

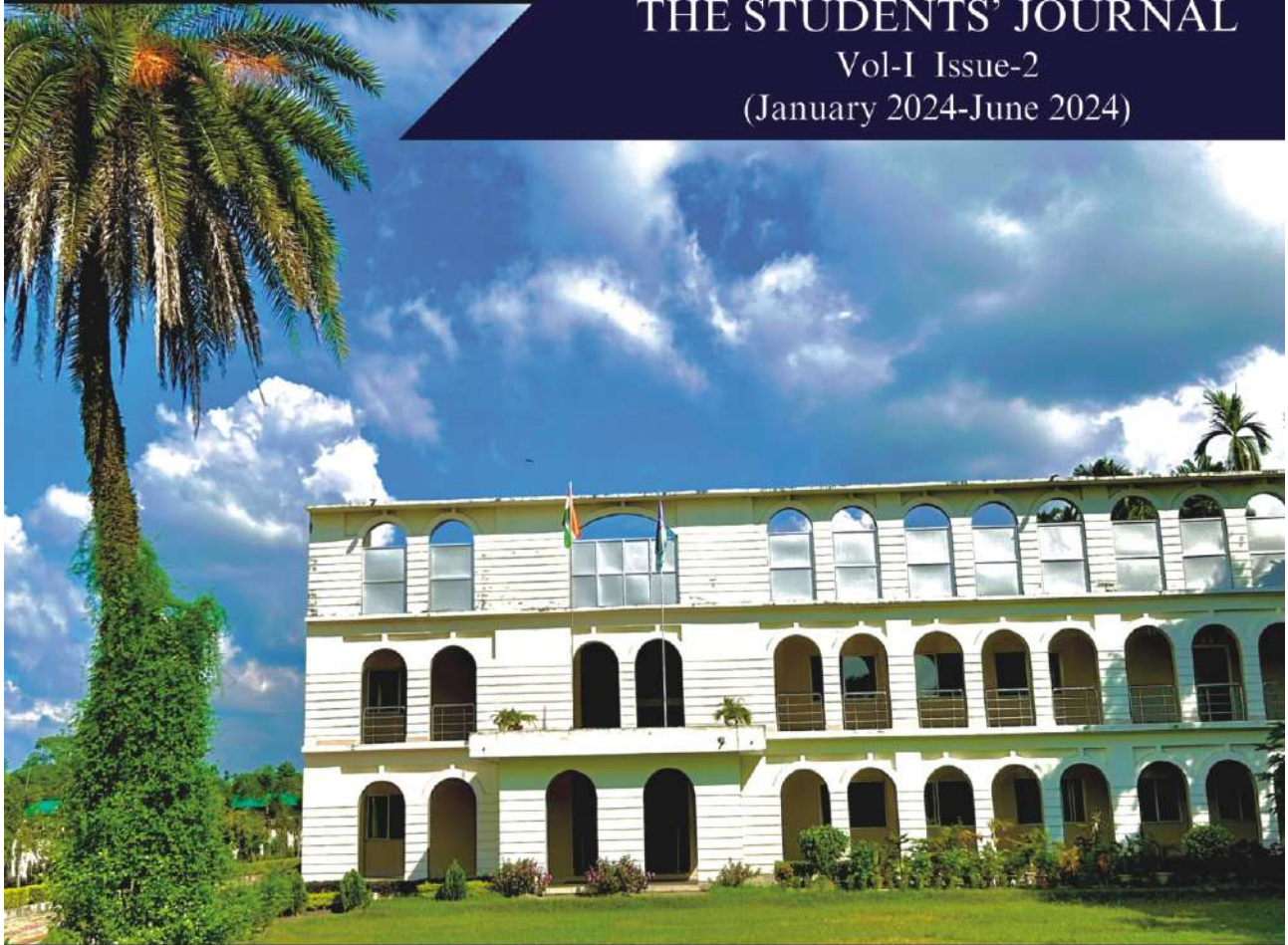
INDIAN INSTITUTE OF LEGAL STUDIES COOCH BEHAR



MIND MUSE

THE STUDENTS' JOURNAL

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"विद्यां ददाति विनयं"

"Education is the manifestation of the
perfection already in man"

A Half Yearly Journal

Authored by

THE STUDENTS AND TEACHERS

INDIAN INSTITUTE OF LEGAL STUDIES COOCH BEHAR



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MESSAGE FROM THE CHAIRMAN'S DESK



*"Know what you want to do,
Hold the thought firmly,
Do everyday what should be done and
Every sunset will see you that much nearer
the goal"*

The Indian Institute of Legal Studies Cooch Behar is devoted to the round development of its students and our half yearly journal "Mind Muse" happens to be the most exemplary manifestation of their persistent cognitive efforts. Our student's 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 a testament to the fact that "Mind Muse" 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 "Mind Muse" 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.

Shri Joyjit Choudhury

Ld. Additional Advocate General,

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Indian Institute of Legal Studies Cooch Behar





MESSAGE FROM THE PRINCIPAL-IN-CHARGE'S DESK



The Indian Institute of Legal Studies Cooch Behar, stands as a vanguard of legal education, shaping a new cadre of jurists imbued with a profound sense of justice and societal duty.

In my role as principal, I am bestowed with the honor of steering our future legal luminaries towards upholding justice. Our institution shines as a beacon, enriching minds with critical legal acumen and advocacy prowess.

At the helm of this pioneering educational establishment, I take pride in cultivating a rich tapestry of thoughts and traditions, fostering a vibrant learning space for a diverse student body.

Our vision is to fortify our scholars with a solid legal grounding, equipping them to thrive across the spectrum of legal professions. We champion a culture of perpetual learning, ethical integrity, and unwavering dedication to social equity.

Our curriculum is meticulously crafted to stimulate intellectual rigor, complemented by hands-on experiences through moot courts and legal clinics, ensuring our graduates are not only knowledgeable but also practice-ready.

The Indian Institute of Legal Studies Cooch Behar transcends the conventional college experience, evolving into a dynamic community that embraces discourse, celebrates diversity, and pursues equality.

Embarking on this educational voyage with us means joining a legacy dedicated to the pursuit of justice.

I extend a heartfelt invitation to be part of our endeavor to mold the legal vanguards of the future, contributing to a society where justice serves as the cornerstone of transformation.

Dr. Jayati Kharga

Principal-in-Charge

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MESSAGE FROM THE DEAN' S DESK



I am delighted to introduce the most recent iteration of the magazine "Mind Muse", 2024. This publication serves as evidence of the abundance of ingenuity, commitment, and skill that permeate our community. Every article, narrative, and artwork contained within these pages exemplifies the vibrant and diverse spirit of our college students.

In my capacity as the Dean of Academics, I take great pride in the manner in which this publication embodies our dedication to scholarly distinction and inquisitiveness. It serves as a forum for the students to exchange their perspectives, accomplishments, and insights from thought-provoking essays and innovative research to inspiring stories and artistic expressions.

This edition comprises a diverse range of contributions, encompassing intellectually stimulating essays, groundbreaking research, motivational narratives, and artistic manifestations. Sincere appreciation is extended to all individuals who made contributions to this publication. Your dedication and labor are apparent on each page.

I encourage you all to delve into this issue, to be inspired by the words and images, and to celebrate the extraordinary talents within our community. Let this magazine be a source of pride and inspiration for us all.

Ms. Priya Singh
Dean (Academics)
B.A. LL.B (H), LL.M.





Editors' Message

The scientific temper of mind means willingness to explore new ideas, to appraise new evidence, to recognize the unreliability of cherished beliefs." - Bertrand Russell

Dear Readers and Contributors,

"Mind Muse," is a biannual journal dedicated to exploring the intricate interplay between social issues and legal aspects through the lenses of articles, poems, blogs, paintings and more. We are delighted to introduce this platform, which has been meticulously crafted by the collective efforts of passionate students.

"Mind Muse" aims to be more than just a journal; it is a forum for the imaginative and analytical minds that are deeply concerned about the societal challenges and legal intricacies that shape our world. Through the diverse array of content in this issue, we embark on a journey to delve into the critical issues of our time, such as social issues and legal issues.

We believe in the power of voices and stories to drive change. In this issue, you will find thought-provoking articles that offer in-depth analyses of legal frameworks, policy implications, and social impacts. Our poetry section brings you verses that stir emotions and foster reflection, while our blogs provide an avenue for personal reflections, commentaries, and discussions on pressing issues.

We would like to extend our heartfelt appreciation to our contributors—students, budding writers, and legal enthusiasts—who have shared their insights, creativity, and perspectives. Your dedication to exploring these themes inspires us, and we hope your work inspires others.

As we embark on this exciting journey with "Mind Muse," we invite you to engage with the content, share your thoughts, and consider becoming part of our community. Our mission is not only to disseminate knowledge but also to encourage academic discourse, scientific temper, critical thinking, and awareness of the social and legal challenges that shape our world.

We also welcome your feedback, suggestions, and submissions for our upcoming issues. Together, we can create a platform that not only raises awareness but also contributes to the discourse surrounding social issues and their legal dimensions.

Thank you for joining us on this intellectual exploration. We hope "Mind Muse" becomes a source of inspiration, knowledge, and a catalyst for change in the world of social issues and the law.

Sincerely,

Editorial Committee

Indian Institute of Legal Studies Cooch Behar





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The background of the page is a soft, abstract watercolor wash. It features large, irregular patches of light green and pale blue, which are more saturated in some areas and fade into a light cream or off-white in others. The texture is painterly and organic, with visible brushstrokes and color blending.

ARTICLES



CONSTITUTION AND ELECTORAL BOND SCHEME: A CRITICAL STUDY

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Abstract: India is the largest democracy on Earth. In every democratic country the Government must be elected by its citizens through the general election. In the year of 2017-18, National Democratic Alliance-led Government introduced electoral reforms through the Finance Bill in 2017. Electoral Bonds is a financial tool for making capital donation to the political parties. The Electoral Bond Scheme was introduced by the Ministry of Finance in 2018. The Supreme Court declared this scheme as unconstitutional in its recent judgement.

Keywords: Constitution, Electoral Bond, Democracy, Supreme Court, Article 19(1)(a)

Introduction

The electoral bond was a instrument to donate money to the political parties. The only parties are eligible to get donations through the electoral bonds, which are registered under Section 29A of the Act, 1951[1]. The main purpose of the electoral bonds was to involve the banking channel in corporate funding to political parties. Before 2017 in India[2] most of the funding to the political party was made through cash. After noticing that there was a number of the problems with this mode. The Government of India was introduced the electoral bond scheme to make funding through the authorized banking channel. In February, 2024 the Supreme Court of India stuck down the electoral bond scheme on the ground of Constitutional validity.

