

VOLUME IX

ISSUE I (Jan – Mar 2023)



QUEST

A Quarterly Journal of the Students published
by the Indian Institute of Legal Studies

INDIAN INSTITUTE OF LEGAL STUDIES

UG & Post Graduate Advanced Research Studies in Law
Approved under Section 2(f) & 12B of the UGC Act, 1956
Accredited by NAAC

Affiliated to the University of North Bengal
Recognized by the Bar Council of India, New Delhi

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MESSAGE

FROM FOUNDER CHAIRMAN'S DESK



SHRI JOYJIT CHOUDHURY

**Founder Chairman
Indian Institute of Legal Studies**

It's been quite some time that I have used my prerogative for penning in a few lines under the Caption "From the desk of the Chairman." The pandemic has probably changed the preferred and known rules in education and it is disheartening to see the once buzzing campuses filled with vibrant and youthful energy being bereft of the exuberance that existed.

If we take a look at the history of the Corona Virus, it originated sometime in the middle of December, 2019 in China at a live seafood market and then spread to the Wuhan area. Gradually, it spread to Italy, U.S.A., Europe and other countries of the world. The affected countries

have been called to take immediate steps to detect, treat and reduce the further spread of the virus to save lives of the people. Presently the COVID-19 is no more confined to China, Italy or U.S.A. It has become a global issue. The economic impact has had devastating and cascading effect world-wide with closure of business entities, rampant job loss coupled with non-existent economic activities putting the lives and the livelihood of a large section of the world's population in peril.

The poor vulnerable daily wage earners and migrant workers are the ones who are worst affected. Concrete measures must be adopted by the governments to provide this section of the population with sustainability incomes or else the world shall witness an increase in the pre-existing inequalities. The Governments must strengthen social protection and livelihood, reorient public finance to augment human capabilities, introduce measures to limit bankruptcies and create new sources of job creation.

To my view, the Pandemic has caused a dramatic and perceived change in the socio-economic structure of the entire world. Millions of wage-earners in the United States have been bugged of leaving their current employment and demanding higher wages and they have chosen to be unemployed if wages are not commensurate with their expectations. This is probably the outcome as to how the pandemic has led to increased inequality and unequal income distribution amongst different classes. According to Oxfam's "The inequality virus" report in the

Indian context, India's billionaires increased their wealth by 35 percent while 25 per cent of the population earned just Rs. 3000 as income per month. The unforeseen and unpredictable nature of the mutant waves have caused immense distortions in the labour market which has exposed the migrant labourers to the destitution of low incomes at their native places or starvation at their outstation job sites.

Research based data shall illuminate us about the devastation caused by cyclical mutant waves in the times to come but in the meantime, we have no choice other than to maintain status quo till the pandemic subsides. It is heartening to see that in spite of closure of many educational institutions, the editorial team has put in their honest efforts to publish the journal in such antagonizing and unprecedented times. I sincerely laud and appreciate their endeavors in making this happen. Wish everybody good luck & health.

A handwritten signature in black ink, appearing to read 'J. Choudhury', with a horizontal line underneath it.

JOYJIT CHOUDHURY

MESSAGE

FROM PRINCIPAL'S DESK



I would like to convey my sincere thanks and congratulate the “Quest Editorial Board” and its contributors for their ethos and time. I believe that this edition will enrich the readers for enhancing their knowledge. In the journey of ‘QUEST’ the tireless work of students, teachers and other contributors are appreciated. This edition will focus on the mind of the readers and its reflection spread around the society.

I would also like to thank the students and teachers who have shared their ideas, views, emotions, and expressions for fruitful completion of the journey of “QUEST” (this edition), and I hope it will continue in future also and serve the purpose of the Institute for which it is meant.

A handwritten signature in black ink, appearing to read 'P. K. Sahoo', with a long horizontal stroke extending to the right.

Prof. (Dr.) P. K. Sahoo
Principal,
Indian Institute of Legal Studies

EDITORIAL MESSAGE

FROM EDITOR-IN-CHIEF

Dear readers,

We hope you are doing well!

Albert Szent-Gyorgyi rightly said *“Research is seeing what everybody else has seen and thinking what nobody else has thought”*.

It gives us immense joy and satisfaction to introduce our very own student journal ‘QUEST’.

The objective of this journal is to promote, develop and enhance the research skills of creative minds. We are proud of our contributors who present you with write-ups dealing with various legal issues, and engage other disciplines with law. Further, this journal gives a platform to showcase talent, and also it stokes curiosity and improves the way one expresses.

A lot of effort has gone into the making of this issue. Amidst the hectic schedule of semesters, examinations, assignments, and internships, we tend to lose track of all the simple things we are capable of. Often, we tend to procrastinate and lose grip over things that could make a proud moment for us and give a sense of satisfaction.

We hope you enjoy reading this issue as much as we have enjoyed making it!

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LONG ARTICLE



A STUDY OF THE RIGHTS OF THE ARRESTED PERSONS IN INDIA

- Sristhi Goyal and Archana Rampuria¹

ABSTRACT

India's constitution was written in a way that places a high value on democracy and the rule of law. In addition, the Indian Constitution recognizes that the right to a free and fair trial is a fundamental principle of criminal law that is based on natural justice, which requires that both the accused and the guilty be treated with dignity. A person who breaks the law is typically detained. What then is an arrest? We refer to an arrest as the apprehension of a person by a legal authority that results in his loss of liberty. Arrest is of two types - Firstly, arrest without warrant means when the person has committed a non-cognizable offence i.e., less serious in nature. Secondly, arrest with warrant means the person has committed a cognizable offence i.e., serious in nature. The rights of the arrested person are then discussed, including the right to consult a lawyer, the right to know the grounds of arrest, the right to be brought before a magistrate immediately, right to provide free legal aid. There are multiple case laws which have provided guidelines of arrest. However, there have been a number of instances in India where this procedure has been criticized and questions have

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been raised regarding its operation. India's prevalence of corruption and related malpractices, which primarily affect the detention of the proper person and the rights of the arrested, is one of the biggest drawbacks.

KEYWORDS: *Rights, Offence, Constitutional Rights, Investigation, Detention, Warrant.*

1. INTRODUCTION

Human rights are rules that help keep everyone safe from serious abuses in politics, the law, and society. All people, regardless of their nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status, are entitled to human rights. Without discrimination, we all have the right to our human rights. Even an accused person is considered innocent until and unless he is found guilty in a court of law. Article 20 provides the accused with protections in addition to their fundamental rights.²

Arresting someone who has committed a crime is one of the police officer's most important powers. As a result, it has become a significant source of corruption and extortion. When a case has been filed against a person who has been concerned about committing a cognizable offence, the police officer has the authority to make an arrest. They can also take someone into custody if they get any credible information that someone has committed a crime that can be considered a crime. According to Article 21 of the Indian Constitution, the procedure that is followed must be "right, just, and fair" and not wrongful, arbitrary, fictitious, or offensive.³ It is anticipated that the detention will be well-justified in addition to being based on legal grounds. The arrestee's rights are also listed as Fundamental Rights in the Constitution.

² INDIA CONST. art. 20.

³ INDIA CONST. art. 21.

The word arrest means to take or hold a suspect with legal authority, such as by a police officer. A warrant issued by a court can be used to legally make an arrest after receiving a sworn statement of probable cause to believe this person has committed a crime, for an apparent crime committed in the presence of the arresting officer, or upon probable cause to believe that person has committed a crime.

2. DECISION TO ARREST

The individual's liberty as well as the interests of society should be taken into consideration when determining the existence of such circumstances and the subsequent decision to arrest. The ideal person to resolve such matters with a fair amount of reason, impartiality, and distance is a court official. Hence, in essence, a Magistrate's decision to order an arrest must be based on the data often collected from the police or the complainant. If the magistrate decides to make an arrest, he will issue an arrest warrant.

A warrant of arrest is a written order that is signed, sealed, and given by a magistrate, directing a police officer or another person to make an arrest of a person.

It would also be clear that there can be situations where an immediate arrest is required and there is not enough time to go to the magistrate and ask him for a warrant. For instance, it would be foolish to demand that an arrest be made only after getting a warrant from a magistrate in a situation where a significant crime has been committed by a dangerous individual and there is a high likelihood that the offender will flee if not

promptly apprehended. The rapid arrest of the troublemaker may be a crucial step in such preventative action when preventive action is required to avoid the threat of a sudden outbreak of crime.

In similar situations, it is frequently necessary for someone other than a judicial magistrate to decide whether to make an arrest. In these situations, it is up to the investigating agency to decide whether to make an arrest. In some cases, it may choose to arrest some people while leaving their co-accused unarrested and in custody. Every person arrested without a warrant is obligated under the Code to appear before the Judicial Magistrate within 24 hours of arrest.

3. TYPES OF ARREST

Neither the Code of Criminal Procedure (CrPC), 1973 nor the Indian Penal Code (IPC), 1860 define the term "arrest." Even in legislation pertaining to criminal offenses, the definition is absent. Section 46 of the Criminal Procedure Code, 1973 which addresses "How an arrest is made," provides the only indication of what an arrest entail.⁴

If broadly defined, there are two types of arrest. Firstly, an arrest made in pursuance of a warrant issued by the magistrate. Secondly, arrest made without such a warrant but made in accordance with some legal provisions permitting such an arrest.

Private arrest is another kind of arrest in which a person is taken into

⁴ The Code of Criminal Procedure, 1973, §. 46, No. 2, Acts of Parliament, 1974 (India).

custody by another person. However, it is only permitted if a person commits a non-bailable offense in the presence of another person, is suspected of committing a crime against a person or his property, and the address of his residence is either unknown or incorrect. However, there should be sufficient apprehension and justifiable cause to arrest a person before doing so.

3.1. Arrest with Warrant

Where a person has been concerned in a non-cognizable offence, he cannot, except in a few cases to be considered later, be arrested without warrant. The warrant is issued by a Judge or Magistrate on such behalf.

3.2. Arrest without warrant

An arrest without a warrant means when a police officer has the legal authority to make an arrest without a warrant. It can only occur when a person is suspected of an offense that can result in an arrest. Section 41(1)⁵ of the CrPC specifies a number of circumstances for which an arrest may be made without a warrant. When a reasonable complaint is made or credible information is received, it is typically done in the event of a cognizable offense.⁶ A police officer is permitted to

⁵ The Code of Criminal Procedure, 1973, §. 41(1), No. 2, Acts of Parliament, 1974 (India).

⁶ *Id.*

make an arrest without a warrant even in cases of non-cognizable offences. Section 42(1),⁷ states that, an individual who has committed a non-cognizable offence and who refuses to provide his name or address or who provides a false name and address upon the officer's demand may be arrested by that individual in order to determine his true name or place of residence. Further, the individual so arrested may be released after determining the correct name or address, but only after executing a bond, with or without sureties, to appear before the magistrate if necessary. Nonetheless, the bond must be secured by a security or securities that are residents of India if the person is not a resident of India. And, a person must be brought before a magistrate with jurisdiction if their true name or address is not found within twenty-four hours or if they fail to execute the bond or required sureties.⁸

3.3. Arrest by a private person

Section 43⁹ of the Criminal Procedure Code specifically outlines the process for a private person's arrest. A person who commits a non-bailable offence or is a proclaimed offender

⁷ The Code of Criminal Procedure, 1973, §. 42(1), No. 2, Acts of Parliament, 1974 (India).

⁸ *Id.*

⁹ The Code of Criminal Procedure, 1973, §. 43, No. 2, Acts of Parliament, 1974 (India).

may be arrested by a private person under Section 43(1),¹⁰ who must then take the person to a police officer without wasting any time and take the person to the nearest police station if the officer is not present. If the arrest of that person falls under Section 41,¹¹ the police officer must re-arrest him, according to Section 43(2).¹²

Further Section 43(3),¹³ a person will be dealt with in accordance with Section 42¹⁴ if there is reason to believe that he has committed a bailable offense and he refuses to give the police officer his real name or address. However, he will be released if there is insufficient evidence to charge him with a crime.

3.4. Arrest by Magistrate

Magistrate here includes both an executive or judicial Magistrate. According to Section 44, any person committing any offence within the local jurisdiction of, and in the presence of, such Magistrate, and, states that any person within his local jurisdiction for whose arrest he is competent

¹⁰ The Code of Criminal Procedure, 1973, §. 43(1), No. 2, Acts of Parliament, 1974 (India).

¹¹ The Code of Criminal Procedure, 1973, §. 41, No. 2, Acts of Parliament, 1974 (India).

¹² The Code of Criminal Procedure, 1973, §. 43(2), No. 2, Acts of Parliament, 1974 (India).

¹³ The Code of Criminal Procedure, 1973, §. 43(3), No. 2, Acts of Parliament, 1974 (India).

