NEWSLETTER

SENSE OF JUSTICE

ISSUE - 2

AUGUST

INDIAN LEGAL WING

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WE ALSO ORGANISE VARIOUS INTERESTING EVENTS, COMPETITIONS AND OTHERS IMPORTANT ACTIVITIES WHICH ARE IMPORTANT FROM THE POINT OF VIEW OF LAW. WE HAVE AN INTERNSHIP SECTION WHERE THE INTERESTED CANDIDATES CAN APPLY FOR THEIR INTERNSHIP.

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NEWSLETTER - SENSE OF JUSTICE

INDIAN LEGAL WING (ILW) WITH THE OBJECTIVE OF ENRICHING THE DIALOGUE SURROUNDING CONTEMPORARY ISSUES OF CONSTITUTIONAL LAW AIM TO PROVIDE A PLATFORM FOR MEMBERS OF ACADEMIA TO CONTRIBUTE TO THE NEWSLETTER, WHILE ALSO ENSURING THAT IT IS EASY ENOUGH TO GET IN ONE GO ,KEEPING IN MIND OUR AIM OF CONNECTING LAYMAN TO LAWMAN. WE PRIMARILY ACCEPT SUBMISSIONS PERTAINING TO CONSTITUTIONAL LAW, BUT WELCOME AND ACTIVELY ENCOURAGE INTERDISCIPLINARY TOPICS. THIS IS IN KEEPING WITH OUR GOAL TO SPREAD AWARENESS OF ALL ASPECTS OF CONSTITUTIONAL LAW, AND ITS INTERSECTION WITH OTHER FIELDS OF STUDY.

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DREDGING OUR RAINBOW IN LEGISLATIONS

Saumya Singh

"I am what I am, so take me as I am "- Johann Wolfgang

Introduction-

LGBT term is evolving and expanded to LGBTIQ+, the term used to describe a person sexual orientation or gender identity. In this blog, the current predicament of the Indian Judiciary in relation to legal rights and state obligations has been elucidated. In order to show the long-standing acceptance of community before the British invasion, the historical perspective has been explored. The blog discusses various courses of action both legislative and judicial for the legalisation of same-sex marriage.

Chronicle Roots-

Our evolutionary achievement didn't happen overnight by decriminalising Section377, but homosexuality has a long-standing history in Indian culture. Hindu art and text like Rig-Veda dated around 1500BC depicts the sexual act between two women, Kama sutra oldest Hindu textbook of erotic love, have the descriptive affair of homosexuality. Muslim Nawabs and Hindu elite were been sexually served by Harems young boys in the medieval Mughal period are some archaic evidence of homosexuality but loosed its significance with indiscriminate invasions of foreign powers.

While, last decade has witnessed a huge tussle for human rights, where victory stands in the hand of love when consensual sexual act between homosexuals was de-criminalised but is this in itself is enough? When the countries around the globe are conquering new frontiers of civil liberties each passing day, we are still struggling to save our culture by shredding the right of at least 5-10%Indian population. Whereas, whenever history has witnessed the injustice, the judiciary rose to its vigour and restored the old treasure of integrity.

Why in news?

A five-judge bench headed by Chief Justice Dipak Misra termed the part of Section 377 of IPC which criminalised unnatural sex irrational, indefensible and manifestly arbitrary and too mentioned it's violative of the right to equality. Two years after the SC, an affidavit was submitted to the Delhi High Court, to recognise same-sex marriage under the Special Marriages Act.

The Petitioners argued that "despite the fact that there is absolutely no statutory bar under the Hindu and Special Marriage Act of 1956against gay marriage, the same are not registered throughout the country." The petitioner also cited names of 27countries including the U.S where same-sex marriage is legal.

The Solicitor General said that petition was not permissible as it was asking the court to legislate and also that any relief granted would run contrary to various statutory provisions. He argued 2018 judgment merely decriminalised homosexuality or lesbianism, nothing more nothing less. Further, he added, "our legal system, society and value don't recognise marriage between the same-sex couple". After hearing the contention respectively, Delhi HC gave its observation that "The world over today things are changing. Those changes may be applicable in our country or they may not be" the bench said adding that for our country we have to see what our constitutional values say. The prohibition of the marriage of LGBTQ people on basis of sexual orientation is absolute discrimination towards them and also violative of the Right to Equality as granted in our Constitution.

It should be noted that it's not a final judgment presented by Delhi HC, but it gives us an endurance that rainbow got a ray of hope to appear high up in the sky by such liberal outlook of judges in their opinion.

It becomes important for us to understand why there is an exigency to legalise same-sex marriages.

Why should it be legalized?

"Article-14 intention of the article is that every person is equal in the eye of the law, so why there is a disparity with homosexual people"

There is a big debate going in our country that why should same-sex marriage need to be legalized here are some arguments in favour of it-

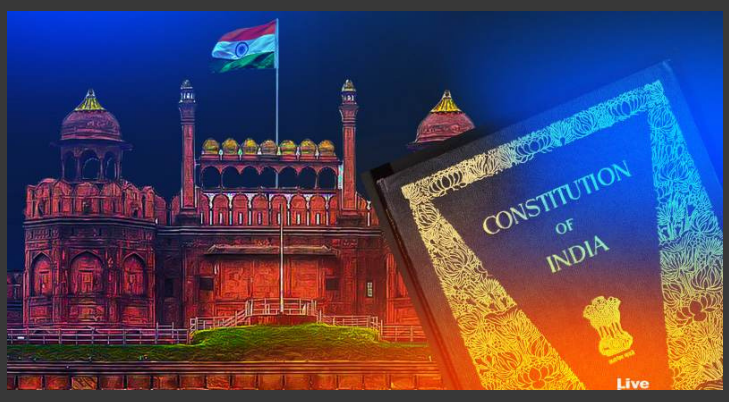
1. Right to marry integral to Article 21– Right to marry is not recognised as a fundamental or constitutional right under the Constitution but is regulated through various statutory enactments. Due, to judicial activism we are here over an open interpretation of Article 21. Justice KS Puttaswamy v. Union of India and others held that "right to privacy is protected as an intrinsic part of article 21 that is right to life, personal liberty and privacy represent the core of human personality and ability of an individual to make choice". Hence, it eventually ended up with an elucidation that 'an inherent aspect of Article 21 would be freedom of marriage as Privacy cover the preservation of intimacies, sanctity of family, marriage and sexual orientation'.

2. Marriage Rights and Benefits- Obergefell case of U.S Supreme Court ruled that same-sex marriage bans are unconstitutional and homosexual couples are entitled to federal benefits as heterosexual couples. Hence, it's an epitome for a world that marriage is not only about a sense of security of love but benefits like financial, employment, government, medical, family, housing and other legal protection given to heterosexual couples should be replicated back to homosexual couples.

3. Universality of Human Rights demands- Let's peep around the globe and understand where we are lacking over human rights sensitivity. 2000, 21st century was about to knock the doors, The Netherland became the first country to legalize same-sex marriage and it's 2021 just a year before Costa Rica became the 29th country by enacting progressive legislation of homosexual couples. It's not only countries in their capacity is encouraging world but, in 2011 United Nation Human Rights Council passed its first resolution recognizing LGBT rights, following which the Office of UNHRC issued documents of violation of the right of LGBT. While the world is making one's way is it reasonable for the world biggest democracy to advocate its rearwards dogma by stating that "our legal system, society and value don't recognise marriage between the same-sex couple".

