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INDIAN INSTITUTE OF LEGAL STUDIES

Recognised under Section 2(f) & 12B of the UGC Act, 1956
UG & Post Graduate Advanced Research Studies in Law
Accredited by NAAC
Affiliated to the University of North Bengal
Approved by the University Grants Commission, New Delhi
Recognised by the Bar Council Of India, New Delhi

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VOLUME V ISSUE –II (April-June 2019)

IILS QUEST

A Quarterly Journal authored by IILS Students
Published in the IILS Website

VOLUME V **ISSUE – II (April-June 2019)**

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THE STUDENT JOURNAL (2019)

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MESSAGE
FROM THE CHAIRMAN’S DESK

The Indian Institute of Legal Studies is devoted to the all round development of its students and our quarterly journal “QUEST" happens to be the most exemplary manifestation of their persistent cognitive efforts. Over the years our students’ journal has presented pertinent issues which not only pertain to the legal sphere but also bear the stamp of succinct social awareness. It is heart-warming to witness the burgeoning evolution of our students, who are attaining new heights of finesse with each passing day. Their ever enthusiastic creative spirit is testament to the fact that “QUEST" indeed has been successful in its quest to recognize and nourish the powerhouse of talent that is our beloved students.

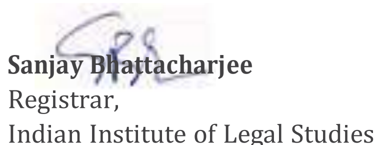
I would like to congratulate all the students who have actively taken upon themselves the responsibility to turn “QUEST" into something which everyone looks forward to. We, on our end, pledge to arrange and implement everything conducive to the wholesome enlightenment of our students.

Joyjit Choudhury
Founder Chairman
Indian Institute of Legal Studies

MESSAGE

FROM THE REGISTRAR'S DESK

I take immense pride to record my views in the ' IILS Quest', a students' journal which is authored, edited and published by students of the college. This initiative provides a platform for the students to present their multivocal talent for all to witness and recognize. IILS QUEST is an extension of our collective objective of devoting ourselves for everything 'of the students-by the students-for the students'. It not only aims at enhancing the writing skills of the students, but also awakens the shy embers of creative multiplicity and spirit of enterprise in them. This journal carries forward the contribution of the students thereby reflecting their ethos and aspirations. The articles, poems and photographs published here flaunt the poetic prowess, imagination, creativity, technical competence of our dear students teeming with talent. I congratulate my dear children and wish them all the success.



Sanjay Bhattacharjee
Registrar,
Indian Institute of Legal Studies

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ARTICLES

ADVERTISING OF FEEDING BOTTLES IN INDIA

By Faij Ahmed
Semester VI (3year) LL.B

"Breastfeeding was the best, is the best & will remain the best" as far as infant feeding is concerned. Breastfeeding has been a part of our culture since ancient times. But with modernization, breastfeeding practices have gradually declined. The effect of mass scale commercial propaganda by baby food companies had resulted in very disheartening and gloomy situation as far as infant health is concerned.[1]

In addition to the risks posed by not having breast milk's protective qualities, breast milk substitutes and feeding bottles (where it is often difficult to sterilize the nipple properly), in particular, carry a high risk of contamination that can lead to life-threatening infections in young infants. The feeding bottle is an important factor in theinfamous malnutrition- infection cycle, often reported to be a major cause of infant andchild mortality. Bottle feeds are one of the major causes of diarrhoea in infants. The riskof infection is high as microorganisms may stick on the neck and teat of the bottle and transmit to the infant with reuse of the bottle. Diarrhoea in HIV infected, malnourishedand underweight infants can prove life-threatening and is a reason why bottle feeds should be discouraged in such cases. Even if substitutes are given to adopted children and HIV kids, it should be through a cup or paladai.[2]

To achieve optimal growth, development and health, the World Health Organization (WHO) recommends that infants should be exclusively breastfed for the first six months of life. Thereafter, to meet their nutritional requirements, infants should receive adequate and safe complementary foods while breastfeeding continues up to two years of age and beyond. It is further recommended that a feeding bottle with a nipple should not be used at any age. World Health Organization (WHO) says "Artificial feeding is

[1] *http://www.indianpediatrics.net/aug2003/aug-743-746.htm*
[2] *http://www.thehindu.com/sci-tech/health/policy-and-issues/bottles-not-the-best-way-to-feed-your-baby/article3749684.ece*

an established risk factor for child health like causing more of diarrhoea, respiratory or newborn infections, allergies as well as obesity and adult health diseases like diabetes and heart disease."[3]

THE LAW IN INDIA

The question was who should take the initiative towards improving this situation, the parents, the health workers or the government and policy makers. In this background, the World Health Assembly (WHA) took the initiative by formulating the International code regarding infant feeding in the year 1981. The International code is mainly regulatory in nature. It regulates the promotion, sale & marketing of teats, bottles, milk substitutes and baby foods. The code enforces that companies should provide scientific, unbiased and factual information regarding infant feeding. It doesn't prescribe any punishment to the offenders but gives power to individual state government to frame their own specific rules to tackle the menace of artificial feeding. Based on the recommendations of WHA; Indian government enacted **"The infant milk substitutes, feeding bottles and infant foods (Regulation of promotion, supply and distribution) Act, 1992"** (IMS Act), that came in force since August 1, 1993.[4]

Feeding Bottles can't be advertised as it promotes an alternative to mother's milk which is considered to be the best nutrition for the child. Feeding bottles can be inextricably linked with the consumption of formula milk and thus it promotes a culture which goes against breast feeding that is considered to be crucial for the infant's health.

The 1992 Act, seeks to protect breastfeeding practices by controlling promotional activities by baby food manufacturers. Over the years, however, it was noticed that manufacturers of infant milk substitutes, formula foods and feeding bottles found loopholes in the Act, which they utilised to promote formula foods and undermine breast feeding.

Limitations of the Act

(i) The rules and regulations regarding infant food advertisements have many loopholes as compared to that for infant milk substitutes and feeding bottles. It seems that more emphasis was laid over in restricting the use of milk substitutes and feeding bottles rather than on the commercial, artificial baby food products.

(ii) There are no stringent rules to tackle the issue of sponsoring of scientific sessions, inducements and other gifts by infant food manufacturers.

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[3]*WHO. The International Code of Marketing of Breast-Milk Substitutes: frequently asked questions. World Health Organization. 2006, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2800907/*

[4]*http://ibfan.org/heinz-nestle-abbott-breaking-the-rules-misleading-mothers*

[5]*Supra(1).*

(iii) Though there are restrictions for infant food companies and health workers, the chemists have been exempted from many provisions of the Act. Thus the chemists continue to advertise and promote the baby food products through their shops.[5]

In 2003, amendments to the Act were placed in Parliament to set right the lacunae. The law came into force in January 2004.[6]

The Infant Milk Substitutes, Feeding Bottles and Infant Foods(Regulation of Production, Supply and Distribution) Amendment Act, 2003 seeks to curtail publicity for artificial feeding of newborns and infants, with a view to driving preference for breast milk.

Section 3 of the Act lays down that,

"No person shall advertise, or take part in the publication of any advertisement, for the distribution, sale, or supply of infant milk substitutes, feeding bottles, or infant foods....... (c) take part in the promotion of infant milk substitutes, feeding bottles or infant foods;" [7]

This act states that no person should advertise, promote or mislead people to believe that infant food, feeding bottles and infant milk substitutes are an acceptable replacement of mother's milk. No person can distribute or supply infant food, feeding bottles and infant milk substitutes, or contact any expecting mother or mother of an infant, or offer inducement in an attempt to sell or promote infant food, feeding bottles and infant milk substitutes. Section five states, no person shall donate or distribute infant food, feeding bottles and infant milk substitutes or any material regarding the same, except the health system.