¹⁴ The Code of Criminal Procedure, *supra* note 8, at 16.

to issue a warrant.¹⁵

4. PROCEDURE OF ARREST

There is no comprehensive code that describes the entire procedure. However, Section 46 explains the procedure for arrest. It states that "unless there be a submission to the custody by word or action," the police officer or other person making the arrest must actually touch or confine the person to be arrested.¹⁶

An oral declaration of arrest without any physical contact or surrender to custody will not constitute an arrest. When a woman is to be arrested, the police officer is not allowed to touch the woman in order to complete the arrest. If a woman is arrested orally, it is assumed that she will submit to custody until the situation clearly shows otherwise.

In cases where the person being arrested forcibly resists or attempts to evade arrest, the police are permitted to use a reasonable amount or means of force under Section 46(2).¹⁷

A person who is not accused of a crime does not have the right to be killed under Section 46(3).¹⁸ In such instances, the penalty is either death or life in prison.

According to Section 46(4), a woman police officer can obtain the prior

¹⁵ The Code of Criminal Procedure, 1973, §. 44, No. 2, Acts of Parliament, 1974 (India).

¹⁶ The Code of Criminal Procedure, *supra* note 8, at 16.

¹⁷ The Code of Criminal Procedure, 1973, §. 46(2), No. 2, Acts of Parliament, 1974 (India).

¹⁸ The Code of Criminal Procedure, 1973, §. 46(3), No. 2, Acts of Parliament, 1974 (India).

permission of the Judicial Magistrate with the local jurisdiction to make an arrest by filing a written report, with the exception of certain circumstances, when a woman cannot be arrested after sunset and before sunrise.¹⁹

5. RIGHTS OF AN ARRESTED PERSON

Additionally, the accused have certain rights, the most fundamental of which are outlined in the Indian Constitution. These rights are based on the fundamental assumption that individuals are entitled to some protection from the government's misuse of their powers because the government has enormous resources at its disposal for criminal prosecution. During any investigation, an accused person has certain rights; investigation or trial of the charge against him, and he ought to be protected from arbitrary or illegal arrest.

Hence, some of the most important rights are discussed below:

5.1. Right to know the ground of arrest

According to Section 50 of the Criminal Procedure Code, 1973, anyone who makes an arrest is required to inform any of his friends, relatives, or other people in his interest. As soon as the individual is taken into custody by the police, the officer must advise the person who has been detained that he has a right to information regarding his arrest to be given to the

¹⁹ The Code of Criminal Procedure, 1973, §. 46(4), No. 2, Acts of Parliament, 1974 (India).

designated person.²⁰ Section 50-A enacts the rule established by decisions like *Joginder Kumar v. State of Uttar Pradesh*²¹ and *D.K. Basu v. State of West Bengal*²² under the heading "Decision to Arrest," making it mandatory for a police officer to not only inform a friend or relative of the arrested person about his arrest and other matters but also to record the information in a register kept by the police.²³

Whenever a police officer authorizes a subordinate to make an arrest without a warrant, the subordinate officer is required to inform the subject of the arrest of the nature of the written order that was given, outlining the offence and other grounds for the arrest.²⁴

The arresting officer or any other officer carrying out the warrant's instructions must explain the situation to the suspect and, if necessary, show him the warrant.

No police officer may detain somebody without providing the reason for the detention, according to Article 22(1)²⁵ of the Indian Constitution.²⁶

²⁰ The Code of Criminal Procedure, 1973, §. 50, No. 2, Acts of Parliament, 1974 (India).

²¹ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260.

²² *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

²³ *Id.*

²⁴ The Code of Criminal Procedure, 1973, §. 55, No. 2, Acts of Parliament, 1974 (India).

²⁵ INDIA CONST. art. 22 cl. 1.

²⁶ *Id.*

5.2. Right to be released on bail

Section 50(2) of CrPC states that every police officer arresting without a warrant any person other than a person accused of a non-bailable offence, is required to inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.²⁷

5.3. Right to be produced before a magistrate without delay

According to Section 55 of the CrPC, a police officer who makes an arrest without a warrant must, subject to the conditions of the arrest, immediately present the arrested person in front of the Magistrate with jurisdiction or a police officer in charge of the police station.²⁸

Section 76 of the CrPC states that the police officer is required by law to present the arrested person to the court before which he is required to do so. It stipulates that the individual must be produced within 24 hours of being arrested. The time it takes to travel from the detention facility to the Magistrate Court must be excluded from the 24-hour period being calculated.²⁹

The police officer making the arrest must appear before the

²⁷ The Code of Criminal Procedure, 1973, §. 50(2), No. 2, Acts of Parliament, 1974 (India).

²⁸ The Code of Criminal Procedure, *supra* note 24, at 19.

²⁹ The Code of Criminal Procedure, 1973, §. 76, No. 2, Acts of Parliament, 1974 (India).

Magistrate within 24 hours, according to Article 22(2) of the Constitution.³⁰ The police officer will be held accountable for unlawful detention if he fails to appear before the Magistrate within 24 hours.

5.4. Right to fair trial

The CrPC does not contain any provision regarding the right to a fair trial; however, such rights can be derived from the Constitution and various judgments.

"All persons are equal before the law" is stated in Article 14 of the Constitution of the United States.³¹ It means that everyone involved in the dispute should be treated equally. In relation to both parties, the natural justice principle ought to be taken into consideration. In the case, *Hussainara Khatoon v. Home Secretary, State of Bihar*,³² the Court ruled that "the trial is to be disposed of as expeditiously as possible." This case recognizes the right to a speedy trial.

5.5. Right to consult legal practitioner

Both the constitution and the provisions of CrPC recognize the right of every arrested person to consult a legal practitioner of his choice. The right begins when you are

³⁰ INDIA CONST. art. 22 cl. 2.

³¹ INDIA CONST. art. 14.

³² *Hussainara Khatoon v. Home Secretary, State of Bihar*, 1979 AIR 1369; 1979 SCR (3) 532.

arrested. The police officer may be present during the consultation with the lawyer, but not during his hearing.

Any person who is arrested and interrogated by the police is entitled, under Section 41-D, to meet an advocate of his or her choice during the interrogation. This right would, however, not be available through interrogation.³³

According to Article 22(1), the individual who has been arrested has the right to select a defence attorney and to be represented by such an attorney.³⁴

5.6. Right to free legal aid

The Supreme Court ruled in *Khatri v. State of Bihar*³⁵ that the state has a constitutional obligation to provide free legal aid to an indigent accused person. This obligation does not only arise when the trial begins but also when the accused is first brought before the Magistrate and is remanded from time to time. However, an indigent accused person's constitutional right to free legal representation may be fictitious if the court does not promptly and properly inform him of this right when he is brought before the court. As a result, the Supreme Court has mandated that all magistrates and courts inform the poor defendant of his entitlement to free legal representation.

³³ The Code of Criminal Procedure, 1973, §. 41-D, No. 2, Acts of Parliament, 1974 (India).

³⁴ INDIA CONST. art. 22 cl. 1.

³⁵ *Khatri v. State of Bihar*, 1981 SCR (2) 408.

According to Section 304 of the CrPC, the court may appoint a pleader for the accused's defense at the expense of the state if a trial is held before the Court of Session and the accused is not represented by a legal practitioner or it appears that the accused does not have sufficient means to appoint a pleader.³⁶ The right of an indigent accused cannot be denied even when the accused fails to apply for it," the court said in *Sukh Das v. Union Territory of Arunachal Pradesh*.³⁷ The entire trial will be null and void if the state fails to provide the indigent accused with legal representation.

5.7. Right to be examined by medical practitioner

Every person who is arrested has the right to have a medical officer working for the federal or state government examine them right away. The arrested person will be examined by a registered medical practitioner in the absence of such a medical officer.

The body must only be examined by or under the supervision of a female medical officer or registered medical practitioner when the arrested person is a woman.

The medical officer (or registered medical practitioner) shall prepare a record of such examination and shall therein

³⁶ The Code of Criminal Procedure, 1973, §. 304, No. 2, Acts of Parliament, 1974 (India).

³⁷ *Sukh Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

mention any injuries or marks of violence against the person apprehended, as well as the approximate period at which such injuries or marks may have been inflicted. The individual who was arrested or a person they designate must receive a copy of the report of such an examination.

In accordance with Section 54,³⁸ the Supreme Court states that the Magistrate must inform the arrested person of his right to a medical examination. In *Sheela Barse v. State of Maharashtra*,³⁹ the supreme court stated that the arrested person must be informed by the Magistrate about his right to be medically examined in terms of Section 54.⁴⁰

6. CASE STUDY OF D.K. BASU V. STATE OF WEST BENGAL⁴¹

The supreme court issued some guidelines in the case of *D.K. Basu v. State of West Bengal*⁴² that were required to be followed in all cases of arrest or detention.

These guidelines include the following: the arresting authority must carry accurate, visible, and clear identification, including their name tags with

³⁸ The Code of Criminal Procedure, 1973, §. 54, No. 2, Acts of Parliament, 1974 (India).

³⁹ *Sheela Barse v. State of Maharashtra*, 1983 AIR 378; 1983 SCR (2) 337.

⁴⁰ The Code of Criminal Procedure, *supra* note 38 at 24.

⁴¹ The Code of Criminal Procedure, *supra* note 22 at 19.

⁴² *Id.*

their designation; the memo must be signed by the arrestee and a family member; and the accused must be informed of the arrest. The arrestee may be allowed to meet his lawyer during the interrogation, but not during the investigation or any other process.

Facts of the case:

Mr. Dilip Kumar Basu, the executive chairman of a non-political organization called Legal Aid Services in West Bengal, delivered a letter to the then Chief Justice of India keeping in mind the startling increase in deaths while in custody in the country. The letter, dated August 26th, 1986, referred to some items on custodial deaths in a newspaper, specifically the Telegraph Newspaper. In the letter, Mr. Basu asked that it be treated as a writ petition under the Public Interest Litigation Act. While the letter was being examined, Mr. Ashok Kumar Johri entered the picture with a letter in which he reiterated the issue and claimed that Mahesh Bihari, of Pilkhana, Aligarh, Uttar Pradesh, died in custody. The Supreme Court of India treated this letter along with the letter from Mr. Basu as a writ petition. The Law Commission of India received notices from the Court asking for the creation of adequate measures to resolve the situation within two months. The Court also sent notices to the state governments over the same. The state governments of Himachal Pradesh, Tamil Nadu, Meghalaya, etc., then submitted a number of affidavits to the Supreme Court. Dr. A.M. Singhvi, who served as the lead attorney for the state governments was also named by the Supreme Court as *amicus curiae*.

The court's rulings are detailed in the following manner:

- According to the Court, Custodial Violence, such as Torture and Death in Lockups, undermines the Rule of Law.
- The Court noted that there had been multiple incidents of torture and fatalities in police custody, which was a troubling issue despite the existence of several Constitutional and statutory measures intended to protect a citizen's personal liberty and life.
- Custodial death was slammed by the court as one of the worst crimes in a civilized society subject to the rule of law, according to its opinion.
- It was mentioned that the Supreme Court had ruled in *Nilabati Behera v. State of Orissa*⁴³ that under Article 21, prisoners and detainees are not stripped of their Fundamental Rights and that the only restrictions that can be imposed on them are those that are allowed by law.

In the present case, the following guidelines were established:

- When the police are making an arrest, they must provide accurate and clear information about each person they are arresting. Their information should be recorded in a register, and their name tags must be accurate.
- At the time of the arrest, the police officer in charge must prepare a memo that must be signed by at least one witness. This witness

⁴³ *Nilabati Behera v. State of Orissa*, 1993 AIR 1960.

could be the arrested person's family member or a well-known member of the community from which they were taken. The arrested person's signature as well as the date and time of the arrest will be included in the memo.

- When a person is arrested and taken into custody by the police, he has the right to tell his family, friends, or anyone else he knows about the arrest and the location.
- As soon as the person in custody is apprehended, he must be informed of the aforementioned right.
- If the arrested person's family, friend, or known person lives outside the district or town, they must be informed through the district's Legal Aid Organization of the time, date, and custody location of the arrested person. Within eight to twelve hours of the arrest, the corresponding police station should also carry out the same action.
- At the scene of the arrest, a diary must be kept with the details of the arrest and the person who was taken into custody.
- Entry must also include information about the police officer who has custody of the person who has been detained.
- If the imprisoned person wishes, then he shall be examined for any injuries or marks on his body and the same must be noted. The arrested person and the police officer in charge of the arrest must both sign this examination, known as the "Inspection Note," and a copy must be sent to the detained person.