Do we have scope to amend our Personal Laws?

Petition filled in Delhi HC "despite the fact that no provisions are halting same-sex marriage under Hindu Marriage Act1955 and Special Marriage Act1956, ordinary citizens have come forward to rescue their right of spousal." Let's understand the ambiguity in the sections of these legislations which are left open for interpretations.



Hindu Marriage Act, 1955 –After decriminalization of sec.377 interpretation of sections 5 and 13(2) of the act became imperative to the larger session of society because sec.5 talks about the marriage between two Hindus with no discern between homosexual and heterosexual couples. Hence there shouldn't be any bar for same-sex marriage to be recognised under this act. Whereas talking about the definition of husband and wife was quite clear till 2018 but now these terms need to be expounded well, as section13(2) of this act, discuss the ground of divorce by my wife but in gay marriage aspect specified in section can't be satisfied.

Muslim Personal Act, 1937- Quran quotes "every person must marry", and asserts that marriage is the only way to satisfy one's desire. So it's quite open for interpretation that every person who follows Islam despite their sexuality have the right to solemnize their tie.

Special Marriage Act, 1954- This legislation is already a revolutionary step in world matrimony, still, there are some loopholes underlining this act as under sections 4 and 27(1a). The major problem remains the interpretation of "marriage between two persons" under section4, which have coinciding ambiguity like the Hindu Marriage Act. Section 27(1a) talks about grounds of divorce and it specifies sodomy as the ground of divorce it needs to be elucidated as it has been decriminalized by the court with respect to LGBT.

As section 377of IPC has stuck down its decimalizing provision towards LGBT, so if homosexual marriages take place it will be governed by these personal laws as, till now no separate legislation governing their marriage have been proposed and considering it to be time taking process the best alternative is amendments in already existing acts. The ambiguity of interpretation doesn't cease within Family law but it follows down to the maintenance in case of divorce under Hindu Adoption and Maintenance Act1956 as gender remains the same for homosexual couples.

Conclusion–

While discussing the most satisfactory course for the accomplishment of LGBTQ right to marry, should be reconditioned under personal laws but achieving these statutory amendments will be difficult because of the malevolence attitude of Indian society towards LGBTQ and while adding a cherry to a cake of difficulties central ruling NDA government is clearly against glorifying homosexuality and referring it as an unnatural act that cannot be supported.

While between tussle of right and wrong Manipur government stand out for LGBTQ in their 'KHUDOL' initiative for 'Inclusive' fight against COVID-19 pandemic. During the ongoing pandemic LGBTQ community is been overlooked by governments, but Imphal based NGO "Ya_All" worked for food, health, hygiene, separate isolation centres for LGBTQ. The most overwhelming part of this act was the crowdfunding done by the general people of Manipur.

Thus, the straightforward argument in favour of same-sex marriage is, if two adults want to be in a committed legalised relationship they should be permitted for the same, excluding on class from benefits demeans their dignity and affront our Constitution.

Secondly, being a concerned citizen I want to put forward some suggestions-

"My friends welcome to the other side of the rainbow"

Anti-Discrimination Law- The Constitution, though apparently marks that citizens on any ground won't fall prey to discrimination under Article15 (2). In existing laws, the scope is restricted in the areas of untouchability, harassment etc. that too against State. But issues remain alike for many vulnerable groups. We come across several occasions where the disparity is faced by people because of their cast, sexuality, religion. Therefore, we need a comprehensive law awning all kinds of discrimination in single legislation.

Social Acceptance- Acceptance means the inclusion of individuals by agreeing over their uniqueness which is considered blotch by the society member. It's difficult to bring people to the same page in our country we have to educate people in our circle, as more we stand up for the community, the more normalised and empowering an idea it would be.

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Will you lose Right to privacy when you die?

Nikita Sharma

The constitution has furnished us with every one of the rights to protect us from the subjective activities of various organs of the state. These rights not just let us partake in our lives completely with no sort of obstruction, yet additionally build up a steadiness in the general public we live in. In any case, there is one part of this load of rights, that we all frequently disregard, and that is, the thing that all rights would stay with us when we all future dead. The point of this article is to talk about why the law gives restricted rights to the dead and not every one of them.

INTRODUCTION

Privacy is type of atmosphere or way of living where an individual wants to protect his personal matters from other's interference without his/her permission. As per Merriam Webster Dictionary, "Privacy is freedom from unauthorized intrusion." Privacy is a basic right, fundamental for independence and the insurance of human poise, filling in as the establishment whereupon numerous other basic freedoms are fabricated. Privacy is indispensable to human beings and we make decisions about it every day. It provides us with a place to be us without being judged, allowing us to think freely without any kind of discrimination, and it is an important factor that allows us to control who knows our situation. According to European convention on Human Rights (ECHR), "Everyone has the right to respect for his private and family life, his home and his correspondence".

RIGHT TO PRIVACY IN INDIAN CONTEXT

Although the Indian Constitution does not expressly provide for the right to privacy, however it has been made a facet of Article 21 of the constitution as right to life and personal liberty in the case of Justice K.S. Puttaswamy (Retd.)& Anr. Vs. Union of India case.

The Supreme Court for the first time in M.P. Sharma v Satish Chandra held that the right to privacy is not a basic right under the Constitution of India, which is different from the United States. In 1962, in Kharak Singh v. The state of U.P, SC spoke about the right to privacy and believed that the Constitution of India does not guarantee the right to privacy.

In R. Rajagopal vs. State of Tamil Nadu, the Supreme Court held that the Right to privacy is implicit in Article 21, which guarantees the rights to life and freedom of citizens of this country. This is a "right not to be disturbed". "Citizens have the right to protect the privacy of their family, marriage, childbirth, childbirth, childbearing, education, etc.". The right to privacy is a basic right, which is stipulated in Article 21 of the Constitution, which is why the right to privacy is guaranteed by the Constitution.

In the landmark K.S. Puttaswamy case (supra) Justice. Abhay Sapre believed that "the right to privacy is multifaceted, therefore, when any citizen files a complaint and denounces the violation of their claimed rights, they also have to go through an individual case development process". In summary, the scope of privacy rights is very broad and should be expanded based on specific circumstances.

DOES RIGHT TO PRIVACY EXTENDS EVEN AFTER DEATH?

In Jurisprudence, according to Salmond, "legal rights are "interests protected and recognized by the rule of law. This is a responsible interest. It is wrong to ignore which is wrong." When an interest or right is protected on basis of morality and not on its legal existence , that is called as Natural Right. So, privacy had consistently stayed a natural right, so regardless of, whether it tends to be expanded even after the demise of an individual?

Article 21 & Post Death Privacy.

Article 21 states, "No person shall be deprived of his life or personal liberty except according to procedure established by law". The word 'Person' used in Article 21 in general will include living individuals, however to extend privacy after the death of the individuals this word must also include dead persons. Therefore, it is necessary to analyse the definition of the word person.

The definition of person is not given in constitution. However, General Clauses Act sec-3 cl.42, "person" shall include any company or association or body of individuals, whether incorporated or not." In the Indian Penal Code , 1860 the word person is defined as in section 11 , "The word "person" includes any Company or Associa¬tion or body of persons, whether

incorporated or not." As evident from these provisions, there is no use of dead persons or include them in persons.