Section 4 says that,

4. No person shall

(a) supply or distribute samples of infant milk substitutes or feeding bottles or infant foods gifts of utensils or other articles; or

(b) contact any pregnant woman or the mother of an infant; or

(c) offer inducement of any other kind, for the purpose of promoting the use or sale of infant milk substitutes or feeding bottles or infant foods.[8]

The law requires that any manufacturer, supplier or distributer of infant food and infant milk substitutes needs to put warning labels on the project ensuring that the customer

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[6] *http://www.childlineindia.org.in/Infant-Milk-Substitutes-Feeding-Bottles-and-Infant-Foods.htm*

[7] *Section 3, The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2003.*

[8] *Section 4,Ibid.*

understands that mother's milk is the best food for an infant, and that these products should only be used under the advice of a healthcare worker. The product should also give clear instructions for use, nutritional information, ingredients and manufacture and expiry information, etc. Infant food and infant milk substitute products are not permitted to have photos of babies or mothers, images or designs that increase saleability, and use words like maternalised or humanised, etc.[9]

Informational or educational material that is used to promote milk substitutes or infant food, should have labels professing the superiority of breast feeding, the harmful effects of bottle feeding, the difficulty in switching back from bottle feeding, the social and financial implications of using milk substitutes or infant food, the health risks to using milk substitutes or infant food and proper publication information.[10] No person can promote the use of infant milk substitutes, feeding bottles or infant food through any facility in the health care system such as posters, placards, There are a few institutions that are exempted from the distribution of these products such as an orphanage, Health care workers, organisations engaged in care for mothers who cannot breast feed, etc.[11] There is a provision in the act to ward off bribing of health care workers to promote the use of infant milk substitutes, feeding bottles or infant food by banning any payment in cash or kind to any health worker or organisation.[12] Employees of producers, suppliers or distributers are not allowed to receive any bonuses on the bases of sales and are not allowed to contact expecting mothers or mothers of infants.[13]

All products being sold or distributed have to meet the standards of the Prevention of Food Adulteration Act, 1954, or the Bureau of Indian Standards or in the absence of a standard then that specified by the central government. Feeding bottles have to conform to the Standard Mark specified by the Bureau of Indian Standards and such mark must be affixed to it.[14] Offers appointed under the Prevention of Food Adulteration Act, 1954 can search any premise if they suspect that the provisions of this act arebeing violated. They may also seize any substance they suspect of being in contradiction to this law.[15]

Under this act, companies can also be charged for an offence, by charging all those who were aware of the violation and are in a position of responsibility.[16] Offences under this act are bailable and cognizable.[17] Lastly the act provides that no case can be levied against a government or government worker for acting in good faith to uphold the provisions of the act.[18]

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[9] *Section 6, Ibid.*
[10] *Section 7,Ibid.*
[11] *Section 8, Ibid.*
[12] *Section 9, Ibid.*
[13] *Section 10, Ibid.*
[14] *Section 11,Ibid.*
[15] *Section12,Ibid.*
[16] *Section 22,Ibid.*
[17] *Section 23,Ibid.*
[18] *Section 24,Ibid.*

In September 2000, The Cable, Television Networks (regulation) Act 1995 was amended. According to Section 6 & 7 of this Act *"no advertisement shall be permitted which is not in conformity with prescribed advertising code and which promotes directly or indirectly production, sale or consumption of infant milk substitute, feeding bottles or infant foods", through a cable service."* Section 16 of the Act provides the following punishment for contravening the provisions of this act

(a) for the first offence, imprisonment up to 2 years or a fine of Rs. 1000/- or both, and

(b) for every subsequent offence, imprisonment up-to five years or a fine of Rs. 5000/-

It is very clear that the Indian laws give no scope for any advertisement of feeding bottles. Even after the laws, several bottle manufacturers such as Pigeon, Farlin, Winnie-the-Pooh, Morrison, Baby Dreams and MeeMee Feeding Bottles have been selling bottles and cereal foods on discount on e-marketing websites and it is a clear violation of the IMS Act. But, the promotion of baby feeding products can still be seen. Such promotions particularly through web and at hospital settings affect the choice of young parents and influence them to adopt artificial feeding which is harmful for babies. In a country like India where clean drinking water is not available, a bottle fed baby is more likely to die of diarrhoea and acute respiratory infections than breastfeed babies.[19]

Several studies provide interesting insights into the socio-cultural aspects of breast-feeding. It is evident that there is a strong tradition of breastfeeding in India, especially in the rural areas. But owing to the rural-urban migration of the poor, the increased interaction of this group with the concomitants of modernization including mass media communication networks, access to job opportunities, commercial products and their availability, has set into process a consumerist behaviour based on imitation rather than need or rational decision-making.[20] So this very well justifies a dire need to prohibit such advertisements which is a threat to infant health.

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[19] *http://ibfan.org/heinz-nestle-abbott-breaking-the-rules-misleading-mothers*

[20] *Hans G. Campaign for promotion of breastfeeding: evolution, experience and future directions. Indian J Social Work. 1998;59:581–98, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2800907/#CIT2*

JUVENILE IN CONFLICT WITH LAW

By Prodipta Ghosh
Semester VI (3year) LL.B

"IT HAS ALWAYS BEEN A MYSTERY TO ME HOW MEN CAN FEEL THEMSELVES HONOURED BY HUMILIATION OF THEIR FELLOW BEINGS."

THERE IS A HIGHER COURT THAN THE COURT OF JUSTICE AND THAT IS THE COURT OF CONSCIOUSNESS. IT SUPERCEDES ALL OTHER COURTS."

-Mahatma Gandhi

Human rights are moral principles or norms that describe certain standards of human behavior, and are regularly protected as legal rights in municipal and internationallaw. They are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being, and which are inherent is all human beings, Regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone. They are regarded as requiring empathy and the rule of law and imposing an obligation on persons to respect the human rights of others, and it is generally considered that they should not be taken away except as a result of due process based on specific circumstances; for example, human rights may include freedom from unlawful imprisonment, torture and execution.

"All human beings are born free and equal in dignity and rights"

-Article 1 of the UDHR

Human rights are almost a form of religion in today's world. They are the great ethical yardstick that is used to measure a government's treatment of its people. A broad consensus has emerged in the twentieth century on rhetoric that frames judgment of nations against an international moral code prescribing certain benefits and treatment for all humans simply because they are human.

Children around the world who are arrested and detained for alleged wrongdoing are often not given the protection they are entitled to under the Convention on the Rights of the Child. In many countries, children are charged and sentenced for acts that should not be crimes—such as truancy or misbehavior at home. Some states set a minimum age of criminal responsibility lower than the internationally acceptable age of 12. Somestates also treat certain children, especially older adolescents or children who are

accused of particularly serious crimes, as if they were adults during their trial and sentencing. Sentences of death, life without parole, and corporal punishment are still handed down in some countries, in violation of international law. The international prohibition on detaining children with adults is also often violated.

The term ‘children in conflict with the law’ refers to anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence. Most children in conflict with the law have committed petty crimes or such minor offences as vagrancy, truancy, begging or alcohol use. In the area of juvenile justice, the aim is to reduce incarceration while protecting children from violence, abuse and exploitation. It promotes rehabilitation that involves families and communities as a safer, more appropriate and effective approach than punitive measures. Justice systems designed for adults often lack the capacity to adequately address these issues and are more likely to harm than improve a child’s chances for reintegration into society. The rights of the child are defined in the 1989 UN Convention on the Rights of the Child (UNCRC) as the first international agreement dealing with comprehensive protection of children’s rights. The Convention is an instruction on how children are to be treated and protected while a special international body of the UN, the Committee for the Rights of the Child, oversees the implementation of the Convention in the countries that have ratified it. The UN Convention on the Rights of the Child is an integral part of the internal legal system of this country and has supremacy over its national legislation, together with other ratified international instruments. According to Article 37 of the Convention on the Rights of the Child, the State Party shall guarantee that no child can be subject to torture or other cruel, inhuman or degrading treatment, or unlawful detention, as well as that capital punishment or life imprisonment without possibility of release shall not be imposed for offences committed by children under the age of 18. This prohibition also applies to hard or humiliating educational measures or punishments in any other institution. This applies to disciplinary measures too. In addition to the prohibition of physical punishment, such measures include: placement in a cell without light; custody in a small room or cell, reduction of diet, limitation or denial of contacts with family members, collective-punishment as well as all other forms of punishment that can threaten physical or mental health of a Child. Juveniles have the right to be represented by a defence counsel throughout the procedure whereas juveniles who are not in a position to form their own views should be ensured a right to freely express such views in any court, administrative or other procedure relevant to him, either directly or through his representative. The juvenile himself, his legal representative or relatives, may select a defence counsel; juvenile must have a defence counsel right from the beginning of the preliminary procedure, so if he fails to retain one, he will be appointed a public defence counsel by the juvenile judge; a juvenile may on no condition waive his right to a counsel and his presence. The juvenile’s personal records shall be kept strictly confidential and access

to them shall be limited only to duly authorized persons. Data from such records may not be used in any subsequent proceedings instituted against such offender once he reaches the legal age of maturity.