- A trained doctor from a panel of doctors approved by the state's Director of Health Services must examine the detainee every 48 hours while they are in custody. For tehsils and districts, the Director is obligated to prepare a panel of approved doctors.
- The local magistrate should receive copies of all documents for his files.
- The arrested person is permitted to meet with his attorney during interrogation, provided that the meeting does not last the entirety of the interrogation.
- There must be a police control room at every district and state police headquarters, and the police officer in charge of the arrest must provide information about the person arrested within 12 hours. In the control room, the aforementioned information must be pinned to a notice board.

7. DRAWBACK

Even though the Code of Criminal Procedure of 1973 contains a number of safeguards and rights, the fact remains that the arrest power is frequently misused and used illegally across the country. The power of arrest is frequently used to extort money, valuable property, or the identity of the arrested person's adversary. In civil disputes, this arrest power is also misappropriated, leading to numerous false accusations against innocent people. The vast discretion granted by the CrPC to arrest a person for a bailable offense and the additional authority to make

preventive arrests give the police officer extraordinary power that can be easily misused. The rise in the number of people dying while in custody in India is another significant criticism. Even though some crimes were committed by the people who were arrested, the police officer does not have the authority to torture the person in his custody. During the course of the investigation, some police officers use third-degree torture on the accused to obtain information from them.

In the present case, the Supreme Court ruled that it is against the law to use the third-degree method to get information from an accused person. In this case, the Supreme Court also mentioned some guidelines, like the police officer's obligation not to use third-degree torture to get any information, the officer's obligation to inform the arrested person of his rights, and the police officer's memo must be signed by at least one family member of the accused. Additionally, the Court has established preventative measures for the police officer in charge at the time of the accused's arrest.

8. CONCLUSION

When it comes to safeguarding the rights of an accused person, modern constitutional law has come a long way. Because they serve under public scrutiny and are expected to produce the results quickly, patrol officers are particularly susceptible to errors. India generally dislikes unlawful captures and custodial passings, fundamentally brought about by unlawful captures. The judicial system in India upholds the idea of

"Innocent until proven guilty," and an accused person has certain rights as an arrested person that are untouched whenever a police officer knocks on his door to make an arrest. The Supreme Court of India is not implementing the present case effectively. To ultimately contribute to reducing the proportion of illegal arrests and the deaths that occur in custody, the provisions and guidelines outlined in this case should be properly implemented.

MENSTRUAL HEALTH – AN UNATTENDED PART OF THE RIGHT TO LIFE

- Prachi & Riya Patodia⁴⁴

ABSTRACT

Periods, also known as menstruation, is the regular vaginal bleeding that takes place as part of a woman's monthly cycle. A woman menstruates for almost 40 years, but she is still not allowed to use the most basic facilities while on her periods. Access to basic facilities is a fundamental right, and menstruation is a natural process. Protection of Life and Personal Liberty is spelled out in Article 21 as “No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law.” Menstrual health is neglected in India, even though it is an essential component of the right to life. Social stigmas, taboos, and myths about menstruation creates a hindrance in maintaining menstrual hygiene. Menstruation affects many different areas, like one’s education, financial state, and health. Menstruation is a normal bodily process, but menstrual taboos have existed and still do in many or most cultures. Girls and women of menstruating age suffer in silence as a result of unjustified

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social stigmas and a lack of health resources. The present article's goal is to discuss period poverty, the various health risks brought on by poor sanitation, and menstruation-related myths that are common in India.

KEYWORDS: *Menstruation, Fundamental Rights, Period Poverty, Myths, and Taboos.*

1. INTRODUCTION

Women's health and overall well-being are fundamentally impacted by their menstrual health. Every month, a woman's body goes through a natural biological process called menstruation, which is a sign of good reproductive health. For the reproductive systems of women to remain healthy, it is a critical process. However, menstruation is stigmatized and shrouded in myths in many parts of the world, including India. To protect women's rights to life and dignity, there is a need to address the lack of education, awareness, and facilities in India related to menstrual hygiene and health.

2. MENSTRUAL HEALTH

Menstrual health means having complete physical, mental, and social well-being. It is not only about having access to period products and hygiene facilities but it also talks about the menstruating class having all the resources required to participate in all spheres of life during their menstrual cycle. Four important parts of menstrual health are –

Access to Menstrual Products for free or at reasonable rates throughout the country. This should be the principal concern but in addition to it, there should be awareness about other safe options of period products, different products available, and which product is best for them.

- The menstruating class should be able to have a stress-free menstruation cycle and that could be possible by removing or controlling the social stigmas faced by them.

- Make provisions for proper sanitation facilities and proper disposal of waste.
- Health care system which understands the importance of menstrual health of the different menstruating classes.⁴⁵

3. LEGAL FRAMEWORK IN INDIA GOVERNING MENSTRUAL HEALTH

Every person, including women, are guaranteed the right to life and dignity under the Indian Constitution.⁴⁶ To guarantee menstrual health and hygiene in India, several regulations and policies have been implemented.

The Ministry of Health and Family Welfare released the Menstrual Hygiene Management (MHM) Guidelines in 2015 to offer advice on menstrual hygiene and management to schools, universities, and other institutions.⁴⁷ The recommendations cover sanitary napkins, menstrual hygiene, and how to properly dispose of menstrual waste.

Via the Accredited Social Health Activists (ASHA) and Auxiliary Nurse Midwives, the National Rural Health Mission (NRHM) also offers rural

⁴⁵ UNICEF, <https://www.unicef.org/wash/menstrual-hygiene> (last visited Mar. 11, 2023).

⁴⁶ INDIA CONST. art. 21.

⁴⁷ NATIONAL HEALTH MISSION,

<https://www.nhm.gov.in/index1.php?lang=1&level=3&sublinkid=1021&lid=391>, (last visited on Mar. 11, 2023).

women sanitary napkins (ANMs).⁴⁸ The program's goal is to offer free sanitary pads to women in rural regions to encourage menstrual hygiene and lower health issues.⁴⁹

Separate restrooms for boys and girls in schools are another element of the Right to Education Act of 2009.⁵⁰ Yet, there are still many issues with guaranteeing menstrual health and hygiene in India because of the weak implementation of these laws and policies.

4. SIGNIFICANCE OF MENSTRUAL HEALTH

It is of great importance that the subject of menstrual health receives the long-due attention. It is time the many ways in which menstrual health can impact a woman and her life are addressed adequately.

4.1. Impact on Women's Right to Life

An essential component of women's right to life is menstrual health. Reproductive tract infections, cervical cancer, and urinary tract infections are just a few of the health issues that can result from poor menstrual hygiene and health practices.⁵¹

These medical issues can have a serious effect on a woman's

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ M. Suchitra, *All Schools must have Separate Toilets for Girls and Boys: Supreme Court*, DOWN TO EARTH (Mar. 6, 2023, 5:54 PM), <https://www.downtoearth.org.in/news/all-schools-must-have-separate-toilets-for-girls-and-boys--supreme-court-44324#:~:text=The%20Supreme%20Court%20has%20ruled%20that%20all%20schools,to%20Free%20and%20Compulsory%20Education%20%28RTE%29%20Act%2C%202009.>

⁵¹ THE WORLD BANK, <https://www.worldbank.org/en/topic/water/brief/menstrual-health-and-hygiene> (last visited on Mar. 11, 2023).

general health and, in severe circumstances, even result in death.

The right of women to education can also be harmed by the lack of sanitary facilities, as many girls stop attending school once they begin menstruating due to a lack of facilities. This not only has an impact on their education but also their chances for future employment and general quality of life.

4.2. Impact on Women's Education

Menstruation-related absences from school are now commonplace for many Indian students. Due to the lack of products available and the associated social stigma, shame, and isolation, students may resort to skipping class during their period. As girls approach puberty and the start of their menstrual cycle, the number of them dropping out of school increases. Dropping out of school can inevitably result in an education that is stunted and a much lower likelihood of landing a successful career in the future. In addition to being much more likely to be malnourished, forced into child marriages, and experience pregnancy complications, young girls who do not receive an education.

Boys are frequently not educated about menstruation in India. Girls may have increased feelings of embarrassment as a

result, which may encourage “period shame” bullying.⁵² Girls are taught about menstruation in schools, but due to cultural conventions, conversations are unlikely to continue at home or even in the classroom after the lecture. Young girls may consequently feel excluded, and the silence surrounding such situations is reinforced by the lack of communication. In many government schools in India, there are no separate restrooms for girls, and there are few sanitary goods available. Period products are not readily available at schools, which furthers the perception that they are ‘luxury’ items rather than necessities. the proportion of female educators, particularly in more rural locations, are low in comparison to their male counterpart.⁵³

4.3. Impact on the Economy

With the impact on education, there is also an adverse impact on the economy. Compromising with education does not only affect the menstruating class but the whole of society. Illiteracy leads to unemployment and unemployment leads to poverty. A women’s future earning grows with every year of her primary education. With every 1% increase in the

⁵² Aditi Partha, *The Influence of Period Poverty on the Rights of Girls and Women Around the World*, HUMANIUM (Mar. 8, 2023, 9:50 PM)<https://www.humanium.org/en/the-influence-of-period-poverty-on-the-rights-of-girls-and-women-around-the-world/>.

⁵³ *Id.*

proportion of women with secondary education, a country's annual per capita income increases by 0.3%, closing the unemployment gap between adolescent girls and boys would result in an up to 1.2% increase in GDP in a year.⁵⁴ With this, we understand how important education is for the economy and when the education of the menstruating class is affected, it affects the economy as a whole.

5. MENSTRUAL HEALTH AND HYGIENE

CHALLENGES IN INDIA

5.1. Stigma and Shame Associated with Menstruation

In many areas of India, talking about one's period is still frowned upon, and women are frequently embarrassed to do so. Women are discouraged from seeking knowledge on menstrual hygiene and health due to this stigma and shame, which also results in poor menstrual health habits.

5.2. Lack of Education and Awareness

In India, particularly in rural regions, there is a dearth of knowledge and awareness regarding menstruation health and hygiene. Many adolescents and women use unclean ways of

⁵⁴ Ola Perczynska & Danielle Preiss in Kathmandu, *Not just a Girls' Problem: The Economic Impact of Menstrual Shame*, THE GUARDIAN (Mar. 8, 2023, 10:15 PM) <https://www.theguardian.com/global-development-professionals-network/2014/oct/30/costly-periods-economic-impact-of-menstrual-shame>.

period management because they are unaware of the right menstrual health practices.

5.3. Lack of Access to Menstrual Products

Many Indian women lack access to reasonably priced, sanitary menstrual products like sanitary napkins. They are forced to use unsanitary techniques like rags, leaves, or ash, which can cause a number of health issues.

5.4. Lack of Proper Sanitation Facilities

In many areas of India, there aren't enough facilities for proper sanitation, like toilets. When a woman is menstruating, having to use the open air for urination and defecation can be difficult. In addition, the lack of restrooms and sanitation facilities in schools contributes to the high number of girls who drop out of school once they begin their periods. In many areas of India, there aren't enough facilities for proper sanitation, like toilets. When a woman is menstruating, having to use the open air for urination and defecation can be difficult. In addition, the lack of restrooms and sanitation facilities in schools contributes to the high number of girls who drop out of school once they begin their periods.

5.5. High Cost of Menstrual Products

Many women find it challenging to afford sanitary napkins and other menstrual products because of their high cost. Many

women then turn to unhygienic methods of period management as a result of this.

5.6. Limited Availability of Menstrual Products

Menstrual products are not always readily available, particularly in rural areas. To access menstrual products, many women must travel far, which is not always feasible.

5.7. Lack of Proper Waste Management Facilities

In India, the proper disposal of menstrual waste is frequently neglected. Due to a lack of adequate waste management facilities, menstrual waste is often disposed of carelessly, which causes environmental pollution and health risks.⁵⁵

5.8. Pink Tax

The term “pink tax” describes the practice of pricing goods marketed to women more expensively than comparable goods marketed to men.⁵⁶ This discriminatory practice can be observed in the cost of period products and is pervasive in many nations, including India.

Tampons and other period supplies, like sanitary napkins, are crucial for women's health and hygiene. But they are frequently more expensive than other necessities, making them out of reach for many women. This is especially true for women from

⁵⁵ DOWN TO EARTH, *supra* note 7.

⁵⁶ *Id.*

economically disadvantaged groups who must decide between purchasing period products and other necessities.

Due to the financial burden, it places on women, the pink tax on period products poses a significant obstacle to menstrual health and hygiene. It supports the idea that women's products are less significant than men's products and perpetuates discrimination and gender inequality. This is unacceptable because menstrual hygiene and health are essential to women's health and shouldn't be viewed as a luxury.