The courts and councils have invested significant energy attempting to ensure the privileges of the dead. Most critical solicitations like the will, internment solicitations, and organ donation are regarded regardless of whether they face the complaints of the family.

Rights of the death

There are some of the rights which are attached to dead persons. Under the Transplantation of Human organs act 1994, people have the right to protect the corpse, amputation, waste, or organ harvesting with the consent of his family or kith and kins. In the Indian succession act, provision also exists for the execution of will of the person after he dies. It shows that there are limited rights which is being provided for the dead persons. In Puttaswamy case, it was also held that Privacy additionally has degree to be expanded even after death as privacy is a component of dignity. Honourable justice. Abhay Sapre also said that "Privacy is a right that remains with humans until the last time they breathe." That is, it is born as a human being and disappears with human beings.

In the case of Parmanand Katara vs Union of India, it has been observed by the Supreme court that right to dignity and fair treatment is not confined to the living man but also his dead body. While explaining the ambit of Article 21 in the case National Legal Services Authority vs Union of India, Supreme court held that 21 is the heart & soul of the Indian Constitution. "Right to life is one of the essential thing rights and not even the State has the position to abuse or remove that right. Article 21 takes that load of parts of life which go to make an individual's life significant. Article 21 ensures the poise of human existence, one's very own self-sufficiency, one's all in all correct to protection, and so forth Right to privacy has been perceived to be a fundamental piece of the right to life and builds to all people because of being human".

Whether privacy can be inherited?

In the case of Deepa Jayakumar vs. AL Vijay (2021) the Madras High Court has held that "a deceased person's right to privacy cannot be inherited". It also rejected a petition against the publication of a biopic about the late former Chief Minister of Tamil Nadu, J Jayalalitha. Therefore, the privacy of the deceased cannot be inherited, because the respect or reputation on which privacy depends to a large extent disappears with the death of the individual, so it cannot be said that the privacy of the relatives of the deceased has been violated. According to the Madras High Court, the privacy of the deceased cannot be considered the privacy of the family or the privacy of the heirs. When the court deals with issues related to the representation of CM films at that time in low light conditions, in accordance with article 19 (1) (a), the right to freedom of expression will not bind the artists to portray events in any way. Artists and filmmakers reflect events in a balanced way through specific cinematographic methods and critically evaluate the social reality of society as the cornerstone of a democratic country.

Privacy and Dignity

Justice Chandrachud, Justice R.K Agrawal and Justice Khekar hold the view that "The realization of privacy guarantees dignity is the basic value that must be realized to protect life and freedom. The right to privacy is an element of human dignity. Personal privacy is an important aspect of dignity. Without privacy, dignity cannot exist. Privacy is the constitutional core of human dignity. Privacy is about people because it is a fundamental aspect of human dignity."

In the opinion of Justice S.A. Bobde, " Dignity and privacy are closely linked: they are the natural conditions for people's birth and death, as well as the natural conditions for many important life events between these events."

So it is derived from the above perceptions that privacy is the centre of dignity and right to privacy isn't simply restricted to living people yet in addition to dead.

CONCLUSION

In the conclusion, it can be said that as per the present scenario, Dignity continues even after death, so privacy must also be extended because it is a subset of dignity. But even in the Paramananda Katara case, the Supreme Court of India only recognized the right to dignity of the deceased, and the ruling did not include the full concept of protection of the dignity of the deceased. Therefore, strictly inferring from the current legal situation, we can conclude that privacy cannot be extended until death. But this right must be considered and protected by law to avoid infringing on a person's privacy just because they die. This right needs protection otherwise it will lead to misunderstanding and people will think that they can infringe person's privacy upon that person's death.

Indian law keeps silent about the dissemination of rights that will stay after the death of the individual also as numerous rights have been granted to the living people by the constitution and therefore it is still a question. The Supreme Court on many occasions has investigated its material ness on the dead people and consistently concocted a view that the right to privacy is restricted to the living person.

Without any order as of now and depending on the legal choices it very well may be inferred that the rights of privileges of the dead doesn't convey the right of protection with it at the same time, one can expect later on in the future that the extent of the right to privacy would be expanded to incorporate any rights of the dead individual.

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7 Constitutions, Several Prime Ministers: Nepal on Roller Coaster

Akhil Kumar Singh

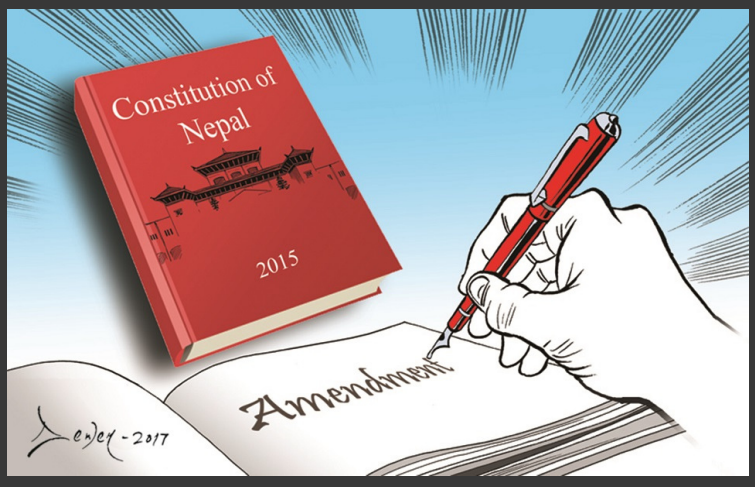
"Stability is everything, emotional or physical. You need a solid ground to build anything on."

The abovementioned quote applies in the same sense to a country as it goes for human beings. Let me boil down the comparison with a very famous speech of Shri Atal Vihari Bajpayee Ji in the parliament where he said, "Bharat koi bhoomi ka tukda nahi hai, ye ek jeeta jaagta Rashtra Purush hai...". The essence of what our former Prime Minister said does not limits itself to India, but applies to each and every country, and hence Nepal. The chaos in political landscape of the country lying in the lap of Himalayas is definitely not just because of political ambitions, because a country which has witnessed 7 constitutions in 70 years and several Prime Ministers in 30 years should look in and out of the issues, social-political-economical, to reach a stability.

The dissolution of house in December 2020, the tussle between ex PMs KP Sharma Oli and Pushpa Kamal Dahal (Prachand), the dissolution being held unconstitutional by the Supreme Court in February 2021, Oli being re-appointed PM on May 13th 2021 and Sher Bahadur Deuba being sworn to the office of PM after Supreme Court's verdict that KP Oli had violated constitutional principles. This roller coaster ride of Nepal has happened in the span of last 6 months that too in the midst of ongoing covid pandemic. Looking for reasons as to why such unstable graph has come up, I find that the tussle between Oli and Prachand with respect to the Power-sharing has disturbed the equation. When a leader holds both legislative and organizational post, not with progressive political ambitions, but with political greed, the only thing which a country fails to achieve is Leadership. And this can be seen to have happened in Nepal. The Prachand faction of Nepal Communist Party, leaders like Madhav Kumar and other communists demanded KP Oli to continue with any one of the two post i.e. Chairman of the party or PM of the country. This demand was annexed with the logical grounds of misgovernance which the country was facing. They said that Oli did not keep his promise of stepping down after half of the tenure and let Prachand preside. As alleged by the leaders, this was agreed when in 2018, merger of Communist Party of Nepal (Unified Marxist-Leninist) and Communist Party of Nepal (Maoist Centre) took place and Nepal Communist Party was formed. The easiest weapon to sideline your opponents and gather mass support is to polarize people of your country on the grounds of nationalism, no matter how lame your arguments are. This is what Oli did. The sentiments of Nepalese nationalism was raised, by very short sighted move to go against India.

