Women and Law PSDA – A Research Paper on

Striking down 497 - Joseph Shine v Union of India

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Contents

Introduction

The rules of the Code of Hammurabi, the ones numbered 129, 130 in this translation[1], deal with adultery, and as would be the case with the 1860 legislated, Indian Penal Code's Section 497 , both have women being reserved a property like gaze at them. It is understandable at the start of civilization, but for it to happen in 1860 is a little surprising with the amount of knowledge humans had accumulated by then. And even more awestruck would you be left, if it is said the same provision continued its journey, for another 158 years including 71 years in Independent India. That's how long it took this chattel attitude provision to go and that too ripped out by the Supreme Court of India. Legislature was blind towards such a provision despite all the progress India had made till then.

The Provision

The Adultery Provision as it stood had the following requirements:

1. Sexual Intercourse
2. With a person
    a. He knows
    b. Or reason to believe to be wife of another man
3. Such man had not given consent or was not in connivance for such intercourse
4. Intercourse wasn't amounting to rape

It provided for a punishment up to 5 years or fine or both. The wife wasn't to be charged as an abettor.

Background

When looking for possible basis there are three places to cover, i.e. old British law, Hindu law, and Muslim law. British law in the 17th and 18th century the church/ecclesiastical courts were given the power to deal with cases of divorce and the punishments were akin to public penance and such.

[1] The Code of Hammurabi, available at: https://avalon.law.yale.edu/ancient/hamframe.asp (last visited on November 7, 2023)

Before 1680 in English common law, husbands had the legal entitlement to seek reparation for any harm or mistreatment inflicted upon their wives, regarding them as a financial possession. They could also employ the leverage of negative publicity or initiate formal legal proceedings for physical assault in order to obtain compensation.[2]

There are proper specific verses i.e. 24:2,24:3, 24:4, 24:5 in the Quran, dealing with adultery but also just sexual intercourse between people not married to each other, which this translation mentions the offenders as "fornicators". There is no discrimination in genders according to the verse, with hundred lashes reserved for both, and asked for believers to be witness to the punishment.

Also marriage was restricted between such people only, and not with other believers. Also accusing chaste women of adultery, and not producing 4 witnesses reserves 80 lashes as punishment. But in the next verse allows exception for repentance of the accusation and not repeating it. There are some other verses following these, but are mostly dealing with the accusation of adultery, than the act itself.[3]

Manusmriti makes adultery a clear punishable offence and the fact that it violates social order and moral conducts. There are some concerns about mixing of caste and diluting the same due to the deep rooted nature of caste system at that point of time. It prescribed severe punishments for the act and allows the killer of an adulterer to repent and absolve himself from the sin by simple purification. It also shifts some of the blame on negligent husbands for adultery committed by the wives. Also discriminates against offspring which given the nature of Manusmriti yet again specifies only sons, as being unworthy of inheriting a share. Also protectionist themes in the verses are there like confining women to houses as penance, enforcing adultery only against married are there.[4]

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[2] Laws on adultery: comparing the historical development of South African common-law principles with those in English law, available at: https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1021-545X2013000200001 (last visited on November 19, 2023)

[3] Quran.com available at: https://quran.com/24?startingVerse=2 (last visited on November 24, 2023).

[4] Manu Smriti Sanskrit Text With English Translation available at: https://www.academia.edu/31478379/Manu_Smriti_Sanskrit_Text_With_English_Translation (last visited on November 24, 2023).

So the basis for women being not charged as abettor can be seen to have emerged from these, especially Manusmriti and British law and also the witnesses part of the Quranic law that we saw. There is a common thread of patriarchy tying each of these.