The pink tax on period products in India has been opposed by a number of organizations and activists. They have been bringing attention to the problem and urging the public and private sectors to take action to address it. To make sanitary napkins more affordable, the Goods and Services Tax (GST) on them was reduced from 12% to 0%.⁵⁷

6. MEASURES TO ENSURE PROPER MENSTRUAL HEALTH

It is of utmost importance to make certain that measures are taken to ensure proper menstrual health for girls and women of menstruating ages. The following measures have been suggested: -

⁵⁷ *Id.*

6.1. Provide Period Products to Economically Weaker Section (EWS)

Ensuring access to period products to the economically weaker sections (EWS) of society is critical for promoting menstrual health and hygiene and reducing gender inequality. Here are some ways to ensure access to period products to the EWS of society

6.1.1. Government Schemes and Programs

The government may implement plans and initiatives to offer EWS women free or heavily discounted menstrual products. For instance, the Pradhan Mantri Bhartiya Janaushadhi Pariyojana was started by the Indian government to give EWS women access to low-cost generic medications and sanitary products.⁵⁸

6.1.2. Non-Profit Organizations

Menstrual products for EWS women can be provided by non-profit organizations. These groups can work with regional authorities and local communities to promote menstrual hygiene and health, as well as to provide menstrual supplies to needy women.

6.1.3. Corporate Social Responsibility (CSR)

⁵⁸ PRADHAN MANTRI BHARTIYA JANAUSHADHI PARIYOJANA, <http://janaushadhi.gov.in/pmjy.aspx> (last visited on Mar. 12, 2023).

Companies can use CSR funds to support initiatives that give EWS women access to menstrual products. For instance, businesses can collaborate with local governments and non-profit groups to distribute menstrual products and promote menstrual health and hygiene.

6.1.4. Community-Based Initiatives

Menstrual supplies for EWS women can be provided through community-based initiatives. For instance, regional women's organizations can collaborate to produce and distribute reusable cloth pads, which are inexpensive and environmentally friendly.

6.1.5. Subsidized Vending Machines

It is possible to install subsidized vending machines in public areas like hospitals, schools, and colleges to offer menstrual products to women from the EWS at a reduced cost.

6.1.6. Educational Programs

It is possible to run educational programs to increase women from EWS' awareness of menstrual hygiene and health. These programs may be run in educational institutions, community centers, and medical facilities.

6.1.7. Incentives for Manufacturers

Manufacturers may receive incentives to produce and sell menstrual products to EWS women for less money.

Manufacturers who produce menstrual products for women from EWS at a lower cost may receive tax incentives, for instance.

6.2. Ensure a Socially Acceptable Environment

The menstruating class has to face a lot of social stigmas which creates a lot of mental pressure on them. These stigmas are the major reasons for the problems faced by menstruators. Men being the majority population can help create a socially acceptable environment if they are educated about menstrual health. To make the environment more accepting and helpful for women during their menstrual cycles, men must be educated on menstrual health and hygiene.

6.2.1. Breaking Stigma and Taboos

Men are frequently uneducated about menstruation because it is still a taboo subject in many societies. Menstruation stigma can be lessened and these barriers can be broken down by educating men.

6.2.2. Supporting Women

Men can be an important source of support for women in their lives when they are menstruating. Men can be more understanding and supportive of women during this time if they are educated about menstrual hygiene and health.

6.2.3. Creating a Safe Environment

Women may experience difficulties during their periods, so it's critical to establish a secure and encouraging environment. Menstrual health and hygiene education for men can lessen the likelihood of harassment and discrimination by fostering a culture of understanding and empathy.

6.2.4. Promoting Gender Equality

Menstrual hygiene and health education can advance gender equality by fostering a more welcoming environment for women. Men are more likely to support laws and practices that advance gender equality when they are aware of the difficulties women face during menstruation.

6.2.5. Preventing Health Issues

Menstrual health affects everyone; it is not just a problem for women. The spread of infections and other health problems linked to poor menstrual hygiene can be reduced by educating men about menstrual hygiene and health.⁵⁹

6.2.5.1. Period Leave

Period leaves are crucial for protecting women's rights to life because they give them the time to take care of their

⁵⁹ News 18, *Talk to Boys about Menstruation - It's Important!* NEWS 18, <https://www.news18.com/news/partner-content/talk-to-boys-about-menstruation-its-important-3386534.html>.

health and well-being while having their periods. Here are some justifications for the significance of period leaves:

6.2.6. Promoting Menstrual Health

By allowing them to rest and treat their symptoms, period leaves help women to take care of their menstrual health. This can help to promote both physical and mental health, protecting one's right to life.

6.2.7. Reducing Absenteeism

Women may find it difficult to work or go to school because of menstrual cramps, headaches, and other symptoms. Period leave can lessen absenteeism during the menstrual cycle, allowing women to fulfill their obligations to their jobs and their studies.

6.2.8. Creating a Supportive Workplace

Period breaks can contribute to the development of a more welcoming and encouraging workplace environment where women's needs are acknowledged and met. Increased job satisfaction and employee retention may result from this.

6.2.9. Promoting Gender Equality

Period leaves can advance gender equality in the workplace by recognizing the special needs of women during menstruation. This may help create a society that is more equitable and inclusive, allowing everyone the

chance to succeed.

6.2.10. Improving Productivity

Women can be more productive and perform better when they take time off during their periods to rest and recharge. This can protect the right to life for both the person and the organization.

Period breaks are necessary to protect women's right to life. It can improve productivity, foster a supportive work environment, support gender equality, and promote menstrual health. Women can manage their menstrual cycles with dignity and respect if governments and organizations collaborate to ensure that they have access to period leaves. We can build a more fair and just society where everyone has the chance to live full and healthy lives by acknowledging and addressing women's needs during their periods.

6.3. Rejection of Period Bill- Disservice to the Right to Life of Women

The only Indian states that permit menstrual leave are Bihar and Kerala.⁶⁰ Women who work for the government in Bihar

⁶⁰ Pooja Yadav, *Explained: What is India's Stand on Menstrual Leave Policy*, IT (Mar. 7, 2023, 11:38 PM), <https://www.indiatimes.com/explainers/news/explained-what-is-indias-stand-on-menstrual-leave-policy-594889.html>.

are granted two days of paid menstrual leave each month under the state's 1992 policy.⁶¹ Menstrual leave for university students was announced by the current Pinarayi Vijayan government in Kerala in January 2023.⁶² Additionally, the notification stated that female students could take exams with only 73% attendance rather than the required 75% under university regulations.⁶³

Here are some reasons why the rejection of the period bill can be seen as a disservice to the right to life of women:

6.3.1. Lack of Access to Menstrual Products

In India, many women lack access to reasonably priced menstrual products, which can lead to unhygienic behaviors and health problems. In order to ensure that women in public schools and colleges could manage their menstrual health with respect and dignity, the period bill sought to provide free menstrual products to them.

6.3.2. Stigmatization of Menstruation

The period bill's demise contributes to the stigma associated with menstruation in India. The government is

⁶¹ *Id.*

⁶² Parvathi Benu, *What is the Demand for Menstrual Pain Leave All About?* HINDU BUSINESSLINE (Feb. 28, 2023, 03:18 PM), <https://www.thehindubusinessline.com/blexpainer/what-is-the-demand-for-menstrual-pain-leave-all-about/article66562966.ece>.

⁶³ *Id.*

conveying that menstruation is a taboo topic that shouldn't be discussed openly by failing to acknowledge the special needs of women during this time.

6.3.3. Gender Inequality

Because it ignores the special requirements and difficulties that women experience during menstruation, the period bill's rejection is an example of gender inequality. Women are at a disadvantage compared to their male counterparts, who do not experience the same problems because menstrual products and leave are not provided.

6.3.4. Health Risks

Lack of access to hygiene products and menstrual products can put women at risk for infections and other health problems. The government is endangering the health of women by refusing to provide free menstrual products, which is against their right to life. The rejection of the period bill in India can also be seen as a denial of women's right to life. The purpose of the bill was to guarantee women's menstrual health and well-being by offering them free menstrual products and leave.⁶⁴

The bill's rejection maintains gender inequality, and the

⁶⁴ Aashraya Seth, *An Argument for Menstrual Leave in India*, TIMES OF INDIA (Mar. 9, 2023, 01:15 AM) <https://timesofindia.indiatimes.com/blogs/nonpartisan-perspectives/an-argument-for-menstrual-leave-in-india/>.

stigma associated with menstruation, and endangers the health of women. The government must take action to ensure that women have access to the resources and support they need to manage their menstrual cycles with respect and dignity. The government must also acknowledge the significance of menstrual health and hygiene.⁶⁵

7. CONCLUSION AND SUGGESTION

Women's rights to life and dignity fundamentally include the maintenance of menstrual health and hygiene. To ensure menstrual health and hygiene, India faces a number of obstacles, including stigma, a lack of education and awareness, access to menstrual products, inadequate sanitation, high prices for menstrual products, a lack of availability of menstrual products, and inadequate waste management facilities. To ensure that women in India have access to affordable, hygienic menstrual products as well as to proper sanitation facilities and waste management systems, the government, civil society, and the private sector must work cooperatively to address these issues.

⁶⁵ *Id.*

SUSTAINABLE DEVELOPMENT AND RIGHT TO LIFE WITH SPECIAL REFERENCE TO GREEN VEHICLE POLICY

-Prerna Mitra⁶⁶

ABSTRACT

The world stands at the precipice of facing environmental degradation beyond repair and daunting climate changes brought about by human activities for the advancement of mankind. We seldom pay heed to the chain of cataclysmic effects that our reckless actions in the quest for advancement set off. Studies indicate that vehicular emissions, which have now become one of the leading causes of pollution, largely impact our surrounding environment and our life expectancy in the long run. Despite global efforts spearheaded by the United Nations to control environmental degradation by achieving and promoting sustainable development, scanty measures have been taken by the Indian Government to protect and promote environmental well-being by curbing the levels of pollution. This failure is precisely highlighted by Indian cities consecutively featuring in

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the list of the “worst air quality” in the world.

This article aims to highlight the interrelation between sustainable development and Article 21 of the Indian Constitution that guarantees the right to life and a healthy environment and espouse how the full realization of Article 21 of the Constitution is impaired by the Government’s failure to implement practical measures reducing and gradually, eliminating the menace of vehicular emissions in the country.

KEYWORDS: *Sustainable Development, Vehicular Emissions, Pollution, Right to Life, Right to Healthy Environment.*

1. INTRODUCTION

“Our biggest challenge in this new century is to take an idea that seems abstract- sustainable development- and turn it into a reality for all the world’s people.”⁶⁷

- Kofi Annan

Our world is inching towards its destruction by ignorantly contributing to the depletion of the ozone layer, the increase of global warming, and other allied environmental concerns. Acting upon the words of the late Mr. Kofi Annan, a Nobel Peace Prize laureate and seventh Secretary-General of the United Nations is becoming crucial now, more than ever.⁶⁸ Mr. Annan aptly pointed out that the concept of sustainable development is abstract but various international conventions and municipal laws have tried to define its perimeters over some time. To our dismay, his statement has still not been brought to fruition- sustainable development has still not become people’s reality and continues to be the goal most countries are still struggling to achieve.

In 1983, the UN General Assembly established the World Commission on Environment and Development (WCED), more commonly known as the Brundtland Commission, and tasked them with finding solutions for

⁶⁷ UNEP, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/presentation/wcms_159172.pdf (last visited Mar. 27, 2022).

⁶⁸ KOFI ANNAN FOUNDATION, <https://www.kofiannanfoundation.org/kofi-annan/#biography> (last visited Mar. 27, 2022).

the practical manifestation of sustainable development.⁶⁹ In their report, the Commission defined sustainable development as the development which is achieved by meeting the needs of the present generation without compromising the ability of our future generations to meet their own needs.⁷⁰

This definition of sustainable development shed adequate light on the objectives of sustainable development-

- to ensure that the needs of the people of this present generation are being satisfied, and
- To ensure that there is enough for future generations to meet their needs in due course of time. The Commission also explored the various causes that lead to environmental degradation and worked towards understanding the interconnection between economic development, social equity, and environmental concerns.⁷¹ Sustainable development aimed at harmonizing these three aspects to maximize economic growth and social equity and minimize environmental degradation.

To materialize the abstract ideals of sustainable development, the United Nations General Assembly adopted seventeen “Sustainable Development Goals” (SDGs), entailing 169 targets and 232 indicators, that replaced the

⁶⁹ Linus Wealth, *The Brundtland Report*, SUSTAINABLE ENVIRONMENT (Mar. 26, 2022, 2:30 PM), https://www.sustainable-environment.org.uk/Action/Brundtland_Report.php.

⁷⁰ UNEP, *supra* note 1.

