalised.

A blueprint for e-courts

To achieve this, the government must establish an effective task force consisting of judges, technologists, court administrators, skill developers and system analysts to draw up a blueprint for institutionalising online access to justice. Such a task force must be charged with the responsibility of establishing hardware, software and IT systems for courts; examining application of artificial intelligence benefiting from the data base generated

through e-courts projects; establishing appropriate e-filing systems and procedures; and creating skill training and recognition for paralegals to understand and to help advocates and others to access the system to file their cases and add to their pleadings and documents as the case moves along. Once the blueprint is ready, the High Courts across the country may refer the same to the Rule Committee of the High Court to frame appropriate rules to operationalise the e-court system.

The facility must not only enable access to courts but must provide access to justice through other processes as well. Let us take an example. The government, both at the Centre and the States, has innumerable poverty alleviation and distress eradication schemes. If all these schemes were properly implemented, there would be very little poverty or distress in India. So, why does this not happen? There is scant awareness amongst the beneficiaries about these programmes. What is the scheme about? How does one apply? Where does one procure the application forms? What is the next step? Within what time is the authority expected to respond? What is one to do if he or she does not? The answers to these questions remain a mystery to the beneficiaries. They invariably come up against a wall which they are unable to surmount. Now, if all this information is provided comprehensively at the grassroots levels and made available online in as many Indian languages as possible, it could be a huge step in creating awareness. Once this happens, it follows that more and more applications will be generated.

Role of Legal Services Authorities

So, what does all this have to do with accessing justice? While these schemes look rosy on paper, without implementation and accountability there is no justice to the aggrieved citizens. It is in addressing this problem that the Legal Services Authorities Act of 1987 and the officers functioning under them all over the country can play a huge role. If there is difficulty in accessing these schemes, a system must be set in place for the applicant to lodge online complaints with the Legal Services Authorities who can then ensure accountability and effective implementation. The local panchayat, municipal or corporation office, or any well-intentioned NGO can assist the complainant to make these online complaints to the Legal Services Authority if the complainant is unable to do so directly. The officers under the Legal Services Authorities Act may then be authorised to hear the complaints online and to direct delivery of redress to the aggrieved complainant in accordance with the law in a time-bound manner.

This is just one of the myriad ways in which access to justice can be enhanced exponentially while simultaneously reducing the burden on conventional courts. The other

facilities that would help access to justice are online mediation, arbitration, counselling in family court matters, quick settlement of disputed insurance claims, and many more. India is a land where skilled human resource is rarely lacking. If we can pick up the will power to do all of the above, justice will become an accessible concept to everyone.

Courtesy: 'The Hindu' as extracted from

https://www.thehindu.com/opinion/op-ed/accessing-justice-online/article31333630.ece

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Sneak Peek:

No. of Words: 726

Level: Easy - Moderate

Estimated time: 3 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 40- 60 minutes or even more

Note: It is in furtherance with a previous Article (another author's view on the same topic). The author in this article argues about the privacy issues popping up while confronting COVID- 19 outbreak. Aarogya Setu App is in news, do follow it as well. As a CLAT aspirant you are not expected to mug up the facts but just to have a fair idea about the topic and its implications.

Article 13

Implement Aarogya Setu, but only through law

Doing so will avoid the dangers of unrestricted use leading to disproportionate violation of fundamental rights

It is only a matter of time before the lockdown starts to ease. The threat of COVID-19, however, will continue. Studies say that there will be multiple waves of infection following the first wave. This will lead to a fundamental transformation in the role of the state in regulating society. Heightened epidemic surveillance by the government could lead to an increased risk of institutionalised surveillance of individuals. To protect large swathes of the population from possible exposure to the infection, the movement of individuals will also be heavily regulated.

Purpose limitation

At present, the movement of individuals is subject to permits in various parts of the world, including India. In China, it's alarming to note that a phone app was started as a voluntary service for informing users of their potential exposure to infected persons, but soon began to be used as an e-pass for allowing access to public transport. The situation in China

raises similar concerns in India. The Aarogya Setu app launched by the government is designed to enable users who have come in contact with COVID-19 positive patients to be notified, traced and suitably supported. It has been criticised for not complying with data protection principles of data minimisation, purpose limitation, transparency and accountability, all of which are crucial to protecting the privacy of its users.

According to the app's privacy policy, Aarogya Setu collects the personal data of its users and allows the disclosure of such data to the government to provide it with necessary details for "carrying out medical and administrative interventions necessary in relation to COVID-19." Such vague articulation weakens the app's purpose limitation. The government is also at liberty to revise the terms of the privacy policy at its discretion (and has done so) without notifying its users.

Given the design of the app, it is not difficult to conceive of the wide dangers of its misuse to carry out surveillance of users. Concomitantly, the app also equips the government with an instrument for restricting and regulating the right of freedom of movement of citizens, especially due to its fluid terms of service. Some reports suggest that the government is considering using the app as a criterion for restricting users' movement. The potential restriction on freedom of movement will have considerable impact on an individual's access to basic government benefits and services, thus endangering citizens' right to life. For example, entry into banks and access to PDS may become subject to the colour coding of the person on the Aarogya Setu app. There is no limitation on the gamut of restrictions that may be imposed using the app. The resultant impact will be disproportionately higher on the most vulnerable sections of the society.

The unconstitutional bargain

A seemingly benign app based on voluntary consent is thus loaded with potential to be used as a tool to violate fundamental rights. Individuals may be forced to download the app to be able to access basic amenities and services. This situation could posit the problem of an unconstitutional condition or barter — a situation where citizens are forced to give up their rights (right to autonomy and privacy in this case) in exchange for government benefits. Further, the existing users of the app could be subject to arbitrary restrictions in their fundamental rights without their informed consent as they would not have foreseen such restrictions at the time of giving their consent to downloading the app. The situation bears resemblance to Aadhaar. Originally designed as an optional programme to provide government benefits to citizens based on their voluntary consent, Aadhaar was later made compulsory, even for private services such as banking and mobile

phone registrations. The Supreme Court then disallowed private parties from using Aadhaar for authentication on grounds that it exceeded its intended purpose.

To avoid unforeseeable dangers of mass surveillance and disproportionate restrictions of fundamental rights, it is therefore imperative that the Aaorgya Setu app is implemented only through law, especially since India lacks a comprehensive data protection or surveillance law. It is already a settled legal principle that any limitation of fundamental rights must be implemented only through a law pursuing legitimate state interest. Enacting such a law will not only subject government actions to limitations but will also facilitate its constitutional scrutiny.

Courtesy: https://www.thehindu.com/opinion/op-ed/implement-aarogya-setu-but-only-through-law/article31391708.ece

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Sneak Peek:

No. of Words: 768

Level: Easy

Estimated time: 3 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 40- 60 minutes or even more

Note: This article primarily is inspired by the appointment of Justice Gogoi as a Member of Rajya Sabha. The author argues about the need for a law to bar the appointments of retired judges by the government to ensure Independence of Judiciary. As a CLAT aspirant you are not expected to mug up the provisions of law but just to have a fair idea about the topic and its implications. A good read for law aspirants. Enjoy !!!

Article 14

Pre-retirement judgments and post-retirement jobs

Enacting a law barring appointments of retired judges by the government will restore confidence in the judiciary

The Constitution has been conceived to provide a pride of place to the judiciary. Constitutional appointees to the Supreme Court have been guaranteed several rights in order to secure their independence. Chapter 4 of Part V of the Constitution deals with the Supreme Court, and Chapter 5 of Part VI deals with the High Courts. The salaries of judges and their age of retirement are all guaranteed in order to secure their independence. They cannot be easily removed except by way of impeachment under Articles 124(4) and 217(1)(b). They have the power to review legislation and strike it down. They can also

question the acts of the executive. All this makes it clear that the framers of the Constitution envisaged an unambitious judiciary for which the only guiding values were the provisions of the Constitution.

The Gogoi example

It was thought that on retirement from high constitutional office, a judge would lead a retired life. Nobody ever expected them to accept plum posts. But the clear demarcation between the judiciary and executive got blurred as many judges over the years began to accept posts offered by the government. A few years ago, a former Chief Justice of India (CJI) was made a Governor by the ruling BJP government. Now, we have the case of a former CJI, Ranjan Gogoi, being nominated by the President to the Rajya Sabha and taking oath as Member of Parliament. During his tenure as CJI, Justice Gogoi presided over important cases such as Ayodhya and Rafale where all the decisions went in favour of the government. This gave rise to the impression that his nomination was a reward for these 'favours'. Thus his appointment — and that too within a few months of his retirement — not only raised eyebrows but came in for severe condemnation from varied quarters.

People are fast losing confidence in the so-called independent judiciary. In 2013, former Union Minister Arun Jaitley, who was also a senior Advocate, ironically said on the floor of Rajya Sabha: "I think, we are going a bit too far now, in every legislation, in creating post-retirement avenues for Judges. Almost everyone, barring a few notable, honourable men, who are an exception, wants a job after retirement. If we (Parliament) don't create it, they themselves create it. The desire of a post-retirement job influences pre-retirement judgments. It is a threat to the independence of the Judiciary and once it influences pre-retirement judgments, it adversely impacts on the functioning of our Judiciary." It is in this context that the appointment of Mr. Gogoi has to be perceived.

An interview that Justice Gogoi gave after assuming office as member of the Rajya Sabha made the situation worse. When asked whether his nomination was a quid-pro-quo for his having delivered judgments in favour of the Central government, his answer, that he was not the only judge but there were other judges too, was damaging. His view that membership of the Rajya Sabha was not a job but a service, and that once the President nominated him the call of duty required him to accept it, only created the impression that the judiciary is pliant. A bare reading of Article 80(3) of the Constitution only envisages the President to nominate "persons having special knowledge... in literature, science, art and social service" as members to the Rajya Sabha. It is difficult to imagine that the Constitution-makers had in mind a retired CJI when framing this provision.

Time to enact a law

Therefore, appointments of persons who have held constitutional office will undermine the very constitutional values of impartiality in the dispensation of justice. It will also go against the clear demarcation of separation of powers. It is true that there are no rules which stood in Justice Gogoi's way of being appointed to the Rajya Sabha. But such matters cannot be left to the individual vagaries of judges. If post-retirement appointments are going to undermine confidence in the judiciary and in constitutional democracy, it is time to have a law in place either by way of a constitutional amendment or a parliamentary enactment barring such appointments. This is the only way to secure the confidence of the people and prevent post-retirement appointments. Judges can be compensated by being given their last drawn salary as pension. Also, the age of retirement for judges can be increased by a year or two. This will undo the damage caused by post-retirement jobs. It is important to remember that judges are constitutional servants, not government servants.

Courtesy: ' The Hindu' as extracted from: https://www.thehindu.com/opinion/op-ed/pre-retirement-judgments-and-post-retirement-jobs/article31408953.ece

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Sneak Peek:

No. of Words: 462

Level: Easy

Estimated time: 2 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 15 - 20 minutes

Note: This article is primarily reporting of a judgment by Sindh HC of Pakistan where The court overturned the conviction of Omar Saeed Sheikh, and three others who were accused of murdering American journalist Daniel Pearl. The author opines that the judgment is untenable in law and a clear departure from Rule of Law Doctrine.

Article 15

Mockery of justice: On Daniel Pearl murder case acquittals

Pakistan's commitment to punishing those involved in terror acts remains suspect

Thursday's ruling by the Sindh High Court that overturned the conviction of Omar Saeed Sheikh, and three others, of murdering American journalist Daniel Pearl, for lack of evidence is scandalous in its utter disregard for criminal jurisprudence. The court observed that no evidence had been brought before it by the prosecution to link any of the

four — the others being Fahad Saleem, Syed Salman Saqib and Sheikh Muhammad Adil, whose convictions were similarly overturned - to the killing of Pearl. This is sophistry at its best and speaks eloquently of the systematic way the case has been diluted from the beginning. Pearl, then South Asian Bureau Chief of The Wall Street Journal, was abducted in Karachi in January 2002, in an operation managed by Omar Sheikh, who had demonstrated links to, among others, Pakistani militant groups as well as to al-Qaeda. Pearl had been baited while investigating links between al-Qaeda and the British 'Shoe Bomber' Richard Reid, who tried, in mid-air on a flight, to light explosives in his shoes on December 21, 2001, just two months previously. Many ransom demands later, a video was handed over on February 21, 2002, wherein Pearl was shown being methodically beheaded with a knife. When the Americans began to squeeze Pakistan to go after the perpetrators, Omar Sheikh 'surrendered' to Ijaz Shah, a former Intelligence Chief, then Home Secretary of Punjab; he is now the country's Interior Minister. Even more curiously, it was after many days that Sheikh's arrest was shown.

The Sindh government has extended Sheikh's detention and the provincial prosecutor has said that the High Court ruling will be appealed in the Supreme Court. But these moves could be aimed at blunting growing international opprobrium, including at the FATF, the global money laundering and terrorist financing watchdog, that has already put Pakistan on its 'grey list', and where India has said it will bring this matter for discussion. It is likely that once the pressure eases, Sheikh and his cohorts will be let off as has happened with others before them. Pakistan's record of leniency on this has been as consistent as it has been alarming. In 2015, Zakiur Rehman Lakhvi, who supervised the 26/11 Mumbai attacks, was released from detention, and remains free. Just last month, Pakistan's Economic Affairs Minister Hammad Azhar revealed that Jaish-e-Mohammed chief Masood Azhar had conveniently gone "missing" along with his family. Masood Azhar, Omar Sheikh, and Mushtaq Ahmed Zargar had been released in exchange for hostages of Flight IC 814 in December 1999 into Taliban/ISI custody in Kandahar. Pakistan needs to be persuaded to move beyond tokenism and demonstrate a much higher order of commitment to deal with such terrorists than it has hitherto shown.

Courtesy: ' The Hindu' as extracted from:
https://www.thehindu.com/opinion/editorial/mockery-of-justice-the-hindu-editorial-on-daniel-pearl-murder-case-acquittals/article31264465.ece

Sneak Peek:

No. of Words: 445

Level: Easy

Estimated time: 2 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 20 minutes

Note: This article is about the detention of Mehbooba Mufti and the legal intricacies thereto. Highly suggestive. Please understand the context and follow the recent developments with Art 370 and J & K in 2019-20. Have a 360 degree analysis of it.

Article 16

Prolonged injustice: On Mehbooba Mufti's detention

Mehbooba Mufti's continued detention in J&K is hard to defend morally and politically

It has been eight months since the Centre revoked the special constitutional status of Jammu and Kashmir and downgraded and divided it into two Union Territories in August 2019. Several political leaders imprisoned in the wake of the abrupt decision continue to be in detention even now, the most prominent among them being the former Chief Minister Mehbooba Mufti. Two other former CMs — Farooq Abdullah and Omar Abdullah — were released last month. Freedom for Ms. Mufti is still not near, the administration indicated on Tuesday as it shifted her from a guesthouse-turned-jail to her official residence that has been designated as a subsidiary jail. She will not be allowed to move out of here or receive visitors, and remains in detention under the controversial Public Safety Act (PSA). Hundreds of others including veteran Peoples Democratic Party (PDP) leader Naeem Akhtar and IAS-officer-turned politician Shah Faesal continue to languish in jail. The manner in which the Centre hollowed out Article 370 and dismantled a State set an inglorious precedent in the history of Indian federalism. The lockdown of J&K was mostly lifted, before it was reimposed to combat COVID-19. Meanwhile, the constitutionality of the revocation of the special status and accompanying restrictions on the entire population of a region remains unsettled before the Supreme Court, eight months on.