WHO COMES UNDER JUVENILE?

Juveniles are generally defined as persons under the age of 18 and above the age of 10. An individual's age is usually established by testimony or a birth certificate. Each state and the federal government have unique laws defining the beginning and end age of juveniles. A juvenile who is alleged to have committed an offense may have their case heard in juvenile court. This is a type of civil court. It has different rules than adult criminal court. Juvenile court (or "juvenile delinquency court") provides defendants with fewer rights than they would receive in an adult criminal court. In many states, juveniles do not have the right to a jury trial. Typically, juveniles have the right to an attorney and an appeal.

The term minor is also used to characterize young people. It is usually used to categorize persons who are not allowed to engage in an activity. A minor can be a person under the age of 21 in cases that relate to the consumption of alcohol.

States treat juveniles and minors in different manners. In some states, juveniles accused of traffic offenses have their case heard in regular traffic court. Depending on the juvenile's age, a prosecutor may be able to motion to have the case of an older juvenile moved to adult criminal court. Children under the age of 10 who are alleged to have committed an offense are usually referred to a state-run or state-administered social services program.

JUVENILE DELINQUENCY

Juvenile delinquency, also known as "juvenile offending", is participation in illegal behavior by minors (juveniles, i.e. individuals younger than the statutory age of majority). Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers, and courts. A juvenile delinquent in the United States is a person who is typically below 18 (17 in New York, Missouri, North Carolina, New Hampshire, and Texas) years of age and commits an act that otherwise would have been charged as a crime if they were an adult. Depending on the type and severity of the offense committed, it is possible for people under 18 to be charged and treated as adults.[1]

However, juvenile offending can be considered to be normative adolescent behavior. This is because most teens tend to offend by committing non-violent crimes, only once

[1] *https://en.wikipedia.org/wiki/Juvenile_delinquency*

or a few times, and only during adolescence. Repeated and/or violent offending is likely to lead to later and more violent offenses. When this happens, the offender often displayed antisocial behavior even before reaching adolescence.

HUMAN RIGHT AND JUVENILE JUSTICE

All individuals are entitled to certain basic rights in every part of the world, irrespective of the circumstances. The rights are of different types like political and civil liberty rights. The violation of Human rights include child trafficking, dowry, sexual harassment, early marriage, child labor, polygamy, genocide, slavery, medical experimentation, war crimes and rape are common and the most fundamental right availableto a human being is of right to life and physical safety. Human rights are the expressionof the need for human dignity, fairness, acceptance, tolerance and mutual respect. Theidea of human rights coveys the scope of justice and morality. The Most common andrecognized rights are the right to life, equality, human dignity, freedom and security ofthe person, freedom from slavery servitude and forced labour, privacy, freedom of religion, belief and opinion, freedom of expression, freedom of association, political rights, citizenship, freedom of movement and residence, labour relations, housing, health care, food water and social security, education, access to information, languageand culture. In this article the human rights related to juveniles will be discussed when he is in detention.

DEFINITIONS PERTAINING TO JUVENILE IN CONFLICT WITH LAW

- "BOARD" is Juvenile Justice Board constituted under section 4 of JJ act 2015 for a period of three years in every district with three members, headed by principal magistrate (metropolitan magistrate or a judicial magistrate of first class) and two social workers, of whom at least one shall be a woman, It is the competent authorityto deal with all matters concerning children in conflict with law and their rehabilitation whenever needed.
- BEST INTEREST OF CHILD" is the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.

  "CHILD" means a person who has not completed eighteen years of age.
- "CHILD FRIENDLY" means any behavior, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of child.
- "CHILD WELFARE POLICE OFFICER" is an officer designated in every police station, not below the rank of assistant sub-inspector to exclusively deal with childreneither as victims or perpetrators in coordination with police voluntary and non-governmental organizations.

- “CHILD IN CONFLICT WITH LAW” means a Child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offences.
- “CHILDREN’S COURT” means a court established under the Commission for Protection of Child Rights Act 2005 or a Special Court under the Protection of Children from Sexual offences Act 2012, wherever existing and where such courts have not been designated, the court of sessions having jurisdiction to try offences under this Act.
- “DISTRICT CHILD PROTECTION UNIT” is responsible for the implementation of Juvenile Justice Act 2015 and other child protection measures in a district.
- “JUVENILE” means a child below the age of eighteen years.
- “OBSERVATION HOME” means established and maintained in every district by the State Government, either by itself or through voluntary or nongovernmental organisation.
- “PLACE OF SAFETY” means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children’s Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order;
- “PROBATION OFFICER” means an officer appointed by the State Government as a probation officer under the probation of offenders Act 1958 or the legal-cum-Probation officer appointed by the state Government under District Child Protection Unit.
- “SPECIAL JUVENILE POLICE UNIT” in a district deals with deal with children either as victims or perpetrators and has designated Child welfare Police officers in every police station.
- “SPECIAL HOME” means an institution established by a State Government or by a voluntary or non-governmental organisation, registered under section 48, for housing and providing rehabilitative services to children in conflict with law, who are found, through inquiry, to have committed an offence and are sent to such institution by an order of the Board;
- “STATE CHILD PROTECTION SOCIETY” in a state is responsible for the implementation of Juvenile Justice Act 2015, including the establishment and maintenance of institutions under this Act, notification of competent authorities in relation to the children etc.

WHAT IS THE NEED OF JUVINILE JUSTICE BOARD?

The JJB consists of a metropolitan magistrate or a judicial magistrate of the first class and two social workers, at least one of whom should be a woman. All three people form a bench that is to function as a unit. Though they have different roles they are required to coordinate for the best interest of the child. When a child has been found guilty of a crime the social workers are vital to deciding the best course of action for the rehabilitation of that child. JJB are meant to resolve cases within a four month period. Backlog of cases can be addressed with an increased number of sittings as was the case in the Mumbai JJB.

A child is usually brought before the JJB be a police officer or person from the Special Juvenile Police Unit (SJPU) (previously called JAPU). Any organization or person who brings a child before the court should inform their local police units first. The police have 24 hours to produce a child before the court once he is arrested. The person or police officer who brings the child before the JJB is required to complete a report of the arrest/detainment. Once the child has been brought before the JJB he/she is registered into the closest Observation Home. Most circumstances the juvenile can be released on bail by the JJB. If the police wish to interrogate the child or conduct a test identification parade the JJB has to give an order allowing so and it can only be conducted in the presence of the superintendent of the home. The home probation officer (P.O.) in charge will also submit a report on the child.

With the police report and P.O. report the JJB calls for the child's plea. If the child pleadsguilty the JJB will pass appropriate orders for the child. To prevent coercion, the JJB can dismiss the child's guilty plea if it feels it was forced. If the juvenile pleads not guilty the JJB must further investigate by calling witnessing and accusers to testify before the court. The juvenile is given then opportunity to address the evidence brought before thecourt and also bring witnesses to the court. According to the evidence the JJB will then pass an order disposing of the case as it sees fit. The JJB is a child-friendly space that should not be intimidating or overwhelming for the child. Juvenile Justice Board (JJB)

PROCEDURE IN JUVENILE JUSTICE BOARD

The procedure and organization of the juvenile court system is different from the adult system. After committing an offense, juveniles are detained rather than arrested. Next, a petition is drawn up which outlines the jurisdiction authority of the juvenile court over the offense and detained individuals, gives notice for the reason for the court appearance, serves as notice to the minor's family, and also is the official charging document.