As an offence

It stands discriminalised in India post the apex court of India declaring Section 497 of the Indian Penal Code unconstitutional in Joseph Shine vs Union of India. [5]

For Civilians and Military

It wasn't immediately clarified by the court, but when the union government on November 5th, 2020 filed an application seeking clarity on how this unconstitutionality affects members of the armed forces. Section 69 of the Army Act, 1950 provides punishment for the members, for committing civil offences. The government was inquiring whether now the ambit of the Section would no longer cover acts of adultery committed by the members. The final order by a 5 judge bench of the apex court dated January 31st, 2023 lifted the veil of uncertainty and decreed that the 2018 judgement did not attempt to bring Armed Forces and their legislation in its purview.[6]

As a ground for divorce under various personal laws

Due to the absence of a Uniform Civil Code with respect to several matters like marriage and succession, every religion present in India has codified or uncodified laws governing these matters. Hence grounds for divorce also are not uniform to everyone across India.

[5] Decriminalisation of Adultery - Supreme Court Observer, available at: www.scobserver.in /cases/joseph-shine-v-union-of-india-decriminalisation-of-adultery-background/ (last visited on November 24, 2023).

[6] Ibid

For Hindus adultery clause 1 of section 13 of the Hindu Marriage Act 1955 deals with adultery as a ground for divorce. Since the petition for divorce can be filed by either husband or wife hence of the two could be charged with committing adultery and hands be granted a divorce. The sexual intercourse needed for constituting adultery under the section has to be voluntary in nature and also must be after for solemnisation of the marriage.

Adultery is dealt with heavy gravity under Sharia law as we saw earlier, but adultery is not specifically a ground for divorce, rather a false accusation of adultery by the husband enables the wife a ground for divorce, under Section 2 (ix) of Dissolution of Muslim Marriages Act, 1939 which is a residuary clause . That section specifies that alongside the other grounds mentioned in Section 2, any other ground recognized by Muslim law shall fall under this Section. For this a reference to Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 must be made which among other things, recognises the doctrine of lian under Muslim law on Indian Muslims.

The process is such that in the absence of witnesses in an allegation of adultery, the husband must swear 4 times in the name of god, and sear a 5th time invoking the curse of god on him if he is lying. The wife also must swear 4 times that her husband is lying, and a 5th time invoking the curse of god should it be proved that her husband is truthful with the allegation.[7]

The court allows the husband to retract the allegation following the three conditions of Mahomedali Mahomed Ebrahim Quereshi v. Hazrabai[8], and if the retraction is done accordingly, the divorce proceedings are stopped and the marriage continues.

Divorce for Christians is governed by Divorce Act, 1869, whose Section 22 provides for only a decree of temporary judicial separation on grounds of adultery, cruelty, or desertion. It was declared unconstitutional by the Andhra Pradesh High Court in Youth Welfare Federation v. Union of India[9], so a divorce could have been taken under this ground only in

[7] Supra note 3 at https://quran.com/24?startingVerse=6 ; https://quran.com/24?startingVerse=7 ; https://quran.com/24?startingVerse=8 ; https://quran.com/24?startingVerse=9

[8] 1954 SCC OnLine Bom 131

[9] (1997) 1 AP LJ 159 (HC)(FB).

Andhra Pradesh only. But this changes with Indian Divorce (Amendment) Act, 2001, which added adultery as a ground for divorce. But then in 2015 the whole amendment act was repealed. So again women have to claim under grounds in Section 10 like cruelty under clause (x) alongside the adultery, for a divorce.

Under Special Marriage Act, 1954, Section 27(a) states adultery as a ground for divorce.

Other Countries Position

In USA, due to its federal nature, there is no uniform law on adultery. Some states prosecute it as a crime. Massachusetts no longer penalizes it, repealing it in 2018[10]. In Idaho and Washington, with the latter repealing it in 1975, and the former in 2022, it is not currently an offence[11]. New York penalises it, with it being a Class B misdemeanor, 3 months' imprisonment and/or fine of 500$.

States like Massachusetts, Idaho, and New York keep adultery as a sole ground for divorce[12].

Adultery as an offence was there in England with the Adultery Act of 1650, but by 1707 it was effectively decriminalised due to repeal of the Act and no further legislations passed[13].

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[10]Massachusetts law about sex available at**:** https://www.mass.gov/info-details/massachusetts-law-about-sex (last visited on November 26, 2023).