Ms. Mufti's home imprisonment, at a time when the entire population is expected to lock themselves up in their own homes, is the theatre of the absurd. Her continuing incarceration even after two other former CMs have been freed is inexplicable. What is it that makes her an exceptional suspect under the PSA? The change in the status of J&K and the massive deployment of force to deal with its aftermath were spectacles of a new national resolve, according to the supporters of those decisions. The unfolding tragedy of

the pandemic bespeaks the pitfalls of lopsided priorities, by laying bare the country's inadequate health-care infrastructure. J&K is badly hit by the disease, with a fightback restricted by the absence of an elected government. The havoc by the virus should not be used as a facade to trample upon civil rights or to criminalise expression of opinion. If anything, this unprecedented crisis should spur fresh thinking on finding solutions to intractable political problems. The BJP's view on Kashmir is as old the party itself. But that by itself is no reason to avoid revisiting the issue. The very least it can do, however, is to immediately free Ms. Mufti. That will be a good signal to the people of J&K during these tough times.

Courtesy: ' The Hindu ' as extracted from:
https://www.thehindu.com/opinion/editorial/prolonged-injustice-the-hindu-editorial-on-mehbooba-muftis-continued-detention/article31293081.ece

Sneak Peek:

No. of Words: 593

Level: Easy

Estimated time: 2 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 30 minutes or even more

Note: This article primarily reveals the irony of Justice delivery system during lock down.

Article 17

Unlocking justice in the lockdown

Without legal practitioners being classified as essential, fundamental rights cannot be realized.The pandemic has compelled the government to suspend work, movement, businesses, services, liberty and more. The Constitution itself, however, cannot be suspended. Any measures enforced under statutory frameworks must conform to the Constitution. Nevertheless, practically, with the near-complete shutdown of India's justice system, such operation of the Constitution lies in limbo.

Several situations today warrant the intervention of the judiciary. For instance, the enforcement of the constitutional rights of life, health and food requires urgent resolution. Any constitutional challenge, however, requires unfettered access to lawyers and courts. The non-inclusion of both in the state's list of permitted activities effectively denies such access.

Peculiarly, the judiciary too has retreated into the background. While the higher courts are hearing 'urgent' matters, the lower courts are entertaining only 'remand' cases. In doing so, they have ceded important constitutional and legal space to the executive. Video-based online proceedings have been proposed as an alternative. But their success rests on the assumption that everyone has equal access to properly functioning equipment as well as fast Internet. The idea also assumes that all courts are Internet-enabled and all functionaries are tech-savvy.

No legal protection

Meanwhile, the state is still active in its traditional policing functions. In Guwahati, on April 7, two activists were arrested in connection with a 2018 case, a day after complaining that officials were siphoning off rice meant for public distribution. Last week, the Delhi police booked two students under the Unlawful Activities (Prevention) Act, in a case related

to communal violence in Delhi over the Citizenship (Amendment) Act of 2019. Article 22 of the Constitution guarantees every individual the right to consult and to be defended by a legal practitioner of their choice upon being arrested or detained in custody by the state. While arrests by the police are rampant, legal protection has almost vanished on account of non-functioning lawyers and courts. Without legal practitioners being classified as essential, one wonders if fundamental rights can substantively be enforced.

Moreover, in the enforcement of lockdown, reports of summary punishments by the police without any sanction of the law are pouring in from across the country. Videos of police forcing persons to perform push-ups and squats; vandalising vegetable carts; and harassing migrant labourers and the homeless are evidence of arbitrariness. The ease with which we have given up on the principles of rule of law is deplorable.

With justice being inaccessible, the populace has become powerless in both the public and private spheres. The National Commission for Women has reported an increase in incidents of domestic violence. Despite abusers and victims being locked down for over 40 days, the institutional response has been to take away the civil remedy of obtaining 'protection orders' against the abuser under the Protection of Women from Domestic Violence Act, 2005.

The lacunae must be remedied

In contrast to India's response, the U.K. first notified legal practitioners as key workers and then notified how different categories of courts shall function. In the U.S., the Department of Homeland Security categorises 'workers supporting the operations of the judicial system' as essential.

In India, the judiciary and the executive should have instituted means to serve the cause of justice. A comprehensive response should have outlined the minimum judicial infrastructural requirements; the nature, type and manner of priority cases; enforcement of physical distancing guidelines; and list of key personnel permitted to ply to and from courts, prisons, police stations, residences, etc. These lacunae must be remedied. Justice must not become a casualty to the pandemic.

Courtesy: ' The Hindu ' as extracted from : https://www.thehindu.com/opinion/op-ed/unlocking-justice-in-the-lockdown/article31456524.ece

Sneak Peek:

No. of Words: 992

Level: Moderate - Difficult

Estimated time: 5 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 60-75 minutes or even more

Note: In this article the author clarifies about the Members of Parliament Local Area Development Scheme and its legal position. It will help you understand the issue and the legal intricacies.

Article 18

MPLADS is nimble tool for targeted intervention, scrapping it in crisis is counterproductive

MPLADS was challenged in the Supreme Court as being violative of Articles 275, 282, the 73rd and 74th Amendment, and the constitutional design itself.

Contrary to popular perception, MPLAD funds cannot be spent at the discretion of an MP in any manner he/she wants.

With a brusque proclamation on April 6, the government decided to suspend operation of the Members of Parliament Local Area Development Scheme (MPLADS) for the next two financial years, and divert Rs 7,900 crore to the fight against COVID-19. The decision is both misconceived and mischievous. It would subvert the fight against COVID-19 rather than strengthen it.

It is important to understand the MPLADS, and why these resources are needed now more than ever. In the classical constitutional construct premised upon the principle of separation of powers, the legislature is not supposed to play an executive role. It is charged with the remit of enacting legislation and exercising sharp oversight over government functioning.

However, in any developing nation, the aspiration for better quality public goods and an enhanced standard of living is a legitimate desire. The expectation, therefore, from public representatives to contribute to this paradigm is strong.

That is why on December 23, 1993, the government announced the MPLAD Scheme. It was formulated to enable the members of Parliament to identify small works based on locally felt needs in their constituencies. The objective being to recommend works of developmental nature with emphasis on the creation of durable community assets.

These are customised solutions unique to the situations that they address. However, the broad focus is on clean drinking water, primary education, public health, sanitation and roads. Each Lok Sabha MP gets Rs five crore per year for his/her constituency; Rajya Sabha MPs have the flexibility to spend it across the state from where they have been elected. This money is allocated through a parliamentary appropriation.

MPLADS was challenged in the Supreme Court as being violative of Articles 275, 282, the 73rd and 74th Amendment, and the constitutional design itself. In 2010, a five-judge bench of the SC held the scheme to be intra vires of the Constitution and declared "Indian Constitution does not recognise strict separation of powers. Even though MPs have been given a seemingly executive function, their role is limited to 'recommending' works and actual implementation is done by the local authorities. Therefore, the scheme does not violate separation of powers. Panchayat raj institutions, municipal as well as local bodies have also not been denuded of their role or jurisdiction..."

Contrary to popular perception, MPLAD funds cannot be spent at the discretion of an MP in any manner he/she wants. There is a set of guidelines mandating the utilisation of the monies. These diktats are updated regularly and are available on the website of the Ministry of Statistics and Programme Implementation. A complete breakdown of how the money is utilised is also available under the Right to Information (RTI). The funds spent are subject to audit by the Comptroller and Auditor General of India. Moreover, the MPs can only recommend development works and the money is electronically transferred to the concerned executing agency directly by the district administration.

Most MPs use their MPLAD funds judiciously and guard them zealously. For us, it is a constant battle between great hopes and scarce resources. A perpetual effort is, therefore, always afoot to extract the maximum advantage from every paisa spent. Coming to COVID-19, it is in fact the MPs who acted even before the government got its act together, for they have their ear to the ground always. Individually and collectively, they represented to the presiding officers of both the Houses to relax the guidelines in order to enable them to procure the necessary wherewithal to fight this pandemic.

On March 24, the government came out with a notification that permitted MPs to utilise their funds for the purchase of infra-red thermometers, personal protection equipments, thermal imaging scanners, corona testing kits, ICU ventilators, face masks, gloves and sanitisers and other necessary medical equipment. Mysteriously, 11 days later, the

scheme was scrapped. What changed in those 12 days? Were there any reports of malfeasance? The answer is no.

What did change was that, on March 28, another letter was received requesting MPs to give their consent for the release of Rs 1 crore from their next MPLAD instalment for the fiscal 2020-21 "to such central government pool or head of account as may be decided by the Government of India for prevention and control of COVID-19 in the country". Not many MPs responded. Not because they are insensitive, but primarily because most of us were dealing with the human fallout of the ill-conceived and badly implemented lockdown. Did someone's "ego" get hurt at this lack of response? The jury still remains out on that.

Turning to the bigger picture, just a fortnight ago, the Parliament passed the Union Budget of Rs 30,42,230 crore. The receipts, other than net borrowings, are projected at Rs 22,45,893. The fiscal deficit is targeted at 3.5 per cent of the GDP lower than the Revised Estimate of 3.8 per cent in 2019-20. The new financial year has just commenced. The government can easily find Rs 2 lakh crore to fight COVID-19 just by rationalising and re-targeting government expenditure. The appointment of an expenditure rationalisation commission is, in fact, the need of the hour. As an estimate pointed out, Rs 93,562 crore can come from 15 central public sector enterprises alone without much effort. Taking away Rs 3,950 crore for 788 MPs is not even a drop in the ocean.

MPLADS is a very nimble and effective scalpel of targeted micro-level intervention. In the months and days ahead, when distress — medical and economic — will haunt the countryside, these discretionary interventions will help save lives. The MPs should be trusted. What is required is cooperative federalism and not unrestrained authoritarianism.

Courtesy: https://indianexpress.com/article/opinion/columns/mplads-coronavirus-mp-salary-funds-6356939/

No. of Words: 1104
Level: Moderate
Estimated time: 8-9 minutes (maximum time on D- day to crack) this one
Estimated Analysis time: 60-75 minutes or even more
Note: In this article the author touches upon various important constitutional provisions to establish the role of judiciary as custodian of human rights and to uphold the principle of Socio – Economic Justice

Article 19

It is our constitutional duty to ensure a safety net for the economically weaker sections of society

Restrictions that are being imposed by the State, even if they are presumed to be necessary in the present circumstances, have deprived the right of people to their livelihoods, and therefore their Right to Life.
Global experience shows that the restrictions imposed on people in the light of the COVID-19 outbreak has not had the same effect on all. There is overwhelming evidence from all parts of India that the lockdown has caused economic and physical distress to migrant labourers, daily wage workers and farmers. The current phase of the lockdown is slated to end on May 3. But we do not know if there will be more lockdowns in future.
A restrictive action, taken in national interest, often ends up hurting those sections of society who, in any case, struggle for basic resources for survival. Can any section of the society be made to bear an unequal and unbearable burden of what maybe considered as necessary state action?

The Preamble of the Constitution makes "Economic Justice" one of the founding goals of our polity. Article 21 recognises that every person has a Fundamental Right to Life. The Supreme Court has reiterated several times that this right includes the "Right to livelihood" — to earn the basic necessities of life. Article 19 (1) (g) guarantees to every citizen the fundamental freedom to carry on any profession, occupation, trade or business, subject to reasonable restrictions. Article 14, which guarantees the Fundamental Right to Equality, not only protects every person against arbitrary action of the State, it also permits the State to treat weaker sections of the society as a separate class and address their concerns directly to ensure economic justice.

Article 38 — in Part IV on Directive Principles of State Policy "which contain the principles fundamental in the governance of the country" (Article 37) — states that "the State shall strive to promote welfare of the people by securing effectively, as it may, a social order in which economic justice shall inform all institutions of the national life". Most importantly, Article 39 states that "the State shall, in particular, direct its policy towards securing that the citizens have the right to an adequate means of livelihood". Over several decades now, the Supreme Court has repeatedly held that Directive Principles of State Policy give meaning and substance to the Fundamental Rights. The reasonableness of the restrictions imposed by the State on the freedoms under Article 19 (2) to Article 19 (6) of the Constitution will also have to be judged while keeping the Directive Principles of State Policy in mind.

Restrictions that are being imposed by the State, even if they are presumed to be necessary in the present circumstances, have deprived the right of people to their livelihoods, and therefore their Right to Life. Such restrictions would become unreasonable, arbitrary and unconscionable, if immediate steps are not taken to compensate the people worst affected by these restrictions so as to enable them to afford the basic necessities of life. Whenever it appears that Fundamental Rights are in danger of being infringed, the constitutional courts have the duty to act firmly under Articles 32 and 226 of the Constitution.
A report prepared by a group of economists at the Ashoka University in the Ideas for Idea (I4I) forum has tried to assess the adverse impact of the lockdown restrictions on the vulnerable sections and have come up with several policy suggestions to ameliorate their suffering by making in-kind and cash transfers. As far as in-kind transfers are concerned, the existing Public Distribution System (PDS) and the chain of fair price shops in the country need to be leveraged to provide food grains and other necessities in as universal a manner as possible. The PDS has to work with the vision of providing comprehensive nutrition to the population by providing pulses, millets and oils — not rice and wheat alone. Boosting the population's nutritional levels and immunity is, after all, critical in the long-drawn fight against COVID-19.

As regards the need for cash in hand, it is instructive to look at the data for the two fortnights from February 29 to March 27 released by the Reserve Bank of India on the currency held by the public. In the days leading up to the lockdown (including the first four days of it), the public withdrew a whopping Rs 84,460 crores in cash. This amount is

about the double of what is typically withdrawn — sometimes, in fact, they withdraw much less— for any two consecutive fortnights in the recent past. When faced with overbearing economic uncertainty, those of us who have the wherewithal seek security in the liquidity and flexibility that cash provides. This behaviour of the well-off should reveal to policymakers the nature of human needs and insecurities that need to be addressed by a comprehensive relief package for the vulnerable groups. Hence, a relief package needs to encompass both in-kind and cash transfers, working as complements.

However, it is vital that the cash transfer is reasonable and not merely a token one. While different computations can be made, the Ashoka report, based on lost earning calculations, recommends for a household of four a monthly transfer of an amount of Rs 5,400 in urban India and Rs. 4,200 in rural India. Not only should we leverage the infrastructure of the existing programmes for such cash transfers — PDS, MNREGA, Jan Dhan, PM Kisan, etc — we must also innovatively reach out to large group of migrant workers who may not be covered under these programmes. Some academics have pointed out about the success of Odisha in using a cash-in-hand model for disbursing pension payments. This can also serve as a model. In Odisha, these transfers are directly made in cash through the gram panchayat in a public setting to check any possible corruption.

In the current situation, it is our constitutional duty to ensure that we create a safety net for the economically weaker sections of the society. It is not open anymore to the State to object on the ground that it does not have adequate resources to perform its constitutional obligations. The State has to prioritise the expenditure of its resources in such a manner so as to first meet its basic constitutional obligations. While the executive is best positioned to formulate and execute appropriate policy solution in this regard, the constitutional courts in the country will have to goad and guide the executive to direct its resources towards its constitutional object of ensuring economic justice.