⁷¹ *Id.*

Millennium Development Goals (MDGs) which already ended back in 2015.⁷² This new set of goals was released under the agenda “Transforming Our World: the 2030 Agenda for Sustainable Development”, and India happens to be a signatory to it.⁷³ The ideal facet of this set of goals is that it is uniformly applicable to all member states instead of its applicability being dependent on their “developed” or “developing” status. This agenda was adopted by 193 member states at the UN Sustainable Development Summit, New York, in September 2015, that came into effect in January 2016.⁷⁴ The Preamble of this Agenda highlighted the areas it would cover, spanning from peace and prosperity to planet and partnership, this Agenda envisioned a remarkable way forward by balancing socio-economic and environmental factors.

However, keeping abreast of the SDGs has proved to be quite challenging, especially for developing countries. As the economic growth in numerous parts of the world spurted, the levels of energy consumption, the depletion of resources, and the pace of environmental degradation both quickened and increased. One of the primary threats to sustainable development in today’s world is vehicular emissions. We pass countless cars on the streets that zoom past us blurring our vision and choking our lungs with their alarmingly high smoke emission. Little do we realize that

⁷² Ninika Dhawan & Rumbidzai Faith Masawi, *Sustainable Development: An Introduction*, ICED, JAIPUR, (Mar. 26, 2022, 2:40 PM), <http://iced.cag.gov.in/wp-content/uploads/Sustainable-Development1.pdf>.

⁷³ *Id.*

⁷⁴ *Id.*

this smoke plays a monumental role in widening the hole in our ozone layer and in raising the overall temperature of the earth's surface. This is precisely why the Government of India in its National Mission on Sustainable Habitat has outlined the need to “promote and encourage” the use and purchase of “lesser polluting vehicles” or the use of public transport by adopting pricing mechanisms.⁷⁵

Despite having agendas in place, India has failed in reducing its level of carbon emissions and vehicular emissions continue to be an area of great concern. Where the legislative and enforcement machinery has failed, the judiciary bears the torch of environmental conservation. The present judicial trends indicate that the judiciary has imposed an undisputable and unshakable obligation on the government to preserve and protect the environment by reading it into Article 21 of the Constitution which guarantees all people the right to life and dignity. In the landmark case of *M.C. Mehta v. Union of India*,⁷⁶ our attention was drawn towards vehicular pollution in India and the urgent need to shift from using fossil fuel to natural gas and other modes of fuel generation that reduce carbon emissions.

⁷⁵ CENTRAL PLANNING AND ENVIRONMENTAL ENGINEERING ORGANIZATION, <http://cpheeo.gov.in/cms/national-mission-on-sustainable-habitat.php> (last visited Mar. 27, 2022).

⁷⁶ *M.C. Mehta v. Union of India*, (1991) 2 SCC 353.

2. SUSTAINABLE DEVELOPMENT AND THE RIGHT TO LIFE UNDER ARTICLE 21 OF THE CONSTITUTION

It is true that the complete fulfillment of the objectives of sustainable development is a distant dream in India but it cannot be ignored that sustainable development has become an essential facet of Article 21 of the Indian Constitution. One might take the liberty to assert that sustainable development and Article 21 of the Constitution shared a similar past in India. This is because just as the concept of sustainable development was truly realized only after 1972, Article 21 began to be interpreted in its truest sense only after 1972. Therefore, we can divide the development of environmental law in India, in juxtaposition to the development of Article 21 and sustainable development, as pre-1972 and post-1972.

The United Nations Conference on the Human Environment, Stockholm, 1972, or as it is famously called the Stockholm Declaration of 1972 marked the worldwide revolution in the interest of safeguarding the environment. The Stockholm Declaration gave birth to a series of international conventions on environmental issues not only in the United Nations but in numerous countries around the world.⁷⁷ This was the first time when human rights were associated as a part of environmental

⁷⁷ *Id.*

protection and thereby, asserted that “the right to quality environment” is a human right that is entitled to be protected. The novel concept of “sustainable development” was introduced at this very Conference; it emphasized the need to use non-renewable resources in a manner that would spare their speedy exhaustion such that these resources can be utilized by future generations. Above all, this Declaration imposed responsibility on the States to protect and preserve the environment and to develop laws that promote the objectives of sustainable development.⁷⁸ In the following years, another notable development in this regard was the United Nation Conference on Environment and Development, Rio De Janerio, 1992, or the Rio Declaration on Environment and Development and Sustainable Management of Forests,⁷⁹ which espoused a “comprehensive global plan” promoting action on part of the governments and major action groups to promote sustainable development, and also, recommended the establishment of speedy judicial and administrative procedures that would effectively and judiciously dispose of matters of environmental concerns.⁸⁰ The positive impact of the Stockholm Declaration could be felt in India when it enacted the Environment (Protection) Act, 1986,⁸¹ by the virtue of Article 253 of the Constitution to further the objective of protecting

⁷⁸ *Id.*

⁷⁹ UNITED NATIONS, <https://sdgs.un.org/publications/agenda21> (last visited Mar. 27, 2022).

⁸⁰ *Id.*

⁸¹ Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

and conserving the environment.⁸² The Ministry of Environment, Forest and Climate Change (MoEFCC)⁸³ was established in 1985 under the name of the Ministry of Environment and Forest, under the aforementioned Act.⁸⁴ The MoFECC wields the power to set standards for the emission of “environmental pollutants” from numerous sources and prescribes procedures and safeguards for dealing with the mis happenings of environmental pollution.⁸⁵ The penal provisions of the Environment (Protection) Act, 1986 give the Act its teeth. Section 15 of the Act prescribes that non-compliance with the provisions of the Act is punished with an imprisonment of 5 years and/or a fine up to one lakh on the concerned individual, company, or governmental department.⁸⁶

The Rio Declaration of 1992 helped the case of Indian laws on environmental protection by encouraging India to implement the National Green Tribunal Act, 2010,⁸⁷ that as suggested by the name, established a National Green Tribunal for the purposes of speedy and judicious disposal of environmental disputes. This Act rallied the judiciary to protect and preserve the environment and promote sustainable development by delivering decisions to that effect.

⁸² UN ENVIRONMENT PROGRAMME, <https://www.unep.org/news-and-stories/speech/stockholm-declaration-and-environmental-law> (last visited Mar. 27, 2022).

⁸³ MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, <https://moef.gov.in/en/about-the-ministry/introduction-8/> (last visited Mar. 28, 2022).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Environment (Protection) Act, 1986, § 15, No. 29, Acts of Parliament, 1986 (India).

⁸⁷ National Green Tribunal Act, 2010, No. 19, Acts of Parliament, 2010 (India).

While environmental law was blossoming in India, the ambit of Article 21 was also expanding. After the *Maneka Gandhi judgment*,⁸⁸ Article 21 was viewed in a new light that widened its horizons. During the 1980s the judiciary had adopted a much more liberal approach to interpreting Article 21. In the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,⁸⁹ the courts for the first time decided that “air” and “water” were quintessential for the sustenance of human life.⁹⁰ It is true that the court did not explicitly equate Article 21 to the need to preserve air and water but the essence of it could be made out from the wording of the judgment.

The Supreme Court in the case of *Subhash Kumar v. State of Bihar*,⁹¹ held that Article 21 of the Constitution guarantees the “right to a wholesome environment”, thus, explicitly stating that the protection of the environment is a part of the right to life under Article 21 of the Constitution.⁹² This stance was reaffirmed by *Virender Gaur v. State of Haryana*,⁹³ and the court further added that the right to enjoy life and live with dignity includes the protection of the environment and its conservation because life cannot be enjoyed if our environment is not

⁸⁸ *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

⁸⁹ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, 1985 SCR (3) 169.

⁹⁰ *Id.*

⁹¹ *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420.

⁹² *Id.*

⁹³ *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577.

clean.⁹⁴

Once the boundaries of Article 21 were pushed to protect the environment, the objective of promoting sustainable development was stressed by the Indian courts. The *Vellore Citizens' Welfare Forum v. Union of India*,⁹⁵ is the pioneer in this regard. It is in this case that the principle of polluters pays, sustainable development, and the precautionary principle surfaced for the first time and it is consequent to this case that the above-mentioned principles coalesced with the Indian environmental law.

The efforts of the judiciary with regard to the promotion of sustainable development in India by fusing it with Article 21 of the Constitution is commendable but the struggle to reduce carbon emissions from vehicles continues to be a challenge for both the judiciary and the legislature.

3. GREEN VEHICLE POLICY: PROMOTING AND PROTECTING SUSTAINABLE DEVELOPMENT AND ARTICLE 21 OF THE CONSTITUTION

Breathing is a bodily activity that comes to us naturally and spontaneously. In fact, it is so easy that we aren't always mindful of what we breathe in, and our actions adequately demonstrate it. Even though our lives are dependent on "quality air", we pay little to no heed to

⁹⁴ *Id.*

⁹⁵ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

preserve it. Vehicular emissions do considerable damage to air quality. In 2013, a report titled “Green Vehicle Rating for 2 and 3 Wheelers in India”⁹⁶ evinced that the transport sector in India is one of the highest contributors to Green House Gas (312.3 million tCO₂e per annum).⁹⁷ It further revealed that approximately 1.4 million deaths in India have been caused due to air pollution.⁹⁸ It is pitiable that as per the World Air Quality Report 2023, India stands at 8th position in the list of countries with the “worst air quality index”.⁹⁹ Such appalling statistics should act as a clarion call for the government as well as the people of India to implement and adhere to laws to improve air quality, respectively.

The judiciary through its decisions such as *Subhash Kumar v. State of Bihar*,¹⁰⁰ *Virender Gaur v. State of Haryana*,¹⁰¹ and *Vellore Citizens’ Welfare Forum v. Union of India*,¹⁰² have sufficiently stressed the need to preserve the environment as it is protected as a fundamental right under Article 21 of the Constitution. Yet, when we focus on vehicular emission as a cause of environmental degradation the paper would be amiss if we

⁹⁶ S. Kumar, N. Das & S. Mathew, *Green Vehicle Rating for 2 and 3 Wheelers in India*, AEEE, (Mar. 27, 2022, 8:00 PM) https://aeee.in/green-vehicle-rating/wp-content/uploads/2018/09/GVR-Report_Final.pdf.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Aastha Ahuja, World Air Quality Report 2021: 63 Indian cities in 100 Most Polluted Places on Earth, SWACHHINDIA, (Mar.27, 8:30 PM) <https://swachhindia.ndtv.com/world-air-quality-report-2021-63-indian-cities-in-100-most-polluted-places-on-earth-67358/>.

¹⁰⁰ *Subhash Kumar v. State of Bihar*, *supra* note 27.

¹⁰¹ *Virender Gaur v. State of Haryana*, *supra* note 29.

¹⁰² *Vellore Citizens’ Welfare Forum v. Union of India*, *supra* note 30.

do not emphasize the importance of *M.C. Mehta v. Union of India*.¹⁰³ The worrisome background that led to this case was that since the independence of India, the population in the capital of Delhi has been booming exponentially and since the majority of the population resided in the urban areas, the level of pollution caused by vehicular emissions was shocking. A writ petition was filed by M.C. Mehta requesting the court to pass “orders for the reduction of pollution caused by vehicles in Delhi.”¹⁰⁴ The court while delivering the judgment touched upon Articles 48A and 51A of the Constitution which was introduced to conserve the environment.¹⁰⁵ It ordered the establishment of a committee that would look into the vehicular pollution in Delhi, analyze the latest technologies available in India to control vehicular pollution, takes long-term and short-term measures to reduce or eliminate vehicular pollution, and make specific recommendations about the legal regulations that will govern the implementation of low-cost alternatives.¹⁰⁶

The Supreme Court also passed orders to use lead-free petrol in India and natural gas along with other non-fossil fuel alternatives.¹⁰⁷ Pursuant to this judgment lead-free petrol was introduced in a few metropolitan cities in India and catalytic convertors were fitted to the cars that were

¹⁰³ *M.C. Mehta v. Union of India*, (1991) 2 SCC 353.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

manufactured after 1995 to filter vehicular emissions.¹⁰⁸ In addition, CNG outlets were constituted at various petrol pumps to provide CNG gas to vehicles.¹⁰⁹ Though this case did not expressly state that Article 21 protects citizens from the right to a clean environment, the judgment highlighted the spirit of this provision.

Complementing the efforts of the Indian judiciary, the Government of India has taken various initiatives to reduce the emission of vehicular gasses and to improve air quality. Inspired by the concept of “green vehicle” adopted by several European Union nations and the United States, India is also looking at various eco-friendly vehicles or green vehicles that have an environment-friendly impact and produce considerably low harmful emissions.¹¹⁰ These “clean vehicles” run on alternative fuels and developed vehicular technologies which include “hybrid electric vehicles, battery electric vehicles, compressed-air vehicles, etc.”¹¹¹ The Fourteenth Finance Commission introduced the “Smart Cities Mission” in which the Government of India will aim at promoting cities with infrastructure that afford its citizen quality of life along with a clean and sustainable environment by applying smart

¹⁰⁸ Dhruval, M.C. Mehta v. Union of India, 1991: Vehicular Pollution Case- Case Summary, ITJ, (Mar. 27, 2022, 8:30 PM) <https://lawtimesjournal.in/m-c-mehta-vs-union-of-india-1991-vehicular-pollution-case/>.