Once in court, the juvenile case is adjudicated, and a disposition is handed down. Records from juvenile courts are sealed documents, unlike adult records which are

accessible by anyone under the Freedom of Information Act. Like diversion, this measure is designed to protect the juvenile so that one mistake does not follow the juvenile for life. Juvenile records may also be expunged upon the juvenile's eighteenth birthday provided the juvenile has met certain conditions, such as good behavior. Juvenile court procedure is also far less formal than adult court procedure.

The court's ability to interfere in both criminal and other matters relating to juveniles is the product of a very old legal concept called parenspatriae, a concept that regards the government as the legal protector of citizens unable to protect themselves. Even today, the disposition of a juvenile case is based on the least detrimental alternative, so the legacy of parenspatriae is still evident. However, one major controversy in juvenile dispositions is the use of indeterminate sentencing, which allows a judge to set a maximum sentence.

In such cases, juveniles are monitored during their sentences and are released only when the judge is satisfied that they have been rehabilitated or when the maximum time has been served. Critics argue that this arrangement allows the judge too much discretion and is, therefore, not the least detrimental punishment.

KINDS OF JUVENILE CASES

There are three basic kinds of juvenile cases:

- **Juvenile Delinquency Cases** - These are cases involving minors whose actions, if they were adults, would be considered crimes and would result in a case in criminal court. Juvenile punishment, and the procedures used in juvenile delinquency courtrooms, differs significantly from adult criminal courts. The focus in juvenile proceedings is generally focused on rehabilitation and avoiding long-term negative repercussions.
- **Juvenile Dependency Cases** - These cases involve minors that have been abused, neglected, or abandoned by their parents or guardians. Cases of this sort focus on protecting the child's safety. They have some similarity to family court cases.
- **Status Offense Cases** - These cases involve status offenses that apply specifically to juveniles. This may include underage drinking or driving, curfew violations, runaways, and truancy from school.[2]

Children are vulnerable because they depend upon adults for the realization of their rights and it is essential that we do whatever we can to ensure their protection. While holding a charge which directly impacts their welfare this solemn responsibility has been a priority for us. “BOARD” is Juvenile Justice Board constituted under section 4

[2] *http://criminal.findlaw.com/juvenile-justice/juvenile-court-procedure.html*

of JJ act 2015 for a period of three years in every district with three members, headed by principal magistrate (metropolitan magistrate or a judicial magistrate of first class) and two social workers, of whom at least one shall be a woman, It is the competent authority to deal with all matters concerning children in conflict with law and their rehabilitation whenever needed.

BEST INTEREST OF CHILD" is the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development. "CHILD" means a person who has not completed eighteen years of age. "CHILD FRIENDLY" means any behavior, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of child.

During my field work I had interacted with some children who are under juvenile custody, and I saw that many boys over there were apprehended from the railway station or foot path, and their crime was theft. But in my opinion the only reason behind them committing offence was poverty. Many of the families in West Bengal or all over India suffer from poverty, and they are not able to maintain their family; the pangs of hunger lead the children to involve themselves in crime. During my conversation to the child over there,I personally felt that many of the children were not mentally stable; I might be wrong in my assumption but the behaviour of those children was not proper or anything like other children. Though I know they are to be considered exceptional and that is why they are in the custody, but another thing is they seemed very innocent and many of the children said that they wanted to go home; many said their parents did not look after them and were not able to provide food and clothing.

JUDICIAL REVIEW IS A POWERFUL WEAPON

By Ranjan Kumar Ray
Semester VIII (5 Year) B.A. L.L.B

INTRODUCTION:

Supremacy of law is essence of Judicial Review. It is power of the court to review the actions of legislative and executive and also review the actions of judiciary, it's the power to scrutinize the validity of law or any action whether it is valid or not. It is a concept of Rule of Law. Judicial Review is the check and balance mechanism to maintain the separation of powers. Separation of power has rooted the scope of Judicial Review. It is the great weapon in the hands of the court to hold unconstitutional and unenforceable any law and order which is inconsistent or in conflict with the basic law of the land.

The two principal basis of judicial review are "Theory of Limited Government" and "Supremacy of constitution with the requirement that ordinary law must confirm to the Constitutional law."Judicial Review is a mechanism and therefore the Concept of Judicial Activism is a part of this mechanism. So far as the, Indian constitution has created an independent judiciary which is vested with the power of judicial review to determine the legality of any validity of law and any executive action. Supreme Court of India formulated various doctrines on the basis of Judicial Review like "Doctrine of Severability, Doctrine of Eclipse, Doctrine of Prospective Overruling" etc. In India Judicial Review based on three important dimensions, these are" Judicial Review of Constitutional Amendments", Judicial Review of Legislative Actions, "Judicial Review of Administrative Actions". To determine the unconstitutionality of legislative Acts is the fundamental objects of judicial review. It adjusts constitution to the new condition and needs of the time. To uphold the supremacy of constitutional law and to protect the fundamental rights of the citizens and also to maintain federal equilibrium between Centre and the States are the main concerns of objectives of judicial review in

India. Legislative and administrative powers between Centre and the State of constitution are also the main concerns of judicial review.

It is the duty of the judiciary the constitution to keep different organs of the state within the limits power conferred upon them by the constitution. The legitimacy of judicial review is based in the Rule of Law, and the need for public bodies to act according to law. Judicial review is a means to hold those who exercise public power accountable for the manner of its exercise, especially when decisions lie outside the effective control of the political process. Judicial Review is a great weapon through which arbitrary, unjust harassing and unconstitutional laws are checked.

JUDICIAL REVIEW IN INDIA

"Supremacy of the law is the spirit of the Indian Constitution. In India, the "DOCTRINE OF JUDICIAL REVIEW" is the basic feature of the Constitution. It is the concept of Rule of Law and it is the touchstone of Constitution India. Though there is no express provision for judicial review in Indian Constitution but it is an integral part of our constitutional system, and without it there will be no Government of laws and Rule of law would become a mockery delusion and a promise of futility. In India, Judicial Review is a power of court to set up an effective system of check and balance between legislature and executive .Various provisions in Indian constitution explicitlyprovides for the power of judicial review to the courts such as

Articles 13, 32, 131-136, 141, 143, 226, 227, 245, 246, 372.

The most prominent object of judicial review to ensure that the authority does not abuse its power and the individual receives just and fair treatment. The ostensible purpose of judicial review is to vindicate some alleged right of one parties to litigation and thus grant relief to the aggrieved party by declaring an enactment void, if in law it is void, in the judgment of the court. But the real purpose is something higher i.e., no statute which is repugnant to the Constitution should be enforced by courts of law.[1]

Origin

The doctrine of Judicial Review of United States of America is really the pioneer of Judicial Review in other Constitutions of the world which evolved after the 18th century and in India also it has been a matter of great inspiration In India the concept of Judicial Review is founded on the Rule of Law which is the swollen with pride heritage of the ancient Indian culture and society. Only in the methods of working of Judicial Review and in its form of application there have been characteristic changes, but the basic philosophy upon which the doctrine of Judicial Review hinges is the

[1] *Justice CK Thakkar , Justice ArijitPasayat, Dr. CD Jha Judicial Review of Legislative Acts(2nd, Lexis NexisButterworthsWadhwa, Nagpur 2009) 116*

same. In India, since Government of India Act, 1858 and Indian Council Act, 1861 imposed some restrictions on the powers of Governor General in Council in evading laws, but there was no provision of judicial review. The Court had only power to implicate. But in 1877 **Emperor vs. Burah**[1] was the first case which interpreted and originated the concept of judicial review in India. In this case Court held that aggrievedparty had right to challenge the constitutionality of a legislative Act enacted by the Governor General council in excess of the power given to him by the Imperial Parliament. In this case the High court and Privy Council adopted the view that Indian courts had power of judicial review with some limitations. Again in, **Secretary of State vs. Moment**[2] Lord Haldane observed that "the Government of India cannot by legislation take away the right of the Indian subject conferred by the Parliament Act i.e. Government of India Act of 1858". Then, in **Annie Besant vs. Government of Madras**[3], Madras High Court observed on the basis of Privy Council decision that there was a fundamental difference between the legislative powers of the Imperial Parliament and the authority of the subordinate Indian Legislature, and any enactment of the Indian Legislature in excess of the delegated powers or in violation of the limitation imposed by the imperial Parliament will be null and void.[4] Though there is nospecific provision of the Judicial Review in Government of India Act, 1935 and the constitutional problems arising before the court necessitated the adoption of Judicial Review in a wider perspective. Now, Constitution of India, 1950 explicitly establishes the Doctrine of Judicial Review under various Articles 13, 32,131-136, 143, 226, 227, 245, 246, 372.