[11] Chapter 9.79 RCW Dispositions SEX CRIMES, available at: https://app.leg.wa.gov/rcw/dispo.aspx?Cite=9.79 (last visited on November 26, 2023).

Senate Bill no.1325 Legislature Of The State Of Idaho, available at: https://legislature.idaho.gov/sessioninfo/billbookmark/?yr=2022&bn=S1325 (last visited on November 26, 2023).

[12]Section 1: Causes for divorce; general provisions available at: https://malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter208/Section1 (last visited on November 26, 2023).

Title 32 Domestic Relations Chapter 6 Divorce — Grounds And Defenses available at: https://legislature.idaho.gov/statutesrules/idstat/Title32/T32CH6/SECT32-603/ (last visited on November 26, 2023).

Section 170 Action for divorce, available at: https://www.nysenate.gov/legislation/laws/DOM/170 (last visited on November 26, 2023).

[13] Brian P. Levack "The Prosecution of Sexual Crimes in Early Eighteenth-Century Scotland" 89 The Scottish Historical Review 180-181 (2010)

As a ground for divorce, it was there with the Matrimonial Causes Act of 1973, but was deleted from the Family Law Act, 1996.[14]

Adultery was an offence in Japan until 1947, as Article 183 of the Criminal Code of 1908.[15]

According to Section 4, Subsection 1, Article 763 of Civil Code (Part IV and Part V), divorce can be obtained by agreement[16]. No specific ground like adultery is required.

In the cases of, Yusuf Abdul Aziz v State of Bombay[17] , Sowmithri Vishnu v Union of India[18] and V. Revathi v Union of India[19] the excuses for denying to strike down Section 497, include the fact that the non-prosecution of women as accused or abettor falls within Article 15(3) that provides for beneficial legislation for women and children, and that not punishing her does not provide her a license for committing it further. In the second case, it held that just because the provision does not prosecute some of the accused, it is not discriminatory, rather just under-inclusive, plus it atleast criminalises part of all adultery happening in society. The last case, held that its not husband prosecuting the man, it's the community that is putting him behind bars.

But all these cases fail to see that a woman with an adulterous husband does not have any remedy. It is clear subjugation of women, with not even ownership of their own sexuality.

The Case

Facts

Petitioner Joseph Shine filed a writ petition challenging the constitutionality of Section 497 of the Indian Penal Code and Section 198 of the Code of Criminal Procedure pertaining to adultery offenses. The petitioner argued that the laws violate Articles 14, 15, and 21 of the Indian

[14] Supra note 2 at the final paragraph of The development of English Law
[15] Harald Fuess, "Adultery and Gender Equality in Modern Japan, 1868–1948", in Susan L. Burns, and Barbara J. Brooks (eds.), Gender and Law in the Japanese Imperium 116 (Hawai'i Scholarship Online, 2016)
[16] Civil Code (Part IV and Part V) available at: https://www.japaneselawtranslation.go.jp/en/laws/view/4275#je_pt1ch2sc4 (last visited on November 26, 2023).

[17] 1954 SCR 930
[18] 1985 Supp SCC 137
[19] (1988) 2 SCC 72

Constitution. Specifically, Section 497 was alleged to disproportionately hand out rights to male respondents and infringe the dignity of female complainants, thereby perpetuating prejudices against women and unequal treatment under the law based on gender. The petitioner further submitted the law is archaic and fails to be in tune with prevailing societal norms of fairness and equality as guaranteed by the Constitution. Concerns were raised about the imbalanced nature of Section 497 as it prevents female complainants from filing complaints against their husbands who engage in extramarital relationships.

Issues

- Is Section 497 of the Indian Penal Code in line with Articles 14, 15, and 21 of the Indian Constitution?
- Does Section 497 demonstrate gender bias by only criminalizing adultery when committed by a man and not by a woman?
- Should women have the right to file complaints for adultery committed by their husbands under Section 497?
- Does Section 497, by criminalizing adultery only when committed by a man and not by a woman, and by considering an act non-criminal if the husband consents, uphold the principles of gender equality, individual autonomy, and privacy enshrined in the Indian Constitution?