¹⁰⁹ *Id.*

¹¹⁰ OECD, Sustainable Transport Policies, ECME (Mar. 27, 2022, 8:45 PM), https://www.itf-oecd.org/sites/default/files/docs/00sustain_0.pdf.

¹¹¹ U.S. DEPARTMENT OF ENERGY, <https://afdc.energy.gov/fuels/> (last visited on Mar. 27, 2022).

solutions.¹¹²

Under the National Urban Transport Policy of 2006, India launched certain schemes on “sustainable transport”, some such schemes being the “bus rapid transit system (BRTS), upgradation of bus facilities in Indian cities and implementing light rail projects.”¹¹³

In 2010, the Ministry of Housing and Urban Affairs (MoHUA) in coordination with the UN Development Programme launched the Sustainable Urban Transport Project (SUTP) to encourage capacity building in urban and sustainable transport so that the pollution levels could be brought down in cities.¹¹⁴ Bike sharing and availing bus facilities were encouraged.¹¹⁵

The Government of India also launched the Green Urban Mobility Initiative (GUMI) in year 2017 to achieve two-fold objectives-

- to provide a less pollution-emitting alternative transport system by increasing the availability of bus facilities, establishing walking and cycling tracks and by adopting technological measures to impose sustainable urban mobility, and
- by encouraging the use of electric vehicles and adopting clean and

¹¹² GLOBAL GREEN GROWTH INSTITUTE

https://www.teriin.org/projects/green/pdf/National_SPM.pdf (last visited on Mar. 27, 2022).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

renewable fuel alternatives for public transport projects.¹¹⁶

The National Electric Mobility Mission Plan (NEMMP) which was proposed in 2020 encourages the use and purchase of “electric and hybrid vehicles” in the country through collaborations and partnerships between the government and electric vehicle-manufacturing industries.¹¹⁷

In January 2021, Union Minister Nitin Gadkari approved a proposal to levy a “green tax” on old vehicles with the objective of scrapping the decade-old cars from playing on the roads.¹¹⁸ This proposal demonstrates that the objectives of sustainable development are being taken seriously and that the government is making an active effort to protect the right to life of its citizens under Article 21 of the Constitution by bringing down pollution levels and improving air quality. The highlights of the green tax proposal are the following: -

- “The transport vehicles that are older than 8 years will be charged 10-25% of the Road Tax at the time of renewing its Fitness Certificate.
- Public transport vehicles will be charged a lower green tax.
- Vehicles that are registered in highly polluted cities will be charged a higher green tax (50% of the Road tax).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ AGRANJOSH, *supra* note 12.

- Green tax for vehicles will be charged on the basis of fuel and type of vehicle.”¹¹⁹

These initiatives by the Government of India adequately demonstrate that on paper India is making great strides in promoting sustainable development by reducing vehicular pollution, but the practical manifestation of these policies and initiatives is still a distant dream.

4. CONCLUSION

India has failed to achieve the practical manifestation of SDGs to its fullest extent despite adopting various measures because of its weak and inadequate enforcement machinery. Albeit the country's capital- Delhi consecutively tops the list of the world's most polluted air quality, no stringent measures are taken for violating environmental laws. Most of the people in India wriggle their way out by bribing government authorities or police personnel. There is no general awareness among people about the environmental hazards of driving vehicles with failed pollution licenses.

In metropolitan cities like Bangalore and Chennai, metros have proved to be a major failure, instead more funds should have been poured by the Government into increasing the availability of buses and other road public transport facilities. So far very few government initiatives to adopt

¹¹⁹ *Id.*

a green vehicle policy framework have been successful, most of them are impractical in Indian societies due to the dearth of proper administrative facilities. Furthermore, it is crucial for the government to implement the green tax policy as it will not only reduce the level of pollution but it will also discourage private car owners from driving old cars by the imposition of a higher tax rate.

Government should collaborate with eco-friendly car manufacturing companies so that the usage of electric cars can be promoted. The state should realize that Article 47 of the Constitution imposes upon it an obligation to “raise the standard of living and improve public health”, none of which can be attained if it fails to promote eco-friendly vehicles or eco-friendly fuel alternatives. Launching initiatives and implementing laws alone will not suffice, it is imperative to mobilize the police force to improve air quality by fulfilling their duty with utmost honesty.

People should be educated about the use of green vehicles, the environmental hazards that are caused by vehicular pollution, the meaning of sustainable development, and how their participation is valuable in attaining the goals of sustainable development. Only then will they develop an inward sense of preserving and protecting our environment, and in doing so the right to life under Article 21 of the Constitution will be safeguarded by the people themselves. Furthermore, if people are aware of the implications of their acts and their rights and duties, they will be mindful of their actions and will know when to hold the government accountable for failing to protect their rights. These steps

towards the conservation of the environment are pivotal in making sustainable development the world's reality.



SHORT ARTICLE



UNCOVERING THE TRUTH: THE HARSH REALITIES OF MANUAL SCAVENGING AND CASTE-BASED DISCRIMINATION

-Diwash Saibya¹²⁰

ABSTRACT

Manual scavenging, a practice that has persisted in India for centuries, is a violation of basic human rights and is based on caste discrimination. The Indian government has made efforts to eliminate this practice, but it continues to persist due to the lack of viable alternatives for those employed as manual scavengers. Empowering manual scavengers with sustainable and dignified livelihoods has been identified as a key solution, with successful programs helping individuals transition to alternative professions. Additionally, providing fair wages and working conditions, social security, and access to education and skill-building opportunities are important to improve the overall quality of life for manual scavengers. However, changing societal mindsets about manual scavenging and

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caste-based discrimination remains a challenge, and overcoming resistance and changing mindsets requires a sustained effort from all sections of society. It is the responsibility of each individual and community to take action to eradicate manual scavenging and promote social inclusion. This requires collective action to break the cycle of discrimination and ensure that all individuals are treated with dignity and respect.

KEYWORDS: *Manual Scavenging, Caste Discrimination, Dignified Livelihoods, Social Inclusion, Sustainable Livelihoods.*

1. INTRODUCTION

Manual scavenging and caste-based discrimination are two interrelated issues that have long plagued India, revealing the country's persistent social inequalities and systemic injustices. Manual scavenging involves the handling, transporting, disposing, or cleaning of human waste using manual labor.¹²¹ This degrading and inhumane practice is typically performed by people from lower castes who have been historically marginalized and discriminated against. Caste-based discrimination, in contrast, is a deeply entrenched social issue that assigns individuals to a specific social status based on their birth, with those at the bottom of the hierarchy considered "untouchables" or "Dalits". Despite constitutional provisions and affirmative action policies aimed at addressing the issue, caste-based discrimination and manual scavenging continue to exist in various parts of the country, highlighting the need for a sustained and comprehensive approach to tackle these issues.

2. THE ROOTS OF MANUAL SCAVENGING: A HISTORICAL OVERVIEW

Manual scavenging has its roots in the caste system in India, where people from the lower castes were traditionally assigned "unclean" jobs, including manual scavenging. The earliest recorded instances of manual

¹²¹ The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, No. 46 Acts of Parliament, 1993(India).

scavenging in India dates back to the 4th century BCE, during the Mauryan Empire, when a separate class of people called 'Chandalas' were responsible for cleaning human excreta. The practice continued through the Mughal and British colonial periods, with British colonial authorities institutionalizing the practice by constructing dry latrines that required manual scavenging. The caste system, which was reinforced by colonial policies and laws, further entrenched the practice of manual scavenging and made it difficult for those engaged in the practice to escape it.

The practice was legitimized by the government in the form of the Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993¹²², which aimed to eradicate manual scavenging and dry latrines. Despite efforts to eradicate the practice, manual scavenging still persists in various parts of the country, frequently concealed from public scrutiny.

3. THE SOCIAL AND ECONOMIC IMPACT OF MANUAL SCAVENGING ON COMMUNITIES

Manual scavenging is a degrading and inhumane practice that perpetuates caste-based discrimination and creates a hierarchical society. Individuals engaged in manual scavenging frequently face ridicule and social exclusion, being deprived of participation in a variety of social and religious events. This exclusion from society can lead to a sense of

¹²² *Id.*

isolation among manual scavengers.¹²³

Manual scavengers often live in segregated colonies, far away from other communities, and they are forced to live in poor conditions without proper access to basic amenities such as clean water, sanitation, and healthcare. Inadequate access to fundamental services and amenities can lead to health issues and worsen their social marginalization.

Typically, manual scavengers come from the most underprivileged sections of society, and they receive unfair compensation for their labour. Many manual scavengers are forced to work for free or in exchange for meager food rations. This exploitation perpetuates poverty and further marginalizes them.¹²⁴

Furthermore, manual scavengers do not have access to other employment opportunities, and their job is often passed down from generation to generation. This perpetuates the cycle of poverty and reinforces the caste-based discrimination.

4. HEALTH AND SAFETY HAZARDS OF MANUAL SCAVENGING: A GRIM REALITY

Manual scavenging poses significant health and safety risks to those

¹²³ Asad Ashraf, *The Truth About Manual Scavenging in India*, THE OUTLOOK (Mar. 14, 2023, 2:15 PM), <https://www.outlookindia.com/magazine/story/india-news-the-truth-about-manual-scavenging-in-india/305414>

¹²⁴ INTERNATIONAL DALIT SOLIDARITY NETWORK, <https://idsn.org/key-issues/manual-scavenging/> (last visited Mar. 13, 2023).

involved in it. According to a report by the National Commission for Safai Karamcharis, manual scavengers are exposed to various diseases such as cholera, typhoid, and hepatitis A and E, among others. The workers are also at risk of chronic health problems such as respiratory issues, skin diseases, and gastrointestinal disorders due to long-term exposure to human waste.¹²⁵

In addition to health hazards, manual scavengers also face safety hazards due to the lack of proper protective gear and equipment. A study by the World Health Organization (WHO) notes that manual scavengers are often not provided with gloves, masks, or other protective gear, exposing them to hazardous waste and chemicals. The lack of proper equipment also puts them at risk of accidents, such as falling into pits or getting trapped in septic tanks, which can be fatal.

Moreover, manual scavengers are also exposed to hazardous chemicals such as bleaching powder and acid, which are used to clean the waste. Prolonged exposure to these chemicals can lead to skin and respiratory problems, eye damage, and even cancer.

The lack of proper health and safety measures for manual scavengers not only affects their physical health but also their mental health. According to a report by the Human Rights Watch, manual scavengers often suffer

¹²⁵ Bhavini Saraf and Siddharth Verma, *Transforming denial into deliberation : The case of manual scavenging*, THE PRINT (Mar. 15, 2023, 4:45 PM), <https://theprint.in/opinion/transforming-denial-into-deliberation-the-case-of-manual-scavenging/803599/>.

from depression, anxiety, and other mental health problems due to the stigma and discrimination they face. The dehumanizing and discriminatory nature of manual scavenging can also lead to low self-esteem, social exclusion, and economic hardship for the workers and their families.

5. LEGAL FRAMEWORKS TO ERADICATE MANUAL SCAVENGING: A CRITICAL ANALYSIS

Manual scavenging, a pervasive and humiliating practice in India, has resulted in the deaths of 971 individuals while cleaning sewers or septic tanks since 1993, according to the Ministry of Social Justice and Empowerment.¹²⁶

The Constitution of India has a comprehensive framework for eradicating manual scavenging by recognizing every citizen's fundamental rights, such as the right to live with dignity and equality, and principles that aim to achieve social justice and equality for all. Article 17¹²⁷ declares untouchability as abolished and forbidden, highlighting the constitutional commitment to eradicate manual scavenging. Provisions such as Articles

¹²⁶ THE HINDU, <https://www.thehindu.com/news/national/971-people-died-while-cleaning-sewers-since-1993/article65295919.ece> (last visited Mar. 12, 2023).

¹²⁷ INDIA CONST. art.17.

15,¹²⁸ 16,¹²⁹ and 46¹³⁰ promote equal opportunities in employment and promote the economic and educational interests of marginalized communities. The Constitution also establishes protection for the rights of workers, including sanitation workers, through Articles 23¹³¹ and 24.¹³² Additionally, the Constitution provides for the establishment of institutions like the National Commission for Scheduled Castes¹³³ and a Special Officer¹³⁴ for Scheduled Castes and Scheduled Tribes to monitor the implementation of laws related to the eradication of manual scavenging and the welfare of sanitation workers.