Doctrines

1. Doctrine of Severability:

Art. 13 of the Indian constitution incorporate this doctrine. In, Art. 13 the word" to the extent of contravention" are the basis of Doctrine of Severability. This doctrine enumerates that the court can separate the offending part unconstitutional of the impugned legislation from the rest of its legislation. Other parts of the legislation shall remain operative, if that is possible. This doctrine has been considerations of equity and prudence. It the valid and invalid parts are so inextricably mixed up that they cannot be separated the entire provision is to be void.

This is known as "doctrine of severability "In **A.K Gopalan vs. State of Madras**[5], case section 14 of Prevention Detention Act was found out to be in violation of Article

1 *[1877] 3. ILR 63 (Cal)*

2 *[1913]40. ILR 391 (Cal)*

3 *[1918]. AIR 1210 (Mad)*

4 *Supra 2, p 501*

5 *[1950] AIR 27 (SC)*

14 of the Constitution. It was held by the Supreme Court that it is Section 14 of the Act which is to be struck down not the act as a whole. It was also held that the omission ofSection 14 of the Act will not change the object of the Act and hence it is severable. Supreme Court by applying doctrine of severability invalidate the impugned law.

2. Doctrine of Eclipse:

This doctrine applies to a case of a pre constitution statute. Under Art. 13(1) of the constitution, all pre constitution statutes which are inconsistent to part 3 of the constitution become unenforceable and unconstitutional after the enactment of the constitution. Thus, when such statutes were enacted they were fully valid and operative. They become eclipsed on account of Art. 13 and lost their validity. This is called "Doctrine of Eclipse". If the constitutional ban is removed, the statute becomes free from eclipse,and becomes enforceable again.

In Bhikaji Narain Dharkras vs. State of M.P. an existing State law authorized the State Government to exclude all the private motor transport operators from the field of transport business. After this parts of this law became void on the commencement of the Constitution as it infringed the provisions of Art. 19(1)(g) and could not be justified under theprovisions of Art.19(6) of the Constitution. First Amendment Act, 1951 amended the Art. 19(6) and due to this Amendment permitted the Government to monopolize any business. The Supreme Court held that after the Amendment of clause (6) of Art. 19, the constitutional impediment was removed and the impugned Act ceased to be unconstitutional and became operative and enforceable.

3. Doctrine of Prospective Overruling:

The basic meaning of prospective overruling is to construe an earlier decision in a way so as to suit the present day needs, but in such a way that it does not create a binding effect upon the parties to the original case or other parties bound by the precedent The use of this doctrine overrules an earlier laid down precedent with effect limited to future cases and all the events that occurred before it are bound by the old precedent itself. In simpler terms it means that the court is laying down a new law for the future. This doctrine was propounded in India in the case of **Golak Nath vs. State of Punjab**[9].

In this case the court overruled the decisions laid down in **Sajjan Singh**[10] and **Shankari Prasad**[11] cases and propounded Doctrine of Prospective Overruling. The Judges of Supreme Court of India laid down its view on this doctrine in a very substan-

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[9] *[1967] AIR 1643(SC)*

[10] *[1965] AIR 845(SC)*

[11] *[1951) AIR 458(SC)*

tive way, by saying "The doctrine of prospective overruling is a modern doctrine suitable for a fast moving society." The Supreme Court applied the doctrine of prospective overruling and held that this decision will have only prospective operation and therefore, the first, fourth and nineteenth Amendment will continue to be valid.

JUDICIAL REVIEW OF CONSTITUTIONAL AMENDMENTS:

Our Indian Constitution , Judicial Review is explicitly provided in three dimensions such as "Judicial Review of Constitutional Amendments", Judicial Review of Parliament and State Legislation and also Judicial Review of Administrative actions of Executives. These dimensions are summarized as follows:

In India, constitutional amendments are very rigid in nature. Although Supreme Court of India is the guardian of Indian Constitution, therefore Supreme Court time to time scrutinize the validity of constitutional amendment laws, parliament has the supreme power to amend the constitution but cannot abrogate the basic structure of the Constitution. But, there was a conflict between Court and Parliament regarding Constitutional Amendment about whether or not fundamental rights are amendable under Art. 368. The question whether fundamental rights can be amended under Art. 368 came for consideration of the Supreme Court in Shankari Prasad v. Union of India, the first case on amendability of the constitution the validity of the Constitution (1st Amendment) Act, 1951, curtailing the "Right to Property" guaranteed by Art. 31 was challenged .The argument against the validity of (1st Amendment) was that Art. 13 prohibits enactment of a law infringing an abrogating the fundamental rights, that the word 'law' in Art 13 would include" any law", then a law amending the constitution and therefore, the validity of such a law could be judged and scrutinized with reference to the fundamental rights which it could not infringe. It was argued that the "State in Article 12 included Parliament and the word "law" in Art. 13(2), therefore, must include constitutional amendment". The Supreme Court, however, rejected the above argument and held that the power to amend the constitution including the fundamental rights is contained in Art. 368, and that the word 'law' in Art. 13(2) includes only an ordinary law made in exercise of the legislative powers and does not include constitutional amendment which is made in exercise of constituent power. Therefore, a constitutional amendment will be valid even if it abridges or takes any of the fundamental rights. Again , in 1964 Sajjan Singh v. Rajasthan, the same question was raised when the validity of the Constitution (Seventeenth Amendment)Act,1964, was called in question and once again the court revised its earlier view that constitutional amendments, made under Art. 368 are outside the purview of Judicial Review of the Courts. In this case the Constitution (17th Amendment) Act, 1964 was challenged an upheld.

After two years, after the decision of Sajjan Singh, in 1967 in Golak Nath vs. State of Punjab, the same question regarding constitutional amendment was raised. In this case the inclusion of the Punjab Security of Land Tenures Act, 1953 in the Ninth schedule was challenged on the ground that the Seventeenth Amendment by which it was so included as well as the First and the Fourth Amendments abridged the fundamental rights was unconstitutional. The Supreme Court overruled the decision of Shankar Prasad and Sajjan Singh's case. The Supreme Court observed that "An amendment is a 'law' within the meaning of Art. 13(2) included every kind of law, "statutory as well asconstitutional law" and hence a constitutional amendment which contravened Art. 13(2) will be declared void." Court further observed that "The power of Parliament to amend the constitution is derived from Art.245, read with Entry 97 of list 1 of the Constitution and not from Art.368. Art. 368 only lay down the procedure for amendment of Constitution. Amendment is a legislative process."[12] The minority view of five out of eleven judges was the word 'law' in Art. 13(2) refer to only ordinary law and not a constitutional amendment and hence Shankari Prasad and Sajjan Singh case rightly decided. According to them Art. 368 dealt with only the procedure of amending the constitution but also contained the power to amend the constitution.[13] Once again the Supreme Court was called upon to consider the validity of the Twenty .fourth, Twenty Fifth and Twenty Ninth Amendment in the famous case **Keshavananda Bharti vs. State of Kerela**[14] which is also known as "Fundamental Rights Case". In this case the petitioner had challenged the validity of Kerala Land Reforms Act 1963. But during the pendency of the petition the Kerala Act was amended in 1971 and was placed in the Ninth Schedule by the Twenty Ninth Amendment Act. The petitioner was challenged the validity of Twenty Fourth, Twenty Fifth, and Twenty Ninth Amendment to the Constitution and also the question that was involved was the extent of the amending power conferred by Article 368 of the Constitution.