Courtesy: ‘ The Indian Express ’ https://indianexpress.com/article/opinion/it-is-our-constitutional-duty-to-ensure-a-safety-net-for-the-economically-weaker-sections-of-society-6369475/

Sneak Peek:

No. of Words: 757

Level: Moderate - Difficult

Estimated time: 5 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 60-75 minutes or even more

Note: In this article the author suggest that Insolvency code should be suspended for six months to help companies recover. Insolvency and Bankruptcy Code had been in news thus it is suggested to have a Vidhigya 360 degree analysis done for IBC. This article will provides more insights about the same.

Article 20

Insolvency code should be suspended for six months to help companies recover

After the lockdown is over, several companies are likely to default on their dues to both operational and financial creditors. The latter include banks and others who have given financial assistance to a company in the form of loans and debentures.

The economic consequences of the COVID-19 pandemic and the lockdown that followed will undoubtedly be disastrous. These crippling blows have come close on the heels of the worst economic slowdown experienced by the country in the recent past. Almost every sector was badly affected. The manufacturing sector had seen a drastic drop in production due to a steep fall in consumption. The lockdown has badly affected the service sector, particularly travel, hospitality, and wholesale and retail trade.

After the lockdown is over, several companies are likely to default on their dues to both operational and financial creditors. The latter include banks and others who have given financial assistance to a company in the form of loans and debentures. According to a 2018 amendment to the Insolvency and Bankruptcy Code (IBC) 2017, flat purchasers are also deemed as financial creditors. An operational creditor is just about anyone who has to receive money from a company. The IBC provides a fast-track mechanism to deal with companies which are unable to repay their creditors and have become financially unviable. Section 22 of the Code mandates the appointment of a Resolution Professional (RP) who is expected to miraculously turn around the company in 330 days. If this attempt fails, the company goes into liquidation.

The IBC's provisions have been extensively used by various creditors whose dues were not paid. Initially, the threshold limit was just Rs 1 lakh and the IBC became an effective recovery mechanism for all operational creditors. Just before the lockdown, the finance minister raised the threshold for invoking the insolvency provisions to Rs 1 crore. She said that this limit was being raised to prevent proceedings being initiated against small and medium enterprises.

After the lockdown, several enterprises, large, medium and small, might not be able to pay their dues, at least in the short-term. The easiest way for a creditor to recover money is to initiate insolvency proceedings against the debtor company and threaten it with liquidation. The shutdown of business after the lockdown could have a domino effect. If an auto-manufacturer has shut down its operations, the ancillary units will not get their dues. This would then lead to non-payment to downstream vendors and service providers as well. It might take at least three to four months for the situation to stabilise.

The most important, and immediate, step that needs to be taken is to have a six-month moratorium on the IBC. It may be necessary to promulgate an ordinance suspending the prospective operation of Sections 7 and 9 of the IBC so that no fresh petition is filed against a company. While this could hurt some of the creditors, the damage that could be done to the corporate sector by invoking the IBC is likely to be far greater. A distressed creditor is not without a remedy as he can always approach the civil courts for relief, which will not be so severe on a defaulting company.

If an insolvency petition is filed and the RP appointed, it is difficult to stop the insolvency process. The IBC requires a financially-stressed company to be taken over by a financially-sound one. For example, Essar Steel was taken over by ArcelorMittal and Bhushan Steel was taken over by Tata Steel. In the current scenario, it will be difficult, if not impossible, for an RP to find a suitable buyer and the only option would be to liquidate the company. Suspending the IBC for a short period would enable several companies to return to normalcy without the constant threat of an insolvency application and its Board of Directors and management being taken over by the RP. Moreover, the National Company Law Tribunal benches will simply be unable to take any additional workload.

Using the insolvency process to recover dues is contrary to the IBC's objectives. Its preamble indicates that the objective of the IBC is not just insolvency but the reorganisation of companies, maximisation of value of assets and the need to balance the interests of all stakeholders. Therefore, suspending the IBC for six months would be a much-needed step to prevent further damage to the economy. It would be in the larger public interest. Indeed, at this critical stage, permitting the legal remedy of insolvency could be the last nail in the coffin of many companies.

Courtesy: 'The Indian Express' as extracted from:
https://indianexpress.com/article/opinion/columns/insolvency-and-bankruptcy-code-coronavirus-impact-on-indian-economy-6365965/

Sneak Peek:

No. of Words: 1800 words

Level: Moderate – Difficult | Essay type, very informative

Estimated time: 10 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 90-120 minutes or even more

Note: In this article questions the role of governor in a democratic setup. It clarifies the constitutional position about the same. Further it is inspired by the issue of Uddhav Thackeray's Nomination to legislative council and the role of governor. It is a very informative text to understand the legal position about the subject.

Article 21

Uddhav Thackeray's Nomination: Least Risky Option or Subversion of Democratic Process?

The process of nominating unelected chief ministers to prevent their resignations subverts the legislative intent behind having nominated members.

The Maharashtra cabinet, on April 9, unanimously resolved to recommend to governor Bhagat Singh Koshyari that chief minister Uddhav Thackeray be nominated to the legislative council.

This recommendation comes on the heels of news that elections to nine seats of the legislative council, scheduled to take place on April 24, were being postponed by the Election Commission of India against the backdrop of the outbreak of coronavirus.

Why is it important for Thackeray to be nominated?

According to Article 164(4) of the constitution of India, a minister who is not a member of the state legislature for a period of six consecutive months ceases to be a minister after this period ends.
This provision applies to chief ministers as well. Uddhav Thackeray took oath as the chief minister on November 28, 2019, and the period of six months ends on May 27, 2020. Maharashtra is one of the few states in the country which has a bicameral legislature or two houses of the legislature.
When Thackeray took an oath, he was not a member of either the legislative assembly or the legislative council and has not become a member since.

Ordinarily, in such circumstances, chief ministers are elected to the legislative council as was done in the case of Yogi Adityanath in Uttar Pradesh and even Prithviraj Chavan in Maharashtra. This is because elections to the legislative assembly create uncertainties and require a sitting MLA to resign, besides the time that the Election Commission takes to conduct by-elections.

Therefore, in order to continue as the chief minister of Maharashtra, Thackeray must become a member of the legislative council, before May 27 in order to avoid the resignation of the entire council of ministers leading to a constitutional crisis in the state worst-hit by the novel coronavirus.

What is the governor's power to nominate members to the legislative council?

Membership to the legislative council of a state is by way of a pre-determined formula: one-third of its members are to be elected by local authorities, one-twelfth to be elected by graduates, one-twelfth by teachers, one-third by members of the legislative assembly and the remaining are to be nominated by the governor. This scheme is neatly laid down in Article 171(3). As per Article 171(5), the governor's nominees shall consist of persons

having special knowledge or practical experience in the matters of literature, science, art, co-operative movement and social service.

Three questions then arise.
First, whether the governor exercises this power to nominate by way of discretion or the decision of the council of ministers has to be followed; second, whether this manner of 'backdoor entry' for ministers or chief ministers is appropriate, and third, whether courts can intervene and declare such nomination – of career politicians – as illegal.
The affairs of a state are carried out in the name of the governor of the state who is the nominee of the Union government and acts as a bridge between the state government and the Union government. Article 163(1) requires a governor to act on the aid and advise of the council of ministers, except for where the governor is specifically required, according to the constitution, to exercise discretion in carrying out their functions.

The landmark decision of Rameshwar Prasad v. Union of India reiterates the importance of the aid and advise of the council of ministers guiding a governor's actions. As is clear from the constituent assembly debates, this provision was to ensure that there do not exist two centres of power. Article 171(3)(e), under which the governor is granted the power to nominate members to the legislative council, does not grant any discretion to the governor in the exercise of this power.

Hence, the governor will have to follow the aid and advise of the council of ministers. This question was also raised in Vidyasagar Singh v. Krishna Vallabh Sahay before the Patna high court in 1964, as well as in V. Venkateshwar Rao v. Government of Andhra Pradesh before the Andhra Pradesh high court (as it was known then) in 2012.

In both these cases, the court held that the governor was bound to follow the aid and advise of the council of ministers. However, the governor is not required to act in a time-bound manner and therefore can stall the nomination process. Previously, in Maharashtra, the council of ministers recommended that two NCP politicians be nominated to the legislative council, but the nominations have not been notified yet since the term of the nominated members ends in June.

The purpose of giving the power to the governor to nominate members to the legislative council is to bring to the floor of the house, and therefore to deliberations that are carried out therein, expertise from different fields. The power of nomination, therefore, is intended to allow experts to become members of the house, despite their disinterest in electoral politics. Upper houses (Rajya Sabha and legislative councils) are meant to act as houses of moderation, checking the impulses of the lower houses (Lok Sabha and legislative assemblies) in enacting legislation and carefully scrutinising bills sought to be turned into laws.

Nominated members, who are largely apolitical beings, are expected to add to this balance to the house, and enrich legislative debates and inputs by contributing their own subject-specific expertise to law-making. If that is the legislative intent behind having nominated members, then using this route to nominate a sitting chief minister only to ensure that they do not have to resign, amounts to blatant misuse of the constitutional provisions and defeats the intent of the framers of the constitution.

Although there is no bar on nominated members becoming ministers, one would expect that their ministership would be on the basis of their expertise in the field. However, purported 'practical experience' in the field of social service (as is the justification for most career politicians' nominations) does not serve the purpose of having this provision in the constitution, as already mentioned above, the intent is to enrich the quality of legislative debates and consequent enactments by bringing to the house, inputs of those from outside the field of politics.

To argue that career politicians are also eligible for nomination under Article 171(3)(e), renders such provision redundant. One might claim that Uddhav Thackeray is a talented photographer, yet the purpose of nominating him to the legislative council is not to avail of his great experience and expertise in the field of photography but to merely ensure that he does not lose his chief ministership. Therefore, this is a clear misapplication of the constitutional provisions, especially when there the six-month period ends only almost one month hence.

However, despite this, courts have refused to intervene in nominations which may be politically coloured because of two reasons – that it is a political question, and that the governor has immunity against any action undertaken or purported to be undertaken in

furtherance of his constitutional duties. The doctrine of political question dictates that ordinarily, courts should restrict their sphere to resolving legal questions since it is not the best placed to solve political questions.

Accordingly, the Allahabad high court in Har Sharan Varma v. Chandra Bhan Gupta refused to intervene in a situation similar to the current one. In that case, the chief minister was not a member of the legislative assembly when he took his oath and failed to get elected to the legislative council in the six months' period and was nominated to the legislative council by the governor. The court had made some scathing criticisms on the backdoor route taken for the chief minister to save his government, but refused to intervene, deeming the use of Article 171(3)(e) in this manner to be a political question.

Article 361 gives immunity to governors from being answerable to any court for the exercise and performance of the duties of the office. Although, in cases pertaining to the exercise of discretion by the governor, courts have intervened and established standards for scrutiny of these acts, high courts have refused to intervene in cases of nomination of members to the legislative council.

In V. Venkateshwar Rao, the former Andhra Pradesh high court, while dealing with a challenge to a nomination to the legislative council, held that the governor's actions to nominate members based on the aid and advise of the council of ministers were immune to challenge by virtue of Article 361, affirming the Patna high court decision in Vidyasagar Singh v. Krishna Vallabh Sahay.

The Patna high court's decision even stated that courts cannot deal with the factual question of whether or not a nominated member had the 'special knowledge' or 'practical experience' required under Article 171(5). The court cannot question the validity of the nominations even when it was a case of a wrong choice, the governor was misinformed about the qualifications or the decision was erroneous.

According to Section 151A read with Section 151 of the Representation of People Act 1951, the time limit to fill up a vacant seat in the legislative council is within six months from the occurrence of the vacancy. The by-election can be conducted only when the remainder of the term of such member is one or more than one year. However, this provision is

applicable only in the case of by-elections to seats vacated by elected members and not in the case of members nominated by the governor. Nevertheless, the convention is that if less than a year of the term of members of the legislative council is left, the governor may not nominate a person to the council.

Therefore, as per the current jurisprudence on the point, courts are unlikely to intervene in any legal challenge to Uddhav Thackeray's nomination to the legislative council. Nevertheless, the Supreme Court has not ruled on the matter, and to that extent the decisions of high courts mentioned above shall not be binding on the Bombay high court under whose jurisdiction the question may lie.

Is there any alternative?
It is a given that in ordinary circumstances, Uddhav Thackeray would have been elected to the Legislative Council and this route would not have been required to be availed. The only other alternative to the nomination is for Thackeray to resign and take the oath again. However, the Supreme Court had, in 2001 in S. R. Chaudhari v. State of Punjab, ruled that resignation in between two periods of ministership without being a member of the legislature was unconstitutional and the subsequent appointment as minister would be subversive to parliamentary democracy. In light of this decision, it would be a risky proposition for Thackeray to resign and take the oath again.
In this emergency-like situation, a nomination to the legislative council may perhaps be the least risky alternative.

However, the governor is not bound to act in a timely manner with respect to nominations. Further, Koshyari may claim support of the convention as mentioned above to not nominate Uddhav Thackeray since the term of nominated members ends on June 6 this year.
Courtesy: ' The Wire' as extracted from:
https://thewire.in/law/uddhav-thackeray-legislative-council

Sneak Peek:

No. of Words: 1647 words

Level: Moderate – Difficult | Essay type, informative

Estimated time: 10 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 90-120 minutes or even more

Note: In this article questions the role of judge while granting bail is discussed. The author criticizes the bail orders in the recent cases where in his opinion the conditions for grant of bail were arbitrary.

Article 22

Strange and Arbitrary Bail Orders: Are Indian Judges Going Too Far?

A look at recent orders placing conditions on bail raises several questions.

In granting bail one must balance the personal liberty of the accused with public justice. Lately, there have been many problematic bail orders both in terms of their length, what they stated as well as the conditions these orders imposed. Recently while granting bail to Som Marandi, former BJP Member of Parliament, and five others, the Jharkhand high court directed each one of them to deposit Rs 35,000 in the newly formed PM CARES Fund and download the Aarogya Setu app.

The contact tracing app was recently launched to fight COVID-19 and has been downloaded by more than five crore Indians though concerns about privacy have also been raised as the government may get access to a lot personal information of its citizens. The law is clear that conditions which have no nexus with the object and purpose of bail and tend to be in the nature of harassment of the individual or even an infringement of their constitutional and legal rights cannot be brought within the purview of the lawful exercise of 'judicial discretion'.

Let us talk of other strange bail orders. In July 2019, one Richa Bharti, who was arrested for writing an offensive post on social media against Muslims, was given bail by judicial magistrate Manish Kumar Singh in Jharkhand on the condition that she should distribute five copies of the Quran to different libraries. Subsequently, this condition was withdrawn.

Justice Pratibha Rani of the Delhi high court in 2016 passed a 27-page bail controversial order in the sedition case against the then JNUSU president Kanhaiya Kumar. She did not hesitate in mentioning majoritarian rhetoric on "anti-national attitudes" in her order but ignored the established convention of keeping the bail order brief. She also, completely out of context, referred to borders being kept secure by our forces and connected this with

freedom of speech. She unnecessarily indicted and stigmatised the country's top university and asked the JNU faculty to pay the bond of Rs 10,000. She also imposed several conditions on Kanhaiya's participation in what she termed as 'anti-national activities'.