Background of Electoral Bond Scheme

Political campaign financing has historically been an opaque affair in India. Before 2017 the funding to the political parties was organized mainly in cash and therefore, there was no concrete or possibilities to regulate the huge cash payment to the political parties. In the year of 2017 the NDA[3] government introduced the Electoral Bond Scheme to regulate and to involve the banking channel in the purchase and selling of the electoral bond. The unique feature of the electoral bond was it does not carry the name of the buyer of that bond. Therefore, the information relating to the electoral bond was

[1] The Representative of People Act, 1951

[2] The Indian Penal Code, 1860 Section 18

[3] National Democratic Alliance





anonymous to the general people. The specific branches of the State Bank of India (SBI) was authorized to sell and redeem the electoral bond and in every year. Only in certain specific months the bond are allowed to sell and redeem.

Conceptual Discourse

As stated earlier electoral bond was a tool to provide corporate funding to political parties. The bonds may be purchased by a citizen of India or incorporated or established in India[4]. The bond issued in nature of a promissory note that can be denoted to any political parties which are registered under the Representation of People Act, 1951 and secured not less than one percent of the votes in general election or in state assembly elections. Therefore, the bond purchased by a citizen can be encashed by the eligible political parties only.[5] The bond is non-refundable in nature and it must be encashed by the receiver within 15 days of the issuing date. One can buy a bond of Rs-1000, Rs-10,000, Rs-1,00,000, Rs-10,00,000 and Rs-1,00,00,000. The unique feature of electoral bond is that, it is a kind of bearer instrument in nature and does not carry the name of the buyer. If the parties does not convert the electoral bonds into cash then the amount of the donation will automatically be transferred in the Prime Minister Care Fund[6].

Constitutional Validity of Electoral Bond Scheme

In a democracy the government must be elected by its citizens in a free and fair electoral process. Therefore, it is the duty of the State to conduct free and fair elections. Under Art 324[7] of the Constitution it the duty of the election commission to hold free and fair elections. Electoral bond scheme allows the individuals to provide unlimited funding to the political parties and there is no transparency of data. So, there is a huge problem arises. Article 19 (1)(a) of the Indian Constitution states that, "to freedom of speech and expression"[8]. This article guarantees the right to information to its citizens. The electoral bond scheme does not carry the of the buyers. Therefore, the citizens cannot access the data who buys it and hence it violates the right to information of the citizens.

[4] Electoral Bond Scheme, Clause 3(1)

[5] Electoral Bond Scheme, Clause 12

[6] MD Sharik, "Electoral Bonds: A Critical Study", IJLLR

[7] Dr. J. N. Pandey Constitutional Law of India 826, (Central Law Agency, Prayagraj, Allahabad, 59th edn., 2022)

[8] The Constitution of India 1950, art 19(1)(a)





In *Union of India v. Association for Democratic Reforms*,^[9] it was held that the Electoral Reforms Law passed by the Parliament as violative to the citizen's right to know under Art 19(1)(a) of the Constitution.

In *Association for Democratic Reforms & Anr. v. Union of India & Ors.*,^[10] the Supreme Court struck down the Electoral Bond Scheme. The Court observed that, Electoral Bond Scheme, the proviso to Section 29C(1) of the Act, 1951^[11] (as amended by the Section 137 of the Finance Act, 2017), Section 182(3) of the Companies Act^[12] (as amended by Section 154 of the Finance Act 2017), and Section 13A(b) (as amended by Section 11 of Finance Act 2017) were violative of Article 19(1)(a) and unconstitutional. The court further stated that, the Section 182(1) of the Companies Act permitting unlimited corporate contribution to the political parties is arbitrary and violative of Article 14 of the Constitution. The defendant's contention was that, disclosure of the information of the corporate entities who make donation through the electoral bond to the political parties was violative to their right to privacy.

In *K.S. Puttaswamy*^[13] case the Court stated that, right to privacy is not absolute in nature. In the seek of state or public interest the right to privacy can be rejected. The reasonable restriction on the right to privacy may be imposed because it is not absolute right.

On March 14, the Election Commission uploaded two sets of data. One, with a data-wise list of bond purchased by companies and the other with a data-wise list of deposits by political parties that encashed the bonds.^[14]

In striking down the scheme, the Court appears to have placed the voter's right to transparency on a pedestal and held that opaque corporate donations are purely business transactions which may influence policy making. The verdict has been widely acclaimed as protecting the basic features of Indian democracy.^[15]

[9] AIR 2002 SC 2112

[10] AIR 2017 SC

[11] The Representative of people Act, 1951

[12] The Companies Act, 2013

[13] AIR 2018 SC

[14] Electoral Bond Case: Here's what the SC told SBI about unique number, available at: <https://www.google.com/amp/s/www.livemint.com/politics/news/electoral-bond-case-here-what-the-sc-told-sbi-about-unique-number/amp-11710485673792.html> (Last updated on 15 March, 2024)

[15] Vinod Rai, "India's Electoral Bond Scheme: Declared Unconstitutional by the Court" ISAS (2024)





Conclusion

Electoral Bonds were brought in India to minimize the corruption and the use of black money in general elections and state assembly elections. The main issue with the electoral bonds was the anonymity of the donor's information. The Apex Court held that, the electoral bond scheme was violative to the provisions of Part III of the Constitution. The Court further, stated that, electoral bond allows the companies to provide unlimited funding to the political parties and this practice hamper the principal of free and fair elections of the Constitution. It was the responsibility of the Election Commission of India to observe that no political party ineligible to receive the donation through the Electoral Bond Scheme. The Supreme Court further direct to the Election Commission of India to disclose the information regarding the figure of the donation received by the political parties and which business corporation or individual buy that electoral bond. The Court basically directed to make available the information of the buyers in the public domain. SBI was directed to submit details of the political parties which were received the donation through the Electoral Bond Scheme and also the date of purchase of the bond and the information must be submitted to the Election Commission of India within three weeks of the date of this judgement, that was, 15th Feb 2024. And the Court also directed to SBI to stop issuing the electoral bonds.





EMPOWERING TRIBAL COMMUNITIES: AN IN-DEPTH ANALYSIS OF THE PESA ACT AND ITS IMPACT ON LOCAL GOVERNANCE IN INDIA

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ABSTRACT

India ranks second globally in terms of its tribal population. In India, an act has been introduced to integrate tribal communities into politics, known as the Panchayat Extension to Scheduled Areas (PESA) Act of 1996. The PESA Act empowers tribal communities and enhances local self-governance. This Act has established an autonomous political institution, the Gram Sabha, to promote participatory democracy in the fifth scheduled area. This institution has an independent role in decision-making for the progress of tribal communities. This Act recognizes the rights of tribal communities and also grants the Gram Sabha the authority to control and manage natural resources, specifically Jal (water), Jangal (forests), and Jameen (land). Forests are not only a source of income; they are also a vital means of livelihood for tribal communities, who are the true custodians and protectors of these forests. Does the law understand how to balance society and politics? Does it consider marginalized communities as citizens? Why is it crucial to empower tribal communities? This article explores how the law empowers tribal communities, delving into the key provisions of the PESA Act. It also seeks to analyze the Act's impact on local governance in India. This article relies heavily on descriptive and analytical methods. Secondary resources such as books, acts, authoritative websites, and other materials significantly contribute to shaping the content, ensuring a comprehensive and well-researched exploration of the topic. This article suggests that understanding the identity of tribals is crucial for creating a harmonious and sustainable environment.

Keywords: Tribal Communities, PESA Act, Fifth Schedule Areas, Part IX





Introduction

There has been a systemic failure in giving tribals a stake in the modern economic processes that inexorably intrude into their living spaces... The systematic exploitation and social and economic abuse of our tribal communities can no longer be tolerated. – Dr Manmohan Singh[16]

The state molds society with its 'will', such as laws, and influences society. India is an ethnically heterogeneous state. It is a place where many religions, cultures, castes, tribes, and languages are found in their unique styles. Even today, the tribal society in India is a marginalized society, which has its own culture, language, and rules. The primary challenge faced by tribals is their 'identity crisis'. The tribal population in India comprises approximately 6% of the total population, totaling around 104.3 million people[17]. The issue of tribal identity can find resolution through self-governance. Gandhi championed this concept, asserting that it leads to decentralization. Such decentralization is achievable solely through Panchayati Raj, empowering villages to manage resources autonomously. The 73rd and 74th Amendment Acts were introduced to manage resources at the grassroots level, constitutionalizing the local government system. Three things are crucial for tribal communities: Jal(water), Jangal(forests), and Jameen(land). In a way, tribals also serve as protectors of nature.

In India, a separate act has been enacted to empower tribal communities through self-governance, called the **Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996**. This act is commonly referred to as the PESA Act. The Act extends the provisions of Part IX of the Constitution of India and applies to the states falling under the Fifth Schedule, namely, Rajasthan, Odisha, Maharashtra, Jharkhand, Madhya Pradesh, Himachal Pradesh, Gujarat, Andhra Pradesh, Telangana, and Chhattisgarh. The primary objective of introducing this act was to ensure the protection of tribal communities' rights through self-governance and Gram Sabha in the scheduled areas. This empowers them to autonomously manage their natural resources, considering the limited availability of these resources and the potential for conflict due to their scarcity. Through this Act, the Gram Sabha has been empowered as a significant body, allowing tribal communities to directly participate in democracy. The Gram Sabha is instrumental in decision-making regarding forest resources, minor water bodies, and minor minerals. It also manages local markets and works to prevent land alienation.

[16] Government of India, "Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA Act, 1996)" 3 ((PESA Act, 1996) Ministry of Home Affairs)

[17] Adivasis in India, available at <https://minorityrights.org/communities/adivasis/> (last visited on June 12, 2024).





Background

“Indigenous people around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated.” **United Nations Permanent Forum on Indigenous Issues, October 2006**[18]

Forests serve not only as a source of income for the state but also as a vital means of livelihood, housing, and cultural identity for tribal communities. Only tribals possess the traditional knowledge and connection necessary to effectively conserve and protect these invaluable natural resources. Self-reliance holds a unique place in India's history. While local self-government had been adopted, there was no such system for tribal people to become independent in managing their resources. In British India, the inherent rights of tribal people were stripped away by the Indian Forest Act of 1927, leading to tribal communities becoming landless in their territories. Even after freedom from colonialism, there was no specific legislation to empower tribal people in India. Panchayati Raj was implemented through the 73rd Constitutional Amendment Act, of 1992, but this act is not applicable in some areas under Article 243M. On the recommendation of the Bhuriya committee, the PESA Act was introduced to extend the provisions of Part IX of the Constitution to areas under the fifth Schedule. There are several objectives behind the introduction of this act, including:

1. Enable tribal people to determine the management of their natural resources according to their preferences and needs.
2. To empower tribal people and protect their identity.
3. To protect their rights from exploitation, especially safeguarding their rights to land ownership.
4. To enable them to become self-reliant in the era of globalization.
5. To ensure the active involvement of tribal people in democratic decision-making.
6. To decentralize the power within Schedule areas.