The Supreme Court overruled the Golak Nath's case and held that" Under Art. 368 Parliament can amend the fundamental rights but cannot take or abridges the Basic Structure of the Constitution". According to this judgment of largest bench in the constitutional history propounded the "Theory of Basic Structure: A Limitation on Amending Power." This theory formulated By Supreme court through Doctrine of Judicial Review. In, **Indira Nehru Gandhi vs. Raj Narayan**[15], the amendment was made to validate with retrospective effect the election of the then Prime Minister which was set aside by the Allahabad High Court. The Supreme Court struck down clause (4) of Art.329-A which was the offending clause and inserted in (39thAmendment) to validate the election with retrospective effect. Khanna .J. struck down the clause on the ground that "it violated the free and fair elections which was an essential postulate of

[12] *MP SINGH, V.N. SHUKLA'S CONSTITUTION OF INDIA, (11th, Eastern Book Company,2008), 999*
[13] *DR. J.N. PANDEY, The Constitutional Law Of India,(49th, Central Law Agency , Allahabad,2012)*
[14] *[1973]AIR 1461(SC)*
[15] *[1980] AIR 1789(SC)*

democracy which in turn was a basic structure of the constitution".

Again in **Minerva Mills vs. Union of India**[16], the petition was filed in the Supreme Court challenging the taking over of the management of the mill under the Silk Textile undertaking (Nationalisation) Act, 1974, and an order made under S. 18-A of the Industrial (Development and Regulation) Act, 1951. The petition challenged the constitutional validity of clauses (4) and (5) of Art. 368, introduced by Section 55 of 42nd Amendment. If these clauses were held valid then petitioner could not challenge the validity of the 39th Amendment which had placed the Nationalization Act, 1974, in the IX schedule. S. 55 of the Constitution (42nd Amendment) Act, 1976 inserted sub-sections (40 and (5) in Art. 368. The Supreme Court struck down clauses (4) and (5) of Art. 368 inserted by the 42ndAmendment on the ground that these clauses destroyed the basic feature of the basic structure of the Constitution. Limited amending power is a basic feature of Constitution and these clauses removed all limitations on theamending power and thereby conferred an unlimited amending power, and it was destructive of the basic feature of the Constitution."Through these cases Supreme Court scrutinize the validity of constitutional Amendment Law by using the Doctrine of Judicial Review. By scrutinizing the judicial decisions Supreme Court also interpreted the various provisions such as Art. 13,368 and also ensure the Supremacy of the Constitution which the basic feature of the Constitution.

JUDICIAL REVIEW OF PARLIAMENTARY AND STATE LEGISLATIVE ACTIONS

Art. 245 and 246 of the Indian constitution gives legislatives powers to Parliament and State Legislatures. Art. 245 (1) provides "subject to the provisions of the constitution , the parliament may make any laws for the whole and any part of the territory of India and a State Legislature may make a law for whole of the state and any part thereof". The word "subject to the provisions of the constitution" are imposed limitations to the Parliament and State Legislature to make legislation. These words are the essence of Judicial Review of legislative actions in India. It ensures that legislation should be within the limitations of constitutional provision.

These words provide power to the Courts to scrutinize the validity of legislation. The Supreme Court has supreme power under Art. 141 which incorporates "Doctrine of Precedent" to implement its own view regarding any conflicted issue and it's also have binding force. Supreme Court gives us some relevant observations through judicial decisions regarding the legislative actions of Parliament and State Legislatures. In **SP Sampat Kumar vs. Union of India**[17] the constitutional validity of Administrative

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[16] *[1975] AIR 2299(SC)*
[17] *[1987]1 SCC 124(SC)*

Tribunal Act, 1985, was challenged on the ground that the impugned Act by excluding the jurisdiction of the High Court's under Art.226 and 227 in service matters had destroyed the judicial review which was an essential feature of the constitution. The Supreme Court held that though the Act has excluded the judicial review exercised by the High Courts in service matters, but it has not excluded it wholly as the jurisdiction of the Supreme Court under Art. 32 and 136. Further held that" a law passed under Art. 323-A providing for the exclusion of the jurisdiction of the High Courts must provide an effective alternative institutional mechanism of authority of judicial review. The judicial review which is an essential feature of the Constitution can be taken away from the particular area only if an alternative effective institutional mechanism or authority is provided." Again in **L Chandra vs. Union of India**[18], clause 2(d) of Art. 323-A andclause 3(d) of Art.323-B was challenged on the ground that these clauses excludes the jurisdiction of High Courts in service matters. The Constitutional Bench unanimously held that "these provisions are to the extent they exclude the jurisdiction of the High Courts and Supreme Courts under Art.226/227 and 32 of the constitution are unconstitutional as they damage the power of judicial review. The power of judicial review overLegislative Actions vested in the High Courts and Supreme Court under Art. 226/227 and Art.32 is an integral part and it also formed part of its basic structure."Then, in therecent scenario, **I.R. Coelho vs. State of Tamil Nadu**[19], the petitioner had challengedthe various Central and State laws put in the Ninth Schedule including the Tamil NaduReservation Act. The Nine Judges Bench held that "any law placed in the Ninth Schedule after April 24, 1973 when Keshvananda Bharati's case judgment was delivered will open to challenge, the court said that the validity of any Ninth Schedulelaw has been upheld by the Supreme Court and it would not be open to challenge it again , but if a law is held to be violation of fundamental rights incorporated in Ninth Schedule after the judgment date of Keshvananda Bharati's case, such a violation shall be open to challenge on the ground that it destroy or damages the basic structure of constitution". The Supreme Court observed that "Judicial Review of legislative actionson the touchstone of the basic structure of the constitution"

1. Judicial Review of Administrative Actions:

The system of judicial review of administrative action in India came from Britain. Judicial Review of Administrative action is perhaps the most important development in the field of public law. The Doctrine of Judicial Review is embodied in the Constitution and the subject can approach High Court and Supreme Court for the enforcement of fundamental right guaranteed under the Constitution.

[18] *AIR[1R7] ASC 1125*
[19] *AIR 2007 SC 861*

All the rule, regulations, ordinances, bye-laws, notifications, customs and usages are "laws" within the meaning of Art.13 of the Constitution and if they are inconsistent with or contrary to any of the provisions thereof, they can be declared ultra vires by the Supreme Court and by the High Courts.

Judicial review of administrative action aims to protect citizens from abuse of power by any branch of State. "When the legislature confers discretion on a court of law or on an administrative authority, it also imposes responsibility that such discretion is exercised honestly, properly and reasonably"[20]. This view of "DE Smith" clearly pointout that discretion of administrative action should be used with care and caution. So, the abusive discretionary power of Administrative action must be review by judiciary.If judiciary founds any ground of illegality of any administrative action, it is the duty of the judiciary to maintain check and balance.

a. Grounds of Judicial Review of Administrative Action:

As a general rule, courts have no power to interfere with actions taken by administrative authorities in exercise of discretionary powers. But this does not mean that there isno power of court to control over the discretion of administration. In India, the court will interfere with the discretionary powers exercised by the administration in the basically on two grounds: i.e. failure to exercise discretion and excess or abuse of discretion.

The judicial review of administrative action can be exercised on the following grounds:

- Illegality: means that the decision maker must correctly understand the law that regulates his decision making power and must give effect to it.
- Irrationality: means that the decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person could have arrived at such a decision.
- Procedural impropriety: means that the procedure for taking administrative decision and action must be fair, reasonable and just.
- Proportionality: means in any administrative decision and action the end and means relationship must be rational.
- Unreasonableness: means that either the facts do not warrant the conclusion reachedby the authority or the authority or by the decision is partial and unequal in its operation.

[20]*De Smith, Judicial Review of AdministrativeAction (1995) p296-99, CK TAKWANI, Lectures On AdministrativeLaw(, 4th, Eastern Book Company,2008) p276*

But in the famous case Council of **Civil Service Unions vs. Minister for the Civil Service**[21], Lord Dip lock highlighted the grounds by his observations "Judicial review has I think developed to a stage by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', second 'irrationality' and the third 'procedural impropriety'. Doctrine of proportionality's another important basis for exercising judicial review. This entails that administrative measures must not be more drastic than what is necessary for attaining the desired result. The doctrine operates both in procedural and substantive matters. This principle contemplates scrutiny of whether the power that has been conferred on an executive agency is being exercised in proportion to the purpose for which it has been conferred. Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred[22].