Earlier this year, while granting bail to Swami Chinmayanand, the former Union minister and BJP leader who was accused of sexual harassment by a female law student, Justice Rahul Chaturvedi of the Allahabad high court in his 25 page bail order made several unwarranted comments against the victim. Though the Amarmani Tripathi (2005) judgment of the apex court was quoted by the learned judge, it was not properly applied. In that judgment, the highest court had said that while granting bail, judges should keep in mind factors such as 'character, behaviour, means, position and standing of accused.' The accused here was too powerful and the victim really powerless but the court overlooked this vital factor. In fact, this bail order looked like the final judgment of the case, even as bail orders are not supposed to make any determination of the guilt or otherwise of the accused.

In a case about three men who allegedly murdered a young Pune techie, Mohsin Sheikh, in 2014, Justice Mridula Bhatkar observed in her six-page order that the victim was wearing, a "pastel green colour shirt and had sported a beard". "The fault of the deceased was only that he belonged to another religion. I consider this factor in favour of the applicant/accused. Moreover, the applicants/accused do not have [a] criminal record and it appears in the name of religion, they were provoked and have committed murder," the judge said while granting bail.

The order is shocking and dangerous as it rewrites the whole jurisprudence of provocation. Provocation cannot be claimed against anything which is lawful – to be Muslim, to wear a green shirt or sport a beard has not yet been made unlawful in India. Moreover, provocation cannot be voluntarily sought. In this case, the accused out of their own free will went to listen to the speeches at a Hindu Rashtriya Sena event. This was a strange justification for granting bail.

Binayak Sen was denied bail for years though he had not killed anyone. The charge against him was that he was allegedly a courier between jailed Naxal leader Naryan Sanyal and businessman Piyush Sinha because he met Sanyal 33 times, each time with due permission by jail authorities. The evidence against him comprised of a postcard written by Sanyal about his health and legal case duly signed by the jail authorities; a book on unity between CPI (Maoist) and the Maoist Communist Centre and a letter from an inmate,

Madanlal Barkhade, about prison conditions. Even an appeal for the release of Sen by Noam Chomsky and 22 Nobel Laureates did not move the then UPA government which had sided with the BJP government of Raman Singh in Chhattisgarh. Finally, the Supreme Court granted Sen bail.

The Bombay high court denied bail to differently abled Delhi University Professor G.N. Saibaba who travels in a wheel chair. Even his temporary bail was withdrawn. All of Saibaba's co-accuseds were granted bail but the principle of parity was not accepted in his case.

More recently, scholar Anand Teltumbde, who is nearly 70 and suffering from respiratory and heart diseases was denied interim bail by a special court in Mumbai though one sub-inspector posted at the offices of the National Intelligence Agency office of Mumbai tested positive for COVID-19. The civil rights activist was not immediately quarantined but was in fact taken to the court in an NIA vehicle and then moved to the crowded Arthur Road Jail. The charge against this eminent scholar is that he was a part of Elgar Parishad where the 'conspiracy' to congregate at Bhima Koregaon was hatched.

On the other hand, a former Gujarat minister Maya Kodyani who had been convicted for the Naroda Patiya riot case and was undergoing imprisonment of 28 years too was granted bail on July 30, 2014, on the grounds of ill-health. Similarly, in January 2020, the Supreme Court in an unprecedented order granted bail to 13 convicts of post-Godhra massacre in which as many as 33 people were burnt alive in Sardarpyra. The court asked them to undertake social service and stay out of Gujarat.

Indian bail laws

Let us now understand the law of bail, which has been around for a long time. As far back as 399 BC, Plato is supposed to have suggested the release of Socrates' against a bond. The law of bail is a 'cobweb', encompassing the issues of personal liberty, public concern and interests of justice. After the 2008 amendment to Cr.PC, arrests now cannot be made in a routine manner and for an offence which is punishable with seven years' or less imprisonment. In Arnesh Kumar (2014), the Supreme Court clearly laid down that in every arrest the police officer must ask himself why the accused should be arrested. Is it really required? What purpose will it serve? What objective it will achieve?

There are two types of crimes: bailable and non-bailable. In the former, bail can be claimed by the accused as a matter of right, in the latter bail is the discretion of the judge. In Rasik Lal (2009), the apex court itself said that bail is 'an absolute and indefeasible right' and 'no discretion can be exercised' in bailable offences. In these cases, there is no need for the public prosecutor or for the complainant to be heard.

Moreover, the Supreme Court categorically observed that 'the court has no discretion to impose any conditions except to demand security.' Thus conditions such as surrender of passport or non-participation in public demonstration or prohibition of making speech or appearance before commissioner cannot be imposed. Similarly, under Section 167 of Cr.PC, a person has an absolute statutory right to bail if he is accused of an offence punishable with death, life imprisonment or 10 years' imprisonment and an investigation is not completed within 90 days and within 60 days for other crimes.

Judicial discretion in bail

In non-bailable offences, bail is discretionary and there are conditions that the judge may impose. In Govind Prasad (1975), the apex court rightly held that the granting of bail is indeed a judicial, not a ministerial act. The discretion cannot be arbitrarily exercised. In Rao Harnairain Singh (1958), the Supreme Court itself said that this discretion must be judicially exercised subject to restrictions mentioned in Section 437(1) of Cr.PC. and keeping in view enormity of charge, nature of accusation, severity of punishment on conviction, possibility of accused absconding if released on bail, the danger of witnesses being tampered with, health, age and sex of accused etc.

Under Section 337(3), if the crime is punishable with imprisonment which may extend to seven years or more, the court can impose conditions aimed at ensuring the accused's presence at the trial, ensuring the accused does not commit a similar offence and the non-tampering of evidence. The judge may also impose 'in the interests of justice' such conditions as it considers necessary. Is downloading of the Aarogya Setu app a condition in the interest of justice?

Due to the concept of pecuniary 'surety', the archaic Indian law on bail already had a class character wherein, for the rich, bail is the rule and for the poor, invariably, jail. Justice Krishna Iyer in the Moti Ram case where a poor labourer was asked for a surety of Rs 10,000 in 1978 was pained to observe that "the poor are priced out of their liberty in the justice market." Lately, it would appear that religion is the new class.

The judicial discretion in granting bail is not too wide and cannot be used in an arbitrary manner; sound discretion is guided by law and governed by rule, not by humour and cannot be arbitrary, vague and fanciful.

Courtesy: ' The Wire ' as extracted from : https://thewire.in/law/judges-bail-orders

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Sneak Peek:

No. of Words: 4200 words

Level: Moderate – Difficult | Essay type, informative

Estimated time: 10 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 90-120 minutes or even more

Note: In this article the author criticizes apex court for its inability to effectively function during COVID -19 outbreak. He questions the role of court in deciding urgency to hear the matters. Author quotes the exam of the petition filed by Republic TV editor Arnab Goswami and criticizes the apex court for the same.

Article 23

The Supreme Court Is Locked Down and Justice Is in 'Emergency' Care

From the choice of cases it considers urgent to its handling of crucial matters impacting the lives of millions, the apex court is once again inviting comparisons with its conduct in 1975-77.

Even before a national lockdown was declared on March 24, the Supreme Court of India had already announced suspension of its normal working via a circular dated March 13, directing that "the functioning of the court shall be restricted to urgent matters with such number of benches as may be found appropriate" and thereby virtually shut down the courts.

After some days, they allowed hearing of some urgent matters by video conferencing which started on the March 25. However, the process of oral mentioning before any judge/officer who has decision making power for urgent listing of cases was done away with, with the result that even very urgent petitions – such as the one filed by Jagdeep Chhokar on April 17 seeking the return of migrant workers, stranded and helpless in shelter homes or other cities across the country, back to their home towns or villages – was not listed and seems now to be slated April 27, 10 days after filing an application for its urgent listing. It is pertinent to point out here that the destitution of migrant labour in India – caught off guard due to the unplanned lockdown and pushed to the brink of starvation without work,

wages or food – had, by this time, been covered by all major newspapers and portals nationally and internationally.

The apex court's priorities

Mysterious – and in stark contrast – however was the fate of the petition filed by Republic TV editor Arnab Goswami, seeking protecting from FIRs registered against him in various states following a programme where he had falsely implied minorities were responsible for the lynching of three men (including two sadhus) at Palghar in Maharashtra. His petition was filed after 8 p.m. and listed the very next morning at 10:30 am.

This procedure for hearing of cases through video conferencing, as introduced by the Supreme Court, has gone through various hiccups and even when it has started functioning better, it is not without problems due to inaudibility, lack of connectivity, inability of counsel to complete submissions without interruption, background noises, etc. In any case, hearing by video conference is not a substitute to a face to face hearing, since there is much cross talk and one cannot often hear what the judges are saying or put one's point across effectively. Hence, the experience of these video conference hearings has been that these are short, truncated hearings where some cases, even serious and urgent ones, have been just adjourned or dismissed. Added to this is the infrequency of sitting of Supreme Court benches – with the result that on an average, instead of the usual 800+ cases being listed and heard on any miscellaneous day by the Supreme Court, the court is barely hearing 10-15 cases even on the day that it does function.

In a recent laudable representation on open court hearings, the Supreme Court Bar Association has resolved that "even while video conferencing remains in use during the present crisis and lockdown, live streaming of Supreme Court hearings ought to be introduced so that the video-conferenced hearings are conducted as far as possible in the spirit of Mirajkar and Tripathi" (two important judgments of the Supreme Court on open court hearings and live streaming of court proceedings).

The functioning of the Supreme Court in this highly truncated manner has a domino effect on the high courts across the country, some of which have also adopted similar practices. Most lower courts are not functioning at all, with lawyers unable to file even bail applications for people who have been arrested during the COVID-19 crisis.

The lockdown and aftermath

Let us however examine how the Supreme Court reacted to some of these urgent matters during this lockdown. Some of these pertained to petitions filed seeking various reliefs for migrant labour who were bearing the worst brunt of the lockdown. The lockdown left

crores of migrant workers stranded without jobs, money or food, particularly in metros across the country. Consequently, most of them wanted to and did attempt to return to their villages. Huge crowds thronged train and bus stations as well as interstate borders. Workers were willing to even walk home, hundreds and thousands of kilometres, in desperation, when they saw that there was no question of motorised transport being allowed.

On the Central governments orders they were stopped at the state borders by the police and mercilessly shoved into various shelter homes where thousands had to live in cramped spaces, making a mockery of social distancing norms. That apart, in these shelter homes, the food provided to them was of very uneven quality with many reporting that they were getting just one meal of uncooked food everyday. The government claimed that they had about 15 lakh migrant workers in shelter homes and they were being provided food (by the government and NGOs). That still left out the vast majority of the migrant labour population, which according to the government census of 2011 was over 4 crore people. The inadequate provision for 15 lakh workers locked up in shelters, would in any case not take care of the food and other requirements of their families back in their villages and home towns, who were dependent on these workers sending home money from their daily wages.

When these petitions were taken up, the government bragged on affidavit of its Rs 1.70 lakh crore financial package that it had announced under the Pradhan Mantri Garib Kalyan Yojana (incidentally 36 hours after the lockdown and hence not mitigating in any way the anxieties of the poor when the lockdown was announced). Besides the fact that many of the schemes announced under this package did not address the needs of migrant workers, this package on analysis by independent economists was found to be promising only about Rs 60,000 crore by way of actual benefits to the poor (the rest being front loading of dues which the poor were entitled to in any case). Even Rs 1.70 lakh crore constituted just 1% of the GDP of India. One of the benefits touted by the government was the 10% increase in the minimum wages each rural family is entitled to under MNREGA. But this in fact was the wage rate increase as a regular adjustment against inflation and in no way an additional resource.

Similarly the announcement that emergency support will be granted through the Building and Other Construction Workers (BOCW) cess fund which has accumulated Rs 52,000 crore is not an additional resource. These funds were specifically earmarked for construction workers and were non-utilised.

Then there was the provision of 5 kgs of food grain and 1 kg of pulses per person to 80 crore beneficiaries for the next three months. Also 20.4 crore women who are account holder under the PM Jan Dhan Yojana, would get an ex-gratia of Rs 500 per month for the next three months. It was then clarified that 1 kg pulses free of cost for the next three months is to be given per ration card and not to each person covered under the Public Distribution System. This means that 23 crore ration card holders will be given one kg pulse each for next three months and not each of the 80 crore persons covered under the PDS.

Real humanitarian crisis

Besides migrant workers are excluded from the PDS as the system is a domicile based entitlement with a requirement of address proof, ration cards, etc. which migrant workers do not have. Various new reports have shown that during the lockdown even those with functional ration cards are not being able to access this, with kilometre long queues outside ration shops and shopkeepers selectively distributing rations. The Jan Dhan beneficiaries will also be only those who have functional accounts, which are a fraction of the 20.4 crore women who are entitled to this. Apart from the tokenism of these schemes for the poor, migrant workers would need their wages to provide for the various needs of their families apart from food such as health care, education, rent and other sustenance needs.

Instead of facilitating the safe return home of the stranded migrant labour, the government on March 29 of issued an order restricting the movement of migrant workers and ordering the employers of the workers to pay their wages and for landlords not to charge rent from workers, during lockdown. However, this order was hardly implemented (other than the ban on movement) and the government did not even bother to study the extent to which it was complied with. In any case, most small employers would not be in a position to pay workers' salaries since their businesses had to close down and in fact many such employer's associations have petitioned the Supreme Court challenging the constitutionality of this order. The order also took no account of self employed migrant labourers who worked as rickshaw pullers, street vendors and other petty service providers.

On April 15, a network called the Stranded Workers Action Network (SWAN) published a report, coordinated by activists, researchers and students from various universities, based on interactions with around 10,000 workers whom they interacted with through a helpline. The key findings of the report showed that 89% workers had not been paid wages

by their employers during the lockdown, 44% calls were SOS with no money or rations left, 78% workers had less than 300 rupees left, 96% had not received rations from the government, 50% had rations left for less than 1 day, etc. – all pointing to the extremely grim and precarious conditions in which workers were struggling for survival during this lockdown. This is an ongoing initiative and as this goes to press, the team has interacted with more than 15,000 workers and there is no significant change in the reported figures. From this, it is obvious that the government's order of March 29 had hardly been implemented even 20 days after it had been issued.

The fate of a petition: Delay, then dropped

With this in the backdrop, a petition was filed by social activists Harsh Mander and Anjali Bharadwaj, who had been working tirelessly to feed the stranded workers at various places in Delhi, seeking payment of at least minimum wages to these stranded persons. The petition was filed on March 31. The petition also sought that the government form an expert advisory committee as mandated by the Disaster Management Act to plan properly for all the hardships of workers and others during the lockdown. The first lockdown order from the prime minister had been announced without any advice from any such expert committee. In fact, the first such expert committee for the COVID-19 crisis was appointed by the government just four days before the lockdown announcement and they had not had their first meeting by the time Prime Minister Modi went on national television on March 24.