[18] Government of India, “Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA Act, 1996)” 3 ((PESA Act, 1996) Ministry of Home Affairs)





Key Provisions of the PESA Act

The Panchayats (Extension to Scheduled Areas) Act (PESA) of 1996 is indeed considered a crucial legislation for tribal empowerment in India. **Section 3** of this Act is crucial as it extends the provisions of **Part IX** of the Constitution to scheduled areas, thereby enabling decentralized governance[19]. There are many important provisions in this Act, but three provisions that are particularly significant are the decentralization of power, the recognition of customary laws, and resource management.

Decentralization of Power:

An important provision of the PESA Act is the decentralization of power. **Section 4** of this Act empowers the Gram Sabha[20]. Whenever any social and economic development plan is implemented by the Panchayat, it must first receive approval from the Gram Sabha. Apart from this, the Gram Sabha has many powers, including protecting the culture of tribal communities, preventing land alienation, managing village markets, resolving local disputes, and managing and protecting traditional properties.

Recognition of Customary Laws:

The second important provision of this Act is to recognize the customary laws of tribal people. Tribals have been following their culture, language, and faith since ancient times, and these customs have evolved into laws based on their traditions. For instance, marriage customs vary across tribal communities, and when the state formulates laws, they should align with and respect these customs.

Resource Management:

The third important provision of this Act is to recognize the customary laws of tribal people. Tribals have been following their culture, language, and faith since ancient times, and these customs have evolved into laws based on their traditions. For instance, marriage customs vary across tribal communities, and when the state formulates laws, they should align with and respect these customs.

The PESA Act ensures that every Panchayat in scheduled areas shall have seat reservations based on the proportion of the population of different communities. This reservation shall be in accordance with the provisions of Part IX, and the chairperson at every level of the Panchayat shall be from the scheduled tribes. According to **section 4(g)**, this reservation shall not be less than one-half of the total seats.

[19] The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act No. 40 of 1996), s. Section 3

[20] The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (Act No. 40 of 1996), s. Section 4





An important provision of this Act, according to **section 5**, is that state-level law that does not align with the PESA Act will continue to be in effect until it is amended by the competent legislature and competent authority, or with the consent of the President, after one year of the PESA Act's implementation.

Impact on Local Governance

The most effective way to empower tribal communities is to enable them to make their own decisions so that they can establish self-governance. Therefore, Panchayati Raj was linked to scheduled areas through the PESA Act. This Act has had a positive impact on local governance which is as follows-

Empowerment of Gram Sabhas: It promotes participatory democracy in tribal areas to enhance their participation and empowerment. The logical reason behind bringing this Act is to secure the identity of tribal people through the Gram Sabha. Section 4 of the Act empowers the Gram Sabha to make decisions regarding local problems, the management of natural resources, and their resolution. This Act designates the Gram Sabha as a special body consisting of eligible voters. This sabha can make decisions regarding socio-economic development plans for the progress of scheduled areas, protecting their customary properties, managing resources, managing local markets, and preventing infestations.

Improvement in Local Administration: According to Gandhi, self-governance is crucial for a state, as it allows people to have direct participation and make decisions based on their own capacity. For grassroots democracy, it is necessary to have a local administration to ensure a division of labor for effective governance. After the implementation of this Act, there has been a revolution in local governance, where tribal people have been able to connect themselves with the state, constitution, politics, and government. This has brought awareness among people that they can preserve their water, forests, and land only through self-governance.

Case Studies: The PESA Act recognizes the rights of tribal communities, bringing about a revolutionary change in their lives. Its provisions are applicable in the states with Fifth Schedule areas, including Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Odisha, and Rajasthan. However, Odisha and Jharkhand have yet to enact the PESA rules. The provisions of this Act should be consistent with state law. The laws of Himachal Pradesh, Odisha, and Madhya Pradesh align with the provisions of this Act. However, the laws in Jharkhand, Telangana, and Rajasthan do not. This inconsistency poses significant challenges for implementation and enforcement.





Challenges and Limitations

The PESA Act, enacted by the central government to promote self-reliance among tribal communities, faces numerous implementation hurdles. Despite being entrusted with the authority to frame rules under this Act, 40% of the states have yet to do so, even 28 years after its implementation. For effective implementation at the local level, the provision for a competent authority has not been clarified, and no timeline has been provided for the implementation of the Act. After the introduction of this Act, the Central Government introduced additional legislation, such as the Land Acquisition Act of 2013, which empowers the Gram Sabha. Similarly, the Forest Rights Act of 2006 includes provisions from the PESA Act, which can diminish the distinct role of PESA. According to the Tilma gram sabha, the district administration and the police have “encroached” upon their Sarna Sthal (sacred place for tribal worship) and preventing the villagers from offering their worship. This example illustrates how the rights of tribal communities and the powers of the Gram Sabha are being misused by the state machinery.

Future Prospects and Recommendations

The PESA Act is a unique legislation for tribal people, yet it faces challenges such as the absence of framed rules and conflicts with other Acts like the Forest Rights Act (2006). To address these issues, the state government must empower and raise awareness among tribal communities, ensure transparency in the law, frame comprehensive rules, resolve conflicts with other Acts, enhance the significance of Gram Sabha, and establish a robust feedback mechanism for effective implementation. The Gram Sabha must actively engage in decision-making to utilize the powers conferred by the PESA Act, ensuring that tribal communities receive their rightful entitlements.

Conclusion

It is crucial to protect every individual and community for the sake of a sustainable environment. Self-governance serves as a potent means towards this end. The PESA Act plays a pivotal role in empowering tribal communities, acknowledging their rights, and enabling them to carve out their identity within a democratic framework. This Act has enhanced the participation of tribal communities in politics and decision-making by establishing the Gram Sabha as an independent political institution. A unique aspect of this Act is that the state government can also enact laws related to Panchayats, which must be in harmony with customary laws, beliefs, and traditional resources. This Act empowers tribal communities, yet the reality is that even after 28 years of its enactment, 40% of the states have not formulated their own rules. Some states under the PESA Act, such as Chhattisgarh, Jharkhand, Madhya Pradesh, and Odisha, have not yet framed rules. Hence, the government needs to formulate rules pertaining to the PESA Act, promote the political participation of tribal communities, and conduct awareness programs in scheduled areas.





A STUDY ON ASSISTED REPRODUCTIVE TECHNIQUES : WITH SPECIAL REFERENCE TO ITS COMMERCIALISATION

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Introduction

The institution of family is as old as human beings themselves. A family means wife, husband and their children. Every couple has an innate desire to have a child of their own. But some couples are unable to procreate and their marriages remain barren. When the biological role of parenthood remains unfulfilled, couples are subjects to emotional trauma. Procreation has psychological background too. The husband wants to prove himself as a man capable of producing children. The wife also finds her womanhood complete by becoming a mother. These biological instincts are inherent and therefore inability to procreate frustrates the couples. For such frustrated couples, adoption was the only old remedy, for which legal procedures were formulated.

But presently, medical science and related technology has brought new hope and aspirations of infertile couples. Test tube baby procedure is the treatment to cope with infertility of those frustrated couples. Awareness among them motivates to undertake test tube baby procedure to bring their progeny.

Test tube baby procedure is a developing science for which research is going on in various parts of the world. It requires sophisticated instruments and gadgets and also highly specialized doctors. As a result it is expensive and the success rate is also poor. Moreover, highly qualified counsellors are in need to apprise the intending couples.

'Test under baby' is a misnomer. It is commonly used to mean a baby not reproduced by Sexual intercourse but by the assistance of physician through procedures in the laboratory. Infertile couples want babies but defects do not permit pregnancies to develop. Both medical and surgical treatments fail to achieve pregnancy. So Assisted Reproductive Technology (A.R.T) is to be availed for a successful pregnancy. For that an egg is to be fertilized by sperms either in the fallopian tube of the wife or in the 'dish' in the laboratory. This is the basic concept of A. R. T[21].

[21] Dr.Nandita Adhikari, Law and Medicine 158(Central Law Publications, Prayagraj, 4th edition, 2021)





Origin and Development of Assisted Reproductive Technology

Since its inception in 1978, test tube baby procedure has brought in more than one million babies globally. As per estimates by the World Health Organization, there are about 80 million couples in the world who are infertile. In India, this number of infertile couples ranges between 10 to 15 million. In India, there exists some undesirable ill-will against infertility. But above all, an instinct to have a child drives infertile couples to opt for test tube baby procedures.

The majority of the infertile cases are due to genetic, physical, hormonal, or some other causes. But many of the causes are due to infection of the genital tract, genital tuberculosis, and some cases psychological in character. These are preventable and can be treated to make the couples fertile.

The first test tube baby delivered by Mr. Brown had diseased Fallopian tubes. Therefore, Dr. R. G. Edwards and Dr. P. Steptoe of England employed inventive fertilization and embryo transfer techniques (I.V.F.E.T.) for her successful pregnancy and delivery. It was in July 1978 that the first test tube baby named Louise Brown was born. Assisted Reproductive Technology (A.R.T.) was known to the world as a measure to defeat infertility. Application of the technology cured many other causes of infertility viz., low sperm count, unexplained infertility, endometriosis, etc. The newly developed procedure is known as Gamete Intra-Fallopian Transfer (G. I.F.T.) and Intracytoplasmic Sperm Injection (I. C. S. I.) and others.

Interestingly, in India at the same time, the technology of test tube baby procedure was being conducted by the Late Dr. Subhas Mukherjee of Kolkata. Dr. Mukherjee was a reputed physiologist. He was assisted by Dr. Sunit Mukherjee, and Late Dr. Saroj Bhattacharya, a Gynaecologist. The first Indian test tube baby was born in October 1978 and was named Durga.

Unfortunately, the birth of the first Indian test tube baby was not scientifically and adequately documented for which it failed to receive recognition. But in 2003 the Indian Council of Medical Research (I. C. M. R.) recognized the work of Dr. Mukherjee as authentic. Thus Durga was recognized as the first Indian test tube baby and the second in the world being junior to Louise by 70 days only. The recognition was possible because of the efforts of Dr. T. C. Anand Kumar who once pioneered in the field and because the Director of the Institute for Research and Reproduction at Mumbai.

It took another 8 years for the next Indian test tube baby. This time it was scientifically documented and procedure was performed under the leadership of Dr. T. C. Anand Kumar, the former reproductive biologist. He was ably assisted by Dr. Indira Hinduja Gynaecologist of Seth G. S. Medical College at Mumbai. The birth of second test tube baby in August, 1986 opened the new vista for Indian infertile couples. The news was greeted across the country.





At about the same time, two other times were wandering in Kolkata and Mumbai. The team at Kolkata was headed by Dr. B. N. Chakravarty and was assisted by Dr. S. Ghosh Dastidar and Dr. S. Goswami. The team at Mumbai is comprised by Dr. Mehroo Hansoria and Dr. Sadhana Desai. Both teams produce test tube babies in the same year 1986. Thus the norms and standards of test tube baby procedures were firmly established in two great cities of Kolkata and Mumbai.

