

VOLUME IX

ISSUE – III (Jul – Sep 2023)



QUEST

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

INDIAN INSTITUTE OF LEGAL STUDIES

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

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

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THE STUDENT JOURNAL

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MESSAGE

FROM FOUNDER CHAIRMAN'S DESK



SHRI JOYJIT CHOUDHURY

**Founder Chairman
Indian Institute of Legal Studies**

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

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

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

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

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

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

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

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

JOYJIT CHOUDHURY

MESSAGE

FROM PRINCIPAL'S DESK



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

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



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

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LONG ARTICLE



RIGHT TO INFORMATION LAW IN INDIA: AN OVERVIEW

- Tousif Khan¹

ABSTRACT

This comprehensive article delves into the historical underpinnings of the Right to Information Act. It meticulously examines the constitutional provisions and judicial precedents surrounding the Right to Information in India before the enactment of the act. The narrative then seamlessly transitions to the evolution of the Right to Information Act of 2005, elucidating its pivotal components and expounding upon the inherent obligations imposed on public authorities.

Further enriching the discourse, the article addresses the intricacies of requesting and obtaining information, meticulously detailing the processes and procedures involved, alongside an insightful exploration of information disposal mechanisms. The narrative culminates in a thorough exploration of the powers and functions vested in the Information Commission, shedding light on its pivotal role in overseeing the implementation of the Right to Information Act. Finally, the article

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meticulously dissects the provisions related to appeals and penalties, providing a comprehensive understanding of the legal framework that underpins this crucial legislation.

KEYWORDS: *Historical Backgrounds, Constitutional Provisions, Judicial trends, Disposal of information, Information Commission.*

1. INTRODUCTION

The Right to Information Act, 2005 (RTI Act), enacted on October 12, 2005, stands as a pivotal legislation in India, empowering citizens to request information from a broad spectrum of government bodies defined as "public authorities." These encompass ministries, departments, corporations, and local bodies established under constitutional or legislative provisions. Any Indian citizen can file an RTI application seeking information in various formats, and public authorities are obligated to respond within 30 days, barring specific exemptions outlined in the Act.

The RTI Act has had a profound impact on Indian society and democracy. Recognized as one of the most progressive freedoms of information laws globally, it has enhanced government transparency and accountability. This legislation has effectively enabled citizens to scrutinize and hold public representatives accountable, contributing to a more informed and engaged citizenry. Moreover, the RTI Act has played a crucial role in unveiling instances of corruption, inefficiency, and maladministration within governmental bodies.

2. HISTORICAL BACKGROUNDS

The legal landscape concerning government secrecy and public access to information in India has evolved over the years. Before the enactment of

the Official Secrets Act, of 1923, the Indian Official Secrets Act, of 1889, and the Official Secrets Act, of 1911, which were passed by the British Parliament, were in effect. The subsequent introduction of the Public Record Act, of 1993 aimed to regulate the management, administration, and preservation of public records held by various government entities, including the Central Government, Union Territory Administrations, Public Sector Undertakings (PSUs), statutory bodies, corporations, commissions, and committees formed by the Central Government or Union Territory Administrations. This Act empowered Record Officers to take appropriate measures in cases of unauthorized removal or destruction of records under their custody.

Emphasizing the importance of secrecy in government operations, the Official Secrets Act (OSA), of 1923, granted exclusive rights to maintain confidentiality. In addition to the OSA, other statutes, such as the Indian Evidence Act, of 1872 (Section 123), prohibited the disclosure of unpublished official records as evidence without the permission of the relevant department head. The Supreme Court of India, in the case of *R.K. Jain v. Union of India*,² further affirmed that Section 123 of the Indian Evidence Act, 1872 provides government immunity from disclosing unpublished official state documents in the public interest. However, certain statutes did grant limited access to information:

² R.K. Jain v. Union of India, AIR 1993 SC 1789.

The ***Indian Evidence Act of 1872 (Section 76)*** mandated public officials to provide copies of public documents to individuals with the right to inspect them.

The *Factory Act of 1948* required compulsory disclosure of information to factory workers regarding hazards and protective measures.

The ***Water (Prevention and Control of Pollution) Act, of 1974 (Section 25(6))*** compelled State Boards to maintain a register containing information on water pollution, open to inspection, with exceptions based on public interest.

The ***Air (Prevention and Control of Pollution) Act, of 1981*** had a similar provision for information on air pollution, again with public interest exceptions.

The ***Environment (Protection) Act, of 1986***, its Rules, and Environmental Impact Assessment Regulations provided for public consultation and disclosure, albeit with certain limitations.

The ***Representation of the Peoples Act, of 1951***, amended after the *Union of India v. Association for Democratic Reforms case*,³ conferred the Right to Information on citizens regarding candidates' criminal records, but Section 33B was later struck down by the Supreme Court.

³ Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112.

Chapter VII of the Representation of the Peoples Act deals with the publication of election results and nominations, emphasizing transparency in electoral processes.

Furthermore, *Chapter VIIA* addresses the declaration of assets and liabilities by elected candidates for Parliament.

The *Protection of Women from Domestic Violence Act, of 2005, Section 24*, obliges courts to provide copies of orders free of cost to relevant parties, police, and service providers.

Under the *Trade Marks Act, of 1999, Section 148* mandates public inspection of the Trade Marks Registry, with provisions for obtaining certified copies of entries and documents.

The *Semiconductor Integrated Circuits Layout Design Act, of 2000, in Section 87*, outlines provisions for public inspection of the Layout-Design Registry, including certified copy access to entries and relevant documents.

These legal provisions and amendments reflect the complex interplay between government secrecy and the public's right to access information in India's legal framework.

3.CONSTITUTIONAL PROVISIONS AND JUDICIAL TREND ON THE RIGHT TO INFORMATION IN INDIA BEFORE 2005

In India, the Right to Information is considered a fundamental right, integral to both the freedom of speech and expression (Article 19(1)(a)) and the right to life and personal liberty (Article 21) enshrined in the Constitution. While Article 19 doesn't explicitly mention the Right to Information, the Supreme Court has consistently ruled that the right to know is an essential component of the right to free speech and expression. This recognition is based on the idea that to speak and express oneself freely in a democracy, citizens must have access to information, especially about government actions.⁴

Examining bodies and examination processes of examining bodies, are covered under this Act. There is a need for the disclosure of maximum information by public authorities and a change in the old mindset of unwarranted secrecy. However, competent authorities under the RTI Act to maintain a proper balance between achieving transparency and reducing corruption and ensuring that demand for information does not reach unmanageable proportions affecting public interests as the efficiency of public authorities and Government, preservation of

⁴ People's Union for Civil Liberties v. Union of India, (2004) 2 SCC 476.

confidentiality of sensitive information and optimum use of limited fiscal resources.⁵

The Right to Information encompasses not only the freedom of the media but also the access to information held by the government, making it accessible to ordinary citizens. Article 21, which safeguards the right to life and personal liberty, has been interpreted broadly by the Supreme Court. It covers essential aspects like food, education, and health, and personal liberty includes protection from illegal and unnecessary restraint. Denying access to information related to these vital aspects is seen as a denial of the right itself.⁶

Before the enactment of the Right to Information Act in 2005, the Indian judiciary played a pivotal role in safeguarding and promoting the Right to Information. The focus was on issues such as the disclosure of information, the right to know, the right to acquire and disseminate information, and guiding voters' right to information.

The Purpose of this Act is to provide free access to information with the object of making governance more transparent and accountable. The Right to information is not an uncontrolled right but subject to dual check viz. inbuilt restrictions within the statute itself, and secondly, constitutional limitations enshrined in Article 21 of the Constitution i.e.,

⁵ ICAI v. Shaunak H. Satya, (2011) 8 SCC 781.

⁶ Govt. of India v. Cricket Assn. of Bengal, (1995) 2 SCC 161.

it has to be balanced with the right to privacy. Further held, where public authority takes recourse to provisions of exemption or infringement of Article 21 of the Constitution and withholds information sought, it has to apply its mind and form an objective opinion justifying the exemption.⁷

4. EVOLUTION OF RIGHT TO INFORMATION ACT, 2005

In the early 1990s, the right to information movement took root in Rajasthan when members of the *Mazdoor Kisan Shakti Sangathan* (MKSS) demanded transparency in government records while fighting for their wages during a famine. They sought access to documents related to public works, particularly muster rolls, wages, and payments. Although the collector accepted their request, the village development officer initially refused to comply.

MKSS staged protests, lasting for 52 days, until the Deputy Chief Minister of Rajasthan, in May 1997, announced that the state government would permit access to information regarding panchayat or village local government matters. While copies of muster rolls were provided, the order was not fully implemented. This movement catalysed a nationwide campaign for the right to information.

⁷ Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi, (2012) 13 SCC 61.

Various committees made significant efforts in drafting the Right to Information (RTI) Bill. RTI laws were proposed by entities like the Consumer Education and Research Council in Ahmedabad and the Press Council of India. Additionally, the Shourie Committee contributed to the formulation of Indian freedom of information laws.

In 1997, Tamil Nadu and Goa enacted their state-level Right to Information Acts. Subsequently, several other states introduced their RTI Acts before the nationwide Right to Information Act of 2005, including Madhya Pradesh, Karnataka, Rajasthan, Delhi, and Maharashtra.

At the national level, the Freedom of Information Bill, of 2000, was presented in Parliament, leading to the enactment of the Freedom of Information Act, of 2002, aimed at enhancing transparency in government operations. However, this act never came into effect due to the absence of a notification for its enforcement by the Central Government.

The importance of the right to information was underscored in the report of the National Commission to Review the Working of the Constitution, led by *Justice M.N. Venkatachaliah* in 2002. The report emphasized that citizen access to information is pivotal for a new style of governance and can address many issues, including bureaucratic delays and corruption. It called for the government to guarantee and facilitate the right to information, ushering in transparency and participation in public administration.

In 2004, the newly elected UPA government in India made a commitment to introduce a more progressive and participatory Right to Information (RTI) law. To fulfill this promise, the National Advisory Council (NAC) was established to implement the government's Common Minimum Programme. During this period, a Public Interest Litigation (PIL) was filed in the Supreme Court of India to compel the government to enforce the Freedom of Information Act, of 2002. In response, the Supreme Court of India directed the government to provide a timeline for the notification of the Act.

In 2004, the NAC's dedicated efforts led to the enactment of the RTI Bill, 2004. This bill was subsequently passed by both houses of parliament in May 2005 and received the assent of President APJ Abdul Kalam on June 15, 2005. Finally, the RTI Act came into force on October 12, 2005, marking a significant step towards a more transparent and participatory government.