To endorse this kind of nationalism, which is destructive in terms of bilateral relations with a country which has helped Nepal in every possible way it can, a map was published by the Oli government showing the territories of Limpiydhura, Lipulekh and Kalapani as part of Nepal. Not just this, the acceptance of this map was legitimized by passing a constitutional amendment which endorsed this new map. Not one, but a number of factors including weak or infact absence of public institutions, poverty, economic hardship, corruption, black marketing etc, pushed Nepal backwards day by day. A new political development was seen with India's intervention when a decade long arm conflict was resolved. From 1996 to 2006, Nepal in the hands of Maoist war had seen more and more hardships and was sinking inch by inch on all domains of progress. An interim constitution was adopted by Nepal in 2006. After this, the process of making a new constitution started, though very slow but it was necessary to give Nepal a document for governance at all the levels of society. Elections for the formation of Constituent Assembly took place in 2008 and with this, Nepal which still was not born as Democratic country, started to sideline India from its affairs. The decline in bilateral relations occurred because of a theory which was circulated among Nepalese that India was helping, suggesting Nepal just to meet its own wishes of having infrastructural investments in Nepal, getting cheap labour from the country etc. With all the effort which it could make, Nepal gave itself a constitution in the year 2015. This was like a ray of hope for newly born Federal Democratic Republic which was to be governed at three levels namely local, provincial and central.

What Nepal could not for-see is that the rush to sideline a neighbor which has had historic relations with you and an urge to handover a constitution to people of your country with lots of shortcomings could never provide stability which the country was starving for. The disrespect given to India put Nepal at a crisis again when issues of Madhesis' began to take the podium. Two terms are important here, one is the Terai and other is Madhesi. Terai is the low land area of Indo-Gangetic plane in the Northern India and Southern Nepal lying in the foot of hills and Madhesis are people living in Terai region of Nepal, tracing their ancestry to India, comprising of various cultural groups. The new constitution was silent with respect to the rights to Madhesis living on the Indo Nepal border, and this silence could not resist India to remain silent, sit and watch and hence it started to raise this issue with Nepal. The new constitution, as per Madhesis had institutionalized discrimination against them and they were being deprived of the citizenship rights, their representation in the government was not given value and federal structure of the country which ought to be achieved as per new constitution so that a provincial setup for them could be carved out was not being adhered to. These genuine demands led to protest and blockade in the country. Now, for a country which has just got a constitution and is struggling to feed every person with bread and butter was again facing a crisis because of Terai region. This crisis was only because of an imaginary ego which Nepal had when it sidelined India while drafting the constitution and hence the border population was not given what they should have been. However, after analyzing the danger which was posed before the country, a cabinet resolution was passed which formalized the demands of Madhesi. Population became the basis of representation and hence a ray of hope was seen to enter the blackout areas. Several mathematical calculations in terms of number of seats is still a topic of debate when it comes to representation of Terai.



The role of China, as always, has been of a catalyst which never undergoes a change but brings a change in the reaction. The sad part is that the extent to which China can go in order to meet its ambitions is very unpredictable. Pretend of helping someone and slowly expanding your market by making the other person a parasite has been nature of China. In the ongoing crisis, visit of a vice minister of China, Guo Yezhou, was a part of its policy. The Chinese mission had come with an agenda of reuniting the communist leaders and not let

the communist government go down. It had nothing to do with the real socio economical issues being faced by the country. The dependence of Nepal on India was slowly fractured by China and it took complete advantage of the crisis of Nepal and a turbulence in the Indo Nepal relations. Several projects have been entered between two countries when Oli visited Beijing few months back. KP Oli was very well aware of the moves he had been taking for last few months just to remain in power. And hence, when he realized that they could not afford to disappoint India for very long, a change was witnessed. When Samant Goel, the RAW chief had visited Nepal, there was an order issued to withdraw textbooks which showed the wrong map which was endorsed by KP Oli few months back.

As of today, Nepal stands at a point where split in the communist faction has given new PM to the country. The challenge again is same. Neither the ruling party is strong, nor the constitution governing the country is capable of providing stability. Infact, Part VII of the 2015 Constitution dealing with Federal Executive is being used a tool to overpower others. In the ongoing covid pandemic, like other countries, Nepal also is short of enough medical supplies. Suffering from a dual cancer of mismanagement and misgovernance, Nepal has to face next general election in few months. The crisis is of the people of Nepal and hence they have to overcome this by performing a surgery of their constitution and making required replacements. Not just India, every other peace loving nation at max can do is wish luck and suggest Nepal the best possible outcome without interfering. A "solid ground" through stability is need of hour to build Nepal.

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Withdrawal of Prosecution and Vacuum for Opposition: 321 CrPC

Akhil Kumar Singh

The relationship of an individual with the state is so harmonious in intent that any crime committed against an individual is said to be committed against the state. The reason being very simple that loss/hurt/injury etc inflicted upon an individual when a crime is committed, though has a defined place, time and victim, but the effect of such an act creates a blot on the balanced social landscape of society. Because of such an arrangement, the state takes responsibility to prosecute the offender. For conducting this in the court of law, the authority responsible is the Public Prosecutor or the Assistant Public Prosecutor. It is not always that prosecution leads to conviction. There may be an instance when there are not enough evidences to further the case or public justice will not be served if the case is further prosecuted. In such a scenario, the Public Prosecutor, by the virtue of Section 321 of The Code Of Criminal Procedure, 1973 can exercise its discretion to withdraw from prosecution. The withdrawal is not blatant, but consent of the court is required and such an application has to be accompanied by reasons and those have to consciously looked upon the court giving consent.

The concept of withdrawal by the Public Prosecutor is not new. Section 439 of the archaic Code of Criminal Procedure had similar reading as Section 321 of CrPC 1973. The major changes brought by this new code with respect to this section was giving powers to Public Prosecutor by virtue of person in-charge of the case and permissions requirement from the central government when withdrawal from prosecution pertains to cases related with the Central Government. The fresh reading of this section is, "The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; ...." In the case of Mahmadhusen Abdulrahim Kalota Shaikh v Union of India , it was held that the essence of Section 321 CrPC is judicial review. Special laws dealing with terrorist activities do not per se have applicability of Section 321 but the principle of judicial review is applicable when it comes to giving consent for withdrawal from prosecution.

This section gives discretion to the Public prosecutor but there comes a responsibility along with it. This responsibility keeps a check on unethical use of discretion. The court has to perform its supervisory function. The withdrawal of prosecution has to be in the form affirmative step for administration of justice which includes proper handling of law and order situation and maintenance of public peace and tranquility .

As discussed in the case of Sheonandan Paswan v State of Bihar and Ors , it is important for the public prosecutor to apply his free mind and act independently while deciding whether withdrawal is reasonable or not and then apply to the court. In the case of SK Shukla v State of UP , it was held that the state cannot use the mask of public prosecutor to attain its political motives. Public Prosecutor has to act independently and not just as an agent of state. Being an officer of the court, ethics have to be upheld while discharging the functions.