The poor success rate (30%) and the huge expense are discouraging for universal acceptance of test tube baby procedures. Only desperate couples who can afford such expenses are coming forth for the procedure. However, researchers around the globe are working to increase the success rate and make the procedure affordable to a larger section of intending couples[22].

Methods of Assisted Reproductive Technology

Assisted reproductive technology (ART) refers to all technology where gametes are manipulated outside the body. It does not include where only spermatozoa are manipulated like intrauterine insemination. The first and the most common procedure is in vitro fertilization (IVF), but there is an ever-increasing list. The various procedures are as follows[23]-

1. **In vitro fertilization (IVF):** This is the most well-known form of ART. It involves fertilizing an egg with sperm outside the body in a laboratory dish. After fertilization, the resulting embryos are transferred to the woman's uterus.
2. **Intra Cytoplasmic Sperm Injection (ICSI):** In ICSI, a single sperm is directly injected into an egg to facilitate fertilization. This technique is often used when there are issues with sperm quality or quantity.
3. **Intrauterine Insemination (IUI):** Also known as artificial insemination, IUI involves placing sperm directly into a woman's uterus around the time of ovulation to facilitate fertilization.
4. **Gamete Intrafallopian Transfer (GIFT):** This involves transferring both eggs and sperm into the fallopian tubes, allowing fertilization to occur inside the woman's body.
5. **Zygote Intra Fallopian Transfer (ZIFT):** Similar to GIFT, in ZIFT, fertilized eggs (zygotes) are transferred into the fallopian tubes rather than the uterus.
6. **Donor eggs or sperm:** In cases where one partner has fertility issues, donated eggs or sperm from a third party can be used during IVF or IUI procedures.
7. **Surrogacy:** In surrogacy, a woman (the surrogate) carries and delivers a baby for another individual or couple. This can involve using the intended parents' own genetic material or donated gametes.

[22] Dr. Nandita Adhikari, Law and Medicine 157 (Central Law Publications, Prayagraj, 4th edition, 2021).

[23] Mosammat Rashida Begum, "Assisted Reproductive Technology: Techniques and Limitations" 2010 Infertility Care and Research Centre (ICRC), Dhaka, 26 (2010) available at: https://www.researchgate.net/publication/270114969_Assisted_Reproductive_Techniques_and_Limitations (last visited on: April 30, 2024)





Issues of Commercialization of Assisted Reproductive Technology

Commercializing assisted reproductive technology (ART) raises several ethical, social, and legal issues. Here are some key considerations[24]:

1. **Ethical Concerns:** The commercialization of assisted reproductive technology (ART) raises significant ethical questions, such as whether it commodifies human life and reproductive processes.
2. **Financial Barriers:** Commercialization often results in high costs associated with ART procedures, making them inaccessible to many individuals or couples. This creates a disparity where only those with financial means can afford these treatments, exacerbating existing socio-economic inequalities. However, the cost per live birth for autologous ART treatment cycles in the United States, Canada, and the United Kingdom ranged from approximately USD 33,000 to 41,000 compared to USD 24,000 to 25,000 in Scandinavia, Japan, and Australia. The total ART treatment costs as a percentage of total healthcare expenditures in 2003 were 0.06% in the United States, 0.09% in Japan, and 0.25% in Australia.
3. **Quality Control and Regulation:** Commercialization may compromise the quality and safety of ART procedures if stringent regulations are not in place. Profit motives could lead to corner-cutting practices, inadequate screening processes, or pushing unnecessary treatments to maximize profits, potentially endangering the health and well-being of patients and offspring.
4. **Legal Complexities:** Commercialization introduces legal complexities related to ownership of genetic material, parental rights, and the responsibilities of fertility clinics and agencies. A lack of clear regulations can lead to disputes over custody, inheritance, and other legal matters, adding stress and uncertainty to an already emotionally charged process.
5. **Impact on Society and Culture:** The commercialization of ART can reshape societal norms and values surrounding reproduction, family structure, and parenthood. It may contribute to the normalization of non-traditional family arrangements, challenge traditional notions of conception and parenthood, and influence perceptions of what it means to have a child, potentially leading to broader cultural shifts.

Addressing these issues requires collaboration among policymakers, healthcare professionals, ethicists, and society at large to establish guidelines that balance the advancement of reproductive technology with ethical considerations and social justice.

[24] Paul R. Brezina* and Yulian Zhao. "The Ethical, Legal, and Social Issues Impacted by Modern Assisted Reproductive Technologies" 2012 *Obstetrics and gynecology international* 10 (2012), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3261493/> (last visited on: April 30, 2024).





Laws Regulating Assisted Reproductive Technology in India

1. **National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India, 2005:** In the absence of a comprehensive law, the Indian Council of Medical Research (ICMR) formulated guidelines in 2005 for the regulation of ART clinics in India. These guidelines provide standards and protocols for the practice of ART and the establishment and operation of ART clinics[25] .

2. **Assisted Reproductive Technology (Regulation) Act, 2021(Act No.42 of 2021):** While the Act is a decisive and considerable step towards curbing the menace of illegal and unregulated ART clinics and towards safeguarding donors and women undergoing ART from the health implications faced due to unsafe and illegal procedures, it falls short of addressing some serious concerns.

First and foremost, the Act excludes unmarried men, divorced men, widowed men, unmarried yet cohabiting heterosexual couples, trans persons, and homosexual couples (whether married or cohabiting) from availing of ART services. This exclusion is relevant as the Surrogacy Act also excludes above said persons from taking recourse to surrogacy as a method of reproduction.

The Act is also limited to those commissioning couples who are infertile - those who have been unable to conceive after one year of unprotected coitus. Thus, it is limited in its application and significantly reduces the reproductive choices of those excluded. Third, the prices of the services are not regulated; this can certainly be remedied with simple directives[26].

3. **Surrogacy (Regulation) Act, 2021(Act No .47 of 2021):** The Surrogacy (Regulation) Act aims to regulate surrogacy services in the country, including prohibiting commercial surrogacy and establishing regulations to prevent exploitation of surrogate mothers. This Act to constitute National Assisted Reproductive Technology and Surrogacy Board, State Assisted Reproductive Technology and Surrogacy Boards and appointment of appropriate authorities for regulation of the practice and process of surrogacy and for matters connected therewith or incidental thereto.

[25] National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India ,India, available at:<https://main.icmr.nic.in › files › art> › ART_Pdf(last visited on April 29,2024).

[26] Vishan Dev Singh Jamwal and Arun Kumar Yadav, "The Assisted Reproductive Technology (Regulation) Act, 2021: A Step in the Right Direction" 48(1) Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine 4 (2023),available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10112746/> (last visited on:April30,2024).





ROLE OF JUDICIARY

The judiciary played a significant role in regulating the field of Assisted Reproductive Technology(ART) through its various judgments. Some landmark and recent cases are:-

- **Baby Manji Yamada vs. Union of India**[27]

This case involved a Japanese couple who used a surrogate mother in India to conceive a child through ART. However, before the child was born, the couple divorced, and the intended mother refused to take custody of the child. The case raised complex legal and ethical questions about the rights of the child born through surrogacy, particularly in cases where the intended parents are unable or unwilling to fulfill their responsibilities.

The Supreme Court of India emphasized the importance of safeguarding the rights and interests of the child born through ART, regardless of the circumstances of their conception. The court ruled that the child's welfare should be the paramount consideration in cases involving surrogacy arrangements. Additionally, the court called for the establishment of clear guidelines and regulations to govern surrogacy arrangements in India, aiming to prevent exploitation and ensure the protection of all parties involved.

- **M.BABY V. UNION OF INDIA REP BY SECRATORY(2023)**[28]

In this case, the petitioner a single women ,is seeking to become a parent by resorting to Assisted Reproductive Technology (ART) service. That writ petition is filed on the premise that the Assisted Reproductive Technology (ART) services are not made available to the petitioner for the reason that she is a single woman.

The High Court Of Kerala said that Section-2(u) of the Assisted Reproductive Technology (Regulation) Act-2021, defines “women means any woman above the age of twenty-one years who approaches an Assisted Reproductive Technology(ART) clinic or Assisted Reproductive Technology(ART) bank for obtaining the authorized services of the clinic or bank”. The the writ petition is closed reserving the petitioners liability to approach the forum/court if any of her grievances are still subsisting.

[27] AIR 2009 SC 84

[28] Assisted reproductive technology.india, available at : <https://www.casemine.com/search/in/assisted%2Breproductive%2Btechnology>(last visited on April30,2024)





CONCLUSION AND SUGGESTION

Assisted reproductive technology (ART) has revolutionized the landscape of reproductive medicine, offering hope to countless individuals and couples struggling with infertility. Through techniques like in vitro fertilization (IVF), intracytoplasmic sperm injection (ICSI), and gamete intrafallopian transfer (GIFT), ART has made parenthood achievable for many who might otherwise have been unable to conceive.

In conclusion, while ART has undeniably provided remarkable opportunities for individuals and couples seeking to build families, it also presents complex ethical, social, and emotional considerations. Issues such as the commodification of human embryos, the potential for multiple pregnancies and associated health risks, and the psychological toll of failed cycles warrant careful attention. Moreover, disparities in access to ART services highlight the need for equitable distribution and affordability.

Moving forward, it is crucial to continue advancing both the medical technology and the ethical frameworks surrounding ART. This includes ongoing research to improve success rates, minimize risks, and enhance the overall experience for patients. Additionally, comprehensive education and support programs should be established to guide individuals through the decision-making process and provide emotional assistance throughout their ART journey.

Furthermore, policymakers, healthcare providers, and ethicists must collaborate to address the broader societal implications of ART, ensuring that it remains ethically sound, socially responsible, and accessible to all who stand to benefit. By approaching ART with sensitivity, compassion, and a commitment to ethical principles, we can harness its potential to empower individuals and couples on their path to parenthood while upholding the dignity and well-being of all involved.





A LEGAL ANALYSIS OF SCIENTIFIC INTERROGATION TEST IN INDIA

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Introduction

Man is said to be a social animal, which lives in a society where different norms are set for different individuals. In this society, certain acts are permitted while some are forbidden, and if a man performs any such activities or behaves in an inappropriate way sanction is being imposed upon him. Society is responsible for controlling many social institutions like marriage, family, religious institutions, education, and so on. Although a society can only control the moral misconduct of a person. And the legal misconducts are still congested in the hands of the criminal justice system. It is well known that man is having a fighting nature which can be traced back since the Stone Ages. Hence to consider a society crimeless would be no less than a myth.