On the first hearing of the petition on April 3, the court asked the Union of India to respond to the averments made in it. The matter was next listed for April 7. In this hearing, the CJI, who had a copy of the status report filed by the government, realised the petitioners had not been served it so he directed the government to give a copy of the status report to them and listed the matter for April 13.

This status report filed by the government essentially relied upon an earlier status report that the government had filed in response to a petition by one Alok Alakh Srivastav. That petition, though ostensibly for providing relief to migrant workers, was turned by the court into essentially a petition of the government, seeking the court's orders to restrict the media from reporting about the spread of the coronavirus and warning people about spreading misinformation about the COVID-19 crisis.

The order of the Supreme Court in this case stated at the start that "the concern of the petitioners pertains to the welfare of the migrant labourers" and curiously went on in

another part of the order to state, "We trust and expect that all concerned vis., State governments, Public authorities and citizens of this country will faithfully comply with the directives, advisories and orders issued by the Union of India in letter and spirit in the interest of public safety. In particular, we expect the Media (print, electronic or social) to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated...we do not intend to interfere with the free discussion about the pandemic, but direct the media to publish the official version about the developments." An order thus, all-in-one, applauding the government's efforts at mitigating the pandemic and its adverse effects on the poor and warning the press from reporting an alternative to this narrative.

On April 13, when Mander and Bharadwaj's case was being argued, it was now the court that said it did not have a copy of the government's status report (which it had on the previous hearing on April 7 where it had ordered it be served on the petitioner and which in fact was the same status report in the Alok Alakh Srivastav case in which the court had itself passed an order as quoted above) and therefore adjourned the case by a week to April 20, despite repeated requests by the petitioners' counsel to list it earlier due to the deteriorating conditions of workers across the country.

On April 20, the court curiously did not sit nor assign any reason for not sitting, though the order had directed the case to be listed for that date. (The petitioners had filed three detailed additional affidavits and a rejoinder to the government's status report pointing out the factual position vis a vis the government's submissions as well as on the deteriorating condition of migrant workers, unable to access food, brutally beaten by the police and many dying due to starvation or the walk home). The case was listed on April 21 before a totally new bench on which day the court disposed off the petition merely by stating, "[T]aking into consideration the material placed before us, we call upon the respondent-Union of India to look into such material and take such steps as it finds fit to resolve the issues raised in the petition".

Thus with this "hope and trust" jurisprudence, the court was complacent in placing its entire trust on the government and its policies during the COVID-19 lockdown. The judges orally observed that in the COVID-19 emergency, the court could not substitute its own wisdom over what the government's policy was at that time. This despite being repeatedly told that the petitioners only sought the enforcement of Article 21 – the right of life (with minimum dignity) – of workers who had been deprived of their wages and livelihood by the

ill-thought out lockdown imposed by the government. It was pleaded that the government had recognised the need for these workers to be paid their wages in its March 29 order and that the Delhi government had ordered payment of an ad hoc amount of 5000 rupees to registered construction workers, autorickshaw drivers and hence, at least that minimum should be paid to all workers, irrespective of whether they were registered or engaged in any other occupation, across the country.

However, none of these entreaties were of any avail, with the apex court surrendering its power of judicial review of the government's policies, directives and actions. Virtually the same fate was met by petitions filed by Mahua Moitra and Swami Agnivesh on behalf of migrant workers seeking various other reliefs.

NREGA workers get short shrift too

Another petition was filed by human rights activists, Aruna Roy and Nikhil De, seeking payment of wages to registered MNREGA households by the government, in consonance with Ministry of Labour's direction to chief secretaries of all states of March 20, 2020 directing that during the coronavirus pandemic, all workers be "deemed to be on duty" and be paid "full wages without any deductions".

As the lockdown guidelines of March 24, 2020 restricted the personal movement of workers, therefore they could obviously not report for duty thereafter. Under NREGA, each registered household is entitled to at least 100 days of work for at least minimum wages fixed by the government, which is currently around Rs.202. There are about 12 crore registered MNREGA households of which about 1.5 crore were actively working when the lockdown was suddenly promulgated. This petition was heard on April 8, 2020. Without addressing the issue at hand, the Supreme Court orally observed that the year is far from over and that the workers may be able to avail the 100 day entitlement in the subsequent months as the lockdown is lifted and that the government cannot be asked to pay them wages as they are not "employees" but "beneficiaries". This despite the fact that on March 27, 2020, the Ministry of Rural Development had directed that the MNREGA work could continue, without applying its mind as to how the workers would actually apply for work/appear for work.

Data shows that while in April, 2019, about 1.6 crore households worked under MGNREGA, in April of 2020 only 8 lakh registered households could avail work/wages – that is 1% of the normal level. Under the MGNREGA Act, households are statutorily entitled to 'demand' work at any time (even during a National Calamity) under Sections 3

& 5 read with Schedule II of the Act. It was pointed out to the court that the households have suffered a double blow as on the one hand their crops have been destroyed due to no access to the markets while on the other hand even the work/income under MGNREGA had virtually ceased and therefore there was acute rural distress. However, the court satisfied its conscience and duty by directing that the matter be listed "two weeks after lockdown is over". An urgent application for directions seeking directions for payment of at least 'unemployment allowance' at 1/4th of the wage rate as statutorily mandated under Section 7 of the Act was filed on April 20, 2020 but has not been listed under this virtually opaque listing procedure.

Human rights concerns adrift too

Meanwhile, on the socio-political rights front, Gautam Navlakha and Anand Teltumde, lifelong crusaders for human rights and Dalit rights were accused by the National Investigation Agency of being involved in the so-called Bhima Koregaon conspiracy in which it claims there was a plot to kill the prime minister. Their application for protection from arrest during investigation was rejected by the Supreme Court and they were given three weeks time to surrender. Meanwhile, the coronavirus spread and the national lockdown was announced. They applied to the Supreme Court for being given more time since both were above 60 years and suffering from various ailments which would endanger their health and lives in prison. Despite the fact that the court had earlier passed an order directing various categories of prisoners being released on bail during the COVID crisis, they rejected this petition, giving them just one more week to surrender. They are now in jail.

During the lockdown, though the police was over-stretched in enforcing the lockdown, the home ministry instructed the Delhi Police to continue arresting people in connection with the communal riots that had rocked Delhi in February just about a month ago. About 53 people were killed and thousands of Muslim homes were burnt and hundreds of Muslim families had to flee their homes in fear. Though the Muslims were the primary victims of the communal violence and it was they who had to flee their homes, the police started arresting a large number of Muslims, especially youth that had been involved in the peaceful protests that had taken place across Delhi around the CAA/NRC. The chairman of the Delhi Minority Commission raised an alarm about this and issued notice to the Delhi Police seeking action over the random arrest of Muslim men in the range of 20-30 years of age who had been picked up by the police, charged with conspiracy.

Communalism and the court

In some cases, FIRs have been registered against students like the former JNU student leader Umar Khalid who in his speeches during the CAA protests had in fact urged peace when he said, "We won't respond to violence with violence. We won't respond to hate with hate. We will respond with love. If they thrash us with lathis, we keep holding the tricolour." This being the nature of his speech, he has been booked for inciting violence in an FIR under the draconian UAPA. Despite apparently more than a thousand arrests, primarily of Muslims who were the victims of the violence and the warning of the Delhi Minorities Commission, the Supreme Court did not deem fit to take suo moto cognisance of this huge and malafide targeting of Muslims in the Capital itself. Most of the arrests have been made in total disregard of Criminal Procedure Code provisions that require the police to disclose the names of those who have been arrested. During the lockdown, it is near impossible for anyone to access information on those who have been arrested.

A large section of the mainstream media that had been fuelling Islamophobia in the country for months, did not even spare the COVID-19 crisis in continuing to fuel hatred against Muslims, by airing concocted stories and highly prejudicial broadcasts and hashtags such as "CORONA JEHAD" on social media. The court which had used the migrant workers petition to send the government's warning to the media about fake news and rumours being actionable under the Disaster Management Act, did not even bother to say or do anything about this large scale Islamophobia fuelled by the mainstream media that has become a curse to the secular fabric of our country.

Notably, one useful order issued by the court in a suo moto proceeding during this lockdown, directed the setting up of a High Powered Committee in states which will determine the category of prisoners who should be released, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the committee may consider appropriate during the COVID crisis. But though that direction largely remains unenforced, the court has not bothered to monitor its compliance by states. Another useful order the court had passed just prior to the lockdown was about midday meals being provided to children during the COVID crisis. However again, the court has not bothered to monitor the implementation of that order and the case has not been listed thereafter even though the order remains largely unimplemented.

A lesson from Malawi

During the emergency of 1975-77, when an estimated 100,000 people were arrested under the preventive detention law, as many as 10 high courts held that even during an emergency when fundamental rights had been suspended, habeas corpus petitions filed before the courts would still have to be heard and they quashed several orders of preventive detention. Unfortunately, a constitution bench of the Supreme Court then reversed those judgments and held that during an emergency even Habeas Corpus petitions were not maintainable. Justice Khanna gave his famous dissent in that judgment, which, though it led to his supersession as Chief Justice, ensured a permanent place for him in judicial history. He reminded the court of the famous defence of Lord Atkins on a similar issue that arose in England during World War II, in Liversidge v Anderson that, "admist the clash of arms the laws are not silent" and that executive action would, even during an emergency, be tested on the anvil of constitutional and legal rights of the people.

In a recent judgment, the High Court of Malawi held amidst the COVID-19 crisis that "The judiciary is enjoined by ... the Constitution to ensure that the rule of law is upheld at all times, be it before, during or after the state of emergence (or a state of disaster) has been declared. The court is perfectly entitled to enquire into the legality of measures taken by the state in response to a state of emergency (or a state of disaster).

"A declaration of a state of emergency (or a state of disaster) does not give the state carte blanche to exercise power indiscriminately. The substantive and procedural limitations imposed by the law have to be observed."

The emergency has been widely regarded to be the low water mark of the Supreme Court when it buckled under the fear of the executive. The kind of surrender of the Supreme Court to the government that we are seeing today admist the COVID-19 crisis (even without a declaration of emergency under the constitution) is perhaps even more serious when the court is not prepared to question virtually anything that the government has done or not done despite the serious violation of fundamental rights that has ensued.

The Indian Supreme Court retrieved its reputation after the emergency, largely due to its innovative judgments expanding the meaning and content of Article 21 rights and several fine judgments on the right to free speech, privacy, etc. However today, it is unfortunate that the high court of a small country like Malawi is putting our Supreme Court to shame.

Courtesy: 'The Wire' – extracted https://thewire.in/law/lockdown-supreme-court-justice

Sneak Peek:

No. of Words: 1687 words

Level: Moderate – Moderate | Essay type, informative

Estimated time: 08-09 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: 90 minutes or even more

Note: In this article the author explains the recent political drama of Madhya Pradesh and need for floor test amidst COVID -19 threat.

Article 24

Madhya Pradesh Case: Ignoring Coronavirus Threat, SC Makes Floor Test Sacrosanct

The bench also closed its eyes to the allegation that the BJP had confined the rebel Congress MLAs who resigned from the assembly at a resort in Bengaluru.

The fall of the erstwhile Kamal Nath government in Madhya Pradesh on March 19 was a foregone conclusion. The Supreme Court directed in an interim order that a floor test be conducted in the assembly session of March 20, without considering the merits of the speaker's adjournment of the session from March 16 to 26 following the coronavirus outbreak.

On Monday, the Supreme Court bench comprising Justices D.Y. Chandrachud and Hemant Gupta gave a reasoned judgment in the case, again skipping the issue of whether concerns over the spread of a serious epidemic could enable the speaker to adjourn the house and delay the floor test.

The bench had to adjudicate the challenges to the governor's exercise of his discretion to ask the chief minister to seek a trust vote on a particular day, and to the speaker's power to adjourn the proceedings of the assembly to March 26.

In defence of the governor

The bench found nothing constitutionally improper in the conduct of the Madhya Pradesh governor, Lalji Tandon, in calling for a trust vote in the Madhya Pradesh legislative assembly on March 16, following the resignation of 22 Congress MLAs.

"Where the Governor has reasons to believe that the incumbent government does not possess the support of the majority in the legislative assembly, the correct course of action would be for the Governor to call upon the Chief Minister to face the assembly and to establish the majority of the incumbent government within the shortest possible time," the bench held.

"An exception to the invariable rule of testing whether the government has the assembly's confidence on the floor of the house is envisaged only in extraordinary situations where because of the existence of all pervasive violence a free vote is not possible in the House," the bench reasoned, without explaining why the threat of the spread of coronavirus could not be considered as an extraordinary situation, warranting a similar exception.
In its 68-page judgment, the bench adopted an inconsistent line of reasoning to defend the governor, as if the moment an active politician assumes the office, he or she could be expected to rise above party considerations.

"The Governor is not denuded of the power to order a floor test where on the basis of the material available to the Governor it becomes evident that the issue as to whether the government commands the confidence of the house requires to be assessed on the basis of a floor test. Undoubtedly, the purpose of entrusting such a function to the Governor is not to destabilise an existing government," the bench held.

Both the former speaker and the Congress had submitted that the governor could not demand a trust vote except at the initial constitution of the legislative assembly following an election, which produced a fractured verdict. But the bench did not agree that the authority entrusted to the governor cannot be exercised once a government has been formed.
Drawing a distinction between the summoning of the house on the aid and advice of the council of ministers, and the governor using his discretion to summon the house to ensure a floor test, the court reasoned:

"In a situation where the House has been summoned following the aid and advice of the Council of Ministers, the position would be more nuanced in the sense that the remedy of a no confidence motion would be available to any segment of the legislature seeking to espouse the view that the government has ceased to command the confidence of the house.

In exercising the constitutional authority to demand a trust vote, the Governor must do so with circumspection in a manner that ensures that the authority of the House to determine the existence or loss of confidence in the government is not undermined. Absent exigent and compelling circumstances, there is no reason for the Governor to prevent the ordinary legislative process of a no confidence motion from running its due course."

The bench had no explanation why the BJP could not have moved a no-confidence motion against the Kamal Nath government, following the resignation of the 22 rebel Congress MLAs from the assembly. The bench, however, proceeded on its finding that there existed no parallel proceeding for convening a trust vote.

On a bare reading of the affidavit submitted by 54 members of the BJP, which was treated as a motion of no-confidence by the then speaker, the bench found that it did not postulate a request for convening a discussion on a motion of no confidence. Both Kamal Nath and the speaker had argued before the court that in an ongoing session of the legislature, the only way to test whether the government has a majority strength is through a no-confidence motion moved under Rule 143 of the Madhya Pradesh Assembly Rules, which provides a limit of 10 days, within which a decision should be taken.

"Based on the resignation of six ministers of the incumbent government (accepted by the Speaker), the purported resignation of 16 more members belonging to the INC, and the refusal of the Chief Minister to conduct a floor test despite the House having been convened on 16 March 2020, the exercise of power by the Governor to convene a floor test cannot be regarded as constitutionally improper," the bench held, without considering the reasons behind the assembly's decision not to have the floor test on March 16.

"The adjournment of the session till March 26 would have allowed the state of political uncertainty to continue and furnish avenues for political bargaining on terms which cannot be regarded as legitimate. It is with a view to obviate illegitimate and unseemly political bargaining in the quest for political power that this court has consistently insisted upon the convening of a trust vote at the earliest date," the bench reasoned, as if holding of the floor test on March 20 could obviate illegitimate and unseemly political bargaining in the quest for political power.