Ajai Hasia vs. Khalid Mujib[23] the Regional Engineering College made admissions on the ground that it was arbitrary and unreasonable because high percentage marks were allocated for oral test, and candidates were interviewed for very short time duration. The Court struck down the Rule prescribing high percentage of marks for oral test because allocation of one third of total marks for oral interview was plainly arbitrary and unreasonable and violative of Art. 14 of the Constitution. In **Air India vs. Nargesh Meerza**[24], one of the Regulation of Air India provided that an air hostess would retire from the service of thecorporation upon attaining the age of 35 years, or on marriage , if it took place within the four years of service or on first pregnancy , whichever is occurred earlier. The Regulation did not prohibit the marriage after four years and if an Air Hostess after having fulfilled the first condition became pregnant, there was no reason why pregnancy should stand in the way of her continuing in service. The Supreme Court struck down the Air India and Indian Air lines Regulations on the retirement and pregnancy bar on the services of air hostess as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary.

CURRENT POSITION OF JUDICIAL REVIEW IN INDIA:

The Supreme Court of India since the era AK Gopalan's case to the historic judgment in I.R. lho's case magnified the concept of Doctrine of Judicial Review. In the present scenario, Supreme Court plays a very crucial role to interpret the constitutional

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[21] *(1984) 3 AII ER 935 (950)*

[22] *Seminar on 'Judicial Review of Administrative Action,address by Hon'bleMr. K.G. Balakrishnan, Chief Justice of India*

[23] *AIR 1981 SC 487*

[24] *AIR 1981 SC 1829*

provisions and now the concept of Judicial Review became a fundamental feature of the Constitutional Jurisprudence. In its recent judgment in **Madras Bar Association vs. Union of India**[25] the Supreme Court scrutinized the provisions of Companies Act, 1956 and declared some provisions ultra vires. In this case, the petitioner challenges the constitution of NCLT and NCALT and also challenges the formation of the Committee, the appointment of the judicialmembers as well as the technical members .Sec 409(3)(a), 409(3)(c), and Sec. 411(3) . 412(2) are the provision which incorporates Constitution of Board of company law administration. The Supreme court upheld the validity of NCLT and NACLT, but declared the above mentioned provisions ultra vires and held that these provisions are unconstitutional in nature on the ground that any institution performing a judicial function should be constituted of members having judicial experience and expertise and thus judicial member were to exceed the technical members so as to maintain the essential feature of that constitution.

CONCLUSIONS AND SUGGESSTIONS

In India, courts are very strictly scrutinized the validity of law or any administrative actions if they inconsistent and illegal in nature. The scope of judicial review in Administrative action is wider in the present scenario. Every organ must be within their limitation, is the spirit of judicial review.

Separation of power is the concept which correlated with all the organs, and it is the duty of the Court to maintain check and balance. But in India, Courts have no power to take cognizance Suo Moto and to declare the law void, courts can initiate only when matter comes before the courts. Courts cannot question any political matter, but it cannot mean that the Court would avoid giving its decision under a shelter of political question; it is not the duty of the court. Sometimes it seems to be that court evolves judicial legislations but it may not be correct in India. Parliament has authority to make law in India, but in USA and UK courts evolving judicial legislation. Judicial review checks the legislative power from delegating its essential functions and also sometimes discourages the legislature from enacting void and unconstitutional legislation. In India and US , there are various constitutional limitations implicitly and also explicitly, which incorporates limitations to the law making power of Legislature , such as legislature cannot go beyond its power to make law, it cannot make law against the Principles of Natural Justice. Legislation cannot violate the fundamental rights which are the basic structure of the Constitution.

Judiciary doesn’t have power to make laws; therefore there is also existence of Judicial

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[25] *(2015) SCC 484*

Restraint. Court has also some limitations. Court cannot anticipate a question of constitutionality in advance, court cannot declare void in a doubtful case. Court does not declare a law void merely on the grounds of sentiments and personal view.

In all the countries, Courts work as a guardian solves the issues through judicial review. The dispute regarding federal laws are the biggest problem like distribution of powers, interstate trade etc, therefore through judicial review the constitutionality of Acts has to be determined keeping in view the Courage of co-operative federalism which creates greater accord in the Federal democratic state. Judicial review is now a great weapon in the hands of the court to interpret and enforce the valid law. Independence of judiciary are also the main concern of judicial review because, it would be great injustice to giving decision to the invalid laws and actions, if judiciary not independent. Through judicial review , judiciary also exercises effective control on delegated legislation, where a law made bythe executive is found to be inconsistent with the constitution or ultra vires the parent Act from which the law making power has been derived , it will declared null and voidby the court.

In my point view, there should be more Expansion of judicial reviewing all the countries in the world like UK, the power of judicial review of legislative Acts should be given to the Courts in UK, because it creates democracy in the minds of the people. One organ should be accountable to some other organ in any manner, but it cannot transgress its limits.

It establishes the concept of Rule of Law. As Justice P.N. Bhagwati in his minority judgment in Minerva Mills case observed “It is for the judiciary to uphold the Constitutional values and to enforce the Constitutional limitations, that is the essence the Rule of law, which inter alia requires that the exercise of powers by the Government whether it be the legislative or the executive or any other authority be conditioned by the Constitution and the law” It enables the court to maintaining harmony in the State. By declaring invalid laws, court protects individual as well as collective rights also. The basic feature is to protect the individual rights; therefore there is a need of expansion of judicial review. To strengthen judicial review will become strengthen the liberty and freedom of individual. The concept of judicial review is also criticized. By the strict behaviour of the Courts, sometimes it is criticized in the political corridors. It should not be happen in any manner, because Supremacy of law prevails in the interpretations of the Courts, we the people cannot questioned to the actions of judiciary because Supreme Court performing as the guardian of the Law of the land.

BLOGS

CHILD LABOUR: AN EVIL TO THE SOCIETY

By Pritha Chakraborty
Semseter VIII (5 Year) B.B.A. LLB

Children are the future of the country, so why are people using child labour only for their small benefits?

The employment of the children in work deprives them of their childhood, their potential, dignity and it is also detrimental to their physical, mental and social development. Not only is it destroying the present condition of the children but also the future.It leads to fatal and non fatal accidents, permanent disability, etc.

We all are the mute spectators of child labour everywhere in our vicinity, from a bus where a conductor is a child, a meal in a restaurant which is served buy a little child. Not only bus services and restaurants are the only places where child labour is practiced but also Industries, bakeries, fruit shops, medical stores and numerous are the other-places where cheap child labour is encouraged and practiced shamelessly.

The organisations regulating and working in this field have been unsuccessful in curbing child labour, let alone abolishing it: resulting in an increase of child labourers. This issue should be eliminated from its root and to eliminate this issue effective and strict law is needed with addition to high level of social awareness.

The child labour prohibition and Regulation Act 1986 is a comprehensive act which deals exclusively with the evil of child labour, but still not successful to remove this Evil from the society as the children are still continuously being victimised by child labour.

Child labour is very profitable as the wages of children are very less, their complaints are very few and they can work harder than adults. Therefore they exploit the children for their selfish interest without considering the needs of the children. The children work due to poverty and ignorance from their family regarding their education, proper health and personality development and as a result they are exploited.

Although welfare measures are initiated by the government, but they remain in papers and never reach the needy people.

It is very much required to curb this Evil from our society so joint efforts should be made from all parts like civil society, state governments and corporations.

As child is said to be a national asset therefore, it should be the primary duty of the state and "WE THE PEOPLE" to look after every child as a child of our family.

Do not exploit their Childhood by employing them as workers in the name of poverty.

RIGHT TO RELIGION VS. WOMEN'S RIGHTS

By Sarita Nath
Semester VI, 3 YearLL.B

"Arise! Awake! And stop not

Until the goal is reached."

- SWAMI VIVEKANANDA

Religion is a matter of faith. A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion as conclusive to their spiritual well being, but it is also something more than merely doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, but may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as an integral part of that religion. The forms and observances might extend even to matter of food and dress. Religion is thus essentially a matter of personal faith and belief. Every person has right not only to entertain such religious belief and ideas as may be approved by his judgement or conscience but also exhibit his belief and ideas by such overt acts which are sanctioned by his religion. Religion is the belief which binds spiritual nature of person to super –natural being. Religious right is the right of a person believing in a particular faith to practice it, preach it, and profess it.