In this society everyone owns a certain duty towards others and in return is gets certain rights and privileges. This would only be balanced if every person fulfils his duties, then others as well as his own rights will be automatically secured. While most of the people do so and believe in 'live and let live' policy but there are certain portion of people in this society who associate themselves with unethical and inhuman activities by detaching themselves from the normal behavioural pattern. Therefor it imposes an obvious responsibility on the state to control this sort of behaviours and make laws to abide the human and punish the law breakers. And any act is a crime only when the law considers it to be as long as the greater public interest is concerned. And it becomes a sole responsibility of the state to look after it.

Criminal Justice Administration is regulated by state solely. The report of Malimath Committee has described the whole scenario of criminal justice system from no criminal law in uncivilized society to modern times where law is governed by state only. This committee observed that,

Initially there was no criminal justice in the barbaric society. Every individual was responsible for the security of his own life, property which could be seized by any one at any time. "A tooth for a tooth, an eye for an eye or a life for a life", this was basically the main motto of once life. As time passed eventually people started to recognise there sense of being human and started accepting to compensate for their mistakes.





This process gave birth to the present legal system or the criminal justice system which is undoubtedly playing a crucial role in eliminating the evils.

In this system of eliminating the evils interrogation plays a key role. Generally, Interrogation means a process of asking someone a series of question in order to get information, even sometimes using threats or violence.

The foundation of a successful trail is the efficiency of investigation and interrogation is a crucial part for every investigation in the criminal field.

When it comes to Interrogation methods, may it be in a law enforcement, a counter terrorism or may it be in a military context, it has earned a whole some amount of attention from not only to the policy makers, bureaucrats, scholars but also from the general people. The relative assumptions of people about false interrogation and use of harsh techniques has always been a matter of controversies and debate.[29] There are various techniques which are used for the interrogation such as direct questioning, reid techniques, torture etc. But when it comes to scientific interrogation test it has some extra elements in it. The world is developing in a very fast pace. In today's world where one can get any information within seconds using finger tips, it is hard to imagine a place where there no science. Therefore, today every common man has much more technical knowledge than before. Not only in the field of medicines, have astronomy, computer science but technologies also enhanced the criminal justice system. Unfortunately it has also helped the criminals to do crimes in a more sophisticated matter with new high tech techniques. Crimes like human trafficking, forgery, cyber-crimes, smuggling etc has known no bounds. And Hench to bring situation in a equilibrium position there comes and urgency to incorporate scientific methods to help the procedure of investigation, interrogation, prosecution or may it be trail.

The apex court in *Dharam Deo Yadav v. state of UP*[30] by advocating the use of scientific evidence, has observed that,

“In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become out-dated, hence, the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness, etc. whereas forensic evidence is free from those infirmities... We are not advocating that, in all cases, the scientific evidence is the sure test, but only emphasising the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence.”

[29] Christopher E. Kelly, 135 Western Avenue, Draper Hall 241-C, Albany, NY 12222

[30] (2014) 5 SCC 509





Various Forms of Scientific Interrogation Tests

Scientific Interrogation refers to the use of science in aid of interrogation. It includes techniques like polygraphy, narcoanalysis, voice stress analysis, brain mapping, etc. These are some effective ways to interpret the evidence.

Meanings: -

- **POLYGRAPH TEST:** A polygraph test also known as a lie-detector is a “psycho-biological” test that aims to examine the truthiness or correctness of a statement given by an accused by using computerized equipment known polygraph or lie detector. A polygraph can measure certain psychological responses and produced it in the form of graph. The psychological responses which it catches responses like blood pressure, abdominal respiration, thoracic respiration, pulse rate, galvanic skin resistance, muscle contraction etc. The underneath theory behind the polygraph test is that when a person lies, his/her psychological responses triggers. It is believed that when a person lies out of fear of being get caught, his body responses in a different manner than a normal person.
- **NARCO-ANALYSIS TEST:** The Narco-Analysis test is a “chemo-physiological” test, where the person who undergoes this test is put in a sleep-like condition by injecting an intravenous injection and thereafter is interrogated. The injection that is given contains a hypnotic drug known as barbiturate and chemicals like sodium amytal and sodium thiopental. The barbiturate is injected in a very less and controlled manner so that his reasoning power is lessened but it does not hamper his memory. It makes the person to speak more without actually making up things in his way. Thus he is more likely to speak the truth when under repeated questioning. The narcoanalysis test is also known as the “Truth Serum”. In the case of **Bombay v Kathi Kalu Oghad**, it was stated that the Indian police officers are obsessed with the fact of sitting in a shed and investigate rather than to go out in sun and hunt for the real devil. Narco tests are considered a better alternative to the third-degree method used by police officers. It seems to be a perfect blend of science and forensic technology. And interrogation which main purpose is to detect the crime must be of a scientific basis. In **Bhagwan Singh v State of Punjab**, the Supreme Court held that “It is a pity that some of the police officers have not shed many brutal methods even in the modern age. They must adopt some scientific technique rather than sticking to physical torture.” According to Webster’s Dictionary, ‘Narco analysis is defined as “Psychoanalysis using drugs to induce a state akin to sleep”. According to the online Merriam-Webster dictionary, it is defined as “psychotherapy that is performed under sedation for the recovery of repressed memories together with the emotion accompanying the experience and that is designed to facilitate an acceptable integration of the experience in the patient personality”.
- **BRAIN MAPPING:** Brain Mapping is said to be a modern scientific process that can measure the way of responding of one’s brain when an object or picture is being shown to him under the ongoing test. It is an attempt to identify the location of everything in brain. It involves examination of event related potentials which are electrical waveforms that are emitted by the brain after it has observed an event. Brain mapping is to ascertain that if a person is actually possessing certain information or not.





These scientific interrogation techniques have helped the criminal justice system effectively to a certain limit. Although it has played a major role in solving some of the high profile cases like the Arushi Talwar case, Telgi Stamp case, Pathankot airbase attack case, Tapsi Malik murder case, and so on.

By acknowledging the efficiency of scientific interrogation techniques, the Malimath Committee on “Reform of Criminal Justice System” has stated that scientific interrogation tests should be applied in every investigation. Some of the relevant recommendations were

1. “From the initial stage of the investigation procedure, scientific and modern technologies should be applied.
2. It is necessary to make strong the present network of the CFSs and SFSs so that to provide the required cover of forensic science to investigators.
3. Forensic medico-legal services must be strengthened at the central/state/district level with ample amount of facilities.

Scientific Interrogation Tests Practices in Foreign Countries.

Narcoanalysis: International Perspective

1. Narco Analysis Test in U.S.A.

The history of eligibility for the “Narco test” or the “Truth Serum” in the United States of America can be traced back to the middle of the 20th century. But during that time the courts were unwillingness to accept the statements given by the accused after using the truth serum.

During the 19th century, there evolved a concept of advantage against self-incrimination. It means that an accused is believed to be innocent until and unless he is proved to be guilty, hence he does not need to produce any such statement that is against his favor.

In the USA an accused has the complete freedom of right to silence. Its main principles of protection against self-incrimination are well established in the case of **Lawrence v King** by lord Atkin. He conferred that a society is a stronger entity than an individual, hence a “society is capable of inflicting more harm on an individual rather than an individual on the society.”

As per observation of the Supreme Court of Virginia with regards to Narco-Analysis Test in the case of **Orange v Commonwealth of Virginia** had refused to accept the evidences produced through Narco test. Again in 1963, the Supreme Court of U.S. in **Townsend v Sain** declared that confessions made under the influence of this kind of truth serums are not a result of free consent and hence it is inadmissible. Further the human rights group, Amnesty International has denounce the Narco-Analysis test by stating that use of drugs in interrogation is a breach of medical ethics as well as it is prohibited under the International Standards. The constitution of USA provides the advantage against self-incrimination in its **Fifth Amendment**.

Hence the courts across the world have mostly refused to accept the testimonies produced with the help of the Narco test.





2. Narco Analysis Test in U.K

The Narco analysis test in the United Kingdom is not openly allowed for the purpose of investigation. The right to remain silent is enshrined under the traditions of common law. It is regarded as one of the most important aspect in protecting the citizens from any kind of arbitration. Even if any police officer wants to put an accused on the Narco-Analysis test then he must issue an “Miranda-style “warnings as well as inform the person who is been arrested and any failure to do so might result in jeopardizing a criminal prosecution. The accused person when put to hypnosis is not in a state to make up and manipulate his own answer but to only answer simple questions when given some options, hence the answers are believed to be spontaneous.

But one should remember that wrong amount of does can sometimes send the person in coma as well which may eventually result in death.Hence a person when put under the test must be treated with utmost care while examining.

3. Narco Analysis Test in Canada

The confession of a person in Canada made under the influence of Narco Analysis is not admissible in the court of law and is no way being treated as a evidence. The Canadian Charter of Rights and Freedom provides that ‘Everyone has the right to be secured against unreasonable search and seizure[31]’. In Canada it is believed that when a person is under the Narco analysis test is in semi-conscious state just like a hypnotic state and thus losses awareness and thus any statement made by him may be just result of dose. In the case of **Hovarth v. The Queen**[32], the Supreme Court of Canada held that statements taken in a hypnotic state is involuntary and manipulated and cannot be considered as evidence. In this particular case there was a boy of 17 years old who was being charged for the murder of his mother.The police officers then put this boy under the narcosis and during the middle of interrogation he has conferred his crime. But the trail court found that this evidence is merely a product of influence of hypnosis, which leads to his acquittal. But thereafter the court of appeal held him guilty on the grounds of this evidence.

Lastly the Apex Court upheld the judgement of the trail court by quashing the decision of the court of Appeal. In this case[33], Beetz and Prattle J.J concluded that there is a resemblance between light hypnosis and Narco analysis test.

[31] Constitution Act,1982, Part 1, Number 8

[32] (1979) 44 C.C.C.(2nd 385)

[33] This case was relied on Selvi v. state of Maharashtra by the supreme court of India.





Constitutional Basis of Scientific Interrogation Test in India

In the era of science and technology, a variety of instrument is available for the purpose of defeating crime. The modern scientific techniques of interrogating have fastened the speed of criminal justice.

In the recent times the constitutional basis regarding to fingerprinting and ballistic report has gain constitutional validity but on the other hand the validity of Narco analysis tests and Brain mapping is still in ambiguity. The most leading constitutional issue relating to applying narco analysis test to the accused relates to Article 20(3) of the constitution of India. This article embodies the principle of right against self-incrimination. This Article says that no person accused of any offences shall to compel to be a witness or any testimonies which may expose him to prosecution for crime. In simple words no person shall be forced to be a witness or say anything against him. Thus the advantage against self-incrimination protects one's human privacy and observance of civil standards regarding the enforcement of criminal justice. In the case of **M.P. Sharma v. Satish Chandra** the Supreme Court this right contains three essentials. Firstly, it is a right given to a person accused of any offence. Secondly, it works as a protection against compulsion to be a witness. And thirdly, it is an protection against such compulsion which results in giving evidence against himself. With respect to scientific interrogation the third essential best fits in protection of such rights of accused. In the matter of **Nandini Sathpathi v. P.L. Dham**, Justice Krishna Iyer advocated an expansive interpretation of the phares "compelled testimony". He stated that compulsion is evidence produced not only by means of physical violence but also torture, interrogative prolixity, atmospheric pressure or any other intermediate techniques.