5. OBLIGATIONS OF PUBLIC AUTHORITY

[SECTION 4]

Under **Section 4** of this Act, public authorities are obligated to fulfil four key duties, namely:

(a) Maintaining well-catalogued and indexed records. [Section 4(1)(a)]: The primary duty of any public authority is to organize and index all its records, ensuring they are easily accessible in a manner that

supports the right to information as per the Act. Additionally, public authorities should prioritize the computerization of records and establish a network accessible nationwide. However, this process should be carried out within a reasonable timeframe and subject to resource availability.

(b) Publishing vital information. [Section 4(1)(b)]: Another crucial responsibility of the public authority, as stipulated in Section 4(1)(b), is to disclose vital information within 120 days from the enactment of this Act:

- i. Details regarding its organization, functions, and duties.
- ii. The powers and duties of its officers and employees.
- iii. The decision-making process, including channels of supervision and accountability.
- iv. Norms established for fulfilling its functions.
- v. Rules, regulations, instructions, manuals, and records used by its employees.
- vi. A list of documents under its control.
- vii. Information about arrangements for public consultation and representation in policy formulation and implementation. This includes the publication of the particulars of such arrangements where they exist.
- viii. A list of boards, councils, committees, and similar groups, along with details of their public accessibility and meeting minutes.
- ix. A directory of its officers and employees.

- x. Monthly remuneration details for each officer and employee, including the compensation system defined in the organization's regulations.
- xi. Budget allocation for each agency, specifying plans, proposed expenditures, and expenditure reports.
- xii. Information on the execution of subsidy programs, including allocated amounts and beneficiary details.
- xiii. Particulars of recipients of concessions, permits, or authorizations granted by the organization.
- xiv. Details about electronic information available or held by the organization.
- xv. Information on facilities for citizens to access information, including library or reading room working hours if provided for public use.
- xvi. Names, designations, and contact details of Public Information Officers.
- xvii. Any additional information as prescribed by relevant regulations.

(c) Disclosing all pertinent facts. [Section 4(1)(c)]: One of the responsibilities of a public authority is to disclose all pertinent information when crafting significant policies or making decisions that impact the public.

(d) Providing reasons for their administrative or quasi-judicial decisions. [Section 4(1)(d)]: The Last Obligation of the public

authority under Section 4(1) is to give reasons for its administrative or quasi-judicial decisions to affected persons.

5.1. Suo motu action to provide such information

[Section 4(2)]

Public authorities should consistently strive to proactively share information with the public through various communication channels, including the Internet, as mandated by Section 4(1)(b). The primary goal is to ensure that citizens are well-informed, reducing their reliance on the Right to Information Act to access information. Therefore, public authorities should take the initiative to provide information without citizens having to request it. When public authorities fulfil their obligations under Section 4(1), there is a decreased need for citizens to resort to the Right to Information. However, the Commission has observed instances where public authorities have not taken proactive steps as required by Section 4(2), leading to increased use of the Right to Information by citizens.

5.2. Wide Dissemination and Easy Access of Information

[Section 4(3)]

Information falling under Section 4(1) must be widely disseminated in a format and manner that is easily accessible to the general public.

Dissemination [Explanation to Section 4]: Dissemination refers to the process of effectively sharing information with the public through various channels such as notice boards, newspapers, public announcements, media broadcasts, the internet, and other means, which may also include inspecting the offices of public authorities.

5.3. Cost-effectiveness, local language, and the most effective method of communication [Section 4(4)]

Public materials must be disseminated with consideration of cost-effectiveness and in the local language and the most effective method for that area. Information should be easily accessible, preferably in electronic format, and provided free or at a prescribed print cost price. Dissemination can include methods such as notice boards, newspapers, public announcements, media broadcasts, and the Internet. Suo motu action by public authorities is required to regularly provide information through various means, reducing the need for formal information requests and streamlining the process for both the authority and the public. This approach, as per Section 4, consolidates information in one place for easier access.

In the case of *ICAI v. Shaunak H. Satya*,⁸ the court said that the information to which the RTI Act applies falls into two categories:

- i. information that promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in Sections 4(1) (b) & (c) of the RTI Act, and
- ii. other information held by public authorities not falling under Sections 4(1) (b) & (c). Public authorities owe a duty to disseminate information falling under the first category widely *Suo motu* to the public. Authorities in dealing with information not falling under Sections 4(1) (b) & (c), must not read exemptions in Section 8 in a restrictive manner but in a practical manner so that other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interests.

⁸ *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781.

6. REQUEST FOR OBTAINING INFORMATION & DISPOSAL OF REQUEST [SECTION 6 & SECTION 7]

An applicant under the RTI Act is entitled to get copies of opinions, advice, circulars, orders, etc. but the applicant is not entitled to seek information as to why such opinions, advice, circulars, etc. were framed, particularly in matters about judicial decisions. The Administrative Officer of a court is not expected to have any information other than what is mentioned by a Judge in his judicial order.⁹

6.1. Request in writing or through electronic means in English or Hindi etc. [Section 6(1)]

Individuals seeking information under this Act must submit a written or electronic request in English, Hindi, or the official language of the relevant area. The request, accompanied by the prescribed fee, should be directed to the Central Public Information Officer (CPIO) or State Public Information Officer (SPIO) of the concerned public authority. Alternatively, it can be addressed to the Central Assistant Public Information Officer (CAPIO) or State Assistant Public Information Officer (SAPIO), with clear specifications of the desired information.

⁹ Khanapuram Gandaiah v. Administrative Officer, (2010) 2 SCC 1.

On analysing the proviso to Section 6(1), held, it is the duty of the officer concerned to listen to the persons making the request orally and to reduce their request in writing and process the same. Further, for visually impaired persons, who are unable to write or have difficulty in writing, assistance also has to be rendered under Section 6(1).¹⁰

6.2. *No reason for requesting the information or any other personal details [Section 6(2)]*

Applicants seeking information are not obligated to provide a justification for their request or furnish personal details beyond what is essential for communication purposes.

6.3. *Transfer of an application [Section 6(3)]*

Section 6(3) of the legislation addresses situations where an application seeking information is made to a public authority, but the requested information is either held by another public authority or is more closely related to the functions of another public authority. In such cases, the receiving public authority is mandated to transfer the application, or the relevant part of it, to the appropriate public authority and promptly notify the applicant of the transfer. However, the provision does not explicitly outline

¹⁰ Aseer Jamal v. Union of India, (2018) 10 SCC 437.

a procedure for transferring applications within the same public authority, specifically when the information is held by another Public Information Officer (PIO) within the organization.

Disposal of Request [Section 7]

6.4. Once the application is received by PIO then it must be disposed of according to the provisions of this Act. [Section 7(1)]

- i. RTI application is to be disposed of as expeditiously as possible:* Upon receiving a request under Section 6, the Central Public Information Officer or State Public Information Officer must promptly process the RTI application. In doing so, the officer may either furnish the information upon payment of the prescribed fee or reject the request based on reasons outlined in sections 8 and 9.
- ii. The limitation period for disposal is 30 days:* Though Section 7(1) states that the application must be disposed of as expeditiously as possible at the same time it mentions the maximum limitation period for disposal, i.e., within thirty days of the receipt of the request. However, where the information sought concerns the life or liberty of a person, then it shall be provided within forty-eight hours of the receipt of the request.

iii. Disposal of RTI application is subject to Proviso to Section 5(2) and Proviso to Section 6(3)

Proviso to Section 5(2): If an application for information or appeal is submitted to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, an additional five days shall be included in the calculation of the specified response period under Section 7(1).

Proviso to Section 6(3): The stipulation mandates the prompt transfer of an application from one public authority to another under Section 6(3), ensuring completion within five days from the date of receipt. Consequently, the transferee Public Information Officer (PIO) is obligated to dispose of the application within the specified timeframe.

	<i>Application received by the PIOs</i>	<i>Application received by the APIOs</i>
<i>Normal Information</i>	30 days of receipt of the application by the PIO	35 days (30 days + 5 days) of receipt of the application by the APIO
<i>The information concerns the life or liberty of a person</i>	48 hours from receipt of the application by the	7 days [48 hours plus 5 days] from receipt of the application by APIO

	PIO	
--	-----	--

6.5. Failure to furnish information within the Limitation period [Section 7(2)]

If the Central Public Information Officer or State Public Information Officer does not provide a decision on the information request within the stipulated period under Section 7(1), they shall be deemed to have refused the request.

6.6. Information Fee or Additional Fee [Section 7(3)]

Upon deciding to levy additional fees for furnishing requested information, the Central Public Information Officer or State Public Information Officer will notify the applicant. This notification shall include the specified amount of the additional fee, determined by the officer, accompanied by a detailed breakdown of the calculations used to arrive at this figure. Simultaneously, the applicant will be requested to promptly deposit the prescribed fee.

6.7. Information to be provided to a sensorily disabled person [Section 7(4)]

In accordance with Section 7(4) of this Act, when access to records is mandated, and the requester is sensory disabled, the

Central Public Information Officer or State Public Information Officer must facilitate access. This includes providing necessary assistance for document inspection, ensuring that the individual receives the support required for effective information retrieval.

6.8. Considering the representation made by a third party [Section 7(7)]

Before making a decision under Section 7(1), the Central Public Information Officer (CPIO) or State Public Information Officer (SPIO) must consider any representation from a third party under Section 11. If the requested information pertains to or has been provided by a third party and is treated as confidential by that party, the CPIO/SPIO must, within five days of receiving the request, notify the third party about the intent to disclose the information to the applicant. The third party is given the opportunity to submit in writing or orally whether the information should be disclosed, and this submission is taken into account when deciding on the disclosure of information [Section 11].

6.9. *Rejecting the request* [Section 7(8)]

In the event of a denial under Section 7(1), the Central Public Information Officer or State Public Information Officer, as applicable, is obligated to provide the requesting party with a concise communication detailing: (i) the grounds for the

rejection, (ii) the timeframe within which an appeal against the rejection can be lodged, and (iii) specific information about the appellate authority.

6.10. Information to be provided in the form in which it is sought [Section 7(9)]

Information should be provided in the requested format unless doing so would excessively burden the resources of the public authority or pose risks to the safety or preservation of the record in question.

7. POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES

7.1. Powers and Functions of Information Commissions [Section 18]

RTI Act confers powers on Information Commissions to enforce the right to know, the Government's power to shield information relating to sensitive State affairs, and the individual's right to privacy.¹¹ This requires judicious application of constitutional principles and striking a balance between competing interests. There is thus a link between rival parties with respect to the

¹¹ Thalappalam Service Coop. Bank Ltd. v. State of Kerala, (2013) 16 SCC 82.

information sought. Information Commissions have penal powers also. Their functioning therefore has to conform to judicial norms.¹²

Subject to the provisions of this Act, it is the duty of the Central Information Commission or State Information Commission to receive and inquire into a complaint from any person who:

- a) has been unable to submit a request to a Central or State Public Information Officer due to the absence of such an officer or refusal by the Assistant Public Information Officer to accept the application, and*
- b) has been denied access to requested information,*
- c) has not received a response within the specified time limit,*
- d) considers the imposed fee unreasonable,*
- e) believes they have received incomplete, misleading, or false information,*
- f) has concerns regarding any matter related to requesting or obtaining access to records under this Act.*

If the Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry. The Commission, during the inquiry, possesses powers equivalent to those of a civil court under the Code of Civil Procedure, 1908,

¹² Namit Sharma v. Union of India, (2013) 1 SCC 745.

including summoning and enforcing attendance, compelling oral or written evidence, and requisitioning public records.

Notwithstanding any inconsistency in other legislation, the Commission, during the inquiry, may examine any record under the control of the public authority without withholding it on any grounds.

Appeal [Section 19]

This statement outlines the appeal process under the Right to Information Act. Individuals dissatisfied with the decisions of Public Information Officers may appeal to a higher-ranking officer within 30 days, with a provision for admission beyond this period if there is a valid reason. Appeals related to third-party information under Section 11 must be made within 30 days. A second appeal to the Central/State Information Commission is allowed within 90 days, with a possibility of admission beyond this period under certain circumstances. The Commission has the authority to instruct public authorities to comply with the Act, compensate complainants, impose penalties, or reject applications. The decision of the Commission is binding, and notice of the decision is given to the complainant and the public authority. The appeal process must be completed within 30 days or a maximum of 45 days with recorded reasons.

In the case of *CBSE v. Aditya Bandopadhyay*, (2011)¹³ the court held that the power of the Information Commission under Section 19(8), cannot be used to extend the duration for which information is required to be preserved under rules and regulations concerned, right to access information does not extend beyond period during which examining body is expected to retain answer books as per rules.

Penalties [Section 20]

The statement outlines the penalties and disciplinary actions applicable to Central and State Public Information Officers under the Right to Information Act. If these officers unreasonably refuse or delay information, provide false information, destroy requested information, or obstruct the process, they may face penalties. For immediate offenses, a daily penalty of Rs. 250 may be imposed, not exceeding Rs. 25,000 in total. In cases of persistent and unjustifiable non-compliance, the Information Commission may recommend disciplinary action according to the relevant service rules. The officers have the right to a fair hearing, and the burden of proving reasonable and diligent action rests on them.

The Power conferred by Section 20(2) to be exercised strictly within parameters of Section 20(2), namely, (i) denial of information without reasonable cause, (ii) PIO's action tainted with mala fides, or (iii) destruction or obstruction of available information. Besides, delay or

¹³ *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

default by PIO has to be persistent and without reasonable cause — Negligence as a ground for disciplinary action not mentioned in Section 20(2).¹⁴ The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.¹⁵ — It is not every delay that should be visited with a penalty. If the delay is explained then it is to be seen that whether such an explanation is acceptable or not, it is completely depends upon the circumstances of a particular case.¹⁶

8. CONCLUSION

In conclusion, this article has undertaken a meticulous exploration of the historical foundations, constitutional nuances, and judicial trends that laid the groundwork for the Right to Information Act in India. From tracing the evolution of this legislative landmark in 2005 to delineating the multifaceted obligations imposed on public authorities, the narrative has navigated through the intricacies of this pivotal legal framework.

The article has also intricately unravelled the procedural intricacies surrounding the request and disposal of information, offering a nuanced understanding of the mechanisms at play. Furthermore, the examination of the powers and functions entrusted to the Information Commission

¹⁴ Manohar v. State of Maharashtra, (2012) 13 SCC 14.

¹⁵ A.A. Parulekar v. Goa State Information Commission, (2010) 1 Mah LJ 931.

¹⁶ State of Punjab v. State Information Commr., (2010) 4 RCR (Civil) 774 (P&H).

underscores its critical role in overseeing the implementation of the Right to Information Act.

By rounding off with a comprehensive exploration of provisions related to appeals and penalties, the article not only encapsulates the essence of this legislation but also serves as a valuable resource for comprehending the broader legal landscape governing the right to information in India. In essence, this discourse contributes significantly to the scholarly understanding of the Right to Information Act, offering a comprehensive and insightful analysis of its historical antecedents and contemporary implications.

DOMESTIC VIOLENCE AGAINST WOMEN: THE ISSUE, THE LAW AND THE CURRENT SCENARIO IN INDIA

-Diya Patodia ¹⁷

ABSTRACT

Domestic violence is a common misconception that it is strictly physical abuse. While physical abuse is very common and used as a tactic to have total power and control over a partner, there are other forms of abuse as well. Domestic violence can also appear as emotional abuse, verbal abuse, sexual abuse such as marital rape or other sexual acts, financial abuse, psychological abuse and more. Violent behavior, no matter how it looks, is inexcusable and should be taken very seriously. Abusive relationships are painful for everyone involved and one experiencing violence and abuse should seek help immediately. It is a very well-known pattern of abusive behavior which is most frequently done towards women in India. In India there is a huge number of women who either as a daughter, daughter-in-law, or as a wife must be suffering from some

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kind of domestic violence. This article is to critically analyze the existing legal framework with respect to domestic violence under the IPC, Domestic Violence Act and so various judicial decision.

KEYWORDS: *Domestic Violence, Women, Male Domination, Abusive, India.*

1. INTRODUCTION

The term “Domestic violence” includes violence done either by an intimate person or by any other family members, wherever this violence takes place and in whatever form. The definition of domestic violence is wide enough to cover all harms, injuries that endanger the physical or mental well-being of the women. It includes physical, sexual, verbal, emotional or economic abuse and any kind of harassment or injuries to meet any demand for dowry or any other valuable security. It is pertinent to note here that the Act reinforces the right of women to the property and any act, which deprives her of any economic or financial resources, or household effects and facilitates shall constitute domestic violence under Section 3 of the Act. Explaining the meaning of "domestic violence" in *Bulu Das v. Ratan Das*,¹⁸ the Gauhati High Court held that domestic violence includes not only mental harassment through verbal or emotional abuse but also includes economic abuse. In *Radha Manohari v. Vanka*,¹⁹ the Supreme Court held that where wife repeatedly subjected to cruelty, torture and assault by husband "is more or less like a containing offence."

It is a recognized fact that violence against women is a manifestation of historically unequal power relations between men and women, which has

¹⁸ *Bulu Das v. Ratan Das*, 2010 (85) AIC 952 (Gau).

¹⁹ *Radha Manohari v. Vanka*, (1993) 3 SCC 4.

led to domination over and, discrimination against women by men and to the prevention of the full advancement of women.²⁰ Violence against women is a violation of basic human rights which she is entitled to by virtue of having been born as a human being. Violence is such a scourge that not only torments and maims her but also slays her bodily monetarily, mentally, sexually throughout the world. Thus, not only in developed countries but also in developing and underdeveloped countries women are suffering from violence. They are deprived of their human rights and there is always a sword of violence surrounding them. It completely breaks and shatters the spirit of the married women and is not something which should be swept under the rug and considered a private family matter.

Thus, violence against women can take place in a variety of forms. It could be in the form of female feticide, marital rape, wife battering, and dowry related problem or to put it in one-word domestic violence. In this connection it is relevant to mention that wife battering is again a universal problem existing not only in India but throughout the world. The women are harassed, tortured and beaten to such an extent that sometimes they are forced to commit suicide or are sometimes even murdered. It is the common fact that every woman has suffered violence at one time or the other in her life and the life of the woman lies between pleasure at one

²⁰ UNICEF, <https://www.unicef-irc.org/> (last visited Sept. 17, 2023).

end, and danger at another end. Thus, it is seen that throughout history, women were constantly admonished and were forced to stay with her husband, even if he was cruel. It is a general assumption that male adjustment between husband and wife is generally the cause of wife battering.

2. CAUSES AND CONSEQUENCES OF DOMESTIC VIOLENCE

“Men physically assaulted a woman while drunk”, “Husband tortured his wife”, “The in-laws made derogatory remarks to the newlywed bride”, “The husband and his family killed a woman for a dowry”, and so on, these are the headlines we read and see daily; this is a harsh reality of our patriarchal society. In our nation, domestic violence affects nearly one in three women.²¹ There are a lot of cases that are not reported because of family pressure or out of respect for the family in society. Marital rape which is also a part of domestic violence remains ignored in our nation and cases are also not registered because some people accept it as a part and parcel of marriage or culture.

²¹ Study on the Impact of Covid-19 on Gender Equality with a Focus on Intersectionality and Economic Empowerment, GIZ REPORT, (Nov.25, 2022,04:00 PM), https://genderanddevelopment.de/fileadmin/user_upload/Syspons_Report_Covid_Intersectionality_final.pdf.

5.1. Causes of Domestic Violence

Till today there is a continuous debate on the issue of causes of domestic violence. The factor carried out in different parts of the world on the issue indicates that almost all social structure treats women as fundamentally of less value than men which is conducive to violence against women. According to a worldwide survey, low self-admiration, pressure to keep families together, fear of being alone, economic dependency, balancing the victim, overwhelming shame and stigma, status of women are various factors that had led to the infliction of domestic violence. Following are the causes which carry on domestic violence: a) Cultural b) Economic c) Legal d) Political.²² Apart from this, there are various perspectives which answer the question as to why men are violent towards their wives?

In my perspective domestic violence against women occurs due to a number of factors like uncontrolled aggression, unemployment, and cultural factors. Men may become violent, may be, during their childhood days, they have experienced violence in childhood, or the child had witnessed his father beating his mother. No matter how

²² *Supra* note 20.

modern India as a country is. Somewhere today also in the society it is taught that no matter what the situation is women should not open her mouth against her husband. If she disagrees with the latter's opinion, she should stay quiet. If she expresses the disagreement, it hurts the male ego of the husband which causes domestic violence against women. It may also take place due to the fact that in the field of education or employment he is looser, his wife might be an achiever and he is unable to tolerate this, so that violence may actually increase as women's desire for equality, freedom and independence.

5.2. Consequences of Domestic Violence

The effect or consequences of domestic violence on women victims are devastating. Aside from the obvious physical effects some of which can be severe and can last a lifetime, women suffer emotionally, socially and financially as a result of domestic violence. They may endure economic hardship, the loss of their homes and possessions, the loss of employment, isolation from family and friends, lowered self-esteem and even the loss of their children.²³ Domestic

²³ Puja Jaiswal, *Victimization of Women in the Home: Domestic Violence and the Law*, CMLJ, 13,13-22 (2009).

violence has drastic consequences or effects on the health of the victims.