The Supreme Court recently dealt with Section 321 CrPC in the case where withdrawal application was filed by the Assistant Public Prosecutor, for sanctioning the withdrawal of cases filed against some Members of Kerala Legislative Assembly in the year 2015. The trial and high court had dismissed the application and revision petition respectively. The Supreme Court, while dismissing the plea observed that in the scenario of withdrawal, the court exercising such power must be satisfied that "administration of justice" has to be served by the act of withdrawal and there exists no ulterior motive for the same. The legislative intent for which such a provision has been incorporated has to be upheld. Scrutiny of the nature and gravity of the offence and what impact does that creates on public life, public funds, public trust etc has to be done by the court .

Last week, while dealing with a 2016 PIL filed by Ashwini Upadhaya , which sought orders regarding ban of convicted politicians from contesting elections and fast-tracking of trials against

legislators, the Supreme Court ordered to make High Court sanction mandatory before withdrawal of cases against legislators. This order came after Supreme Court took into consideration the gross misuse of Section 321 by the state governments to withdraw cases file against its people. The apex court also ordered that except in the case of death and superannuation of the presiding officer, those hearing the cases against legislators will not be transferred till further orders.

Opposition of Application

There have been instances when the application of withdrawal of prosecution has been opposed either by victim, complainant or any other third person for that matter. But the vacuum of law on opposition of application concept in the provision of Section 321 CrPC leads to rejection of such opposition by the courts. The simple reason on which courts reject this is the lucus standi of the person opposing it. There have been positive development on this aspect by several high courts such as Bombay, Kerala etc but few others have divergent view also. It becomes very difficult for someone who is the victim of crime, not being allowed to oppose the withdrawal of prosecution. The collusion of state governments and Public Prosecutor for such a withdrawal excludes victims of such a crime from the journey of justice through court of law. By doing so, the state fails to discharge its duty of community service for welfare of society because there is no provision with respect to opposition by the victim who is also a component of the society.

On dissecting the contents of Section 321 CrPC, we find that there is a vacuum on several aspects namely the discretion of Public Prosecutor, the locus standi of person who wants to oppose the application etc. The judicial pronouncements though have thrown some light on empty spaces, but a lot more is required in the form of provision based on the reasoning adopted by the courts. Such a thing will end the gradually building master agent relationship of State Government and Public Prosecutor for ulterior motive and meet the legislative intent for which the provision was incorporated.

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National Security: A Legitimate Exception or Erosion of Free Speech Right?

Rini Kothari

"The imperatives of national security have collided head on with the imperatives of openness, and the consequences pose grave challenges..."

Article 19 (1)(a) of the Constitution of India provides the right to freedom of speech and expression to all the Indian citizens. In the United States, the First Amendment provides that, "Congress shall make no law...abridging the freedom of speech, or of the press...". Article 19 (2) of the Indian Constitution authorises the government to impose restrictions on the freedom of speech and expression in the interest of security of the State. Whereas, in the United States, though there is no such constitutional provision, certain sections of Title 18, Chapter 37, of the U. S. Code, criminalise unauthorised possession, wilful communication, disclosure, etc., of government secrets, to any person not entitled to receive it.

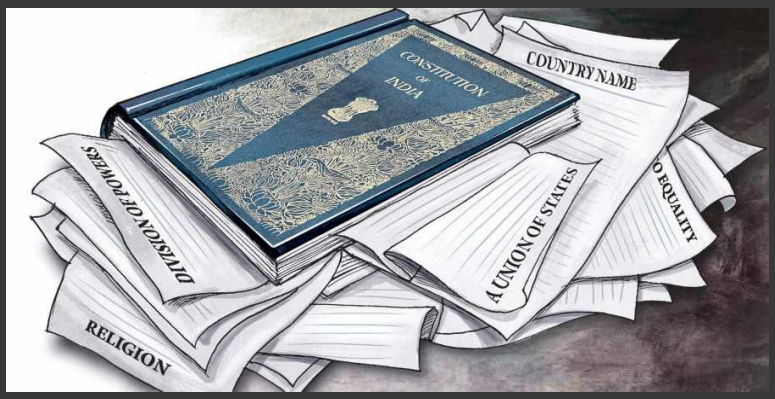
It is undeniably true that sometimes the government has legitimate needs to keep certain matters secretive for protecting the national security, however, the restrictions imposing prior restraint on the press, hinder freedom of the press to disseminate essential public information and keep the citizenry informed. Gabriel Schoenfeld, an American author, and a political advisor, pointed out in his article titled"Journalism or Espionage?" that a review of 45 million classified pages revealed that at least 20 million of those pages, if leaked, would have done no harm at all. This clearly indicates that often the secrets kept by the government are devoid of any legitimate reasons. Justice Black, in the case of New York Times Co. v. United States, highlighted the importance of press in saving the lives of people by revealing the lies of the government and exposing deception in the government. He stated, "the guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our republic". He further asserted that secrecy leads to insecurity, it does not lead to more security, but less security, and hence, the press must be free to publish news, regardless of the source, without injunctions, censorship or prior restraints since such actions also amount to a "flagrant, indefensible, and continuing violation of the First Amendment".

Secrecy prevents citizens from holding their representatives accountable and directly undermines the vitality of democratic governance. The laws preventing press from publishing information in the interest of security of the nation, not only disregard the people's right to know as envisaged in several laws, but also impose unreasonable prior restraint on the press. ational interest.

Justice Douglas, in the case of New York Times Co. v. United States, emphasised on the significance of informed citizenry and states that there is no basis for sanctioning a prior restraint, even if the disclosure of information may have a serious impact. He further stated that, "secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors". Further, he cited Near vs Minnesota, and reiteratesd from New York Times Co. v. Sullivan, that the debate on public questions should be "uninhibited, robust, and wide-open". He also highlighted that prior restraint bears a heavy presumption against its constitutional validity. Justice Stewart, stresses on the importance of informed citizenry in the areas of national defence and international affairs. He insists that maximum possible disclosure ensures security of the system and in order to maintain credibility, the government must avoid secrecy. Furthermore, he also stated that documents may only be kept private if their disclosure would surely result in "direct, immediate, and irreparable damage to our nation or its people". Moreover, Justice White opined that a responsible press would itself refrain from publishing sensitive materials which endanger national interest.

Often the government chooses to keep information private because disclosure would expose their incompetence and wrongdoings to the public. In United States v. Nixon, the court stated that in the absence of a claim of "need to protect military, diplomatic or sensitive national security secrets", not even the need for confidentiality of high-level communications, can sustain an absolute unqualified Presidential privilege from judicial process under all circumstances. It further laid down that, the integrity of the judicial system and the confidence of public in the system depends on complete disclosure of the

facts. In State of Uttar Pradesh v. Raj Narain, Justice Mathew pointed out that, "the people have the right to know every public act, everything that is done in a public way by their public functionaries". He further stated that often, there is information pertaining to secret affairs of states which can be disclosed without resulting in any injury to the public interest.