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 is an improvement on the 1993 Act¹³⁵ and it prohibits manual scavenging in all forms, including hazardous cleaning of septic tanks and sewers. It also provides for rehabilitation, education, and training of manual scavengers and their families. The Act aims to eradicate manual scavenging and improve the lives of manual scavengers by providing them with alternative employment opportunities and ensuring their socio-economic empowerment. However, there have been

¹²⁸ INDIA CONST. art.15.

¹²⁹ INDIA CONST. art.16.

¹³⁰ INDIA CONST. art.46.

¹³¹ INDIA CONST. art.23.

¹³² INDIA CONST. art.24.

¹³³ INDIA CONST. art.338.

¹³⁴ INDIA CONST. art.339.

¹³⁵ The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, No. 46 Acts of Parliament, 1993(India).

criticisms about the implementation of the Act and its effectiveness in eradicating manual scavenging completely.

The Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act of 1989 aims to prevent atrocities against members of these communities, including manual scavengers. The Act provides for punishment and compensation to victims of such crimes and recognizes the need to address historical injustice and ensure the welfare of marginalized communities.

The National Commission for Safai Karamcharis Act, 1993 was enacted to establish the National Commission for Safai Karamcharis, a statutory body responsible for monitoring the implementation of laws and programs related to the eradication of manual scavenging and the welfare of sanitation workers. The Commission is responsible for investigating and inquiring into complaints of violations of laws prohibiting manual scavenging and for recommending appropriate measures to address them. The Commission is also responsible for reviewing the safeguards provided by the government for the welfare and rehabilitation of sanitation workers and making recommendations for their improvement. While the Act provides for an important institutional mechanism for addressing the problem of manual scavenging, its effectiveness depends on the political will to implement its recommendations and recommendations of the Commission.

6. BREAKING THE CYCLE OF DISCRIMINATION: ALTERNATIVE SOLUTIONS AND THEIR IMPACT

Manual scavenging is a deeply entrenched practice in India, perpetuated by a range of social, economic, and cultural factors. In order to break the cycle of discrimination, it is crucial to implement alternative solutions that address the root causes of the problem.

One important approach is to provide education and employment opportunities to manual scavengers and their children. By increasing access to education, individuals can acquire the skills and knowledge necessary to pursue alternative professions and break out of the cycle of poverty and discrimination. In addition, providing employment opportunities in non-manual scavenging professions can help to reduce the demand for manual scavengers and shift the perception of this work as a necessary and acceptable occupation.

A study conducted by the Sulabh International Social Service Organization,¹³⁶ an Indian non-governmental organization, found that providing vocational training and job placement services to manual scavengers can have a significant impact on their livelihoods and well-being. The study found that after receiving training and support, many

¹³⁶ SULABH INTERNATIONAL SOCIAL SERVICE ORGANIZATION, <https://www.sulabhinternational.org/> (last visited Mar. 14, 2023).

manual scavengers were able to successfully transition to alternative professions, such as tailoring, beautician services, and driving.

Another important approach is to raise awareness about the negative impact of manual scavenging on individuals and communities. This can be done through targeted campaigns and education programs that emphasize the health risks, social stigma, and human rights violations associated with the practice. By changing public perceptions and attitudes towards manual scavenging, it becomes easier to promote social inclusion and reduce discrimination against affected communities.

One successful example of an awareness campaign is the "No Toilet, No Bride"¹³⁷ initiative launched by the state government of Haryana in northern India. The campaign sought to address the issue of open defecation and promote the construction of toilets in rural areas. As part of the campaign, prospective brides were encouraged to demand that their future husbands provide them with a toilet as a prerequisite for marriage. The initiative helped to raise awareness about the importance of sanitation and hygiene, and contributed to a significant increase in toilet construction in rural areas.

Overall, these alternative solutions offer a path towards breaking the cycle of discrimination and eradicating manual scavenging in India. By providing education, employment opportunities, and raising awareness

¹³⁷ Sharada Balasubramanian, 'No Toilet, No Bride' Campaign Sees Success in Haryana (Mar. 12, 2023, 6:35 PM),<https://thewire.in/society/no-toilet-no-bride-campaign-success-haryana>.

about the negative impact of the practice, it becomes possible to promote social inclusion and ensure that all members of society are able to live with dignity and respect.

7. EMPOWERING MANUAL SCAVENGERS: DIGNITY OF LABOUR AND SUSTAINABLE LIVELIHOODS

In order to break the cycle of discrimination and end the practice of manual scavenging, it is crucial to empower manual scavengers with dignified and sustainable livelihoods. This means creating opportunities for them to transition to alternative professions and providing them with the necessary training and support to do so.

One example of a successful program that has helped manual scavengers transition to alternative professions is the Sulabh International Social Service Organization's vocational training program¹³⁸. Through this program, manual scavengers are given training in a variety of skills, such as tailoring, embroidery, and beekeeping. They are also provided with the necessary equipment and resources to start their own businesses. The program has helped thousands of manual scavenger's transitions to alternative professions, giving them a sense of dignity and self-worth.

¹³⁸ *Id.*

The *Safai Karamchhari Andolan v. Union of India*¹³⁹ case addressed the issue of manual scavenging in India as an inhuman and degrading profession. The Supreme Court emphasized that the PEMSR Act, 2013¹⁴⁰ and the EMSCDL Act, 1993¹⁴¹ do not dilute the constitutional mandate of Article 17 and 21 of the constitution. The court noted that over 95% of identified manual scavengers are Dalits, and referred to international covenants and instruments guaranteeing a dignified human life. The court outlined several propositions for rehabilitating manual scavengers, including making entering sewer lines without safety gear a crime and awarding compensation of Rs. 10 lakhs for each sewer death. The court also stressed the importance of implementing the provisions of the PEMSR Act, 2013 and taking appropriate action for non-implementation or violation.

Another approach to empowering manual scavengers is to provide them with opportunities for education and skill-building. This can help them develop the skills and knowledge necessary to pursue alternative professions and improve their economic and social status.

The case of *Delhi Jal Board v. National Campaign for Dignity & Rights*

¹³⁹ *Safai Karamchhari Andolan and Ors. v. Union of India and Ors.*, (2014) 11 SCC 224.

¹⁴⁰ The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, No. 25, Acts of Parliament, 2013 (India).

¹⁴¹ The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, No. 46 Acts of Parliament, 1993 (India).

*of Sewerage & Allied Workers*¹⁴² sheds light on the challenges and issues faced by manual scavengers and sewage workers in India. The Supreme Court of India issued a groundbreaking judgment that focused on the fundamental issues of safety, health, and well-being of these workers, who are usually from disadvantaged sections of society. The court cited a report highlighting the severe health risks that these workers face, such as high mortality and morbidity due to exposure in the workplace. The court criticized the government and state apparatus for their lack of sensitivity towards these workers and rejected the idea of "judicial overreach" and "judicial activism" in protecting the rights of weaker sections of society. The court directed the civic bodies to ensure compliance with safety and security measures for sewage workers and to pay higher compensation to the families of the deceased. The case emphasizes the urgent need to address the challenges faced by manual scavengers and sewage workers in India and to provide them with access to their fundamental rights to equality, life, and liberty.

It is also important to ensure that manual scavengers are given fair wages and working conditions. This can help to ensure that they are able to support themselves and their families, and that they are not forced to resort to manual scavenging out of desperation. Additionally, providing them with social security and other benefits can help to improve their

¹⁴² Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & Ors., (2011) 8 SCC 568.

overall quality of life.

8. CONCLUSION

In conclusion, manual scavenging is a deeply ingrained social evil that has persisted in India for centuries. It is a practice that is based on caste discrimination and violates the basic human rights of those forced to perform it. The government has made efforts to eliminate this practice, but it persists due to the lack of viable alternatives for those employed as manual scavengers.

Alternative solutions, such as education and employment opportunities, have been proposed and implemented with varying degrees of success. Empowering manual scavengers with dignified and sustainable livelihoods has been identified as a key solution, with successful programs helping individuals transition to alternative professions.

However, changing societal mindsets about manual scavenging and caste-based discrimination remains a challenge. Education and awareness campaigns have been successful in promoting social inclusion, but there is still a long way to go. Overcoming resistance and changing mindsets requires a sustained effort from all sections of society.

It is the responsibility of each individual and community to take action to eradicate manual scavenging and promote social inclusion. It is only through collective action that we can break the cycle of discrimination and ensure that all individuals are treated with dignity and respect.

IMPACT OF PSYCHOLOGY IN THE PHILOSOPHICAL BLENDING OF LAW WITH SPECIAL REFERENCE TO MAJOR SCHOOLS OF JURISPRUDENCE

-Arkaprava Bhattacharya¹⁴³

ABSTRACT

The theory of natural selection has made 'Human beings' as the most prolific species in the entire world. Evolution has made homo sapiens physically competent and mentally the most prominent. Psychology in the literal sense is the specialized study of human behavior. It is the science of studying the mental attributes of a reasonable and prudent man along with the inconsistent variations. Law is an instrument to maintain balance in society. It is a command, custom, voice of the god and also the judgment of a judge. The basic reason for it being dynamic is that it governs the behavioral aspect of society at large. The effect can't be treated until we identify the cause.

Psychology aids law to find the thread, to be precise it is the spine of

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sociological school of jurisprudence. A Judge requires correct images and pictures of the human perceptions and preferences to make his judgment and therefore it is conclusive enough that he must be well versed with the subject. This research paper will mainly emphasize on the intimate connection between psychology and law and will essentially highlight its linkage with special reference to major schools of jurisprudence.

KEYWORDS: *Psychology, Criminology, Jurisprudence, Philosophy, Sovereign.*

1. THE NATURALIST APPROACH

“The natural law being co-existent with mankind and emanating from God Himself is superior to all other laws. It is binding over all the globe in all countries and at all times and no man-made law will be valid if it is contrary to the law of nature”.¹⁴⁴

The world witnessed its rudimentary stage of revolution because of the natural law philosophy as it propagated and generated the wave of liberalism and individualistic freedom. Cicero was a believer in the universal applicability of natural law, the only reason he gave was that natural law is based upon the general morality of human society.¹⁴⁵ The philosophers of the school always were of the opinion that there is a definite link between expository and censorial jurisprudence.¹⁴⁶

1.1. MEANING

Natural law theory has a very flexible interpretation because of its rich evolutionary history. The inherent rights of men and the development of basic philosophy of law owes its origin to it. There is a presumption that the man-made law lacks acceptance and has an expiration period but the natural law is

¹⁴⁴ WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 39 (Oxford University Press, 2016).

¹⁴⁵ DR. U. CHANDRA & KUMAR MITAKSHAR, HUMAN RIGHTS 2 (2014).

¹⁴⁶ HALL JEROME, FOUNDATIONS OF JURISPRUDENCE (Indianapolis Bobbs-Merrill, 1973).

believed to be the voice of God and it highlights the moral character of law. It prevents society from taking a dystopian shape. The control of the state becomes totalitarian in nature if the natural rights are violated.

The concept of “Equality before Law” was first given by Edward Coke.¹⁴⁷ The right to equal treatment is an inherent right and is fundamental for basic survival and it is essentially based on natural law philosophy. ‘Due process’ of law which was established in America has its genesis from natural law. Natural law is believed to be immutable and eternal. It is not codified in nature; it is universal and centrally designed within the ambit of morality as the prime factor.

1.2. Stages of Evolution of Natural law and the Psychology Involved

It is believed that the behavioral aspect of a man becomes a void factor when we talk about natural law. The voice of the god isn’t dynamic, it is static in nature. The divine law is immutable and because of its non flexible nature at a macroscopic level, it

¹⁴⁷ CAMBRIDGE UNIVERSITY PRESS, <https://www.cambridgeblog.org/2015/01/sir-edward-coke/> (last visited Apr. 4, 2023).

lacks acceptance.

The development of natural law can be classified into certain periods on the basis of its purpose and usage. The stages are Ancient, Medieval, Renaissance, and Modern. In the ancient period Socrates was a prominent face from the stoic philosophers.¹⁴⁸ He derived 'virtue' as the concept of good and was of the opinion that one should analyze the positive law through the Socratic Method.¹⁴⁹

It was very ironic, because Socrates was put on trial and executed for corrupting the young and believing in strange gods by the state.¹⁵⁰ Plato's theory on the other hand was a much refined one and there was a clear linkage of psychology.¹⁵¹ He believed that forms of goodness, virtue are eternal and can be explored by human beings because there is a sense of justice. The concept was famously referred to as 'Idealism'.¹⁵² Aristotle who was the student of Plato

¹⁴⁸ DR. N.V. PARANJPE, *STUDIES IN JURISPRUDENCE AND LEGAL THEORY* 152 (9th ed. 2019).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Angelie Aliman & Edna B. Nabua, *Idealism and its Implications to Education*, RESEARCH GATE (Jan 26, 2020), https://www.researchgate.net/publication/338829212_IDEALISM_AND_ITS_IMPLICATION_TO_EDUCATION.