By relying on a series of precedents in which the court had directed holding of immediate floor tests in the assembly earlier, the bench closed its eyes to the allegation that the BJP had confined the rebel Congress MLAs who resigned from the assembly at a resort in Bengaluru only with the purpose of illegitimate and unseemly political bargaining in its quest for political power.

Apparent inconsistency

The bench, having rightly rejected the contention that it should be wary of entering the 'realm of politics' where no 'judicially manageable standards' can be maintained, held thus:
"Merely because the prima facie determination made by the Governor was of the political support enjoyed by the incumbent government or the action demanded was a political process (the floor test) is not a reason for this Court not to hear the matter. There is no doubt that the present case is suitable for judicial determination by this Court. In fact it is eminently so."
But when the bench had to deal with the immorality of the BJP confining rebel Congress MLAs away in Bengaluru, the bench reasoned:

"The spectacle of rival political parties whisking away their political flock to safe destinations does little credit to the state of our democratic politics. It is an unfortunate reflection on the confidence which political parties hold in their own constituents and a reflection of what happens in the real world of politics. Political bargaining or horse trading is now an oft repeated usage in legal precedents. Poaching is an expression which was bandied about on both sides of the debate in the present case. It is best that courts maintain an arm's length from the sordid tales of political life."

The bench continued:
"The present controversy has shone a light on the often-fluid allegiances of democratically elected representatives. This is a matter for their conscience and the court expresses no opinion on the matter. However, in directing a trust vote, the governor does not favour a particular political party. It is inevitable that the specific timing of a trust vote may tilt the balance towards the party possessing a majority at the time the trust vote is directed. All political parties are equally at risk of losing the support of their elected legislators, just as

the legislators are at risk of losing the vote of the electorate. This is how the system of parliamentary governance operates."

One wonders whether the bench has already concluded that the Tenth Schedule to the constitution seeking to disqualify a legislator on the ground of defection is no longer relevant.

As the bench observes at one place:

"An underlying assumption of the anti-defection scheme outlined in the Tenth Schedule of the Constitution is that the political party is the defined political unit which the Constitution recognises. Where we increasingly see a breakdown in the composition and allegiances of the political party due to private allurements offered to Members as opposed to public policy considerations, the law may have to evolve to address these burgeoning evils."

This was an opportunity before the court to let the law evolve to address the evils, which it has identified. But the court appears to have missed it rather inadvertently.

At one stage, the bench observes:

"There existed no extraordinary circumstances for the Governor to determine that a trust vote was not the appropriate course of action on 16 March 2020."

Not even the outbreak of COVID-19? One wonders whether the bench was oblivious to the concerns expressed both inside and outside the court when the case was being heard. The bench took note of the submission that ongoing sessions of the legislative assemblies in Rajasthan, Maharashtra, Chhattisgarh, Odisha and Kerala had, as in Madhya Pradesh, been adjourned as a result of the outbreak of coronavirus, and that there was nothing untoward in the speaker's decision to adjourn the assembly.

But the bench chose to keep a mysterious silence on this submission.

Courtesy: ' The Wire ' as extracted from

https://thewire.in/law/supreme-court-madhya-pradesh-floor-test-coronavirus

Sneak Peek:
No. of Words: 712 words
Level: Easy - Moderate
Estimated time: 03-04 minutes (maximum time on D- day to crack) this one
Estimated Analysis time: Around 30 minutes or even more
Note: This article is authored by our Union Minister for Law & Justice on the occasion of Dr. Ambedkar's birth anniversary. He explains how Indians over a period of time have responded to the challenges posed before them and have overcome it.

Article 25

Indians have always stepped up to a crisis, reaffirmed commitment to shared constitutional values

It would be a great achievement for the nation if the people of the country respond to the challenge posed by the coronavirus by exercising their collective will and performing their duties. Many initiatives of PM Modi and some state governments are being appreciated globally.

India is passing through a difficult time. The coronavirus outbreak has turned into a pandemic that threatens people's lives all over the world. The virus has no antidote, does not seem to discriminate between rich and poor and does not recognise race and religion. Confronting it, therefore, requires a determined effort from all of us. But this challenge is also an opportunity. At this moment, we must reaffirm our commitment to the values enshrined in our Constitution, whose architect, Babasaheb Ambedkar, was born on April 14. A great social reformer, Ambedkar described the Constitution as a social document, which emphasises the significance of rights and obligations and also underlines the importance of social inclusion and empowerment of people in the march of free India.

It's India's great tradition that the resolve of its people is strengthened whenever the country faces a crisis. In the 1960s, when India faced a food crisis, the then prime minister, Lal Bahadur Shastri, appealed to the people of the country to skip one meal every day. The entire country responded to his call. Showing commitment to the national cause during times of war is, of course, quite natural, but the people of India have risen

to the occasion during moments of national difficulties as well, provided the leadership was capable of inspiring them.

Prime Minister Narendra Modi has, on several occasions, appealed to the people of India and they have never let him down. When he asked those who could pay the market price for an LPG cylinder to give up their subsidy, crores of people responded to his call. As a result, women from poor families were given cooking gas connections under the Pradhan Mantri Ujjwala

Yojana. When he launched the Swachh Bharat Mission, PM Modi asked the people of India to voluntarily participate in the construction of rural toilets.
Swachh Bharat has become a mass movement in the last five-and-a-half years and large parts of the country have become open defecation free. People responded with enthusiasm to PM Modi's inspiring call to become swachhagrahis — they believed it was their duty to accept Clean India as a national mission.
Last month, the PM appealed to people of India to observe a janata curfew. He also asked them to clap for all the doctors, paramedical staff and others who have been working amongst COVID-19 patients at great risk to their lives. He took the extraordinary measure to declare a lockdown in the entire country for 21 days. The people of India took it as a duty to pay heed to his message and remained confined to their homes, since maintaining social distancing was important to contain the contagious virus. The entire country also responded to his call to light lamps to show unity and resolve during these challenging times.
Rights and duties are integral to our constitutional architecture, even though fundamental duties were incorporated in the Constitution much later. For instance, citizens of the country have freedom of speech, assembly, movement and residence under Article 19 of the Constitution. But the same Article also talks of a duty: Article 19(2) notes that the freedoms provided under Article 19 have to be exercised in a manner that does not adversely affect the unity and integrity of India, the security of the state, and public order and morality. It talks of reasonable restrictions. Article 17 abolishes untouchability in any form and its practice is forbidden – not to practice untouchability, thus, is a duty for every Indian. Article 39 states, "Ownership and control of material resources of the community are so distributed as best to subserve the common good". The duty of every Indian towards

the fulfilment of the common good thus is a constitutional obligation. Article 49 enjoins the government to protect every monument or place of artistic or historical importance. At the same time, this Article also imposes a duty on us to protect these historical monuments.

Courtesy: https://indianexpress.com/article/opinion/columns/ambedkar-jayanti-indian-constitution-coronavirus-pandemic-outbreak-ravi-shankar-prasad-6361148/

Sneak Peek:

No. of Words: 1677 words

Level: Moderate –Essay type, very informative

Estimated time: 08-10 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: Around 60-80 minutes or even more

Note: This article is authored with a view to afford adequate legal protection to our health professionals. Morefully in the present time our doctors are our Warrior and Saviours, thus the author advocates with proper reasons for change in legal framework to protect the health professionals. Interesting this article was published on April 07, 2020 and later on April 22, 2020 The Epidemic Diseases (Amendment) Ordinance, 2020 was promulgated to protect the health workers. So this article will be helpful to understand the purpose of the said ordinance.

Article 26

India Needs an Urgent Law to Protect All Health Workers From Violence

As the world battles a pandemic, who will protect the protectors?

The world is going through an emergency. We are at war, albeit not with a combatant nation. We are at war with a pandemic, which has subsumed more than 50,000 lives worldwide. The cavalry on the frontlines is not our regular militia but our healthcare professionals. It is the doctors, the nurses and the hospital support staff that are leading the offence against the pandemic.

The grim reality, however, is that our healthcare professionals are neither adequately appreciated nor protected. News reports tell us that there is not enough PPE (personal protection equipment) for our doctors and nurses. That they are misbehaved with. That they are pelted stones at and spat on by unruly people who were defiant from the very beginning. If this doesn't enrage the conscience of the nation, nothing probably will.

What are the legal indemnities available against such actions? Why do we not have a separate law criminalising assaults on doctors and healthcare professionals?

Last year, the Ministry of Health, government of India proposed the passing of the 'Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage of Property) Bill', which had contemplated imprisonment of up to 10 years and the imposition of a fine of as much as Rs 10 lakh on those who assault healthcare personnel. It had even attributed a fairly wide definition to healthcare personnel which included, doctors, dentists, nurses and paramedical staff, medical students, diagnostic service providers in a health facility and even ambulance drivers.

This legislation was due to be introduced in parliament in its Winter Session of 2019. However, the Ministry of Home Affairs gave its thumbs down to this proposed legislation, reasoning that there could be no separate law to protect doctors.

However, in Delhi, we do have the 'Delhi Medicare Service Personnel and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2008', which is an Act to "prohibit violence against medicare service personnel and damage to property in medicare service institutions in the National Capital Territory of Delhi..."
Section 3 of this Act prohibits any act of violence against medicare service personnel or damage to property in a medicare service institution. Section 2(d) provides an inclusive definition of a 'medicare service personnel' which includes inter alia registered medical practitioners, nurses, nursing aids, midwives, paramedical workers, ambulance service providers etc. Section 2(f) defines 'violence' to mean 'activities of causing any harm or injury or endangering life, or intimidation, obstruction or hindrance to any medicare service personnel in discharge of duty in the medicare service institution or damage to property in such institution'.

In terms of Section 4 of this Act, acts of violence under Section 3 are punishable with imprisonment up to three years or with fine of Rs 10,000, or both. The offence under Section 3 is also cognisable and non-bailable. However, it seems that for want of knowledge about this enactment, its provisions are seldom invoked by the Delhi Police.

On May 3, 2017, a division bench of the Delhi high court, alarmed by the increasing incidents of violence on doctors, took suo-motu cognisance of a news article in the Times of India titled 'AIIMS doctors to get self-defence training'. The news report suggested that one in two doctors in public hospitals face violence. As a sequitur, notices were issued to the Union of India and the Delhi government, however it appears that there has been no progress in the writ petition since.

Therefore, insofar as Delhi is concerned, while we do have a substantive piece of legislation criminalising such assaults, it appears that there is little awareness about its existence. This is inferred from the order dated May 19, 2017, where the Delhi high court asked the government to consider giving wide publicity to the provisions of the enactments.

A similar enactment may or may not be present in other states in the country. Therefore, in the absence of a Central legislation on the subject, attention necessarily would have to be made to the Indian Penal Code to punish such violators.

The provisions of the IPC, which would cover assaults on public servant, would be the following:

Section 186 : Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 332 : Voluntarily causing hurt to deter public servant from his duty.—Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public serv-ant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either descrip-tion for a term which may extend to three years, or with fine, or with both.

Section 353 : Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public serv-ant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

However, the common denominator in all of the above provisions is the supposition that victim is a 'public servant' as defined under Section 21 of the Penal Code. While this might be true for employees of public hospitals, the same may not hold true for doctors and healthcare staff who are in the employment of private hospitals. For them therefore, the provisions of simple assault and hurt may apply, which carry significantly less stringent punishments.

In the United Kingdom also, even though there are no separate offence for assaulting a public servant, assaults that are committed on public servants are treated seriously. Paragraph 4.12 (c) of the Code for Crown Prosecutors states: "... A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public." This is reflected in the Sentencing Council's Definitive Guideline on Assault, in which the fact that 'Victim was providing a public service or performing a public duty at the time of the offence' was clearly identified as an aggravating factor.

The sentencing practice in the UK indicates that custody is the appropriate starting point for a person who assaults a public servant. Case examples are the following:

R v McNally 2000 1 Cr. App. R (S) 533– the appellant was attending a hospital with his son when he became involved in an argument with a doctor and assaulted him with one punch. He had no previous convictions and was charged with ABH. The Court of Appeal held that 6 months' imprisonment was the appropriate sentence, and reiterated that such circumstances seriously aggravated the offence.
R v Eastwood [2002] 2 Cr. App. R. (S) 72 (at 318)– the appellant was drunk and in A&E when he assaulted a nurse during the course of an X-ray. The nurse suffered torn ligaments in her hand, and he was charged with ABH. The Court found that in such circumstances, the starting point after trial was between 21 – 24 months' imprisonment with a sentence of 15 months' imprisonment suitable after guilty plea.
R v Colin Dickson [2005] EWCA Crim 1826– having regard to the case of McNally and the judgement of Rose LJ on aggravating and mitigating factors for length of sentence, the Court of Appeal considered that the same factors will come into play when determining the appropriate sentence for assaults on police officers. Such are attacks are particularly grave and any attack on a police officer who is carrying out his duty has to be treated very seriously.

R v McDermott (Victor) [2006] EWCA Crim 1899– assault occasioning actual bodily harm carried out on a member of an ambulance crew. Appellant was attended to by an ambulance crew when found lying in the road and was verbally abusive to the crew who sat him on the ambulance step. He stood up and punched one of the crew in the head, causing his ear drum to rupture. Appellant was drunk at the time and had previous convictions for drink-related offences, including ABH and criminal damage. Appeal against length of the sentence was dismissed – assaults on medical staff and ambulance personnel would frequently merit a custodial term. There had been no personal reason for the assault, alcohol was an aggravating, not a mitigating feature. 15 months' imprisonment was appropriate in all the circumstances.

However, in the UK too, there is the similar problem of distinction between professionals engaged in public healthcare and those engaged in private healthcare. While the former is clearly an aggravating factor for sentencing, the latter may not be.

This unwarranted distinction by itself is a prime reason why an umbrella legislation for the protection of all healthcare staff, be it public or private, needs to be brought in at the earliest. The draft proposed by the Ministry of Health seems to be a balanced draft and had already passed the rigours of public consultation. It is now incumbent upon the Ministry of Home Affairs to reconsider its earlier stance and usher the passing in of this key piece of legislation.

The imminent need for such a legislation would, in my opinion, justify taking the ordinance route to bring it into immediate enforcement, as well. After all, the question that stares us in the face today is, 'Who will protect the protectors?'

Courtesy: 'The Wire' extracted from - https://thewire.in/health/india-health-workers-violence-protection

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Sneak Peek:

No. of Words: 1231 words

Level: Moderate & Essay type.

Estimated time: 07-08 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: Around 40 minutes or even more

Note: This article clarifies legal position about freedom of press and restrictions thereto in the garb of 'fake news'. Must read for a law aspirants.

Article 27

The Centre Is Back to Using the Bogey of 'Fake News' to Try and Suppress Press Freedom

There are no credible reports suggesting that migrant workers decided to walk home based on fake news.

In a recent public interest litigation (Alakh Alok Srivastava vs Union of India), the Centre sought a direction from the Supreme Court that "no electronic / print media / web portal or social media shall print / publish or telecast anything without first ascertaining the true factual position from the separate mechanism provided by the central government."