Domestic violence also consists of depriving women the basic amenities of life such as food, shelter etc. This results in under nutrition and anemic status. Women are treated as the machine to produce the male child and she is forced to go sex determination. If she conceives a female child, she is looped as cursed and forced to go for abortion. This may result in death of a child as well as mother during delivery. Indeed, the consequences of gender-based violence are devastating, including lifelong emotional distress, mental health issues and poor reproductive health. Besides, the effect might extend to future generations as children who see violence in the family or were victims themselves, often suffer a lasting psychological damage? Violence may affect the dignity of a person and may deprive her of basic necessities and alright to dignified life. Therefore, violence in any form may result in depriving life and liberty of the individual. It may hurt the growth and personality of the individual as a normal human being.

Women indeed play a pivotal role in earning for the family, so any harm to the health and well-being of the woman or

primary caregiver of the family may result in harming the family and may have a drastic impact on society at large. Therefore, the concept of domestic violence has to be seen in totality. The forms in which violence manifests itself are much broader and may have a deep impact on not only women but on the society at large.

3. LEGAL PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

Since 1986, the Law Commission of India has been of the view of legislating the law on domestic violence. It has suggested piecemeal amendments in different legislations like Hindu Marriage Act, 1955, Evidence Act, amendment in Code of Civil Procedure and Criminal Procedure Code and also the latest being recommending the law for Protection of Women from Domestic Violence Act, 2005. In India, the protection of women from domestic violence can be discussed in three parts, namely, (i) protection of women from domestic violence under Constitutional law, (ii) protection of women from domestic violence under criminal law, and (iii) Protection of Women under the Domestic Violence Act, 2005. The Constitution of India is the highest law of the land therefore the scope and ambit of the protection of women from domestic violence is to be determined from the constitutional principles.

As the criminal law plays an important role for providing protection of women from domestic violence, it is essential to examine the effect and efficacy of the criminal law in providing the protection of women from domestic violence.

India is signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The treaty was signed on 30th July, 1980 and was ratified on 9th July, 1993. The convention requires the Government to adopt measures for elimination of all forms of discrimination against women to achieve full equality between men and women. In the context of India, the principle of gender equality is enshrined within the Constitution of India, which guarantees gender equality and empowers the State to formulate affirmative action in favor of women. In *Madhu Kishwar v. State of Bihar*,²⁴ The Supreme Court considered the provision of the CEDAW and held the same to be an integral scheme of the fundamental rights and the directive principles. Article 2(e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the constitution, International Conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights.

3.1. Constitutional Protection to Women and Their

²⁴ *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125.

Rights

The Constitution of India provides many safeguards to women and their rights. The Preamble of the Constitution provides to all citizens equality of status and of opportunity as well as justice-social, economic and political. *Inamdar v. State of Maharashtra*,²⁵ the Supreme Court observed that "it is well accepted by the thinkers and philosophers that if JUSTICE, LIBERTY, EQUALITY and FRATERNITY, including social, economic and political Justice, the goals set out in the Preamble to the Constitution of India are to be achieved, the Indian polity has to be educated with excellence. "This is because the Constitution is not to be construed as a mere law, but as the machinery by which laws are made. The Constitution is a living and organic thing which, among all instruments, has the greatest claim to be construed broadly and liberally."²⁶

Right to equality and non-discrimination is a gender-neutral right and its application to unequal circumstances especially in the case of women is quite difficult. Therefore, granting protective discrimination in favor of women is permissible under the Constitution of India to achieve justice as the preamble provides

²⁵ *Inamdar v. State of Maharashtra*, (2005)6 SCC 537.

²⁶ *Goodyear India v. State of Haryana*, AIR 1990 SC 781.

for securing "justice-social, economic and political." The preamble to the Constitution also resolved to secure its all citizens, inter-alia, equality of status and opportunity, while Articles 14 to 18 and 39 provide for right to equality and non-discrimination among men and women.

Article 14 of the Constitution ensures equality before law to all persons within the territory of India. The Constitution of India also prohibits discrimination based on sex, but it equally directs and empowers the government to undertake special measures for women. Article 15 is qualified by a proviso under Article 15(3) that the state may make "any special provision for women." Article 15(3) which permits special provision for women and children, has been widely resorted to and the courts have upheld the validity of special measures in legislation or executive orders favoring women. In particular, provisions in the criminal law, in favor of women or in the procedural law discriminating in favor of women have been upheld in the case of *C.B. Muthana v. Union of India*.²⁷

Article 21 spells that no person shall be deprived of his life or personal liberty except according to procedure established by law. This Article if read literally is a colorless Article and would be

²⁷ C.B. Muthana v. Union of India, AIR 1979 SC 1868.

satisfy at the moment. Article 39(a) lays down that the State shall direct its policy towards securing all citizens, men and women equally the right of means of livelihood and Article 39(d) ensures equal pay for equal work. Article 42 directs the State to make provisions for ensuring just and human conditions of work and maternity relief. Above all, the Constitution imposes a fundamental duty on every citizen through Article 51A (e) to renounce the practice derogatory to the dignity of women.

In a recent decision in *Mangat Mal v. Punni Devi*,²⁸ the Supreme Court has taken within its compass the provisions of residence along with the maintenance. The recent decision of the Supreme Court was in *State of Rajasthan v. Hat Singh*,²⁹ which prohibited “Sati”.

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*,³⁰ the Supreme Court emphasized the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favor of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also

²⁸ *Mangat Mal v. Punni Devi*, (1995) 6 SCC 88.

²⁹ *State of Rajasthan v. Hat Singh*, (2003) 2 SCC 152.

³⁰ *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, 1997 (1) AII MR 537.

include the right against being insulted. These two facets of the right to life find mention under the definitions of sexual abuse and emotional abuse, respectively. A praiseworthy aspect of the legislation is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable, especially as such sexual abuse is not recognized by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.

In this way the Constitution provides a large number of protections for women such as protective discrimination in favor of women, right to freedom of women, rights of women against exploitation, rights of women under directives. In this connection the Indian judiciary plays an important role.

3.2. Protection of Women from Domestic Violence under Criminal Law

Women constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender difference and blast. The phenomenon of domestic violence against women is widely prevalent but has remained

largely invisible in the public domain. In various states domestic violence against women has serious adverse consequences for the physical, mental, and reproductive health of women.³¹

Under the framework of the Constitution of India³² the Dowry Prohibition Act, 1961 was enacted by the Indian Parliament and criminalized the acts of giving and taking dowry. The word "dowry" has to be understood as it is defined in Section 2 of the Act.³³ According to Section 2, the "dowry" means any property or valuable security given or agreed to be given by one party to a marriage to the other party to the marriage.³⁴

Despite having the Constitutional provisions, it has been pointed out by a number of theorists that traditional dowry system in which a bride's family must provide cash, property or gifts to her bridegroom's family as part of the wedding is also responsible for domestic violence of women and thus pervasive gender discrimination occurs from birth, through marriage, until a

³¹ Jayanta Kumar Dab, *Ramifications of Domestic Violence against Women: Common Evil in Indian Society Today*, 13 (4) South Asia Politics 42,42-52 (2014), <https://jamshedpurresearchreview.com/wp-content/uploads/2020/06/Jamshedpur-Research-Review-Year8-Volume-3-Issue-40-May-June-2020.pdf>.

³² Harpal Kaur Khehra, *Discrimination Against Women: Legal Tackling of Domestic Violence as a Life Cycle of Abuse*, 1 Punjabi University Law Journal 36, 36-55 (2007).

³³ Dowry Prohibition Act, 1961, § 2, No. 28, Acts of Parliament, 1961 (India).

³⁴ *Id.*

woman's death which is commonly called as dowry death.³⁵ Demand for dowry per se constitutes cruelty³⁶ and additional demand for dowry has also been held to be covered under the scope of the Act.³⁷ The Apex Court has made it clear that the dowry death occurs not only when the husband of her in-laws put the bride to death but also when she is made to die by abetment to commit suicide.

While Section 498A of the Indian Penal Code, 1860 includes everyday domestic violence against women within its ambit, Section 304B of the Indian Penal Code, 1860 can only be invoked when domestic violence or the death of a woman are linked with dowry issues.

3.3. Protection of Women from Domestic Violence under the Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 came into force on October 26, 2006. The phenomenon of domestic violence is widely prevalent but has remained largely

³⁵ Biswajit Ghosh and Tanima Choudhuri, *Legal Protection Against Domestic Violence in India: Scope and Limitations*, 26 (4) J Fam Viol 319, 319-330 (2011), <https://link.springer.com/article/10.1007/s10896-011-9369-1>.

³⁶ Dowry Prohibition Act, 1961, § 8B, No. 28, Acts of Parliament, 1961(India).

³⁷ Shobha Rani v. Madhukar Reddy, AIR 1988 SC 121.

invisible in the public domain. The Protection of Women from Domestic Violence Act, 2005 provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. The Act extends to the whole of India except the State of Jammu and Kashmir, and is limited in the sense that it does not apply to anything done to a woman elsewhere than in a domestic environment.

Domestic violence is the most prevalent yet relatively given and ignored form of violence against women and girls. While reliable statistics are hard to come by, studies estimate that, from country to country, between 20 to 50 per cent of women have experienced physical violence at the hands of an intimate partner or family member.³⁸

The attributes of this Act are as follows:

1. Firstly, the Act covers women who are or have been in a relationship with the abuser, where both parties have lived together in a shared household and are related through a relationship in the nature of marriage or adoption. In addition, relationships with family members living

³⁸ A.S. ANAND, JUSTICE FOR WOMEN: CONCERNS AND EXPRESSIONS 7 (2nd ed. 2004).

together as a joint family are also included. Every woman who is sisters, widows, mothers, single women or living with the abuser is entitled to legal protection under this legislation. However, the Act enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the Act against any relative of the husband or the male partner. Any widow or unmarried sister or daughter who is harassed within the home can also resort to the new law. The law also protects women in fraudulent or bigamous marriages, or in marriages deemed invalid in law.³⁹

2. Secondly, the provision for monetary relief is also covered under this Act. Monetary relief means the compensation which the magistrate may order the respondent to pay to the aggrieved person at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence."⁴⁰

³⁹ The Protection of Women from Domestic Violence Act, 2005, §2(f), No. 43, Acts of Parliament, 2005 (India).

⁴⁰ The Protection of Women from Domestic Violence Act, 2005, §2(k), No. 43, Acts of Parliament, 2005 (India).