The Narco analysis test is conflicting to the legal maxim '**Nemo Tenetur Se Ipsum Accusare**'. It means that no man is bound to accuse himself, or compelled to speak anything which may be result in his own innocence. And if any such statement is acquired through compulsion then the court may reject such evidences. Article 21 of the constitution embodies "No person shall be deprived of his life or personal liberty except according to procedure established by law." From the viewpoint of criminal ethics a accused a innocent until and unless he is proven guilty. And if seen from the point of view of human rights then a suspect is not an accused hence free from any kind if detention. According to this a suspect is a common man who is being subject to Narco analysis test, his fundamental right to personal life and liberty is being hampered. And this the completely the violation of human rights, as we know that if a person's liberty is to be hampered then it must be supported by a common law and no law in India can put a person under life threatening processes and test, where by some dangerous substances and chemicals are injected in to the body of a person.

When we talk about the third degree methods it is considered to be inhuman and cruel torture such statements accrued during that time are not considered as valid evidences. Hence if we look into the meaning and scope of the term torture, it not only includes physical torture but also includes mental violence. Hence the use of such hazardous substances into a human body amounts to nothing less than torture.





It's a person's right to be protected against cruel and inhuman treatment. Thus, when a forcefully subject to such tests, then its directly attacking to the provisions of Article 20(3) and Article 21 of the constitution. About the context of this the case of **Smt. Selvi and Others v State of Karnataka**[34] hold much importance. In this case, the Supreme Court was requested to determine the constitutionality of the compulsory examination of the Narco analysis test. In this regard, the Supreme Court stated that the compulsory administration of such test as Narco analysis, brain mapping, etc are unconstitutional and are violative of Article 20(3) and Article 21 of the Indian constitution. A three-judge bench comprising of the then Chief Justice K.J. Balakrishnan, Justice R.V. Ravindran, and J.M. Panchal held that forceful compulsion of a person into such test whether in criminal matters or in any other matter is violative of personal liberty. Again in case of **Yusuf Ali v. State of Maharashtra**[35] it was decided by the Supreme court that if an accused speaks without any instigation the is no entitled to get advantage under Article 20(3) of the constitution of India. With reference to this context, it is viewed that this scientific test is used as an aid to the investigation and though one person has the right to remain silent as a fundamental right no fundamental right is absolute if needed for the greater public good. In light of this context a special court handling cases under the Maharashtra Contract of Organisation Crime Act (MCOCA) in Pune, in the case of a multi-core fake stamp paper scam let the investigating team put the main accused Abdul Karim Telgi into the Narco Analysis test in Forensic Science laboratory, Bangalore on 20th, 21st and 22nd December 2003. As a result, the Narco Analysis test provided an ample amount of solid information.

In **Ramachandra Reddy v State of Maharashtra**[36], it was held by the Bombay High Court that scientific interrogation tests are valid as taking into consideration the Fake stamp case. It said that as long as the state's security is concerned this test can be applied for the prevention of such criminal cases. And similarly, in **Dinesh Dalmia v State of Madras**[37], the High Court held that when an accused is put under scientific interrogation to bring the truth for the benefit of the nation then his right to silence is not hampered and its not violative of Article 20(3) of the Constitution. Again in the matter of **Rojo George v D.S.P.**[38], it was held that since Narco analysis test falls under the category of scientific interrogation test therefore it is not considered as a custodial interrogation. And it has to be noted that India the conviction rate of criminal cases has decreased to 6% due to the proof beyond valid grounds.

[34] AIR 2010 SC 1974

[35] AIR 1968 SC 147

[36] 2004 All. MR (Cr.) 1704.

[37] Cr. L.J. July 2006 P.2401.

[38] 2006 (2) KLT. 197.





Conclusion

In this 21st century scientific development and technologies have contributed immensely in the fields of medicine, astrology, mechanisms as well as in the field of justice and crime detention. Scientific Interrogation methods like the Narco Analysis test, Brain Mapping, Fingerprinting, Polygraph test, DNA test, etc have gained much popularity not only in India but also across the globe. But as we know where there is a thing it will cast its shadow, hence these tests do have their pros and cons. In modern India the courts are widely depending on evidence and proofs hence the demand for scientific interrogation tests is increasing so as to punish the culprits and give justice to the nation.

This research paper includes the pros and cons of scientific interrogation tests and their judicial approach in India as well as abroad. These techniques have a huge impact on a criminal as well as civil matters.

As far as Narco Analysis test is concerned in particular it is more likely to be used in the criminal matters. The success rate of this test is comparably high but there's much more about it which is always up for debate. As we know the serum injected into the body of the accused during the Narco test is extremely hazardous for the human body and health and even a slight imbalance in the portion of injecting the serum can lead to the patient's into a state of coma. Even if this test is conducted with consent, it will remain inhumane and against the basic human rights and the fundamental right provided in the constitution. The principles embodied in Article 20(3) of the Indian constitution are same as the Article 14(g) of the International Covenant on Civil and Political Rights. Thereby in Article 6 of the European Convention of Human Rights, the right to silence is an essential feature of a fair trial.

Although Narco test was held to be constitutional by many courts of India, but it was held to be violative of the Constitution by the Supreme Court in Selvi's case. Hence after that India stopped the use of such tests. But one can't deny the fact that it is beneficial for the betterment of society to punish the devils that are the biggest threat to especially children and women. But this should not be misused and must only be applied to the rarest of rare cases, terrorism and other high profile cases.

Hence the Scientific Interrogation test can be a boon to our society if used wisely with utmost care. With a systematic process and at least in front of a family member or friend of the accused person so to prevent from any kind of illegal manipulation by the department.





AN ANALYTICAL STUDY OF WOMEN PRISONERS AND LAWS IN INDIA: AN OVERVIEW

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Introduction

Under Indian Constitution, every person rights is being protected and safeguarded under the principles of equality and rule of law. No human being should be excluded from their essential fundamental human rights and freedom. This also applies to the prisoners including women prisoners who are guaranteed certain basic rights under the different laws, policies guidelines etc. The Apex Court, have also through several pronouncement have ensure and recognized the basic human rights of prisoners. According to Justice Krishna Iyer, “the prisoners are also human beings and all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner[39]”. The position of women prisoners is deplorable and urgently needs some improvement, according to a global accord. In 2011, the Bangkok Rules were established by the United Nations General Assembly in the form of guidelines for the treatment of women prisoners in jail as well as specific non-custodial punishments for female criminals.

Conceptual Discourse

A prisoner is a person who is confined in a prison by a competent body for the act prohibited by the law of the land. The Indian Constitution ensures that every person should be treated equally and provides equal protection of law, which also applies women prisoners who are guaranteed certain rights under Constitution. The Indian judiciary had also acknowledges through several judgments the basic fundamental rights of prisoners in India and they must be treated with respect and provided with basic human rights, dignity and compassion. Everyone, regardless of background, circumstances or character has the right to be treated fairly. Also has fundamental and essential rights codified in the law.

[39] Abhishek Sudhir, “Judicial Pronouncements on Rights of Prisoners in India”, E Adhyan available at <https://ebooks.inflibnet.ac.in/hrdp/13/chapter/239/> (last visited on April 15, 2024 at 20:00PM)





The fundamental concept with regard to the prisoner's right is chiefly refers to the rights of criminals when they are imprisoned. The prisoners who are imprisoned in the jail have some basic constitutional and fundamental human rights that are protected and safeguarded under the international and national law that cannot be taken away by any means, such as meals, food, basic medical facility, water for drinking, the right to counsel to represent them in court and protection against abuse, assault and social harassment. The Apex court through several judgments has also considering and protecting the rights of women prisoners in India. But still, problems like custodial rape, poor revenue conditions, lack of hygiene and sanitation, etc, are being faced by women prisoners. Most of women prisoners in Indian jails are come from the poor background and mostly are from vulnerable and oppressed section of society. The women prisoners are at regular interval being the victims of torture, sexual harassment, custodial rape, atrocities etc. Kiran Bedi wrote in her book named "It's always possible" about the condition of women inmates. The prisoners in jails including the women prisoners are subjected to the most crushing experience, which robbed them of what little dignity and self respect they reached prison with[40].

Historical Background

The idea of administration and managing the prison system is a crucial part of the criminal justice system. In the ancient period, the prisoner's condition was inhuman, their execution where the rigorous punishment and imprisonment was considered normal. During the British legal regime, the prisoners including the women prisoners were treated like animal in jail and ruled by the superintendent of prison. In the post independence era, the concerned government has done some reform in the Indian prison system. The Indian constitution as social documents has covered prisons in 7th Schedule of the Constitution as state subject, which exclusively fall under the domain of state government and is been governed by the Prison Act, 1894 and Prison manual of each state governments . After Post independence, the approach for prison changed from detention to reformatory and rehabilitation of the prisoners which shows that reforming perpetrators is given importance than punishing them. Now the way society views the criminal and convicts has undergone a fundamental shift as there is been a Apart from the state initiative some committee have also suggested prison reform in India such as All India Committee on Prison Reform (Mulla Committee) [41], Law Commission Report of 268; Justice Amitava Roy Committee, Krishna Iyer Report etc.

[40] Kiran Bedi, *It's always possible: one woman's transformation of Tihar Prison* (Himalaya Institute of Press, India, Illustrated edition, 2007)

[41] Implementation Of The Recommendations Of All-India Committee On Jail Reform (1980-83) Vol I , BPRD, Ministry of Home Affairs available at <https://www.mha.gov.in/sites/default/files/Mulla%20Committee%20implementation%20of%20recommendations%20-Vol%20I.pdf> (Last visited on May 02, 2024)





National Standards

Prisoners are also human being and have the right to a decent standard of living including food, drinking water, housing, and clothing. Under Indian constitution there are many provisions which protects the right of prisoners such as the right to life and personal liberty except procedure established by law under Art 21 of Indian Constitution, rights to free legal , right against solitary confinement, handcuffing and speedy trial and right of arrested person under Art of Constitution of India. Under Criminal Law, there are rights available to prisoners such as right to bail, person who is arrested should be inform about the grounds for arrest or of bail available under section 50 of CRPC; the rights to defend his/her case by appointing the lawyer of his choice is available to the prisoners under section 303 of CRPC

Moreover the criminal law also states under Section 46(4) of CrPC that, no women can be taken into the custody after sunset and before sunrise, except some exceptional situation with prior permission of first class magistrate. Section 54 provides that women accused should only examine, buy or under the supervision of women medical officer, if not available, then buy a registered female medical practitioner. The prisoners Act of 1894 has also some important provisions regarding prisoners rights such as proper sanitation in prison, they have to be examine by an authorised medical officer in jail at every regular interval. There must be a separate barrack for male and female prisoners or inmates or under trial prisoners under section 27 (1). The Section 33(1) of Prisoners Act, provides for supply of clothing and bedding to civil prisoners and undertrials by the superintendent. In the year 1987 under the chairmanship of Justice Krishna Iyer, National Expert Committee on female prisoners estimate situations of jail and gave various recommendation as follows:

1. All the female prisoners and inmates should be aware of their rights under the law.
2. In case of search, only the female constable should conduct searches
3. Women prisoners should also be allowed to communicate with their families and lawyers
4. Separate jail should be provided for women
5. They should allow to kept their child with them
6. Female doctors should checkup of female prisoners

Recently, Justice Roy Committee 2018 highlighted the overcrowding issue among under trial prisoners in India.