This direction has been sought in a status report submitted by the state detailing the steps it has taken thus far to fight the coronavirus pandemic. Such a direction has been sought on the basis of the claim that, "Any deliberate or unintended fake or inaccurate reporting either in electronic, print or social media and, particularly, in web portals has a serious and inevitable potential of causing panic in large sections of the society. Considering the very nature of this infectious disease which the world is struggling with, any panic reaction by any section of the society based on such reporting would not only be harmful for such section but harmful for the entire nation."

A direction of this nature, to be constitutionally protected, must be reasonable and covered within the ambit of Article 19(2) of the constitution. In order for government action against the media to be protected under Article 19(2), there has to be a "proximate" relationship between the speech/expression that is sought to be curtailed and the parameters set out in Article 19(2). This relationship must not be remote, fanciful or far-fetched and should be based on material evidence that demonstrably proves the state's claim.

It has been amply documented in various reports that adequate steps were not immediately taken to provide migrant workers with basic and humane living conditions after the lockdown was announced. In this vacuum, migrant workers and their families were left with no alternative but to leave for their villages. The images of migrant workers walking helplessly on highways, putting their lives and that of their young children at peril, is testament to the failure of the government in effectively protecting these workers.

At present, there are no credible studies or reports that argue, let alone establish, the migration of workers was motivated by anything other than the announcement of the lockdown measures. Even the status report filed by the Centre does not cite any data that could back the claim that the migration was due to the dissemination of fake news. This suggests that the state's claim – evidently made orally by the solicitor general and noted in the court's order – that workers migrated because of "fake news" is at best based on conjecture or surmise, and at worst is a blatant attempt to deflect responsibility and accountability.

We live in an age where the collection, dissemination and consumption of information has defined the realisation of and access to human rights. The cornerstone of efficient and democratic policy making is to incorporate public debate and criticism within its fold. To see public debate and the critique of state action as adversarial is to misconceive its indispensable role in democratic nation building.

The Supreme Court in a catena of judgments, ever since the landmark Sakal Papers case in 1962, has consistently held that the right to circulate one's views is an integral part of the right to freedom of speech and expression. The Supreme Court also ruled that the freedom of the press cannot be curtailed in the interest of the general public. Any restriction to the freedom of press must thus fall in line with the stipulations enumerated in Article 19(2) of the constitution:

"Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

The freedoms enshrined in Article 19 also include the people's right to know. During a public health crisis, like the one faced by the world today, the value of the right to be informed is undeniable. Given the dynamic nature of the crisis, and the evolving responses to it coming from various scientific and medical experts, there can be no singular source of information that encompasses all strands of research and expert opinion.

The WHO, in its operational guidelines, highlights the vital role played by media houses in disseminating information, which is arguably one of the most important steps towards

fighting a disease of mammoth proportions. It is pertinent to acknowledge the ability of the free media to unearth vital information which may still be unknown even to the state. This makes the media not only a source of constant critique but also an independent ally for better governance.

The Centre's demand, if eventually conceded, will effectively act as a gag on the free flow and circulation of information which may not always be palatable to the government. Such a step will inevitably also have a chilling effect on robust and uncompromised journalism. The law with regard to prior restraint of media is well settled and the Supreme Court has consistently held that it would not be in consonance with the constitutional scheme to prevent the publication of news. As recently as 2017, in a petition filed by Common Cause, a bench comprising the then Chief Justice J.S. Khehar and Justice D.Y. Chandrachud noted that prior restraint on the publication of news is not the job of the court or administrative authorities, and that all grievances should be dealt with in accordance with the law of the land only after its publication.

The court had said, "We cannot ask them (Centre) to monitor the content of channels. How can we do that? You can approach us or the authority concerned after telecast or airing of objectionable contents only. ...If something happens and you find them obnoxious, then we will certainly deal with them. Generally speaking, we cannot interfere with it and do content regulation."

While quashing an order which had restrained Cobrapost from publishing an exposé on media houses, Justice S.R. Bhat of the Delhi high court had also in 2018 noted that despite the challenges posed by the new age media, especially the electronic media and internet posts, it cannot per se dilute the valuable right of free speech, which the court stated is the "lifeblood of democracy".

The state has time and again utilised the rhetoric and bogey of "fake news", just as it does claims of national security and/or national interest, to justify the whittling down of the right to freedom of speech and expression.

In Jammu and Kashmir, the fear of fake news was used to justify severe restrictions on free speech and media rights by curtailing access to the internet, after the Centre read

down Article 370. The same fear is now being cited to seek pre-publication screening of media reports. In the race between civil liberties and state control, ground is usually lost bit by bit, and one has to be extremely vigilant to keep pace with the increasing dilution of civil liberties.

Courtesy: https://thewire.in/law/covid-19-fake-news-media-supreme-court

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Sneak Peek:

No. of Words: 1867 words

Level: Moderate - Difficult & Essay type, very informative.

Estimated time: 10 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: Around 70-90 minutes or even more

Note: This article is beautifully authored and is inspired by Mr. Gogoi's appointment as Member – Rajya Sabha which in the view of author is against the tenet of Separation of Power and Independence of judiciary. It will not only enhance your legal acumen but also update you about the constitutional values and will upgrade your vocabulary as well. Enjoy this one !1

Article 28

Sorry Mr Gogoi, We Need 'Constitutional Distancing', Not Court-Government Bonhomie

The extent of independence of the judiciary is directly proportionate to the degree of mistrust between the executive and the judiciary.

"President Reagan used to speak of the Soviet constitution, and he noted that it purported to grant wonderful rights of all sorts to people. But those rights were empty promises, because that system did not have an independent judiciary to uphold the rule of law and enforce those rights".

– John G. Roberts, Chief Justice, US Supreme Court

A retired chief justice of India has broken his silence and, in a media interview, justified his acceptance of a high seat in the Council of States as a means to serve as an ambassador of good relations between the executive and the judiciary.

This was countered by another retired judge in another media interface by saying that currently, the executive-judiciary bonhomie was at its peak, hence, there was no crying need to stir up this controversy by accepting such an appointment.

The extent of independence of the judiciary is directly proportionate to the degree of mistrust between the executive and the judiciary of the nation. Put conversely, it is inverse to the extent of bonhomie prevalent between these two pillars.

The celebrated case of Marbury against Madison, where Chief Justice Marshall gave the US's Supreme Court the constitutional weapon of 'judicial review', was also born out of this mistrust. At its founding stages, the battle for the soul of the new nation was being fought between two conflicting ideas. One won a presidency and tried to nullify appointment warrants issued by the other's president, just before he demitted office. The warrant had been signed but not delivered. Marbury, who had been appointed by the outgoing regime, invoked a law passed by Congress to directly take his cause to the highest court. Chief Justice Marshall had no sympathy for the new president. However, he did not want to rock the boat either. If the court ruled in favour of Marbury, there was no telling how the penny would fall. It is then that genius struck him. He ruled that the very law which allowed Marbury to directly come to the Supreme Court could not have been enacted by Congress. The court asserted the right to judicially review laws passed by Congress and yet seemingly ruled in favour of the president. A classic case of operation unsuccessful but patient (in this case, the rule of law) alive.

Cut to our first Republic Day. Tripurdaman Singh, in his riveting book Sixteen Stormy Days, tells us how, even before the ink could dry on our constitution, the Supreme Court's enthusiastic defence of the historic charter of Fundamental Rights included in the Basic Lawb irked the very authors of the constitution, who found their aggressive socialistic plans such as land reforms, zamindari abolition and caste upliftment imperiled. So much so that Nehru had to pilot the First Amendment within months of the constitution coming into force and that too by an assembly which was a carry forward from the pre-constitution days – without having been subjected to an electoral sanction by "We the People".

The initial years of an India ruled by a constitution ensured that, while there was healthy mutual respect between the executive and the judiciary, there was certainly no "bonhomie". This is evident from what several historians, jurists and political commentators have chronicled about judicial appointments. Even before the Supreme Court – in the Judges' Appointment Case – read in a binding character to its recommendations on judicial appointments, the convention was that all recommendations

always went through. This compact soured as India's government acquired autocratic trappings as Indira Gandhi emerged from the clutches of the syndicate and shed the Goongi Gudiya image.

The fact that there was no bonhomie can be gauged from how judges in those days reacted to overtures from the other wing.
Nehru, it is rumoured, was not too fond of Justice Meher Chand Mahajan. The feeling was mutual. The latter, in his role as prime minister of Kashmir, had advised the then maharaja to steer clear of Nehru and he was in no mood to forget. Nehru, on the retirement of Chief Justice Patanjali Sastri in January 1954, wanted to supercede Justice Mahajan who, as the next senior-most justice in the top court, was slated to become the chief justice. Nehru offered the post to Justice S.R. Das. Some say even Justice Vivian Bose, who like Nehru, was quite English in his way, was sounded out. Das and Bose did not bite the bait. Nehru then toyed with getting M.C. Chagla, the legendary chief justice of the Bombay high court, who had learnt his legal craft in the chambers of M.A. Jinnah. The judges simply told the prime minister, "If you want a chief justice other than Mahajan you might as well think of having a whole new Supreme Court." The judges stood up as one – not for Justice Mahajan, the individual, but for the institution.

This set the rules for the executive-judiciary relationship in the coming years. What both wings practiced was not bonhomie but constitutional distancing, if we can mutate a term popularised by the coronavirus pandemic.
This compact, however, collapsed as the court got bolder in protecting its turf as the protector of India's Basic Law. The proverbial last straw was the judgment delivered in April 1973 in the fabled Kesavananda Bharati case (also known as the Fundamental Rights Case). India's Supreme Court in that case gave the world the concept of "Basic Structure" which, put simply, persevered for the courts the right to even strike down constitutional amendments which ran foul of the fundamental architecture of the constitution. The court wisely did not spell out the bare bones of what the beams and plinths of this edifice were. It merely gave an illustrative list which included generic ideas such as republican form of government, democracy, etc.

Over the years, the court has expounded on this doctrine, discovering other basic features such as "secularism" (Bommai case) and the "independence of the judiciary" (Judge's

Appointment Case). (This doctrine has been imported and relied upon by constitutional courts in lands, distant and near. One notable example being Bangladesh, whose top court in 1989 applied this doctrine to hold the constitutional amendments converting that country into an Islamic State to be violative of the basic structure of their Constitution).
The executive's reaction was swift. Justice S.M. Sikri had retired after delivering the Kesavananda verdict. Justices J.M. Shelat, K.S. Hegde and A.N. Grover, the three next in line to be the CJI, who had all ruled in favour of the Basic Structure doctrine, were summarily superseded. Justice A.N. Ray accepted the post. His three senior colleagues promptly resigned.

The court, until this supersession, neither could be termed pliant nor sensitive to the needs of the administration. In fact, in most cases, such as the Bank Nationalisation case and the Privy Purses case, if anything, the court came across doggedly in favour of the individual citizen, causing utmost inconvenience and disruption to the social and political agenda of the government of the day.

The government-judiciary breakdown revisited the Supreme Court in the aftermath of the ADM Jabalpur case. During the Emergency, while the majority of judges fell in line and agreed that even the right to life can be suspended, Justice H.R. Khanna steadfastly guarded the Constitution. Penning his dissent, Khanna quoted Justice Charles Evans Hughes' immortal words that dissent: "is an appeal to the brooding spirit of the law, to the intelligence of a future day when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed".

While the New York Times was fancying a statue being erected for Khanna, Madam Gandhi had other ideas. He was superseded and Justice Beg was made chief justice.
Morarji Desai, as the succeeding prime minister, considered whether to pass over Justice Y.V. Chandrachud's candidature for the top judicial job, because he was part of the majority judgment of the ADM Jabalpur case. Desai resisted the naysayers to go ahead and appoint him. That was a big gift to India's judicial independence, as it is impossible to imagine how the institution would have been able to cope if rival political parties institutionalised the practice of by-passing every inconvenient judge.

These occasional bumps aside, the judiciary and the executive maintained a healthy mutual respect and safe distance. This is evident from the widespread outrage which was sparked when Justice P.N. Bhagawati, next in line to succeed Chandrachud as CJI, sent a profusely congratulatory missive to Indira on her successful election campaign, vanquishing the Janata Party.

Post the Judges' Appointment Case, the Supreme Court has ensured that its recommendations on judicial appointments, including the appointment of the CJI, are binding on the government of the day. The practice of the outgoing chief recommending his successor, who in all cases has been the senior-most judge, continued to be followed but now with teeth.

Here, one must concede that constitutional distancing was simpler in times when justices actually looked forward to their retirement. And high court judges such as P.B. Mukherjee and M.C. Chagla would actually loath having to give up the charm of presiding over grand high courts to travel all the way to Delhi to be members of the top court. However, in the present complex times, the necessity of such constitutional distancing is even more pronounced.

In this backdrop, the perception that arises from former CJI Ranjan Gogoi's comments that he was persuaded to accept legislative office to restore or further cordiality between the judiciary and the executive – is disturbing, to say the least. Sadly, there is a growing perception, articulated even by retired judges, that the degree of bonhomie between the two wings is too high for comfort. Many lament that the healthy tension which keeps the executive on its toes and the court alert, is now absent, having been replaced by a spirit of accommodation and adjustment.

When in a public interest litigation ostensibly to provide succour to migrant labour unsettled by the pandemic, the court – despite a plethora of available legislation governing the media – wades in to promote governmental control over the narrative, howsoever noble the motive may be, it only strengthens the 'bonhomie' narrative. Excessive praise of political personalities holding offices of state, by justices on public platforms also fuel the same, as does inaction on pressing contemporary constitutional and legal challenges.

There is a doctrine of "presumption of constitutionality", the unpronounceable Latin being 'omnia praesumuntur rite esse acta' – which presumes that all law is validly and constitutionally enacted. The burden is heavy on the person who mounts a challenge to a law, to demonstrate to the satisfaction of court, that the action challenged is foul of the law. This, however, does not imply that the court cannot adopt a citizen-centric approach and must always view a challenge from the perspective of the overarching state.
To adopt pandemic-relevant terminology, the court is the safety mask and sanitiser that protects the citizen from the virus of state excesses, as well as inaction.

Courtesy: 'The Wire' as extracted from:
https://thewire.in/law/court-government-bonhomie-ranjan-gogoi

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Sneak Peek:
No. of Words: 1454 words
Level: Moderate - Difficult & Essay type, very informative.
Estimated time: 10 minutes (maximum time on D- day to crack) this one
Estimated Analysis time: Around 70-90 minutes or even more
Note: This article is beautifully authored to explain the term Constitutional Morality in present COVID -19 crises.

Article: 29

As Poor Indians Suffer Amidst Lockdown, Constitutional Morality Leaves the Country

The apex court has identified constitutional morality to mean 'a pillar stone of good governance' which the Centre failed to deliver on for migrant labourers.

The principle of constitutional morality did not find much traction until the beginning of the last decade. To be fair, it did find mention in a few judgments of the Indian Supreme Court prior to that, however, the concept was abstract.

Till date, there are roughly about 38 Supreme Court judgments that have dealt with this concept in some detail, or in passing.

Understanding what is meant by constitutional morality as a principle in law as opposed to applying the principle for the purpose of justiciability and claiming certain rights (including fundamental rights on behalf of a litigant) is one aspect of the matter.