3. Thirdly, the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition."⁴¹
4. Fourthly, if the magistrate considers that the circumstances of the case show warrant and if either party to the proceeding so desires, the magistrate may conduct the proceedings under this Act in camera.⁴²
5. Fifthly, the Act provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home, whether or not she has any title or rights in such home or household. This right is secured by a residence order which is passed by the magistrate.⁴³ In the case of *S.R Batra v. Smt. Taruna Batra*,⁴⁴ The apex court held that the wife's right to reside in a shared household can be sought by her against her husband's

⁴¹ The Protection of Women from Domestic Violence Act, 2005, §3, No. 43, Acts of Parliament, 2005 (India).

⁴² The Protection of Women from Domestic Violence Act, 2005, §17, No. 43, Acts of Parliament, 2005 (India).

⁴³ The Protection of Women from Domestic Violence Act, 2005, §17, No. 43, Acts of Parliament, 2005 (India).

⁴⁴ *S.R Batra v. Smt. Taruna Batra*, (2007) 3 SCC 169.

property and not against husband's relatives. The court held that house which exclusively belonged to mother-in-law of the woman (respondent) wherein she only lived with her husband for sometime in the past after marriage does not fall within the meaning of Section 2(s), hence the respondent is not entitled to claim her right to live therein under Section 17 of the Protection of Women from Domestic Violence Act, 2005. In order to claim such a right, the property should belong to her husband or it should have been taken on rent by her husband or it should have been a joint family property in which her husband was a member.

6. Sixthly, the Section empowers the magistrate to pass protection order in favor of the aggrieved person to prevent the respondent from committing an act of domestic violence or any other specified act entering a workplace or any other place frequented by the agreed person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who would

provide her assistance from the domestic violence.⁴⁵

7. Seventhly, the Section provides for appointment of protection office and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter etc.⁴⁶

In *Krishna Bhattacharjee v. Sarathi Choudhury*⁴⁷ the Supreme Court has held that the 2005 Act has been legislated, as its Preamble would reflect, to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The 2005 Act is a detailed Act. The dictionary clause of the 2005 Act, which we shall advertise to slightly at a later stage, is in a broader spectrum. The definition of “domestic violence” covers a range of violence which takes within its sweep “economic abuse” and the term “economic abuse” as the provision would show, has many facets.

⁴⁵ The Protection of Women from Domestic Violence Act, 2005, §18, No. 43, Acts of Parliament, 2005(India).

⁴⁶ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005(India).

⁴⁷ *Krishna Bhattacharjee v. Sarathi Choudhury*, (2016) 2 SCC 705.

The Supreme Court in *Hiral P. Harsora v. Kusum Narottamdas Harsora*⁴⁸ has held that: “(i) A cursory reading of the statement of objects and reasons makes it clear that the phenomenon of domestic violence against women is widely prevalent and needs redressal. Whereas criminal law does offer some redressal, civil law does not address this phenomenon in its entirety. The idea therefore is to provide various innovative remedies in favor of women who suffer from domestic violence, against the perpetrators of such violence; (ii) It is not difficult to conceive of a non-adult 16 or 17- year-old member of a household who can aid or abet the commission of acts of domestic violence, or who can evict or help in evicting or excluding from a shared household an aggrieved person; (v) The impugned judgment of the Bombay High Court was set aside and it was declared that the words ‘adult male’ in Section 2(q) of the Act, 2005 will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the provision to Section 2(q), being rendered otiose, also stood deleted.”

In *Jovita Olga Ignesia v. Ranjan Maria*,⁴⁹ the Bombay High Court held that the expression "domestic violence" has a very wide amplitude and it includes physical abuse, sexual abuse,

⁴⁸ Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165.

⁴⁹ Jovita Olga Ignesia v. Ranjan Maria, 2011 Cri LJ 754 (Bom).

verbal and emotional abuse, economic abuse which in turn, includes deprivation of all or any economic or financial recourses to which the aggrieved person is entitled under any law whether payable under the order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved persons and her children, if any, stridhan, the property jointly or separately owned by the aggrieved person, payment of rental to the shared household and maintenance.⁵⁰

In *Sabana v. Talib Ali*,⁵¹ the Rajasthan High Court examined the scope of retrospective operation of the Domestic Violence Act, 2005. The Court held that the remedy under Section 12 of the Act covers the Act of violence committed end prior to coming into force of the Act and could be taken consideration by the magistrate while passing the orders extending the reliefs to the aggrieved person under Sections 18, 19, 20, 21, 22 and 23 of the Act. That apart, it is not necessary that the applicant-woman should have a marriage or relationship in the nature of marriage existing and subsisting with the respondent as on the date of

⁵⁰ Rehana Abeyratne and Dipika Jain, *Domestic Violence Legislation in India: The Pitfalls of a Human Rights Approach to Gender Equality*, 21 (2) JGSPL 333, 333-378 (2013), <https://digitalcommons.wcl.american.edu/jgspl/vol21/iss2/4/>; Biswajit Ghosh and Tanima Choudhuri, *Legal Protection Against Domestic Violence in India: Scope and Limitations*, 26 (4) J Fam Viol 319, 319-330 (2011), <https://link.springer.com/article/10.1007/s10896-011-9369-1>.

⁵¹ *Sabana v. Talib Ali*, 2014 Cri LJ 866 Raj.

coming into force of the Act or at the time of filing of the application under Section 12 of the Act before the magistrate for one or more reliefs as provided under the Act. In other words, the aggrieved person who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence is entitled to invoke the remedial measures provided for under the Act. Where the violence on the part of the respondent is specifically pleaded by the aggrieved person, the petition seeking the relief under the Act cannot be dismissed at the initial stage and the matter needs to be examined and determined by the Magistrate as mandated under the provisions of the Act.

4. CONCLUSION AND SUGGESTIONS

Analyzing the situation, it can be concluded that domestic violence is present in each and every woman's life. India is heading towards being one of the developed nations but domestic violence against women remains the same. Most of the women facing domestic violence are illiterate due to which they are unaware of the laws protecting them and their rights. Being unaware of these laws they do not register cases and continue to suffer violence. Instead of hiding these cases people should come upfront and raise their voice against it. Despite the fact that the Protection of Women from Domestic Violence Act, 2005 was

complemented by the women activists and also the women in general as it was pro-women legislation the act met with the strong agitations from some comers of the society. The Protection of Women from Domestic Violence Act, 2005 coming into existence though being a welcome step in women's empowerment movement in the country was openly complimented but various provisions were looked at with suspicion and whispering sounds of even the feminist critique posed a question mark for its success.

There are some suggestions that might help in reducing domestic violence that plagues India-

- **Creation of family counseling centers**

There must be a creation of Family counseling centers where social workers, counselors, psychiatrists, lawyers, etc. are employed and authorized to take appropriate actions on behalf of the battered spouse and to provide legal services in cases of domestic violence.

- **Getting the society educated**

This can be a great measure to eliminate violence as educating women will help them know about their rights and will create awareness among them. It will help them gain justice and live a peaceful life.

- **Gender Perspective Training**

This can be a good move if people start treating men and women as equal. If parents teach their sons that women are not their property and should be respected.

- **Creating legal and social awareness**

Lack of education, awareness, poverty, traditional oppression, and customs place Indian women at the receiving end. Hence creating legal and social awareness amongst women is the need of the hour. The Government and NGOs play a very effective role in this direction.

Thus, in conclusion, domestic violence will not be completely eliminated by the society only by the formation of the laws but requires bold efforts on part of the government as well as the victims. It is a duty of every law enforcement agency to ensure that justice is made accessible to all the victims of domestic violence.



SHORT ARTICLE



RIGHT TO HEALTHY LIVING ENVIRONMENT IS AN IMPLICIT RIGHT UNDER VARIOUS INDIAN LEGISLATIONS

-Riya Roy Choudhury⁵²

ABSTRACT

When we heard the term Environment the first thing which comes to our mind is Mother Nature. Generally, environment consists of both Biotic and Abiotic elements. Now by healthy environment one means clean air, adequate water and natural resources, stable climate, proper sanitization and hygiene, free from disease causing conditions like pollutants etc.

But we are continuously exploiting our ecosystem and extracting more and more resources to satisfy our selfish hunger for survival that leads to destruction of natural vegetations and wildlife in the name of industrialization, globalization, and economic development. Human's greed causes endangerment and extinction of many plant and animal

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species that give rise to the problems like Global Warming and Depletion of Ozone Layer.

Concern for protection of environment is not a new concept. It can be traced back in ancient scriptures of Hinduism (Vedas, Upanishad, Arthasashtra etc.), Buddhism (Principle of Ahimsa), Jainism (Minimum destruction of living and non-living resources), Holy Koran (purity of water) etc.

The Sages of Atharva Veda chanted –

*What of thee I dig out,
let that quickly grow over,
let me not hit thy vital, or
thy heart.*

This is nothing but the Principle of Sustainable Development in modern context. To live in a clean and healthy environment is our basic right as the quality of life depends upon the quality of environment. The Stockholm Conference held in the year 1972 highlights in its first principle:

“Man had the fundamental right to adequate condition of life, in an environment of a quality that permitted a life of dignity and well-being.”

Indian Constitution is one of the rare constitutions which contains provisions for environment protection and recognizes the right to live in a pollution free environment as a fundamental right under Article 21 directly by way of inclusion of various principles. This article tries to establish such right by analyzing various judicial pronouncements.

KEYWORDS: *Healthy Environment, Ecosystem, Sustainable Development, Exploitation, Protection of Environment, Fundamental Right.*

1. INTRODUCTION

The Environment (Protection) Act, 1986 of India is the first statute in history of Environmental law which provides definitions of various technical terms related to environment and define the term ‘environment’ itself under Section 2(a) as:

Environment includes water, air and land and the inter relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

A healthy environment, as defined by The World Health Organization, UNICEF, and the United States Center for Disease Control and Prevention—includes air, land and water that is safe for human health, supportive of healthy lifestyles, and free of hazards such as toxic chemicals which can reduce quality of life and create health problems.⁵³ Since Vedic time the main motto of social life was, “to live in harmony with nature” and “to have compassion for living creatures”. Apart of economic importance, animals, birds and plants has a significant ritualistic and symbolic role in society. Our ancient scriptures preach various verses to worship natural representatives like air, water, land, plants, trees, animals in the form of God. So, destruction of Flora and

⁵³ Lily F. Roberts et al., *Healthy Environments: Understanding Perceptions of Underrepresented Communities in the United Kingdom*, 19, IJERPH, 1, 1 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9367862/#B2-ijerph-19-09643>.