Whereas, Justice Burger in New York Times Co. v. United States, expressed his opinion against both prior restraint and complete disclosure of sensitive information pertaining to national interest, and stressed upon the need to strike a balance between freedom of the press and effective functioning of a complex modern government. He showed concern regarding the authenticity of secret information obtained illegally by the press and its repercussions on the national security. Additionally, Justice Harlan, Chief Justice and Justice Blackmun, in the case of New York Times Co. v. United States, were against unlimited absolutism for freedom of the press at the expense of other provisions. They stressed upon the risk posed by the publication of sensitive information pertaining to national interest, and opined that such revelations could engender severe harm to the nation and lead to "the deaths of soldiers, destruction of alliances, greatly increased difficulty of negotiation with enemies, the inability of diplomats to negotiate".

However, in my opinion, rather than suppressing the free speech rights of the press and criminalising journalistic activities, the government must focus on safeguarding legitimate secrets which may cause imminent harm to the national interest. In all the cases stated above, the court decided in the favour of disclosure of governmental information and constantly highlighted the significance of informed citizenry in keeping the fabric of democracy strong. The presence of a free press alerts the public, guarantees against any kind of misconduct of the government, enables them to press the government officials to resolve their problems and most of all, empowers them to hold the government accountable for its actions. Thus, the value of public discourse on public issues must outweigh any legitimate state interest in secrecy. Imposing penalties on the journalists for doing their job, discourages reporting of essential public information and impedes the ability of the press to serve as a check on the government. In light of the aforementioned arguments, it can be concluded that, although national security is a legally justifiable exception to free speech, it is still an unreasonable erosion to free speech right, and the press must enjoy expansive rights to publish any news they obtain, irrespective of its source.

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A CRITICAL ANALYSIS OF THE RIGHTS AVAILABLE TO TRANSGENDER SPORTSPERSONS

Ronia Ronald

INTRODUCTION

Transgender persons are persons who have a gender identity/experienced gender that is incompatible with the gender they were assigned at birth (with reference to their genitalia). Gender identity, also known as experienced gender, is a person's internal sense of gender, which might be male, female, neither, or something in between this spectrum. Some transgender people, but not all, will choose to affirm their gender identity by socially transitioning (i.e. living as their experienced gender socially, at work or at an educational institution, with friends and family, outside the home) and some choose to medically transition by undergoing Hormone Replacement Therapy (HRT) or Gender Affirming Surgery.

The participation of trans people in sports, specifically, the participation of trans women in sports has long been a bone of contention for most sporting institutions. Trans women are those people who were assigned male at birth and have subsequently transitioned to being women.

The foundation of competitive sport is fairness, and due to concerns about transgender people's perceived athletic advantage, the topic of whether transgender individuals should be able to compete in accordance with their gender identity has been raised and hotly debated in the literature, among sports organisations, and among fellow athletes. The common view is that those who have undergone this transition have an advantage over cisgender women since they are considered to be stronger and faster due to the high testosterone levels they possessed prior to transitioning.

Although there is a strong human rights framework to protect individuals from gender discrimination in recent times, this has not extended to sporting institutions, due to the complex relationship between sport and the law, and has hence left the athletes that do not conform to their biological genders, or society's standards vulnerable, and with limited access to remedies when their gender rights have been infringed.

THE EVOLUTION OF GENDER TESTING IN SPORTS

Sporting activities remain one of the few areas where distinction on the basis of sex is accepted and controlled. The common belief that men have several physiological advantaged over women have necessitated this distinction. However, in a time where genders no longer conform to the strict binary, and when people experience an incongruence between their biological sex and their own gender identity, the line between upholding the tenets of equality and fairness in sport, and violating some athlete's human rights becomes a fine and often blurry one.

Several international sporting organisations like the International Olympic Committee (IOC), and the International Association of Athletics Federations (IAAF, now World Athletics) have established certain standards and eligibility criteria to determine which category an athlete can compete in. These rules have been formulated with strictly a scientific understanding, without paying too much mind to human rights.

From the 1930s till about the late 1960s, the IAAF used 'peek and poke' sex tests, which involved examinations of the athlete's genitalia. As technology improved, tests such as the Barr Body test, which tested the presence of the Y-chromosome were introduced in the 1968 Summer and Winter Olympic Games. This test reiterated the prevailing belief that the presence of the Y chromosome meant physical superiority. In the 2000s, both the Olympic Committee as well as the IAAF abolished this compulsory genetic testing. In 2011, The IAAF introduced the Hyperandrogenism Regulations. These studies concentrated on the amount of advantage gained by female athletes with hyperandrogenism, a condition where females produce excess testosterone. Females with the condition were allowed to compete in female competitions as long as their androgen levels were lower than the male range [10nanomoles per litre (nmo/L)].

In 2015, the IOC stated that chromosomal make-up, as well as legal and psychological sex identification, should be addressed as a whole. The IOC, recognising that legal gender recognition may be difficult in nations where gender change is not legal and that mandating surgery in otherwise healthy persons "may be inconsistent with developing legislation and notions of human rights."

The current mechanism for testing involves measuring the levels of the testosterone hormone in the individual's body since the prevailing belief is that all female competitors must have similar levels of testosterone in their bodies because the perception is that testosterone is a major performance element in sports and high testosterone levels might offer an athlete an unfair edge over their counterparts. This was repealed in 2014, in Dutee Chand v. IAAF.

DUTEE CHAND v. IAAF

In 2014, Dutee Chand, an Indian sprinter, was banned from competing against women because her body naturally produces so much testosterone, that it puts her within the male range. This is a phenomenon called hyperandrogenism. The Athletics Federation of India would only allow her to compete again if she either took hormone suppressing medication or underwent surgery to decrease her testosterone levels to below the male range, in accordance with a restriction imposed by the International Association of Athletics Federations. Dutee Chand refused to undergo these procedures, or take hormone suppressing medication, and challenged her ban before the Court of Arbitration for Sport in Switzerland. She said that the 2011 Regulations were discriminatory to female athletes, because they discriminated against some of them on the basis of some natural characteristics, while no such testosterone limit applied to male athletes. Because the 2011 Regulations constituted a sex-based eligibility restriction, the IAAF recognised that they were, prima facie, discriminatory.

She also alleged that the regulations themselves were not supported by the best available science about the impact of natural endogenous testosterone on the performance advantage of a hyperandrogenic female athlete. The IAAF, however, asserted that testosterone levels are an important factor to determine athletic performance, and it is the best factor to explain the difference in the performances of male and female athletes. With such divergent interpretations of relevant scientific facts and data, CAS decided that there was a scientific basis to use the levels of testosterone to mark the differences between male and female athletes, and the IAAF could continue to use it as a basis for distinction. The CAS agreed that sports should be separated for male and female counterparts so that fairness was preserved, and they were therefore convinced that the regulations aimed to achieve a legitimate goal. However, it determined that there was insufficient evidence to warrant the exclusion of a hyperandrogenic female athlete from her non-hyperandrogenic counterparts. The CAS repealed the 2011 regulations and Chand was allowed to participate.

SEMENYA V. IAAF

In 2018, the IAAF announced the implementation of the Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development (DSD)). The 2018 Regulations required 'biologically male' 46 XY DSD athletes (this mostly refers to intersex individuals who are born with the XY chromosome, but have female genitalia, and are assigned female as birth, and identify as female) with a natural testosterone level greater than 5nmol/l, to reduce their level to what is considered the 'normal' female range (below 5nmol/l) through hormone treatment, and they were expected to maintain this level for at least six months before competing in certain events, including middle-distance track events.