The second aspect would essentially mean how the concept of morality is ordinarily understood i.e. societal morality that is different from constitutional morality and how the courts have interpreted that.

What is understood to be societal morality has to yield to constitutional morality when tested on the touchstone of the constitution as held in Sabarimala Temple matter. But the more topical question today is whether constitutional morality has necessarily to be stated and reiterated time and again by the Supreme Court. The same is actually a facet of institutional morality and political morality. In fact, societal morality, institutional morality and political morality all yield to constitutional morality. The need of the hour is for the Institutions that govern us to observe constitutional morality.

The first mention with respect to constitutional morality is found in the Constituent Assembly debates (November 4, 1948). The reference comes on the debate with respect to the details of administration included in the draft constitution, and which was alleged to have been borrowed heavily from the Government of India Act, 1935.
While responding to this, B.R. Ambedkar introduced for the first time the concept of constitutional morality as enunciated by George Grote.
What exactly Ambedkar said was that:
"While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the forms of administration has a close connection with the form of the Constitution. The forms of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution.

It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the

Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution."
Constitutional morality as first discussed by Grote was in the context of the history of Greece and, more particularly, the attachment to constitutional forms at Athens and the use made of this sentiment by Antiphon to destroy the constitution.

It is in this context that Ambedkar had quoted Grote:
"The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves."

The time and context of the Constituent Assembly debate assumed much significance at the time, as India had freshly attained independence and one nation was sought to be created out of roughly 521 princely states which had acceded to the Indian Union or were in the process of acceding. The challenge at the time was to have a predominant constitution as a binding factor for a nation. It was in this context that Ambedkar made the aforesaid remark with a view to have the constitution as the paramount document of the new nation.

There have been certain scattered discussions of what constitutes constitutional morality from sociologists point of view as discussed by Andre Beteille in that obligations of constitutional morality bind the government of the day as well as the opposition. While this observation assumes importance in the context of the situation prevailing in the country today, the question remains: what are the institutional obligations when the country is in a state of lockdown?

Constitutional morality essentially translates into constitutional methods of administration in achieving social and economic objectives as held in the adultery case. In a number of judgments, the Supreme Court has discussed the parameters of constitutional morality to variously mean, 'genuine orderliness' 'a pillar stone of good governance'.

A complete lockdown for a country of 1.3 billion people is certainly not an easy task. These are tough decisions. While it has been debated that only strong leadership would be able to achieve this, and that may not be disputed. However, disturbing and heart-rending pictures are emerging every day of migrant labourers walking miles to reach the safety of their homes, of police atrocities on these people, who are punishing them, caning then and making them crawl, which, of course, has been condemned by the authorities.
This, when coupled with all the assistance rendered to another lot that was airlifted from foreign countries, has drawn considerable flak. The actions of the government may have been decisive but can scarcely be said to have been properly thought through. The Union government and the states did not think of the huge migrant populations that make the cogs of the city run. There was no announcement about mitigating circumstances for them, no promises made, no assurances given, no prior arrangements announced. Did they not exist on the radar of the authorities? Preaching social distance without realising that this is perhaps a luxury for them will cost the country a huge price. These are the people who may actually trigger a community spread of the virus.

The home ministry order of March 29 directing that the migrant workers, who had moved out to reach their homes, must be kept in the 'nearest shelter' didn't specify whether it meant the shelter nearest to their homes, hence implying that the workers would be kept in shelters nearest to where they had been rounded up.

The Supreme Court, in a writ petition seeking the welfare of migrant labourers who had started walking back to their villages, passed an order on March 31 expressing satisfaction with the steps taken by the central government without expressing any concern about the human right violations as it is now no longer a lockdown for workers. It is a lock up!
A new balancing of priorities and human rights will emerge in the new normal post-COVID-19 world. Constitutional morality demands that governance, and institutions that govern and affect us, scrupulously follow its principles. This is non-negotiable. The

Supreme Court, in its privacy judgment, had aptly described this principle in the following language:

"The principle of Constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and conventions have to grow to sustain the value of such amorality. The democratic values survive and become successful where the people at large and the persons in charge of the institution are strictly guided by the Constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite Constitutional restraints. Commitment to the Constitution is a facet of Constitutional morality."

In this context, the statement of the chief minister of Telangana needs to be applauded and appreciated.

Not only has he called them partners in the development of the state, but his announcement appears to be genuine keeping in mind the difficulties faced by the class of people who have been endowed with less. Constitutional morality demands that the institutions act today and not wait for a direction and order from the Supreme Court.

Courtesy: https://thewire.in/law/constitutional-morality-coronavirus-lockdown

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Sneak Peek:

No. of Words: 788 words

Level: Very Easy

Estimated time: 03 minutes (maximum time on D- day to crack) this one

Estimated Analysis time: Around 20 minutes.

Note: This article reports the case of Vijay Mallya' s extradition proceedings and the outcome in the courts at UK.

Article 30

UK Court Rejects Fugitive Economic Offender Vijay Mallya's Appeal Against Extradition Order

Liquor baron and fugitive businessman Vijay Mallya's appeal against his extradition order has been rejected by the High Court in United Kingdom on Monday.

Pursuant to a request from the Indian Government, the Senior District Judge (SDJ) at the Westminster Magistrate's Court had, in December 2018, ordered Mallya to be extradited back to India so he could face charges of financial irregularities. Mallya preferred an appeal to this order in February 2020. A two judge Bench comprising of Lord Justice Stephen Irwin and Justice Elisabeth Laing presided over the appeal at the Royal Courts of Justice in London.

The Court considered and rejected 6 challenges to the 2018 order, wherein it was argued that the SDJ had erred in her approach towards the questions of law raised, and subsequent appreciation of evidence.

The judgment, handed down remotely via email due to the present Corona virus lockdown, clarifies that in extradition cases, the Court must only satisfy itself of the existence of a prima facie case against the requested person, and not delve into establishing the truth. It has thus been ruled that evidence suggested a case against the 64-year old tycoon which could lead a reasonable jury to confirm charges against him, and therefore he must be extradited to India to face trial and answer questions.

Rejecting Mallya's argument that the SDJ needed to be sure of his guilt to pass such an order, it was held that

"the role of an extradition court considering this question is to consider whether a tribunal of fact, properly directed, could reasonably and properly convict on the basis of the evidence. The extradition court is, emphatically, not required itself to be sure of guilt in order to send the case to the Home Secretary. The extradition court must conclude that a tribunal of fact, properly directed and considering all the relevant evidence, could reasonably be sure of guilt."

Junking all contentions regarding the lack appreciation of evidence and admissibility of the same, the Court upheld the SDJ's decision to not got into a fact finding exercise do determine the merits of the allegations against Mallya.

"It is clear beyond any doubt that the SDJ directed herself properly. It is clear she had the criminal burden and standard in mind when she considered whether there was a prima facie case.

In our view, the SDJ was not making "a decision not to consider all the evidence" in the sense criticised. She plainly considered a vast amount of evidence, from both sides. She knew what was her task, and she was fully aware of the burden and standard of proof which must govern any eventual trial. She was well aware of what was "needed to prove a prima facie case, or not"."

The SDJ had concluded that a prima facie case of conspiracy to defraud, misrepresentation as well as money laundering were made out. Junking all contentions against these findings, the High Court affirmed the same and ruled that "there is a prima facie case both of misrepresentation and of conspiracy, and thus there is also a prima facie case of money laundering".

In a significant observation regarding the charges of conspiracy and money laundering, the Court took the view that there exists sufficient material to suggest that a jury could infer that Mallya was behind the process through which applications for the loans in question were made.

"It seems to us that there was material from which a properly instructed jury could draw a secure inference that the Appellant was knowingly behind all the steps that led to the applications for the loans being made in the forms in which they were."

With this appeal being dismissed, the final call on Mallya's extradition will now lie with the Secretary of State, i.e- Home Secretary, Priti Patel. However, he now has a period of 14 days to seek permission to appeal to the Supreme Court of UK. Failing to do so, he would be extradited to India within 28 days and subsequently face trial on charges of fraud and money laundering to the extent of an estimated amount of Rs. 9000 Crore.

Mallya left India on March 2, 2016 in the wake of cases registered by the ED as well as the Central Bureau of Investigation, for alleged fraud and money laundering amounting to an estimated Rs 9,000 crore.

In January 2019, he was declared a Fugitive Economic Offender by the India Government under the Fugitive Economic Offenders Act 2018

Under the FEO Act, a person can be declared a Fugitive Economic Offender if a warrant has been issued against him for an offence involving an amount of Rs 100 crore or more and he has left the country and refuses to return.

Courtesy: 'Live Law' as extracted from https://www.livelaw.in/foreign-international/uk-court-rejects-fugitive-economic-offender-vijay-mallyas-appeal-against-extradition-order-155527

MESSAGE FOR LAW ASPIRANTS BY LEGENDS WHO INSPIRE

"You are lucky to be in this institution with unusual mission of National Service. Those of you wish to specialise in law in particular, I have to advise that a Lawyer who only knows Law is not a Lawyer, he is only a Mason.A Lawyer has to be an architect. You must know religion, philosophy, world history and science, almost every branch of knowledge. Above all, service to the nation must be your primary commitment.
I wish you all the best in life."

Late. Shri Ram Jethamalani
Sr. Advocate, Supreme Court

Shri G. Balasubramanian
Ex-Director Academics (CBSE)

"It is said "You must either modify your dreams or magnify your skills." With the fast changing dynamics of science, technology and its tools, not only formal familiarisation with the newer skills has become imperative, but to acquire the competency in using them. We are, turning, therefore from 'Knowledge workers' to 'Knowledge technologists'. In this context, the 'Vidhigya' finds its relevance as not only meeting the needs of current generation, but as one which could prepare the learners for futuristic tasks and challenges. The concept of Vidhigya is well thought of and well-conceived. I am confident that this organisation will not only help to facilitate the young learners to design their futuristic dreams, but help them to acquire the contextual skills to face the realities with courage, conviction and confidence."

"Integrity is doing the right thing when nobody is watching. Education is not information but formation. Perfect human being is God and imperfect God is human being and education is a tool to remove imperfections and make a perfect human being."

Prof.(Dr.) R. Venkata Rao
Vice Chancellor, NLSIU, Bengaluru

MESSAGE FOR LAW ASPIRANTS BY LEGENDS WHO INSPIRE

Ms. Kala Mohan
Patron - Vidhigya, Educationist
Academic Advisor- CBSE Schools

"In this era of 21st century, the most important thing to succeed is 'EXCEL IN THE CHOSEN WORLD', be it anything, whether it is rotiwala or dabbawala. The first important step to excel in any field is SELF AWARENESS. Find the best in you, accept your weakness and become a better version of you everyday. Be a reason of someone's smile everyday and lead a happy life, because happiness leads to success."

"Society is an organic and dynamic entity and law being an instrument to regulate the behaviour of members of society has to be equally dynamic. Study of a dynamic concept like law, while being an inspiring and exciting endeavour in itself, provides an opportunity to individuals to delve into the functional aspects of society and governance. The curriculum in modern law schools is designed to develop communication and persuasive skills, reasoning and analytical skills, research skills, critical thinking, public speaking, etc. Therefore, legal education, as it stands today, is not limited to studying a few books, appearing in exams and getting a degree. It is focused on all-round development of individuals that ultimately enables them to meet the emerging challenges of legal profession."

Hon'ble Shri. Tarkeshwar Singh
Retd. District Judge, MP
Honorary - Academic Director, Vidhigya

Our Visitors

Mr. R. Venkatramani (Sr. Adv. Supreme Court) Ex-Member Law Commission of India, visited VIDHIGYA for a class room interaction with law aspirants.

Prof. (Dr.) Indranath Gupta Professor of IP & Technology Law, LL.M. (East Anglia, UK), Ph.D. (Brunel, London) interacted with Law aspirants about 'Data Privacy and Cyber Laws' at VIDHIGYA.

Mr. Sakshat Bansal (Professor of Law, NLSIU Bengaluru) interacted with students at VIDHIGYA about contemporary challenges in Legal Profession.

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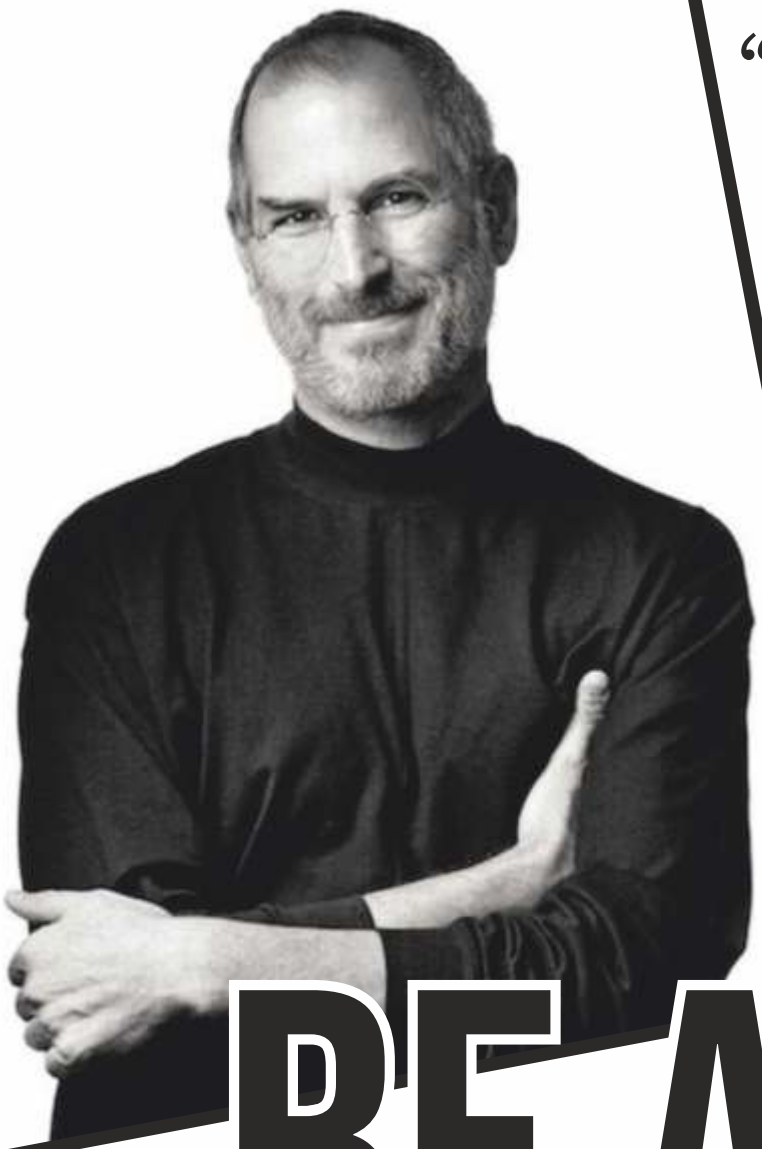

"Here's to the crazy ones. The misfits. The rebels. The troublemakers. The round pegs in the square holes. The ones who see things differently. They're not fond of rules. And they have no respect for the status quo. You can quote them, disagree with them, glorify or vilify them. About the only thing you can't do is ignore them. Because they change things. They push the human race forward. And while some may see them as the crazy ones, we see genius. Because the people who are crazy enough to think they can change the world, are the ones who do."

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