There are many law regulating the prisoners and prison system in India such as follows

1. The Transfers of Prisoners Act, 1950
2. The Repatriation of Prisoners Act, 2003
3. Model Prison Manual, 2003
4. Indian Penal Code, 1860
5. Code of Criminal Procedure, 1973
6. Identification of Prisoners Act, 1920
7. The Prisoners (Attendance in Courts) Act, 1955





International Law

The International standards and safeguards for women prisoners' rights are crucial agreements established across the globe to ensure humane treatment to all, giving them fair trials procedure etc which are very significant in order to uphold the sanctity of human rights and provide justice. The following are the keys international instruments which protect the rights of prisoners in international arena such as UDHR (Art 3, 5, 9), (ICCPR Art 9 and 10), Convention against Torture (Art 1), The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (Rule 1, 27(1), 53) etc.

Some Issues and Challenges

Various provisions in the legislation provided rights to the prisoners, but they face problems in their life. According to the 'Prisons Statistic India' the population of females in Indian prison has increased by 58.09% from 2010 to 2022. There are some of the major problems of prisoners, both male and female, which includes:

- **Overcrowding:** One of the main problems faced by worldwide prisoners, including inmates living in Indian prison, which affect both male and female inmates. In India, there are only 34 women jails out of total 1330 prisons as per the recent prison statistics report conducted by NCRB in the year 2022. Because of overpopulation, there are lack of access to health care facilities which led to multiple health issues; For example, diabetes, diarrhea, TB and HIV diseases are most found among the prisoners in India.
- **Poor spending on welfare and basic healthcare facilities:** Another problem of prisoner are poor Spending on welfare and basic healthcare facilities, sanitisation and hygienic related issue, health issues and custodial violence. The prison statistic India report 2022 clearly that 82.2% of women inmates are in common prisons, which marks as major threat to their safety issues heightened their vulnerability.
- **Sanitation and hygiene:** According to the report of Commonwealth Human Rights Initiatives (CHRI), they visited Haryana prison, they found that most of the female prisoners are not aware about this thing that the jail authorities are duty bound to provide sanitary napkins during their menstruation period. They found that women's were using old cloths.
- **Custodial Violence:** It is another main issue faced by women prisoners. He couldn't do the prison statistics India reports 2022, It shows that 82.2% of women inmates are in common prisons, which marks as major threat to their safety issues heightened their vulnerability.
- **Lack of free legal aid:** The Constitution of India's profile did the right to free legal aid, which is not implementing in the prison. And women prisoners are unconscious about their rights.





Apart from these, there are other problems such as lack of rehabilitation, lack of awareness about their rights and separation from their children are the some problems which the face in the prison.

Judicial Approach

The Indian Judiciary had played a significant role in order to safeguards the basic fundamental rights of the prisoners including women prisoners in India. The Indian Constitution, not only guarantees basic fundamental rights to the individuals but also empowers the judiciary to protect and enforce these rights, which undoubtedly provides a strong foundation for the protection of human rights in India. The apex court through its several pronouncements had protected the fundamental rights of the prisoners such as in the case of *Sunil Batra v. Delhi Administration* the Hon'ble Apex Court had laid down some guidelines for prison reform under the criminal justice system to improve living condition in jail, vocational training for prisoners. In the landmark case of *D K Basu* established guidelines for the treatment of prisoner, including women prisoners, and laid down measures to prevent custodial violence and abuse inside the prison authority and to protect the dignity of individuals in custody. In the *Sheela Barse* case the apex court had given a direction to improve the condition of police lockups and women protects the human rights of women prisoners in jail. Similarly the judiciary also played some pivotal role in *Hussainara Khatun* case, by giving the fundamental right of speedy trial as implicit under Art 21 of the Indian Constitution. Moreover the state is under obligation under constitution to provide a lawyer under right to legal aid to such individuals and persons who needs the most due to his poverty etc . The judiciary also encompasses the right to speedy trial to inmates who had been in custody for long period awaiting trial. In *Charles Sobraj* case the Delhi High Court held the even the inmates or prisoners have the right to be treated with human dignity. Apart from these rights, the arrested or under trial inmates both male and female prisoners, should not be subjected to any kind of handcuffing in the absence of justifying circumstances. "Inside the jail, the prisoners have the right to receive books magazine and also they have the right to be visited by friends and relatives. In has been observed the judiciary hasd ensure the rights of prisoners including the women prisoners under criminal justice system through several pronouncement however the despite judgment it has been seen that the implementation of judgment is very slow in the society which led to the pendency of cases in courts

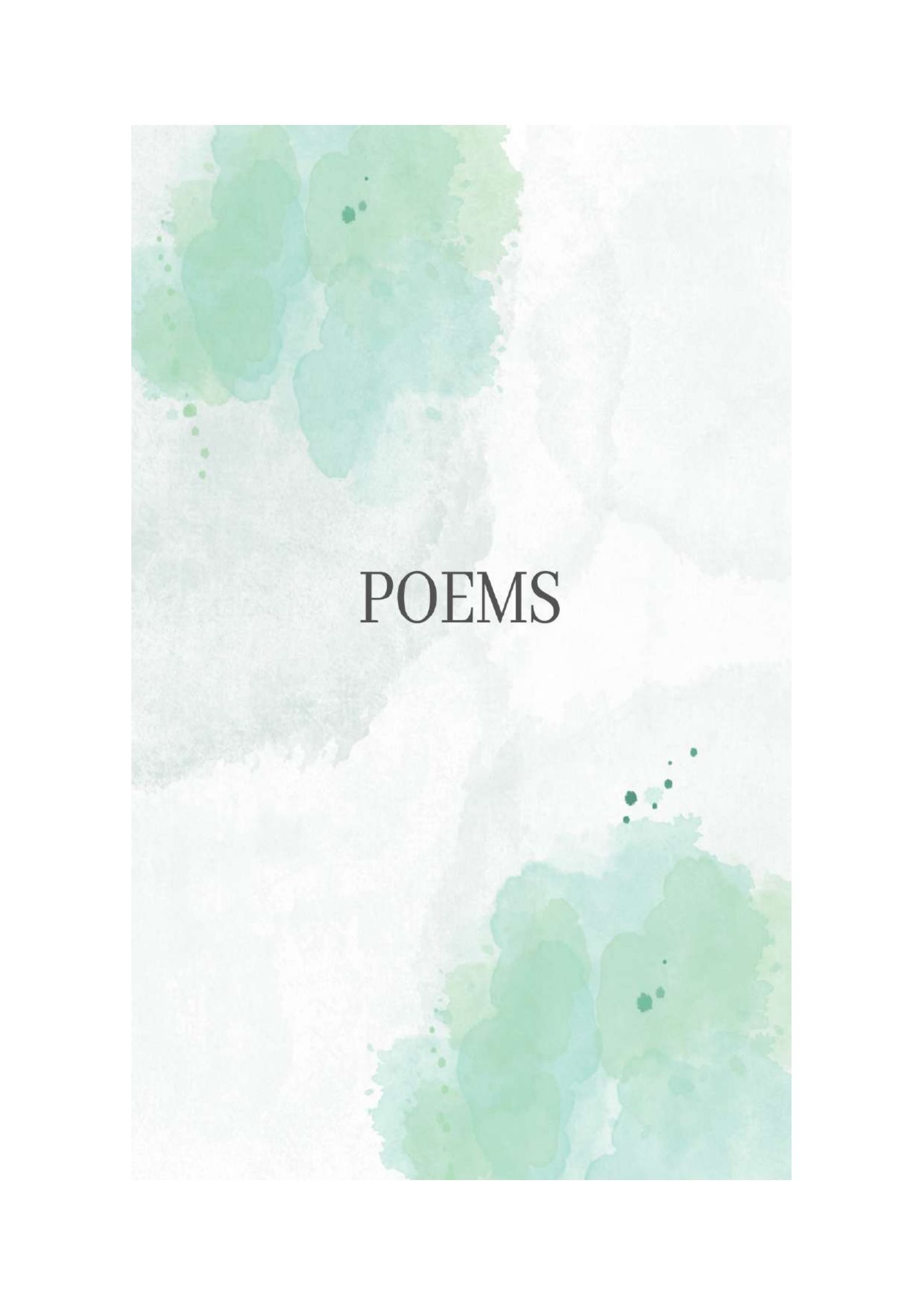




Conclusion and Suggestions

Hence, the aim of prison system is basically to ensure the society crime free, to correct the offenders to rehabilitate them and transfer them into law abiding citizen. Reformation and rehabilitation offer these prisoners a second chance in their life. Therefore, dreadful treatment and denial of human rights can never be a way to achieve these goals. At the time of arrest, a person Suffers from lack of knowledge about their basic rights. It is common in case of poor and illiterate persons. The suggestions for improving in the condition of prisoners are as follows: Prisons and it authority should be converted into correctional homes which has been seen in several areas and prisoners should also provided basic facilities which is necessary for livelihood in the prison Legal aid system should be strengthened in jail, more para legal volunteers for each jail along with a panel of lawyers. Education should be provided to all the prisoners (both male and female) so that they could know about their basic rights.





POEMS



WARRIOR : MEN IN KHAKI

Simpi priya chaudhary

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Does they blanked out the entirety when they bear it?
Or , there devotion for the nation is more like there spirit.
Don't they feel nostalgic for there birth giver?
Or, there obsession for the home land is moreover.
Don't they discern glacial?
Or, the tricolour makes them forcible.
Don't they want to inhabit normalcy?
Or, they be smitten with nationality.
Don't they look for serenity?
Or, they bicker for tranquility for community.
Don't they yearned-for lineage?
Or, they cling to for heritage.
Audacity can be seen in there eyes,
Patriotism can be seen in there eyes,
Ready to fight ,
Ready to protect,
Turn of phrase can't give justice to there sacrifice.





LITTLE LILY

Narayan Sutradhar

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I was standing alone beside the shy river.