Judgement

With respect to Article 14, the court held Section 497 to be devoid of the logicality of approach. It illustrated how one hand it “protects” the woman from prosecution for the offence of abetting adultery, but the hands of a wife of an adulterer are tied using Section 198 of Code of Criminal Procedure, 1973 . It describes how the Indian Penal Code provision deviates from dictionary based definitions of adultery, by only prosecuting men in specific cases of adultery. This is despite the fact that women can certainly approach the civil courts, but that privilege lies with men too. The court found the provision manifestly arbitrary. With respect to 15, specifically 15(3) it said it “cannot operate as a cover for exemption from an offence having penal consequences. A section which perpetuates oppression of women is unsustainable in law, and cannot take cover under the guise of protective discrimination.”

The provision of granting of exemption from punishment, through connivance or consent of the husband when the intercourse takes place, was said to have "patriarchal underpinnings", and instead of being a partner in the marriage the court held the provision to in effect declare the husband "the owner of her sexuality". It said the base principle of the section is "preservation of the sexual exclusivity of a married woman—for the benefit of her husband,". So this makes the Section further manifestly arbitrary.

As for it to fail the standards of Article 21, the Apex Court quoted "… marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband."[20] This quote by Lord Keith shows how much we have progressed as humanity, with regards to equality between the two partners of a marriage. It discussed the case of Shamima Farooqui v. Shahid Khan[21], which was completely dismissive of chivalry , calling it "a perverse sense of human egotism", declaring it has no room in society. It must be discarded in favour of ideas by people of "new horizons". In Pawan Kumar v. State of H.P.[22], the court discussed gender equality with respect to eve teasing, individual choice and empowerment, and respect for women's rights. It stated that male ego has to break down in front of law. Also was quoted K.S. Puttaswamy (Privacy-9J.) v. Union of India, which stressed upon not only privacy as a facet of Article 21, but also trumpeted the dignity as one of the limbs of an individual. It finally states that since time and again, through the winds of time it has come to recognise "the conceptual equality of woman and the essential dignity which a woman is entitled to have", the distinctions created by Section 497 violate Article 21.

It demonstrates gender bias by closing the ambit of adultery under the Indian Penal Code to a few specific cases of adultery. The court multiple times states the basis for this distinction to be not rational, rather manifestly arbitrary.

By letting women also prosecute for adultery, it is an argument for criminalizing adultery, for which the court accepted it to be a moral wrong, but it stated that the direct societal impact of adultery as a wrong is negligible, and a "much stronger justification" is needed for imprisonment of the accused. It said the right to dignity includes to right to not attract "public censure" and

[20] R. v. R., (1992) 1 AC 599 : (1991) 3 WLR 767
[21] (2015) 5 SCC 705
[22] (2017) 7 SCC 780

punishment by state except where absolutely necessary.
As for autonomy, it said "The State must follow the minimalist approach in the criminalisation of offences, keeping in view the respect for the autonomy of the individual to make his/her personal choices." It felt that where civil remedy is sufficient, criminal action by state may not be warranted.

Legal Implications

It overruled , Sowmithri Vishnu v Union of India and V. Revathi v Union of India alongside W. Kalyani v. State[23].

Render Section 497 of the Indian Penal Code inoperative, and "Section 198(2) CrPC which contains the procedure for prosecution under Chapter XX IPC shall be unconstitutional only to the extent that it is applicable to the offence of adultery under Section 497."