According to the Constitution of India - Article 25 says "all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health. Further, Article 26 says Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.[26]

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[26] *M.P. Jain, INDIAN CONSTITUTIONAL LAW, (7th ed., 2015),1091*

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But when this religious right is infringing the rights of women then the matter is obviously shrouded by thick veil of mystery which cannot be pierced through easily.

One of the most important case in India i.e., Sabrimala Verdict (Young lawyer association V. State of Kerala AIR 2018).In this case the fact was that the legal authority of the Sabrimala Temple was Devaswans Board. This board was imposing a ban on entry of woman whose age 10-50 years old. They imposed this rule under rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation Of Entry) Rule 1965.In this case, there were some issues raised ‘whether the worshipper of Lord Ayyappa are religious denomination U/A 26 of the court’ and ‘whether rule 3(b) is violative of parent act?’ And finally, the 5 Judges bench given their verdict that Religious denomination was not fulfilling the conditions which are laid down under Article 26 of the Constitution of India and this Rule 3(b) under the Kerala Hindu Places of Public Worship (authorisation Of Entry) Rule 1965 was ultra violative of the parent act.

The status of women in India has been subject to many great changes in the past few important judgements. With a decline in their status from the ancient to medieval times, to the promotion of equal rights by many reformers, their history has been eventful. Women's rights under the Constitution of India mainly include equality, dignity, and freedom from discrimination; additionally, India has various statutes governing the rights of women.

EQUALITY BEFORE LAW

By Megha Agarwal
Semester VIII, (5 year) B.Com L.L.B.

Equality implies provision for equal opportunities to persons for their self-development without any distinction of religion, caste, sex, wealth or status. According to Harold Laski, if there exists in the system of special privileges, the people cannot have any freedom. In India the right to equality has been enshrined in the Constitution.

The Right to Equality is the most fundamental right a man has. This is the right that occupies its place in almost every constitution. It is the Right to Equality from which all liberties are guaranteed.

Right to Equality means that every person, who lives within territory of India, has the equal right before the law: the meaning of this is all are equal in same line. No discrimination based on religion, race, caste, sex, and place of birth. it means that all will be treated as equality among equal and there will be no discrimination based on lower or higher class.

In Maneka Gandhi v. Union of India (AIR 1978 SC 597) - Bhagwati J quoted with approval the new concept of equality: equality is the dynamic concept with many aspects and dimensions and it cannot be imprisoned without traditional and doctrinaire limits.

ARTICLE 14 EQUALITY BEFORE LAW

Article 14 declares that "the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

i.e. if any equality prevails which is the outcome of the step which was taken by the state then that will be considered as affecting Article 14 that will be declared unconstitutional.

Thus, Article 14 uses two expressions "equality before the law and equal protection of the law".

The phrase "equality before the law" is a negative concept implying the absence of any special privilege in favour of individuals and the subject of all classes to the ordinary law and "equal protection of the law" is more positive concept implying equality of treatment in equal circumstances

In State of West Bengal vs Anwar Ali Sarkar (AIR 1952 SC 75) Patanjali Sastri CJ rightly held that the second expression is collaterally of the first and it is difficult to

imagine a situation in which the violation of the equal protection of laws will not be the violation of the equality before law. Thus in substance the two expressions meanone and the same thing.

● Equality before law and rule of law- Equality before law has been borrowed from England. It is based on doctrine of rule of law which was involved by Professor Dicey give three meaning of the rule of law thus -

1. Absence of arbitrary power or supremacy of the law- Everyone is equal in the eye of law irrespective of race, caste, religion, sex or place of birth. It is a law which is Supreme if any wrong has been violated then he will be held guilty. There is no such arbitrary power which is conferred to any person providing is certain privilege under the law. No one is entitled to exercise any arbitrary power even if a person is holding a particular position of the head of the particular department or any IPS officer, damage to some extent exercise the power but they are also under the law.

2. Equality before the law- In the eye of the law everyone is equal irrespective of richness or poverty; irrespective of educational qualification. There should be no discrimination made because the rule of law is purview have also second important elementwhich is known as equality before the law which is under article 14.

3. The constitution is the result of the ordinary law of the land- It means that the source of the right of individuals is not the written constitution but the rule as defined and enforced by the courts.

EXCEPTIONS TO THE RULE OF LAW

1. Equality before the law does not mean that the "power of private citizen are the same as the power of the public officials", Thus, police officer has the power to arrest while as a general rule no private person has his power. But under CrPC section 43 a person which is exercised by a police officer in its position to arrest any person which can also be exercised by private person.

2. The rule of law does not prevent certain classes of a person being subject to special rule. Thus, members of the armed force are controlled by military laws. For example Maternity Benefit Act 1961 is meant for the women employees not the male employees certain laws does not have any equal application till confined the particular class,community or section.

3. Ministers and other executive bodies are given very wide discretionary power by the statutes. A Minister may be allowed by law to act as he thinks fit or if he is satisfied.

4. Certain members of society are governed by special rule in the profession that is lawyer, doctor nurses, members of armed force and police. Such classes of person are treated differently from ordinary citizens.

● Equal protection of the law- the guarantee of equal protection of law is similar to the one embodied in 14th Amendment to the American constitution. This has been interpreted to mean subjection to equal law, applying to all in the same circumstances. It only means that all person similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applicable to all in the same situation and there should be no discrimination between one person and another.

All laws are not applicable to each and everyone. For example- A is entitled to minimum wages and other employees who are working in factory industrial subjected to equal law. So there should be no discrimination that is like should be treated alike and not that unlike should not be treated alike, it means every employees should be treated equally.

Thus, the rule is that the like should be treated alike and not that unlike should be treated alike. For example- female employees who have been provided with leave wages in violation of Maternity Benefit Act 1961 which has not been given to other female employees so it is discriminatory and violation of Article 14.

NEW CONCEPT OF EQUALITY: PROTECTION AGAINST ARBITRARINESS

Any action which is taken by any administrative authority if that action on the part of the administrative authority takes away or violates the right of any individual then it will be declared as arbitrariness.

In E. P. Royappa v. State of Tamil Nadu (AIR 1974 SC 555)

The Supreme Court has derived from the traditional concept of equality which was based on reasonable classification and has laid down a new concept of equality. Bhagwati J., delivering the judgment on behalf of himself, Chandrachud and Krishna Iyer JJ propounded the new concept of equality in the following words- Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits.

CONCLUSION

Keeping in view of above mentioned statements said by the different courts, it is clear that Article 14 ensures equal rights without discrimination. It says equal everyone is Equal in eye of law. "Equality before the law means that among equals thelaw should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued to prosecute and prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence."

POEMS

LONELINESS, MY FRIEND

By Abhilasha Alice Khongshei
Semester VI (3 year) LL.B

Sometimes I wonder if I was destined to be alone.
Alone where I feel the pain and bear it
As salt in my wound that seeps in
As I'm swimming in the great white sea.
Being alone feels so wonderfully calm.
Since talking to people has suddenly lost its charm.
I long for moments of loneliness ever so much.
I hate to admit but, it has become my companion.

Where thoughts are clear and ideas seem not too far away.
Maybe this is what the joy of loneliness feels like.
Sweet wine that feels foreign in the lips of strangers.
As I sleep I can feel its kisses in the breeze
Carefully keeping me animated in a dream.
When I'm awake it follows me as I stare into nothingness,
All of life seems a blur that contorts itself into a mirage of possibilities.

I sit and I sit, ever so still that I see the movements of the ground,
Young shoots springing out of the mud,
The raw earth cracking as the rain percolates into it.
Resisting change and finally giving in.
The termites gnawing into old wood,
Hammering at it till the wood melts away.
Strong sunlight making curtains fade and lose their vibrant hues.
Bands of water vapour making their way to the heavens like a silent parade.

Dear, loneliness I ask, "Have you always been beside me whispering into my ears?"
Loneliness replies, "Why yes, my child. But you have never known my name before."

From this day onwards I embrace my loneliness and call it on as a friend,
Rather than a traitor for when I feel empty inside.

PHOTOGRAPHY

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