Fauna is a sinful act. All our ancient teachings treat men as a part of nature not as superior to it. Therefore, interdependence, cooperative living and closed association with other components of environment were the real basis of human life.⁵⁴

It has been said that, man is nature's best promise and worst enemy. Throughout the evolution of human race and rapid advancement of science and technology by various inventions and discoveries, industrialization and urbanization man has acquired the power to change his surroundings in unprecedented manner which effects adversely on nature. Overexploitation of natural resources results in ecological imbalances and environmental degradation by deforestation that destroyed natural soil conservation, water pollution, air pollution and brings upon greenhouse effect and ozone depletion; overall deteriorate the health of an environment.

It is the basic right of all living beings to live in a healthy environment that has become endangered not only for present generation but for future generation. Here comes the concept of sustainable development which was used at *Cocoyoc Declaration* in early 1970 and further received impetus in *Stockholm Declaration on Human Environment*, 1972 which means:

⁵⁴ S.C. SHASTRI, ENVIRONMENTAL LAW 8 (7th ed. 2022).

*“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.*⁵⁵

It is one of the most successful International Conference on the Human Environment where more than 107 states had participated. 26 principles have been resolved in the conference which has been termed as *Magna Carta* on Human Environment. The concept of Sustainable development is embedded in Principles 2, 3,4,5,13,14 and specifically in,

Principal 2: The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the present and future generations through careful planning or management as appropriate.

Principle 3: The capacity of the earth to produce vital renewable resources must be maintained and wherever practicable restored or improved.

India's then prime Minister, Mrs. Indira Gandhi was the first head of a State who addressed the conference and voiced her concern about eco imbalances, environmental degradation and pollution problem.⁵⁶

As a result, Indian Government passed 42nd Constitutional Amendment, 1976 that incorporates two significant Articles 48A and 51A(g) to protect

⁵⁵ T.N. Godavarman Thirumalpad v. Union of India, 2002(10) SCC 606.

⁵⁶ S.C. SHASTRI, ENVIRONMENTAL LAW 36 (7th ed. 2022).

and improve the environment. Many major laws on environment had been enacted such as the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; National Green Tribunal Act, 2010; mentioning that,

“Whereas decision was taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated to take appropriate steps for the protection and improvement of human environment”

Indian Judiciary has incorporated in various pronouncement certain principles from this convention while deciding disputes in environmental cases. These principles are: Inter-generational Equity, Polluters Pay Principle, Precautionary principle, Public Trust Doctrine.

2. A FUNDAMENTAL RIGHT IS TO LIVE IN HEALTHY ENVIRONMENT: CONSTITUTIONAL PROVISIONS

Originally the Indian constitution did not have any provisions as an explicit reference to protect environment. We have Article 253 which empowers parliament to legislate of any matter for implementing international obligations and decisions as:

253. Legislation for giving effect to international agreements-

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

So, after India took part in Stockholm declaration; an amendment has inserted two articles under Directive Principle of State Policy (48 A) and Fundamental Duties (51 A(g)) to implement the decisions of the conference by the power of Article 253. The new article reads as follows:

48A. Protection and improvement of environment and safeguarding of forests and wild life- *The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.*

51A. Fundamental Duties – It shall be duty of every citizen of India, *(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;*

Further the amendment brings various changes in concurrent list of Schedule VII by transferring entries from State list so that Parliament can legislate on environmental issues to bring uniformity in law throughout India.

Now, Part III of our Indian Constitution guarantees some fundamental

rights in which right to environment is also an implicit right. While dealing with environmental cases court referred and based their judgement on Articles 14, 19 and 21.

Article 14 guarantees right to equality to all persons without discrimination. By invoking this article Indian court time to time have struck down many arbitrary official sanctions in environmental matter on mining or leasing as it may jeopardize the wildlife and natural wealth of Nation.

In *Bangalore Medical Trust v. B. S. Muddappa*,⁵⁷ the area kept for the low-level park was to be converted into the civic amenity site where the hospital was to be constructed under the direction of the chief minister. The Hon'ble court stated that the open spaces, recreation, playing grounds and protection of ecology are the matters of vital importance in the interest of public and crucial for the development. Keeping open spaces for the interest of the public is justified cannot be sold or given on lease to any private person solely for the sake of monetary gains.

Most of the harms caused to environment due to industrialization. Article 19(1)(g) guarantees right to freedom of trade, occupation and business but not absolutely. It is subjects to some restrictions. This right should not be exercised in a manner that causes endangerment to vegetation,

⁵⁷ Bangalore Medical Trust v. B. S. Muddappa, AIR 1991 SC 1902.

wildlife, aquatic life, human health.

In *M. C. Mehta v Kamalnath*,⁵⁸ the Supreme Court made it abundantly clear that if a hotel is discharging untreated effluent into River Beas, thereby disturbing the aquatic life and causing water pollution, it cannot be permitted to work.

In this case, The Supreme Court of India recognized Polluter Pays Principle and Public Trust Doctrine and established principle of exemplary damages for the first time. The Court said that polluter must pay to reverse the damage caused by his act and imposed a fine of Rs Ten Lakhs (Rs 10,00,000) on the Span motel as exemplary damages.

In *PA Jacob v. The Superintendent of Police Kottayam*,⁵⁹ the Kerala High Court held that freedom of speech under article 19(1)(a) does not include freedom to use loud speakers or sound amplifiers. Thus, noise pollution caused by the loud speakers can be controlled under article 19 (1) (a) of the constitution.

Article 21 of Indian constitutions is considered to be the Heart of the fundamental rights. It states as:

Protection of Life and Personal Liberty: *No person shall be deprived*

⁵⁸ M. C. Mehta v. Kamalnath, (2000) 6 SCC 213.

⁵⁹ PA Jacob v. The Superintendent of Police Kottayam, AIR 1993 Ker 1.

of his life or personal liberty except according to procedure established by law.

This right is available to every person, citizens and foreigners alike and provided against State. This right does not directly confer right to clean, healthy and unpolluted environment but through various judicial pronouncement this right has been established.

Article 21 has received liberal interpretation from time to time after the decision of the Supreme Court in *Maneka Gandhi v. Union of India*.⁶⁰

In *M. C. Mehta v. Union of India*,⁶¹ the Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Article 21 of the Constitution.

Again, in *T. Damodhar Rao v. Municipal Corporation of Hyderabad*,⁶² the court declared that,

“Slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation by article 21 of the Constitution”.

The Rural Litigation and Entitlement Kendra v. State,⁶³ (Popularly

⁶⁰ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁶¹ *M. C. Mehta v. Union of India*, AIR 1987 SC 1086.

⁶² *T. Damodhar Rao v. Municipal Corporation of Hyderabad*, AIR 1987 AP 171.

⁶³ *Rural Litigation and Entitlement Kendra v. State*, AIR 1988 SC 2187.

known as Dehradun Quarrying Case), case is the first kind of case in India which involves environmental and eco imbalances problem in which Supreme Court directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986.

In *Consumer Education & Research Centre v. Union of India*,⁶⁴ the court gives wider interpretation as:

“The expression ‘life’ assured in Article 21 of the Constitution does not connote mere animal existence of continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standards of life, hygienic conditions in workplace and leisure”.

In *M. C. Mehta v. Kamalnath*,⁶⁵ it was clarified by the Apex court that,

“Any disturbance of the basic environmental elements namely, air, water, and soil which are necessary for ‘life’, would be hazardous to life within the meaning of Article 21 of the Constitution”.

In *Delhi Vehicular Air Pollution Case*,⁶⁶ the Apex court made it clear that Article 21 overrides provisions of every statute including the Motor vehicle Act, 1988.

⁶⁴ *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42.

⁶⁵ *M. C. Mehta v. Kamalnath*, (2000) 6 SCC 213.

⁶⁶ *Delhi Vehicular Air Pollution Case*, (2001) 3 SCC 756.

In *Re. Amarnath Shrine*,⁶⁷ the court declared that inter-generational equity is an integral part of Article 21.

3. CONCLUSION

Thus, we can conclude that right to have a living environment is congenial to human existence. Right to environment, free of danger of disease and infection is inherent in it. Any activity which pollutes the environment and makes it hazardous to the health of human being, flora and fauna, is violative to living environment.

The Covid breakthrough has proved that Nature can survive and bloomed beautifully without any human interference but we cannot survive without natural resources.

Recently on July 2022, The United Nations General Assembly declared that everyone on the planet has a right to a healthy environment, after passing a resolution at UN headquarters in New York City. The General Assembly said climate change and environmental degradation were some of the most pressing threats to humanity's future. It called on states to step up efforts to ensure their people have access to a "clean, healthy and sustainable environment."⁶⁸

⁶⁷ *Re. Amarnath Shrine*, (2013) 3 SCC 756.

⁶⁸ UNEP, <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> (last visited Sept. 11, 2023).

DIGITAL PERSONAL DATA PROTECTION BILL, 2023: SALIENT FEATURES AND ISSUES.

-Sushmita Singh⁶⁹

ABSTRACT

Data protection is all about keeping personal information safe from damage, loss, and corruption. With more and more data being created and stored, it's even more important to protect it. The main idea behind data protection is to make sure that data stays safe and accessible. Data protection makes sure that data doesn't get damaged, that it's only accessible for the right people, and that it's in line with the law. Digital technologies can be used for all sorts of things, and it's important to make sure that personal data is safe and secure. India has made some changes to their data protection laws, like the Digital Personal Data Protection Bill 2023 and the Information Technology Act 2000. The Digital Personal Data Protection Bill ensures that digital personal data is

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processed in a way that respects both the individual's right to the protection of their personal data as well as the requirement to process such data for legitimate purposes and related matters or incidental to them.

KEYWORDS: *Digital Personal Data Protection Act, Data Principal, Data, Government, Right.*

1. INTRODUCTION

In the digital era, an individual's life can be reduced to a handful of data points like what they share on social media, the food they order, the cab they take, the bank accounts they make, the mobile numbers they use, etc. When all these data points come together, they can form a complete profile of an individual. Access and use of this information must be regulated in order to prevent misuse of the information provided. The Supreme Court has recognized information privacy as an integral part of the fundamental right to privacy under Article 21(1) of the Constitution. The Supreme Court has held that the Union Government must examine and put in place a strong regime for data protection.

*Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India*⁷⁰

This case was the first of its kind, challenging the constitutional validity of the Aadhaar Act, 2016, on the ground that it breached the fundamental right to privacy. In its judgment, the Supreme Court of India upheld the right to privacy as a fundamental right under article 21 of the Constitution. Under the Aadhaar Act, collection of personal data must pass the proportionality test and be done with informed consent.