Conclusion

"Members of a civilized democratic society have a reasonable expectation of privacy. Privacy is not the singular concern of journalists or social activists. Every citizen of India ought to be protected against violations of privacy...."[24]
This quote from the Apex court is also applicable on the this decriminalized offence of adultery. It is a misdemeanour that occurs as a result of collapsing marriages. Marriage as an institution concerns two individuals and at best two families only. Criminalisation of an act must happen when such act is likely to be repeated and spreading like a pandemic. Why do not we see more serial killers? Because the state swoops in and prosecutes at the first instance. But compare it to adultery, it causes only marital discord, and will repeat anyway if the next marriage is also not fulfilling. You may argue about it acting as a deterrent, but that would only extend toxic marriages at best. Plus it severely violates the privacy of individuals; it is inherently a private decision, that the public has no right to know about. A criminal trial usually is a public affair, and

[23] (2012) 1 SCC 358
[24] Surveillance versus right to privacy| Five unmissable quotes from the Pegasus Order... available at: https://www.scconline.com/blog/post/2021/10/28/surveillance-versus-right-to-privacy-five-unmissable-quotes-from-the-pegasus-order/ (last visited on November 30, 2023).

even acquittal in trial of adultery might not suffice, in restoring reputation of individuals who were prosecuted for it. Hence the unconstitutionalisation of the offence is a significant step in moving towards a more modern society. And as we saw earlier, that in modern marriages, it is a partnership that is desired, not the patriarchal "husband is a god" institution. Both are mortals, flawed human beings, capable of taking their own decisions, having bodily autonomy. Though this bodily autonomy concept would mean, that marital rape should be criminalized, yet that is something that has received judicial attention in RIT Foundation v. Union of India[25], where it was a split 1-1 verdict, but both the judges concurred on the leave to appeal in the Apex Court.

[25] (2022) 3 HCC (Del) 572

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Use of DNA Evidence in Criminal Justice Systems

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INTRODUCTION

Perfect crimes don't happen, or feel like perfect because the arms of law enforcement haven't grown long enough yet. But thats what happened to Joseph James DeAngelo Jr., an American serial rapist-killer, who terrorised citizens across 6 states from 1974-1986 and managed to evade the detection and capture until 2018. That's when dna evidences were finally connected by the efforts of the Federal Bureau of Investigation. The ordinary ex-policeman was finally realised to have been a monster, dubbed the "Golden State Killer" , "East Area Rapist", etc during his reign of terror.[1]

The DNA from semen stored in a rape kit, was uploaded to websites to match with DNA uploaded on the websites. The websites like FamilyTreeDNA, GEDmatch, and MyHeritage which are used to privately look up family trees by americans, were used to find potential matches. The FBI did it on its own, but also enlisted a civilian genticist, Barbara Rae-Venter to help with the investigation. She aside from the FBI's efforts also uploaded the DNA on her own, on the website titled MyHeritage, and found a closer match to what the FBI had so far found. It created a narrow pool of suspects, and a month later a woman was was visited, but her DNA cleared her brother. On an another website, Ancestry.com , authorities had been building family trees, and the woman was related through the trees there. 6 male cousins were possible fits, and it was known the killer had blue eyes, so through the driver's license records, DeAngelo was zeroed upon, and finally caught with the help of a garbage truck driver, who took away DNA bearing items to help the enforcement confirm it was indeed him.

There was little legal discourse until then as to whether it was constitutionally or even legally valid there. Also it was found that such a search violated a lot of those companies' policies. Some had the provision of release of personal data "if required by law". But some later updated its policies to prohibit such investigations. Some still allow investigations for violent crimes only, but it got arm-twisted by the police at times where to the police classified a case as sexual assault to that end, but after arrest only filed burglary charges. But this kind of investigation, especially in this case began with a free website, and then a sanctioned release of information about the match, only to turn out to be a exceedingly distant relation. The victims were asked about the legitimacy of this kind of search, some feel end justified the means, some feel if you are using a DNA service, it should be private and shared only with consent, but not again used to implicate one's relatives. Some feel the deceptive nature of this, could have led to multiple appeals by the accused if he had not pleaded guilty.[2]

WHAT IS DNA EVIDENCE?

1. What is DNA?

[1] How An Ex-Cop Named Joseph DeAngelo Got Away With Being The Golden State Killer For Decades available at: https://allthatsinteresting.com/joseph-james-deangelo (last visited on April 14, 2024).
[2] The untold story of how the Golden State Killer was found: A covert operation and private DNA available at: https://www.latimes.com/california/story/2020-12-08/man-in-the-window (last visited on April 14, 2024).