Caster Semenya, an intersex South African middle-distance runner, and an Olympian challenged this regulation. However, in her case, the IAAF alleged that there was a fundamental difference between 46 XY DSD athletes and women who were genetically and biologically female. Despite the fact that CAS said unequivocally that Semenya is a woman, it ruled that biology, rather than legal sex or gender identity, must decide participation in sport, and the 2018 Regulations seemed to be fair and appropriate in that regard. CAS confirmed that while the 2018 Regulations were discriminatory, they were a necessary, reasonable, and proportionate method of safeguarding female athletes in specific sports.

Caster Semenya was banned from the 2020 Tokyo Olympics on the basis of a study published in the British Journal of Sports Medicine in 2017, which was the basis of the 2018 testosterone regulations. However, as of August 17th 2021, this study has been corrected by its publishers. According to a report by the Wall Street Journal, "...the influential study overstated the competitive advantage conferred by elevated testosterone levels for women athletes in certain races. It raises new questions about the move to ban from certain races some female athletes who have "differences of sex developments" (DSDs) and carry naturally elevated testosterone levels."

Caster Semenya appealed the 2018 decision of the CAS, in Switzerland's Federal Supreme Court, and is currently awaiting a hearing at the European Court of Human Rights.

The decision of the ECHR, especially in the wake of these clarifications, remains to be seen, and will undoubtedly be a landmark decision that will shape sporting policy.

INCLUSION OF TRANS WOMEN IN THE BROADER SENSE

In the United States of America, there is an increasing trend of not allowing trans girls to compete with other female athletes, to the extent that legislation has been introduced in certain states banning the participation of young trans girls on sports teams for girls. Jack Turban, in an article for Scientific American, writes: "Attempts to force transgender girls to play on the boys' teams are unconscionable attacks on already marginalized transgender children, and they don't address a real problem. They're unscientific, and they would cause serious mental health damage to both cisgender and transgender youth."

The assumption that transgender girls have an unfair advantage stems from the belief that testosterone produces physical changes such as increased muscle mass. However, trans girls are not the only ones that

have high testosterone levels. Polycystic ovarian syndrome, which causes increased testosterone levels, affects an estimated 10% of women, but they are not banned from female sports.

The belief that transgender women have an advantage when it comes to sporting events neglects the fact that, in every other aspect, these individuals are at a disadvantage. Trans people have higher rates of depression, anxiety, and face constant bullying and heckling, which adds to their struggles.

CONCLUSION

The last few years have seen an increasing need for a more robust discourse regarding the participation of trans athletes in sporting events. Sex and gender disparities have long been a defining force for inclusion or exclusion in sports, however, they also strike at the core of human rights. The growing human rights framework that has sprung into place to protect the rights and identity of transgender individuals has prompted several questions into long-standing beliefs and their veracity.

There is a need for a stronger regulatory framework and a more nuanced understanding of the so-called advantages in sports that come from transitioning from male to female.

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IRAN'S POTENTIAL POLICY TO PURSUE NUCLEAR WEAPONS: A LEAD TO FLAGRANT VIOLATION OF THE NPT AND CTBT

Tejas Sateesha Hinder

Introductory Remarks

Iran's intelligence minister has warned that his country could push for a nuclear weapon if harsh international sanctions on Tehran remain in place, state television reported. The remarks by Mahmoud Alavi marked a rare occasion in which a government official said Iran could reverse its course on the nuclear programme. Adding to this, leaders from various countries such as Israel and the United States have brought about the need to prevent and halt Iran's existing policy of nuclearization.

This article explores the nature of treaty and customary obligations on Iran for (a) non-acquisition of nuclear weapons, (b) negotiating towards Nuclear Disarmament and (c) not testing nuclear devices and arsenals, and substantively examines non-adherences to the aforesaid obligations, potentially leading to violation of its obligations under Resolutions of the United Nations General Assembly (hereinafter "UNGA") and the United Nations Security Council (hereinafter "UNSC"), the Comprehensive Nuclear-Test-Ban Treaty (hereinafter "CTBT") and the Treaty on the Non-Proliferation of nuclear weapons (hereinafter "NPT").

Existence of a customary obligation for non-acquisition of nuclear weapons and to negotiate towards Nuclear Disarmament

Vide Resolutions 687 and 1696 of the UNSC, NPT States have consistently condemned the acquisition of nuclear weapons, or attempts thereof, by NNWS. This obligation is further reaffirmed by:

1. Multilateral treaties, such as the Treaty on the Prohibition of Nuclear Weapons and Treaty for the Prohibition of Nuclear Weapons in Latin America and the Carribbean in their first articles;
2. Resolutions, such as UNGA Resolution 69/43 and UNGA Resolution 71/259;
3. Judicial Opinions, such as Dissenting Opinion of Judge Trindade in the preliminary objections to Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands/India).

Owing to the ability of nuclear weapons to destroy humankind, nuclear disarmament concerns all States. Therefore, the practice of each State is equally representative for the formation of a customary rule, as reinstated by the ICJ in the case of Germany v. Denmark and the Netherlands. All states, both CTBT and non-CTBT parties, have accepted a commitment towards disarmament negotiations, as evidenced in UNGA Resolution 68/32 and UNGA Resolution 71/259. Therefore, State practice and opinio juris establish this rule as Customary International Law.

Iran may seek to rely on a right to possess weapons for deterrence as an exception to the aforementioned customary obligations. However, as indicated in the International Law Association's Second Report on Legal Aspects of Nuclear Disarmament, the practice of deterrence is rejected by the majority of States and is, therefore, insufficient to establish an inherent customary right. However, as noted by the International Court of Justice in the case of Legality of the Threat or Use of Nuclear Weapons, even if such a right exists, it is permitted only if the force envisaged by the use of such weapons does not violate the principles of necessity and proportionality, or is not against the Purposes of the UN. This is evidenced by security assurances, such as a "no-first-use" policy, or a declaration that such weapons shall be resorted to only if the survival of the State is at stake or if the State is attacked by a NWS, or in alliance thereof.

Violation of the NPT

Under Articles 42 and 48 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter "ARSIWA"), a State must have standing to invoke the breach of an international obligation. Considering this in light of nuclear disarmament, the ICJ in paragraph 100 of its judgement in Legality of the Threat or Use of Nuclear Weapons case has noted that since nuclear disarmament obligations are by their very nature the concern of all states, Iran's NPT obligations are owed erga omnes partes to Indiana and other NPT parties, while its customary obligations are owed erga omnes. States practice, as indicated in the Security Council Official Records of 2009 also shows their willingness to comply with these resolutions. NPT's Article II is a disarmament obligation insofar as it prohibits the acquisition of nuclear weapons by NNWS as a measure towards general and complete disarmament.