India's primary legislation governing electronic communications and

⁷⁰ Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India (2017) 7 SCC 110.

digital transactions is the Information Technology Act (IT Act), which is governed by Section 43A. This provision provides for compensation to be paid in the event of a body corporate failing to properly disclose personal information. The Indian Penal Code, or IPC, is India's primary criminal code, and contains various provisions related to the protection of privacy and data. These include the offences of hacking (Section 66) and identity theft (Section 66C) under the IPC, as well as the offences of unauthorized disclosure (Section 72) of the IPC.

The Digital Personal Data Protection (DPD) Bill, 2023 was finally approved by the President of India on 11 August 2023. The bill has been pending since 2018 and after many discussions and re-writes, it finally became an Act. The Bill stipulates that only with consent and for specific "legitimate uses" may personal data be processed. The legislation seeks to provide guidelines for managing digital personal data in a way that respects both individuals' rights to privacy protection and the requirement that personal data be handled legally. The bill also Describes the obligations of data fiduciaries, the rights of principals, and the penalties for noncompliance. The bill also sets up the Digital Protection Authority (DPA), which will be responsible for implementing the law and protecting personal data in the country.

2. SALIENT FEATURES OF THE ACT

- **Definitions:**

1. Board means the Data Protection Board of India established by the Central Government for the DPDP Act- Sec 2(2).
2. A child is an individual who has not yet completed 18 years of age- Sec 2 (3).
3. Data principal refers to a person to whom the data belongs- Sec 2 (5).
4. Data fiduciary refers to a person or group of persons who determines the purpose and means of processing an individual's data. **Sec 2 (6).**
5. Personal data means any data about an individual who is identifiable by or about such data- Sec 2 (13).

- **Consent:**

According to the Bill, the data principle must expressly agree to have his data processed for a certain purpose by taking explicit affirmative action. The legal guardian of a person under the age of 18 must give their approval- (**sec 7**)⁷¹

⁷¹ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India).

- **Rights of data principal:**

An individual whose data is being processed has the right to request information about processing, ask for the rectification and deletion of personal data, designate another person to act on their behalf in case of death or incapacity and file a complaint.⁷²

- **Duties of data principal:**

They are prohibited from filing a false or reckless complaint, providing any inaccurate information, *or* pretending to be someone else in specified circumstances. Infringements of obligations will be subject to a fine of up to 10,000 rupees- (**sec 16**).

- **Obligations of data fiduciaries:**

Data fiduciaries must ensure that the data is accurate and complete, that adequate security measures are in place to protect against a breach, that the relevant parties are informed of any breach, and that personal data is erased once the purpose of the data has been achieved and the retention of the data is no longer necessary for legal purposes. Government organizations are not

⁷² Cyber Law Consulting (Advocates & Attorney), Digital Personal Data Protection Act 2023: A Brief Overview, <https://www.linkedin.com/pulse/digital-personal-data-protection-act-2023-brief-overview> (last visited on 7sep,2023).

subject to storage limitations and the principal has the right to delete the data- **(Sec 9).**⁷³

- **Notice Requirements:**

The data fiduciary is required to notify the data principal while requesting consent from a data principal or after receiving such consent. The exact personal data being processed and the intended purpose of the processing should both be included in this notification- **(sec 6).**

- **Transmission of personal data outside India:**

The Bill permits the transmission of personal data outside of India, except for certain countries that are subject to notification by the central government- **(Sec 17)**

- **Children:**

The draft Bill keeps the threshold for children at 18 years. To collect children's data, parental consent must be verified. The Bill also prohibits profiling of children's behavioral monitoring or targeted advertising to children. Although, the Government has

⁷³ Ankita Sabharwal, *Digital Personal Data Protection Bill, 2023: An Overview*, LEXOLOGY (Sept. 8, 2023, 9:30 PM), <https://www.lexology.com/library/detail.aspx?g=2de5ffb4-1d90-4aa9-a7bc-65afe1e7d374>.

the power to exempt these requirements through notifications in the official gazette.

- **Regulatory Authority:**

The Central Government shall, by notification, establish, for this Act, a Board to be called the Data Protection Board of India which will be the regulatory authority (**sec 19**). The Board will also be responsible for enforcing compliance and imposing sanctions in the event of any breach of the Data Protection Data Protection Act (DPDP Act). The Board may also mandate data fiduciaries in cases of a data breach to take any urgent action to rectify the personal data breach or to mitigate any damage to data principals Refer complaints to ADR (**Sec 23**) and accept voluntary commitments from data fiduciaries. Advise the government to block websites, apps, etc. of a data fiduciary who's found to keep breaking the rules of the bill. (**Sec 20**).⁷⁴

- **Penalties:**

The Schedule to the Bill sets out penalties for various infringements, including a maximum of Rs 200 crore in cases of non-compliance for children and a maximum of Rs 250 crore in

⁷⁶ *Supra* note 63.

cases of breach of security measures to protect personal data. **(sec 25)**.⁷⁵

- **EXEMPTIONS:**

The exemptions are provided to notified agencies, in the interest of security, sovereignty, public order, etc. For research, archiving or statistical purposes and For startups or other notified categories of Data Fiduciaries To enforce legal rights and claims, To perform judicial or regulatory functions, To prevent, detect, investigate, or prosecute offenses, etc.- **(sec 18)**⁷⁶

- **Procedure of grievance redressal:**

According to the Act, a director must first exhaust their options of seeking redress from the relevant Fiduciary/Consent Manager before going to the Data Protection Board. If the Director is still dissatisfied with the Fiduciary's or Consent Manager's decision, the Director may file a complaint with the Data Protection Board. The Board may investigate the complaint and issue appropriate orders. The Act also authorizes the Board to refer interested parties to mediation. An individual who has been adversely affected by a decision of the Data Protection Board may bring an

⁷⁵ *Supra* note 62.

⁷⁶ *Supra* note 63.

action before the current Telecom Disputes Settlement and Appellate Tribunal. The decisions of the Telecom Disputes Settlement and Appellate Tribunal will be enforceable as a decision of a Civil Court. Furthermore, the appeal of the Telecom Disputes Settlement and Appellate Tribunal may be brought before the Supreme Court of India.

3. COMPARISON OF THE NEW BILL OF 2023 WITH OLDER BILL OF 2022.

Old Bill, 2022	New Bill, 2023
Government to notify list of countries where data can be transferred	Government to notify list of countries where data cannot be transferred
Entities collecting data need consent to transfer data to another country	No consent required for transfer of personal data
Government empowered to notify entities collecting data that may be exempt	Government empowered to notify entities, including startups, collecting data that may be exempt
Entities collecting data to seek parental consent for minors	Parental consent needed but, government may seek age cutoff

	for consent in some cases
Immunity from legal action for data protection board, its chairperson and any other member	Immunity from legal action for government, data protection board, its chairperson and any other member
Penalty up to Rs. 500 crores	No upper limit prescribed as penalty
Appeal board decision at High Court.	Appeal board decision at Telecom Disputes Settlement and Appellate Tribunal. ⁷⁷

4. KEY ISSUES AND ITS ANALYSIS

- **The appropriateness of overriding consent for benefits, subsidies, licenses, and certificates**

The Bill removes the consent of an individual in cases where the State is processing personal data to provide benefits, services, licenses, permits, or certificates. It explicitly allows the use of processed personal data for one of those purposes, as well as for any other purpose. Consequently, it removes purpose limitation,

⁷⁷ PRESS INFORMATION BUREAU,
<https://pib.gov.in/PressReleasePage.aspx?PRID=1947264/>
 (last visited Sept. 9, 2023).

a fundamental principle of privacy protection. Purpose limitation implies that data should only be collected for a particular purpose and used for that purpose. The question remains as to whether such exceptions are appropriate.

- **The Bill does not provide for the regulation of damages resulting from the processing of personal data.**

The Bill does not regulate risks of harm arising out of the processing of personal data. The Srikrishna Committee (2018) observed that harm is a possible result of personal data processing. Hurt can mean things like losing money and not being able to access things like benefits or services. It could also mean things like identity theft, losing our reputation, being discriminated against, and being monitored and profiled unfairly. The report by the committee said that harms should be covered by a data protection law.⁷⁸

- **No provision for the Right to data portability and the right to be forgotten**

Data portability is a right granted to data users to receive and transfer their data-to-data fiduciaries for their personal use in a

⁷⁸ MEITY, https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%202022_0.pdf (last visited Sept. 6, 2023).

well-structured, commonly used, machine-readable form. The right to forget refers to an individual's right to restrict the disclosure of his data online. The Bill does not include the rights of data portability or the right to forget. The 2018 Draft Bill as well as the 2019 Bill as introduced in Parliament included these rights. The Joint Parliamentary Committee (JPC) examined the 2019 Bill and recommended keeping these rights. GDPR also recognizes these rights. A strong set of data principals' rights is an essential part of data protection legislation. It is based on the principles of independence, transparency, and accountability to empower individuals to control their data.⁷⁹

- **Exemptions granted by the State can have negative consequences on privacy**

The Bill has provided for a number of exemptions for the processing of personal data by the State. Article 12(1) of the Constitution defines the State as follows:

- (a) the central government;
- (b) the state government;
- (c) the local governments;

⁷⁹ PRS LEGISLATIVE RESEARCH , www.prsindia.org, https://prsindia.org/files/bills_acts/bills_parliament/2023/Legislative_Brief_Digital_Personal_Data_Protection_Bill_2023.pdf (last visited Sep. 7, 2023).

(d) the authorities and companies established by the Government.

There are, however, certain limitations on the scope of these exemptions.

- **Adequacy of data protection for cross-border data transfers**

The Bill states that the central government can limit the transmission of personal data to specific countries by means of a notification. If there are no strong data protection rules in another country, the data stored there could be more at risk of being hacked or shared illegally with foreign governments and private parties. Both of these methods need to be assessed on an individual basis to see what the rules are in each country to which data can be sent.

- **Impact of Shorter Appointment Term**

The Bill stipulates that the members of the Protection Data Board of India shall act as an autonomous body. The members shall be appointed for a term of two years and shall be eligible to be reappointed. The short-term nature of the term of appointment and the possibility of reappointment may have an impact on the independence of the Board.⁸⁰

⁸⁰ *Supra* note 67.

- **Lack of clarity on what constitutes detrimental to the well-being of a child**

The Bill provides that the data fiduciary will not undertake any processing which has a detrimental effect on the well-being of the child. The Bill has not defined detrimental effects. It has also not provided any guidance for determining such an effect.

- **Verifying parental consent may necessitate verifying the age of all participants on digital platforms**

The Bill makes it necessary for data fiduciaries to obtain verifiable consent from a legal guardian before processing the personal data of a child, ensuring anonymity in the digital sphere. This verification helps prevent false declarations and ensures data protection.