DNA is an organic chemical with complex molecular structure. It is found in all prokaryotic and eukaryotic cells , as well as in many viruses. It codes genetic information which is responsible for inherited traits to be transmitted.[3]

2. What is an evidence?

EVIDENCE: Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention. (Hotchkiss v. Newton, 10 Ga. 567; O'Brien v. State, 69 Neb. 691, 96 N.W. 650; Hubbell v. U. S., 15 Ct.C1. 606; McWilliams v. Rodgers, 56 Ala. 93.)[4]

3. How could DNA be an evidence?

Sir Alec Jeffreys is to be credited for transforming DNA into an evidentiary item. He discovered the concept of DNA fingerprinting in 1984.

Forensic implications of DNA fingerprinting kept growing, and the original method wasn't sufficient, and hence Sir Alec created a variant method called "genetic profiling".

It was used for the first time where two young girls were raped and murdered in the Enderby area of Leicestershire, where Sir Alec had his laboratory in Leicester. Samples of males in the area were taken, and when the culprit was heard boasting of swapping samples, he was caught. Though the technique used in the case is obsolete now.[5]

4. Important events - timeline post discovery of DNA profiling

During the rape case investigation, a DNA analysing technique was used that used something called Minisatellites. These so called "Minisatellites" contained repeat segments that were dozens or even hundreds of bases long, and each locus with its overall DNA fragment could be tens of thousands of bases long. Forensic Scientists at that point in time, isolated and separated DNA fragments into size-dependent bands using the technique of gel electrophoresis. Then the DNA was labeled using radioactive phosphorus. Detection took the assistance of X--ray sensitive film. Average time of DNA analysis was 6-8 weeks.

In the 90s, the technique got a burial in favour of a method which utilises "short tandem repeats". As we've realised by now repetition is key in case of DNA, so this also uses repetition of bases. And in DNA, short sequences of such bases are repeated multiple times, in various spots(loci). Since there is variation in exact number of repeats in specific loci's from person to person, these variations are termed as "short

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[3] DNA chemical compound available at: https://www.britannica.com/science/DNA (last visited on April 14, 2024).
[4] Henry Campbell Black, Black's Law Dictionary Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern 656 (Publisher's Editorial Staff St. Paul, Minn. West Publishing Co. 1968)
[5] DNA fingerprinting The history of genetic fingerprinting available at: le.ac.uk /dna-fingerprinting/history (last visited on April 15, 2024).

tandem repeats", used in identification of individuals. And since chromosomes are inherited from both parents, so there are two sets of these "short tandem repeats", making them even more specific to an individual's DNA profile.

In 1998, the Federal Bureau of Investigation of America led the establishment of combined DNA Index System (CODIS), which included state databases and the National DNA Index System (NDIS).

In January 2017, in order to facilitate the sharing of DNA profiles internationally, number of loci for new CODIS were profiles increased to 20.

In August 2017, in America the Rapid DNA Act was passed, which let DNA profiles generated outside accredited labs to be used to search CODIS.[6]

5. Origins in India

As for India, the first forensic DNA test took place in 1989 at the Centre for Cellular and Molecular Biology. Following that, in 1998, an institute called Centre for DNA

Fingerprinting and Diagnostics (CDFD) was founded. The purpose was to test forensic DNA, required for civil and criminal cases. also central and state forensic science labs were set up for assisting the court of law.[7]

CRIMINAL JUSTICE SYSTEMS AND EVIDENCE

1. What are criminal justice systems?

It is the system where private and government agencies form a network for the management of accused and convicted criminals. There are several rooms to this system with connecting passages, and them being academia, law enforcement, forensic services, the judiciary, and correctional facilities. They are to support legal justice principles.[8]

2. Evidence in various countries

In USA, evidence can be testimony, documents, photographs, videos, voice recordings, DNA testing, or other tangible objects. A court could exclude evidence on the basis of irrelevance, hearsay nature of its same or admissibility due to other seasons. There are different rule of evidences at the federal and state levels.[9]