¹⁵² *Id.*

advocated the fact that the existence of the ‘forms’ does not have any independent existence.¹⁵³ He was against the concept of universality of forms rather he said every form is attributed from any other form.

Zeno and Cicero were one of the most prominent political thinkers of Rome. Zeno was an admirer of Socrates. He developed the idea of ‘Stoicism’.¹⁵⁴The entire legal system of Rome was based upon stoicism which clears out the picture that there was a significant role of natural law theory in the development of the roman legal system. The roots of international jurisprudence developed in Rome in the form of ‘Jus Gentium’.¹⁵⁵ Zeno’s contribution to the society and his psychological understanding of the society was highly rated.¹⁵⁶ He propounded this theory about 2000 years ago, he had the vision to see society at an international level. The medieval period was the period of interpretation of logical theology. The shift from orthodox pattern to logical and systematic approach was the highlight of that

¹⁵³ *Id.*

¹⁵⁴ WORLD HISTORY ENCYCLOPEDIA, https://www.worldhistory.org/Zeno_of_Citium/ (last visited Apr. 4, 2023).

¹⁵⁵ M. CRANSTON, HUMAN RIGHTS TODAY 9 (1962).

¹⁵⁶ WORLD HISTORY ENCYCLOPEDIA, *supra* note 12.

particular period.

The most famous theologian of that time “Saint Thomas Aquinas” expressed that there are four stages in law.¹⁵⁷

The stages are as follows:¹⁵⁸

- Law of God
- Natural Law
- Divine law
- Human law

According to him the church has the sole authority to interpret the scriptures and therefore his approach towards the study of natural law is empirical in nature.¹⁵⁹ Like other natural law thinkers he also opined that the validity of positive law should be in conformity and within the ambits of natural or external law.¹⁶⁰

1.3. Renaissance Period and the Social Contract Theory

This period is referred to as the modern classical

¹⁵⁷ DR. N. V. PARANJAPE, STUDIES IN JURISPRUDENCE AND LEGAL THEORY 152 (9th ed. 2019).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ WOLFGANG FRIEDMANN, LEGAL THEORY 108 (5th ed. 1967).

era.¹⁶¹ Thomas Hobbes, John Locke and Jean Jacques Rousseau all gave the social contract theory.¹⁶² The theory describes the ‘state of nature’ as a situation where people have no rights and duties on anyone and they come together to form a social contract which leads to the enforceability of those rights and duties.¹⁶³

The various interpretations of this theory can be explained by understanding the psychological mindset of the above-mentioned philosophers:

1.3.1. Thomas Hobbes (1588- 1679)

Hobbes’s theory had an intimate relationship with the evolution of State. According to him man was living with a sense of constant fear prior to ‘social contract’.¹⁶⁴ Hobbes wrote a book named ‘leviathan’ where he mentioned that the law is completely based upon supreme political authority and punishments.¹⁶⁵

¹⁶¹ MALCOLM N. SHAW, INTERNATIONAL LAW 21 (8th ed. 2018).

¹⁶² DR. N. V. PARANJAPE, *supra* note 15.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ J.C. JOHARI, POLITICAL THOUGHT (MODERN, RECENT AND CONTEMPORARY) 469 (7th ed. 2012).

The absolute power giving tendency to the state of his theory was indeed his biggest criticism but he was the torchbearer of the path from natural law to positive law. He portrayed humans as inferiors and thus they need a sovereign for their security.

1.3.2. The Dark Side of the Conception of State

The emergence of the State is indeed a mystery. The normal tendency of a man is to live or coexist with others and therefore it leads to the evolution of ‘society’. Common authority plays the ultimate role to protect the interests.¹⁶⁶

We often witness that the ‘State’ misuses its position to fulfill its own needs. Society becomes dystopian in nature and it is because of the urge of the state to have a totalitarian control over people.¹⁶⁷

¹⁶⁶ Siddharth Gupta, *Concept of State and Sovereignty*, LEGAL SERVICES INDIA (<https://www.legalserviceindia.com/legal/article-5690-concept-of-state-and-sovereignty.htm>), (Aug. 4, 2022, 17:03 PM).

¹⁶⁷ J.C. JOHARI, *POLITICAL THOUGHT (MODERN, RECENT AND CONTEMPORARY)* 469 (7th ed. 2012).

Absolute power of the state invites horrific autocracy. The idea of Duguit about the formation of the state can't be ignored.¹⁶⁸¹⁶⁹ The science behind the formation of the state gives a clear picture about the intention and rigidity of the sovereign and its sanctions.¹⁷⁰ Leon Duguit defined the relationship between State and sovereignty. His conception was very different but relevant. According to him, "The imposition of will and power of the stronger on the weaker in a determined territory is termed as Sovereignty".¹⁷¹

1.3.3. John Locke (1632-1704)

Locke was against absolute power of the State.¹⁷² Locke was a supporter of limited constitutional monarchy. According to him, it is the duty of the state to protect

¹⁶⁸ DR. N. V. PARANJPE, STUDIES IN JURISPRUDENCE AND LEGAL HISTORY 184 (9th ed. 2019).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

the inherent rights which are given to us by nature itself.¹⁷³ His theory was very important in the philosophical context because he recognized the ‘Right to Property’ for the first time. It is believed that the conception of ownership and possession got its initial boost from his theory.

1.3.4. Jean Jacques Rousseau

Modern democracy is the progeny of history and jurisprudence. The shift from dictatorship to constitutional monarch and at last to absolute democracy can be properly analyzed when one studies history with the psychological change and philosophical impact of law. Rousseau gave the theory of general will which discusses a form of government which protects the societal interest over individual interests.¹⁷⁴

The three theories are completely based

¹⁷³ *Id.*

¹⁷⁴ J.C. JOHARI, POLITICAL THOUGHT (MODERN, RECENT AND CONTEMPORARY) 469 (7th ed. 2012).

upon the extent of the power of State. The renaissance period was indirectly sowing the seeds of the change for future generations. It can also be called the transitional period from natural law to positive law.¹⁷⁵ A Priori knowledge theory is vague and uncertain and the 19th century philosophers were rejecting the validity of natural law in the practical legal scenario.¹⁷⁶ It is nearly impossible to find a perfect system of justice without any experience. Law is diverse, dynamic and can be interpreted by humans only.

2. THE HART FULLER DEBATE

“The centre of law and morality can be the same but the circumference can’t be the same”.¹⁷⁷ Law is obligatory in nature while morality is recommended. The natural law school’s political

¹⁷⁵ Anvita Bhardwaj, *Natural-Positive Law Divide: Need for Natural Law over Positive Law*, iBLOGPLEADER (May 3, 2021) <https://blog.ipleaders.in/natural-positive-law-divide-need-natural-law-positive-law/>.

¹⁷⁶ CAMBRIDGE UNIVERSITY PRESS,

<https://www.cambridge.org/core/books/abs/an-introduction-to-the-theory-of-knowledge/priori/191A614ACBDE2D51F3CDDAA50A72F3E0> (last visited Apr. 4, 2023).

¹⁷⁷ J.C. JOHARI, *POLITICAL THOUGHT (MODERN, RECENT AND CONTEMPORARY)* 469 (7th ed. 2012).

thinkers believed in the supremacy of morality. Law should always have a moral character. The rise of the English school of Jurisprudence turned out to be the ultimate reason for the segregation of law and morality. According to Austin, Law is a command of a sovereign which is backed by sanction.¹⁷⁸ The father of the positive school of jurisprudence believed that law should be studied in its present form and it shouldn't be influenced by any other thing. He never said that there is nothing called morality, his contention was law and morality are separate branches and can't be intermixed. He differentiated between 'positive law' and 'positive morality'. Motive and Intention can't absolve an individual from his or her legal liability. The prime essential of morality is 'Good intention'.

If we point out the recent developments of the legal system, the principle of strict and absolute liability is a huge example to understand that a good intention and due care isn't enough to save one from legal liability.

2.1. Hart

The basic moral standard is not a prerequisite for a legal system according to professor Hart.¹⁷⁹ Conformity with morality is not fundamental. Hart's approach was little different from other positivists

¹⁷⁸ DR. N. V. PARANJAPE, *supra* note 26.

¹⁷⁹ *Id.*

because he believed that morality played an important role and acknowledged that morality and law are bound to intersect at a certain point. The interpretation according to him should picturize the veracity of what it expresses rather than what it wishes to.¹⁸⁰

Hart wanted the use of simple words while forming any statute. He was the insertion of complexity and ambiguity in law.¹⁸¹ Penumbra was a problem which occurs because of the inadequacy of words which destroys the essence of law and can be resolved only through judicial interpretations.¹⁸²

2.2. Fuller

According to Fuller, there is a strong relationship between morality and the law, and the legitimacy of the law is derived from its adherence to morality.¹⁸³ A law must pass a moral functional test before it can be said to be a law in the proper sense of the word.¹⁸⁴ A rule or group of rules is not considered to be law if it

¹⁸⁰ HLAHART, THE CONCEPT OF LAW, 190, 185-200 (2002).

¹⁸¹ Sonali Banerjee, *The Relevance of the Hart and Fuller Debate Relating to Law and Morality- A Critical Analysis*, 4 INT. J. LAW LEG. JURISPRUD. STUD 124, 122-132 (2017).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ HLA HART, *supra* note 37.

does not fulfill this function.¹⁸⁵

A principle must be evaluated in light of these eight standards, according to Fuller, in order for it to be recognized as legal doctrine.¹⁸⁶ The idea must be explained in a way that allows for broad application. Laws must always be transmitted to the individuals they are intended for, or they must be promulgated. Newly established legal principles should always be implemented prospectively.

If exogenous circumstances warrant it, retrospective implementation of the law should only be permitted in exceptional situations. The law needs to be clear, there should be no conflicting requirements in the law. Laws shouldn't impose impossibly high standards of behavior.

According to Fuller, adhering to previously established rules, or *stare decisis*, is preferable since it spares people from the changes they would otherwise experience in the event of frequent legal changes. A law must satisfy the criteria for what he refers to as "congruence," which is the compliance with the established standards and individual acts.

¹⁸⁵ *Id.*

¹⁸⁶ DR. N. V. PARANJAPE, *supra* note 26.

2.3. The Nazi Influence

Gustav Radbruch who was a Jew and a positivist changed his mind and became an affirm believer of the natural law theory because of the Nazi regime.¹⁸⁷ Fuller described ‘common sense’ as the basic code for the qualification of an accepted law.¹⁸⁸ The laws made by Adolf Hitler were fulfilling every basic element but it was missing the moral consideration. Fascism is also another evil version of a law without morality.¹⁸⁹

Hart on the other hand considered the Nazi regime as an exception to the rule and said morality isn’t definable and it can only increase the quotient of ambiguity in law.¹⁹⁰

Fuller argued that the definition of law is also subjected to interpretation so Hart’s rejection of moral consideration from law is fuzzy in nature.¹⁹¹

3. ANALYSIS

¹⁸⁷ Sonali Banerjee, *The Relevance of the Hart and Fuller Debate Relating to Law and Morality- A Critical Analysis*, 4 INT. J. LAW LEG. JURISPRUD. STUD 124, 122-132 (2017).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

Prof. Fuller's all contentions are legitimate, when he criticizes the strict positivist approach, citing the atrocities that were committed during Nazi regime. Hart himself accepted the fact that evolutionary history of law was based upon morality. The behavioral aspect of law makes it logical. All the procedural laws are evolved from a common genus which is 'inherent nature' the gift of God. Morality makes a law logical and sound. Therefore, morality is a key element in law but as Hart says morality isn't the law.

4. CONCLUSION

Modern democracy is the love child between history and jurisprudence. The main aim is always to understand the synthetic jurisprudence. The influence of jurisprudence especially in the psychological aspect of the whole society resulting in a net change in the political atmosphere is undeniable. The gradual shift from monarchy to constitutional monarch and at the end democracy is intimately related with the psychological change.

The advocating mindset of the oppressed dystopian society to enjoy inherent rights is the prime factor of the change. Modern society is liberal, jurisprudence has played a quintessential role without any iota of doubt. The Nazi influence is a prime example of Volkgeist ruining the collective psychology of the whole nation. Duguit's negative conception of state linked with Volkgeist shows the real picture in truest sense.

The law is a command, its history, it can be anything but at the end what we can't ignore is that it's the engine for society. It's an instrument to measure collective behavior and it has the power to influence the collective psychology. The study of various schools of jurisprudence and the examination of its impact opens up all the illusive patches and gives us the chain to understand social science as a whole.