Under the shadow of darkness and very
close to the spirit.

In this arena, nothing has left to shine, anymore.

The Kudos of sacrifices has been removed from the fate.

Redden the dimmed bulbs in the darkness to ward off evil spirit.

Let them seek the way of joy, let them find peace.

Everything appears meaningless to me and I leftover as a odd.

However, I came to know;

Little Lily is now grown up.



The background of the page is a soft, abstract watercolor wash. It features large, irregular patches of light green and pale blue, which are more saturated in some areas and fade into a very light, almost white, background in others. The texture is soft and painterly, with visible brushstrokes and a gentle blending of colors.

PAINTINGS



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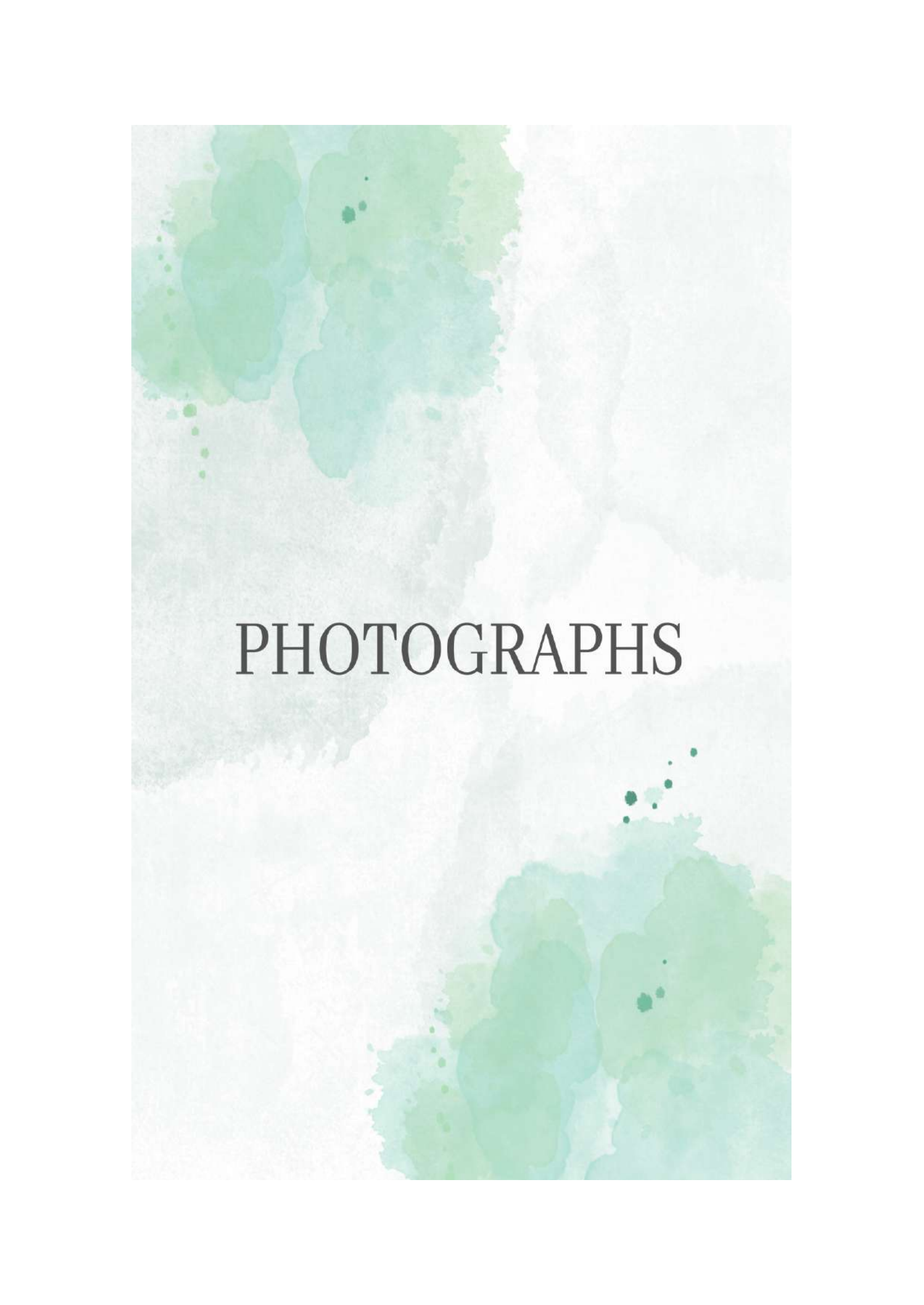


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Prosanta Roy
B.A. LL. B (Hons.) 7th Semester

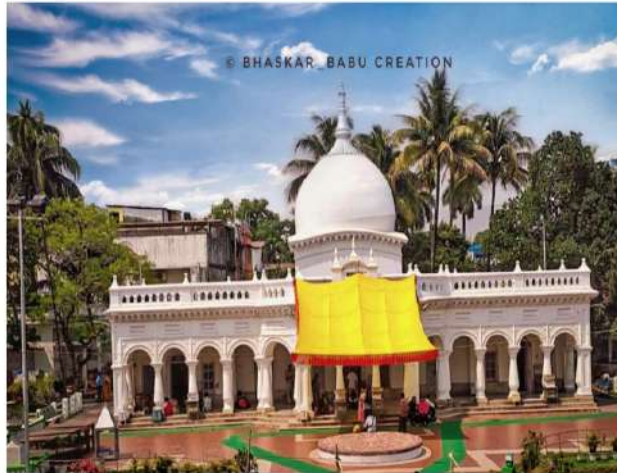


The background of the page is a soft, abstract watercolor wash. It features large, irregular patches of light green and pale blue, with some darker green and blue accents scattered throughout, particularly in the upper left and lower right corners. The overall effect is a gentle, artistic texture.

PHOTOGRAPHS



Photography by
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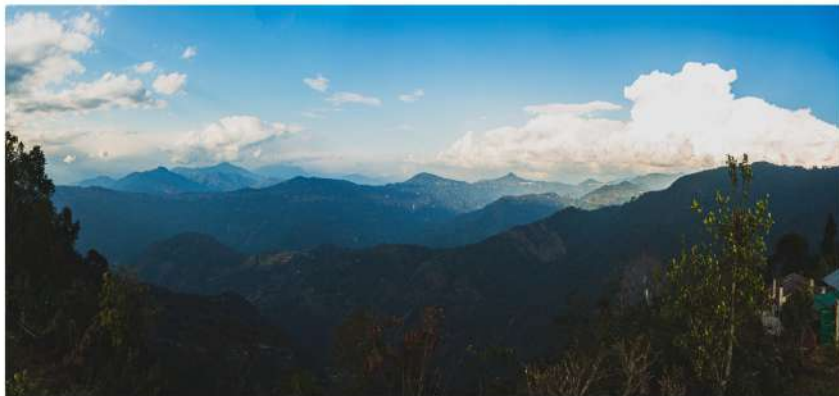


Photography by Bishal Deb
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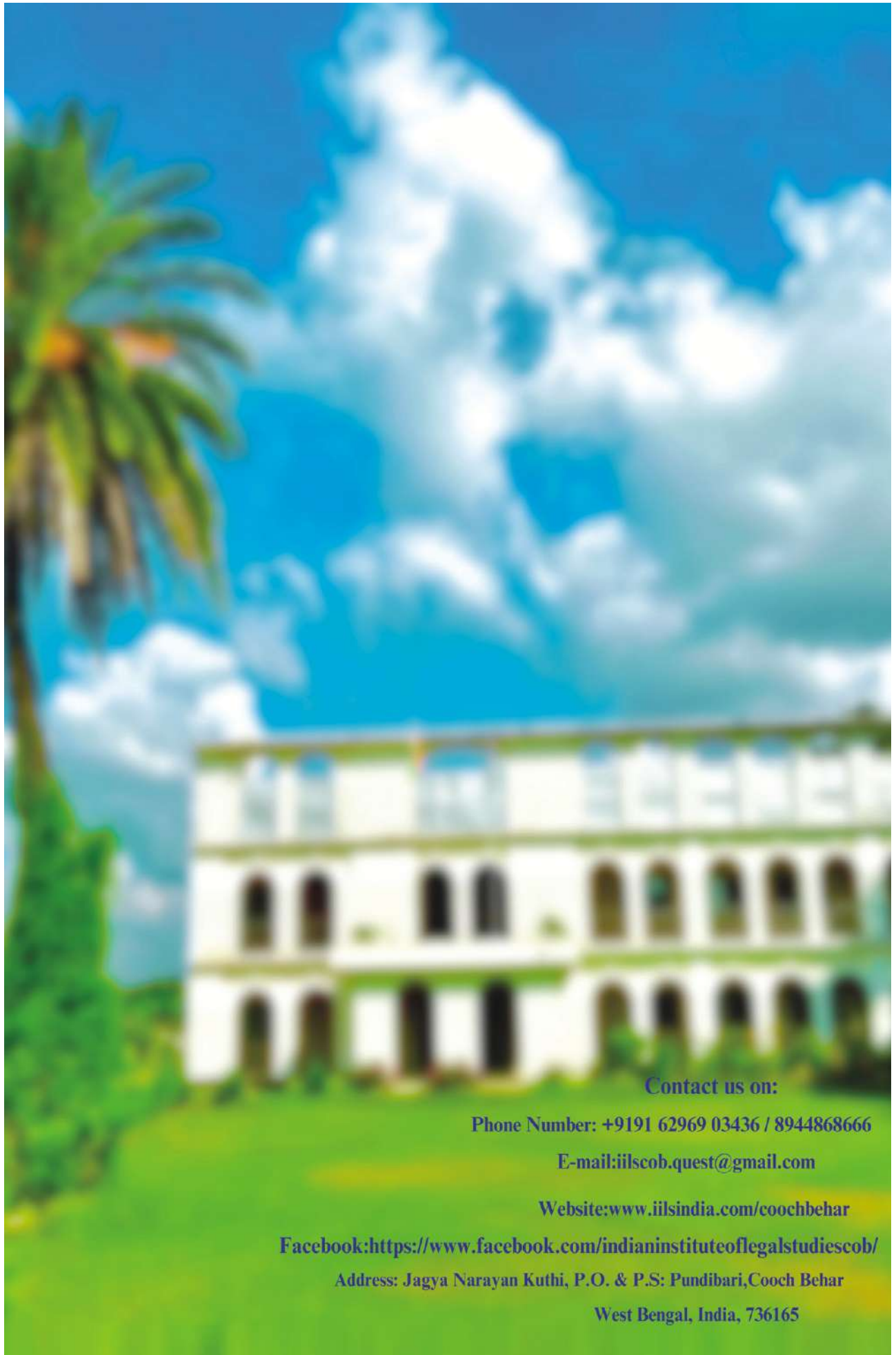
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