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[6] Thirty years of DNA forensics: How DNA has revolutionized criminal investigations available at: cen.acs.org /analytical-chemistry/Thirty-years-DNA-forensics-DNA/95/i37 (last visited on April 16, 2024).
[7] Ankit Srivastava, , Abhimanyu Harshey, Tanurup Das, Akash Kumar, Murali Manohar Yadav and Pankaj Shrivastava, "Impact of DNA evidence in criminal justice system: Indian legislative perspectives" 12 Egyptian Journal of Forensic Sciences 4 (2022)
[8] Criminal Justice System available at: https://www.sciencedirect.com/topics/psychology/criminal-justice-system (last visited on April 16, 2024).
[9] Evidence available at: https://www.law.cornell.edu/wex/evidence (last visited on April 27, 2024).

According to a UK governmental guidance document , evidence is information provided to the court as well as the jury to decide upon the possibility of commission of a crime, and it has the tendency of assistance in proving the truth or its probability with regards to a fact kept before the court and the jury. Items of evidence here are referred to as material.[10]

In India, evidences are primarily governed by the Indian Evidence Act, 1872. Evidence is defined by dividing into two types in oral evidence, and documentary evidence. Oral evidence is defined as witness statements permitted by the court or required to be made before the court in relation to matters of fact under enquiry. Documentary evidence is defined as all documents produced for the inspection of the court which includes electronic records.[11]

3. DNA EVIDENCE IN INDIA AND OTHER COUNTRIES

1. Usage In India

Paternity is a big portion of DNA testing in any part of the world. In the judgement of Gautam Kundu vs State of West Bengal[12] , the court gave the following observations related to DNA testing-

- Blood tests are not be ordered as standard procedure
- If blood test is not connected to the dispute and is just prayed randomly, the same should not be taken up
- Compelling someone for blood test isn't allowed must examine whether ordering blood test of someone tarnishes the reputation of the mother and child.

This is specifically pertaining to civil cases.

In Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra, the apex court observed that in general, if sample at crime scene matches the DNA profile of suspect, general conclusion is of same biological origin. DNA profiles are usually valid and reliable, but variance in the results could be attributed to the quality control and quality procedure in the laboratory.[13]

In the explanation to Section 53[14], the term examination in its ambit takes in examination of DNA profiles. In Selvi Vs State of Karnataka[15], the court observed that only testimonial evidence faced the bar of Article 20(3), protecting against the right of self-incrimination. DNA profiling was held to be physical evidence by holding the other things mentioned in Section 53's explanation like blood, semen, sputum, sweat etc., as physical evidence. So it is constitutionally valid.

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[10] Evidence in criminal investigations available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919630/evidence-in-criminal-investigations-v5.0.pdf (last visited on April 27, 2024).
[11] The Indian Evidence Act, 1872, S.3
[12] 1993 AIR 2295
[13] (2014) 4 SCC 69
[14] The Code of Criminal Procedure 1973
[15] AIR 2010 S.C. 1974

In Sandeep Vs. State of UP[16], it was held that in absence of additional evidence showing that improper storage of samples would vitiate a DNA test, the improper storage would not affect the result of the test.

In the case of Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra[17], the apex court referred to the US Supreme Court Decision of R. vs. Watters[18] which held DNA evidence to significant only if supported by additional evidence.

In Patangi Balarama Venkata Ganesh v. State of AP[19]., the Hon'ble High Court held the opinion of DNA expert to be absolutely admissible since it is perfect since the chances of the same DNA fingerprint without being the same person is negligible.