- **The government's power to exempt certain bodies from providing notice for consent**

The Bill authorizes the central government to exempt specified data fiduciaries (including startups) from certain obligations. This must be done in a manner that takes into account the volume and type of personal data collected. Notice for consent is one of the obligations that may be exempted. The requirement to obtain free and informed consent for these entities will remain. However, if

notice is not provided regarding the nature of the data collected and the purpose of processing, a data principal may be deemed unable to provide informed consent.⁸¹

- **Restrictions imposed on the Right to Information Act**

The RTI Act, 2005, allows individuals the right of access to information held by public institutions. However, certain types of information are excluded from the scope of the RTI Act, including personal data that would violate the privacy of the individual. The most recent version of the Personal Data Protection Bill 2023 also maintains another controversial provision, which proposes to amend the provisions of **section 8(1)(i) of the RTI Act** to extend its scope to all personal data within its scope.⁸²

5. SUGGESTIONS

- Data collection and processing operations should be conducted in a manner that is both transparent and equitable.
- Individuals should be aware of the purpose of the collection and the manner in which it will be utilized.

⁸¹ *Supra* note 69.

⁸² *Supra* note 63.

- Data should be adequately protected throughout its lifecycle, from its collection to its storage and transmission.
- Effective data protection policies and processes should be formulated to meet the specific requirements of the organization.
- Employees should be educated on data protection. They should comply with relevant laws and regulations.
- Data collected should be protected and processed in accordance with the individual's rights to privacy.
- Data should only be collected for legitimate purposes. It shall not be used for purposes unrelated to the intended purpose.

6. CONCLUSION

The Act presents a novel approach to the protection of Personal Data, addressing long-standing requirements related to the growing number of internet users, generation of data, and international trade. However, there are still a number of details regarding implementation that may need to be addressed upon the setting up of the Board of Data Protection and the publication of rules under the Act. All in all, the Act represents India's unique approach to modern data protection, which has been further enhanced through extensive post-draft consultation. . The notification of the sections of the Act for implementation is still pending, and it remains to be seen how the Courts interpret the wide-reaching provisions and how the Act evolves.



CASE COMMENTARY



M. C. MEHTA V KAMAL NATH (1997) 1 SCC 388

- Nikita Sigchi⁸³

Case name- M.C. Mehta v Kamal Nath

Citation- (1997) 1 SCC 388

Date of Judgement- 15/03/2002

Bench- Kuldeep Singh, S. Saghir Ahmad

Statutes Referred- The Constitution of India 1949, Section 2 of the Forest Conservation Act 1980

INTRODUCTION

The case of M. C. Mehta v. Kamal Nath⁸⁴ marks a turning point in Indian legislation.

One of the most significant and historically significant rulings ever handed down was in this case. The judgment delivered in this case marks a turning point in Indian Environmental Legislation as it introduced the “Public Trust Doctrine” paradigm as a novel idea in India. The Public Trust Doctrine states that even if someone owns private property, the

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⁸⁴ M.C Mehta v. Kamal Nath, (1997) 1 SCC 388.

government holds resources such as land, water, air, and forests in trust for the benefit of the people. All people have a rightful claim to the earth's resources, including land, sea, air, and forests, which are considered a precious gift from a divine source. To ensure their well-being, the government takes responsibility for overseeing these natural resources. In addition to this idea, the judges also correctly applied two other important environmental law principles: the “Polluter Pay Principle” and the “Principle of Deterrence”. This case serves as a significant milestone in the realm of environmental litigation by underscoring the role of the judiciary in safeguarding natural resources.

FACTS OF THE CASE

An article on an ambitious project called Span Club that was being introduced by Span Motels Pvt. Ltd., a private firm that owned Span Resorts, appeared in the Indian Express newspaper. Kamal Nath, who served as the country's former Minister of Environment and Forests, was rumored to have close ties to the company⁸⁵. The company encroached over a vast amount of land measuring nearly 27.12 acres, including forest land. By Section 2 of the Forest (Conservation) Act, 1980⁸⁶, the

⁸⁵ Akshat Anand, *Case Analysis on M.C Mehta v Kamal Nath 1996*, LEGAL SERVICE INDIA (Sept. 20, 2023, 10:50 A.M), <https://www.legalserviceindia.com/legal/article-8506-case-analysis-on-m-c-mehta-vs-kamal-nath-1996-.html>.

⁸⁶ The Forest (Conservation) Act, 1980, § 2, No.69, Acts of Parliament, 1980 (India).

Government of India, Ministry of Environment and Forests, provided its prior approval in a letter dated November 24, 1993, addressed to the Secretary, Forest, Government of Himachal Pradesh, Shimla, for leasing to the Motel 27 bighas and 12 biswas of forest land adjacent to the land already on lease with the Motel⁸⁷. The land was legalized on April 11th, 1994, and thereafter leased to the company. The river Beas was significantly impacted by the company's invasion of the property. Bulldozers and earth movers were used by the management of Span Resorts to attempt to alter the course of the river for the second time in more than five months⁸⁸. These harmful activities undertaken by the company became the cause of floods in the river and led to the destruction of property worth Rs 105 crores in 1995.

ISSUES RAISED

- I. Whether the act of the company was justified?
- II. Whether Mr. Kamal Nath was wrongfully accused?
- III. Is the Public Trust Doctrine applicable in India?

ARGUMENT OF PETITIONER

⁸⁷ *Supra* note 75.

⁸⁸ *Id.*

The petitioner argued that this construction violates the fundamental right under Article 21 as it disturbs the ecological balance of the surrounding area and damages the forest land, water and air which are gifts from nature. Moreover, it would violate Article 51A(g), which states every citizen is responsible for protecting the environment⁸⁹.

ARGUMENT OF RESPONDENT

Mr. Kamal Nath disagreed with the accusations made against him. He said that M.C. Mehta had accused him unfairly. The charges made in the press reports, he claimed, were false. They were disseminated to damage his reputation, even though they are untrue and overblown. Additionally, it was asserted that Span Motel owned the site where the development took place. For the purpose of defending the land from future floods, the neighborhood was built.⁹⁰

JUDGEMENT

In this case, a judgment was delivered by two Judges Bench on 15th March 2002. The Court, in its judgment, held that harm to the environment amounted to threatening fundamental rights as guaranteed by the Constitution and thus the damages are not only limited to

⁸⁹ INDIA CONST. art. 51A, cl. g.

⁹⁰ *Supra* note 75.

restorative purposes but also as damages to victims.⁹¹ Any disturbance of the basic environmental elements, namely air, water, and soil, which are necessary for "life", would be dangerous to "life" within the meaning of Article 21 of the Constitution.⁹² In case of enforcement of rights under Article 21 of the Constitution,⁹³ the Court, besides enforcing the provisions of the Acts referred to above, has also given effect to Fundamental Rights guaranteed under Articles 14 and 21 of the Constitution.⁹⁴ The Court, in this case, established the *Principle of Exemplary Damages and Polluter Pays Principle*.⁹⁵ It stated that Pollution is a civil wrong. It is by nature a Tort committed against the entire community. Therefore, if someone pollutes, they must pay damages (compensation) for the repair of the ecology and environment.⁹⁶ Additionally, he must compensate people who suffered as a result of the offender's actions. According to numerous precedents, this Court's ability to award damages in a PIL or a Writ Petition is not limited by Article 32 of the Constitution.⁹⁷ In addition to the aforementioned damages, the polluter can also be liable for exemplary damages in order to prevent

⁹¹ M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388.

⁹² INDIA CONST. art 21.

⁹³ *Id.*

⁹⁴ INDIA CONST. art 21.

⁹⁵ M.C Mehta v. Kamal Nath, (1997) 1 SCC 388.

⁹⁶ *Id.*

⁹⁷ INDIA CONST. art 32.

others from producing pollution in the future.

The court also recognized the Public Trust Doctrine. The public trust doctrine, as stated by the judges throughout the hearing, should be included in the Land laws⁹⁸. The prior approval given by the Ministry of Environment and Forests as well as the lease document in favour of the corporation for a 27 bighas and 12 biswas area were dismissed by the court. The Himachal Pradesh government was tasked with seizing possession of the property and restoring it to its original ecological and natural status.⁹⁹

The decision was made for NEERI to look into the motel's pollution prevention measures. The hotel was required to build a 4-meter-long boundary wall as part of its construction, and they were not permitted to enter the river basin's land past this wall.¹⁰⁰ Not even a small piece of the river basin shouldn't be used by the motel. The river basin should be left untouched from the border wall of the Motel. The public should still have access to the river's basin and bank. It was against the law for the hotel to discharge raw sewage into the river. All hotels, institutions, and businesses in the Kullu-Manali region are to be inspected by the Board, and if any are found guilty of intentionally discharging untreated waste

⁹⁸ M.C Mehta v. Kamal Nath, (1997) 1 SCC 388.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

into a river, severe legal action would be taken against them.¹⁰¹ The Motel had to provide evidence as to why additional pollution costs were not required through its management. The reports had to be turned in by December 17th, 1996, and listed on December 18th, 1996.

CASE ANALYSIS

The case claims that Mr. Kamal Nath, the Minister of the Environment and Forest Department, abused his authority and caused pollution, environmental harm, and deterioration. He prioritized his financial interests over his obligations and duties to the nation's natural resources. Since Mr. Kamal Nath once owned the majority of the company's shares, it was found that he was intimately involved with the hotel in this instance. His avarice and abuse of power resulted in property damage worth over 105 crores. The hotel company's ongoing construction on the river bank contributed to the destruction, which was brought on by an unheard-of flood.¹⁰² A PIL that was filed by M.C. Mehta concerned Mr. Kamal Nath. After extensive hearings and various arguments, the court issued a landmark decision allowing the Doctrine of Public Trust concept to be applied in India. Finally, the Indian judiciary delivered justice to the environment and natural resources, something the Ministry of

¹⁰¹ *Id.*

¹⁰² *Id.*

Environment and forest had failed to achieve.¹⁰³

CONCLUSION

M.C. Mehta v. Kamal Nath & Ors.,¹⁰⁴ is a significant precedent-setting case. This case introduced the "Public Trust Doctrine" paradigm as a novel idea in India. In addition to this idea, the judge correctly applied two other pivotal environmental law principles.

The "Polluter Pay Principle" was applied when the court mandated that the hotel cover the costs of reparation. The "Principle of Deterrence" was applied when the court sentenced the hotel to exemplary damages. The public trust doctrine lays the foundation for enhancing the effectiveness and efficiency of Indian environmental regulations. Additionally, it directs the state to protect and preserve the natural resources that Mother Nature has given us. Therefore, this case emphasizes the judiciary's role in safeguarding natural resources, marking a significant milestone in environmental litigation.

¹⁰³ *Id.*

¹⁰⁴ *Id.*