NPT Article VI, in the paragraph 105 of the ICJ's Judgement in the Legality of the Threat or Use of Nuclear Weapons case, has been interpreted to impose an obligation to "pursue in good faith, and bring to a conclusion negotiations relating to nuclear disarmament in all its aspects." These aspects include reduction of nuclear arsenals, as well as cessation of the arms race. As noted by the ICJ in paragraph 112 of the Case concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area to discharge this obligation, States must show willingness to compromise, and a genuine intention to achieve a positive result. Additionally, as remarked in the Lac Lanoux Arbitration, states must not unjustifiably break off negotiations or engage in conduct contrary to the legitimate expectations of other States. CIL and treaty provisions may be coextensive. Accordingly, the embodiment of obligations of non-acquisition and negotiation in good faith in the CTBT does not exclude the existence of parallel customary obligations. Hence, if Iran tests or acquires nuclear arsenals, would in violation of its obligation.

Violation of obligations under CTBT

Article 1 of the CTBT directs states to not carry out any nuclear weapon test explosion or any other nuclear explosion, and to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control. Therefore, in the present case, Iran by testing nuclear devices and test-firing missiles, has violated Article 1 of the CTBT.

Article 2(5) of the Treaty directs state parties to cooperate with the Organization in the exercise of its functions in accordance with this Treaty and consult, directly among themselves, or through the Organization or other appropriate international procedures, including procedures within the framework of the United Nations and in accordance with its Charter, on any matter which may be raised relating to the object and purpose, or the implementation of the provisions, of this Treaty. Therefore, there existed an obligation on Iran to co-operate with organizations in accordance with the framework of the UN and avoid the testing of nuclear weapons. Hence, Iran, by testing and test-firing nuclear devices and missiles, respectively, has violated this Article.

Under Article 3(1)(a), Iran was under an obligation to prohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Treaty. By its very governmental institution testing nuclear devices and arsenals, Iran failed in its obligation to prevent agencies from testing nuclear devices and missiles.

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PUBLIC INTEREST LITIGATION: THE MOST EFFECTIVE TOOL FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS

Gaurav Purohit

INTRODUCTION

Public Interest Litigation implies litigation in the interest of the general public or to ensure the interests of the public at large. It is litigation that can be filed in any Court of law and by any individual in the interest of the general public and particularly for the individual who fails to approach the Court.

When an act is completed to protect or for benefit of general society. Public Interest Litigation is a term that isn't characterized under any enactment or law however it has been interpreted by the appointed authorities and is practically similar to writs accessible under Article 226 and Article 32 of the Constitution of India.

PIL is like a writ, in this way a PIL can be made under the High Court or Supreme Court as expressed in Articles 226 and 32 of the Constitution of India. Likewise, a PIL can be made to the Court of Magistrate under Section 133 of the Criminal Procedure Code 1973.

Any Individual can move toward the Apex Court under Article 32 only when there is any Fundamental Right being violated or infringed and no other right. However, if an individual needs to approach for Fundamental right as well as some other essential rights available to the nature of the case will be taken into consideration

A PIL filed is only influencing a small group of individuals; it tends to be filed under Article 226 of the Constitution of India in High Court.

EVOLUTION OF PUBLIC INTEREST LITIGATION

FIRST STAGE

The first stage began in the last part of the 1970s and proceeded until the 1980s. In this stage, the PIL was generally filed by public-spirited individuals, for example, Lawyers, social activists, etc. For poor people or more vulnerable segments of society who couldn't get an advantage and suffer injustice on their part. Generally, the cases were identified with child labour, bonded labour. The relief sought was against the infringement of Fundamental rights ensured under the Indian constitution and for this, the judges made remedies through managing the administration and its agencies to bind with the guidelines and the directions made by it.

SECOND STAGE

The second stage of PIL began during the 1990s where the science of PIL was somewhat not quite the same as the previous stage. Many recognized and concentrated Non-Governmental Organizations and Lawyers expressed to file an appeal based on PIL consistently. The issues raised or considered under PIL were additionally extended as sexual harassment at the workplace, free education to youngsters, environment pollution, and corruption-free government, set up of various industries and their activities were taken into consideration by the Court of Law.

THIRD STAGE

The third stage is expressed in the 21st century, where anybody can file PIL if there is any infringement of Fundamental rights. It shows that the judiciary has acted as individuals wanted anytime for the protection and insurance of their rights.

FEATURES OF PUBLIC INTEREST LITIGATION

Public interest Litigation is an instrument that targets ensuring justice to all residents in a welfare State. it tries to ensure all the individuals that access to justice is consistently accessible to them if any of their fundamental rights are infringed. Some of the features of PIL are as follows

1. Since the object of PIL is to ensure the interest of the public everywhere, it isn't vital that any rights of the individual filing a PIL Petition have been violated.
2. PIL writ is commonly directed to secure the interest of the individuals who can't move the court for the assurance of their rights because of illiteracy, lack of education
3. Any individual or social service institution can file a PIL writ for redressal of complaint of the public through he might not have any personal interest in the case or any his right has been affected.
4. In a welfare state, PIL is a successful instrument to make the executive authorities conscious of their public obligations.
5. A PIL can be filed under Section133 of Criminal Procedure Code 1973.

WHO CAN FILE A PIL

Any Indian resident can file a PIL, the main condition being that it ought to be recorded in the public interest as opposed to private interest. If an issue is of public significance, commonly the court additionally takes suo moto cognizance in such a case and appoints an advocate to deal with such a case.

WHEN CAN A PIL BE FILED

A PIL can be filed in instances where any act by an individual or any organization is affecting the whole society and this PIL is filed in the interest of the general public. Like there are instances which are as follows:

- Different types of pollution such as Air pollution caused by any set up of industry or noise pollution by playing of DJ system in a locality
- When there is no light in any particular street
- When there are acts of Deforestation caused due to the setup of the industry or factories.
- For maintenance of basic infrastructure facilities such as sewage treatment, street roads, and different public properties.
- When there is a violation of the rights of women at the workplace such as the act of sexual harassment at the workplace.
- This is not an exhaustive list but only an illustrative list

PROCEDURE OF FILING A PIL

The Procedure for filing a PIL is simple and like the filing of the writ in the High Court of the Supreme Court

In the High Court:

When a PIL is filed in the High Court then 2 copies of the order must be submitted. A copy of the order must be given ahead of time to the respondent. The shreds of evidence concerning the serving of copies are to be attached to the petition.

In the Supreme Court:

If PIL is filed in the Supreme Court the 5 copies of the order must be submitted, and when notice is served from the Court then copies should be given to the respondents.

Court Fee:

A PIL itself is truly moderate when contrasted with different issues. Court charge is Rs. 50/ - according to every respondent must be attached in the petition.

LANDMARK CASES

In Hussainara Khatoon versus the State of Bihar PIL was filed for the privileges of detainees and the attention of the Court was attracted to the trial pending upon them which came about into an excess of detention period which was exceeding the maximum punishment available under the law for which they were accused of.

CONCLUSION

PIL has a significant function to be played in the civil justice framework which gives a ladder to justice to disadvantaged individuals of the general public who are even ignorant of their rights. PIL can likewise add to great administration by keeping the government responsible. Finally, PIL likewise helps in spreading social awareness to individuals and educating and ensuring their human rights, giving a voice to the more fragile segments of the society, to the weak ones or individuals who are poor and can't move toward the Court because of the absence of economic or social funds.

The Indian Judiciary has likewise played an important part in keeping and perceiving the rights of the residents by guiding the government and its bodies to not abuse their power and protect the rights mentioned in the constitution of the individuals. However, it must be guaranteed that the PIL should not be abused or misused by the individuals for their interest and publicity or some other malafide intention and must work according to the term in the interest of general society.