2. **Usage in major countries- comparative view**

a. Australia

In 1989, the Crimes (Blood Samples) Act 1989 (Vic) was enacted in the state of Victoria, to provide for collection of biological samples to have DNA profiling. Now upon 'reasonable' or 'justified' suspicion of commission of a crime gives police the authority to obtain a sample. Refusal means police obtaining a court order for the same. The Model Criminal Code Officers Committee made a bill in 2000, which provides for forensic procedures to be carried out on volunteers, suspects and convicted offenders.[20]

- Aytugrul v The Queen[21]
  In this case Aytugrul was convicted of murder of his ex-girlfriend, and Mitochondrial DNA analysis of a hair sample found under the victim's thumbnail was exhibited to the court at the trial . The expert witness said 99.9% would not share the same DNA profile as Aytugrul, which was alleged to be deceptive by the defense since the jury might take it to be 100% and consider Aytugrul to be guilty, unfairly influencing their judgement. But this allegation was dismissed in further appeals , as equivalent presentations of DNA match probabilities cannot be treated as prejudicial or misleading because one way of presenting it may be more persuasive that the other.
- Fitzgerald v The Queen[22]
  House breaking in a Adelaide house took place, and the occupants were attacked using multiple weapons which included a gardening fork and a pole. One of the victims succumbed following the attack , another sustained serious brain injuries. but the issue was circumstantial and just DNA evidence, found on a didgeridoo - A traditional Australian musical instrument - at the spot of crime. Fitzgerald despite that got convicted of murder and aggravated assault causing serious bodily harm, and got sentenced to life imprisonment.
  There was a further appeal on the basis of lack of evidence, and alleged secondary transfer of DNA to the musical instrument. There was no evidence that ruled out secondary transfer of DNA, despite the court admitting that primary transfer of DNA is more likely. Hence the conviction was quashed.[23]

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[16] (2012) 6 SCC 107
[17] (2005) 5 SCC 294
[18] All.E.R. (D) 1469
[19] 2003 Cri LJ 4508
[20] Marcus Smith, DNA Evidence in the Australian Legal System, 47-48 (LexisNexis Butterworths Australia, Chatswood NSW, 2016)
[21] (2012) 247 CLR 170
[22] (2014) 311 ALR 158

[23] Id. at 136-137-138

b. United Kingdom

As we know from earlier in the paper that the technique of DNA profiling originated in the United Kingdom only, so it would be futile to go over the origins again. Let's look at landmark cases directly instead.

In S. and Marper v. The United Kingdom[24], it was held that DNA samples and its analysis and connected information if undertaken for an investigation, the use of such must stay restricted to the investigation, but if used for research and statistical purposes, it should be such that the identity of individuals cannot be found.

In R v FNC[25], there were two incidents. Firstly there was the defendant who had sexually harassed a victim, and his DNA was stored from the semen left on that victim's dress. This happened in 2003, and then in an unrelated offence, when DNA samples were compared , they matched.

The court of appeal held, if DNA is collected directly as a result of an offence by the criminal, then a high DNA match makes the criminal liable to answer.

In R v Tsekiri[26], there was a case of robbery, that took place moments after the victim entered her car, and the criminal took a gold necklace from her. A mixed DNA profile was collected from the door handle of the driver. The major contribution to the profile matched the defendant.

The Court gave some questions to ponder upon as to whether convict on basis of DNA being matched-

1. Evidence of alternate explanation that could lead to the DNA being found there other than involvement in the crime.
2. The association of the item (on which DNA found) with the offence.
3. How movable the item was?
4. Geographical association evidence regarding the offence and the offender?
5. In mixed DNA profiles, is the offender the major contributor?
6. Is there high possibility of the offender's DNA profile being there due to primary or secondary transfer?
   The honourable judge added that this list is not exhaustive, and it will depend on case to case basis.[27]

c. France

There, DNA tests are only permissible for medical, scientific or judicial purposes. Main concern is that paternity and genealogical tests are to be done under supervision.[28]

[24] [2008] ECHR 1581
[25] [2015] EWCA Crim 1732
[26] [2017] EWCA Crim 40
[27] DNA Evidence and Tsekiri: When Is There A Case To Answer? available at: https://centralchambers.co.uk/dna-evidence-and-tsekiri-when-is-there-a-case-to-answer/ (last visited on April 27, 2024)
[28] My French Roots available at: https://www.myfrenchroots.com/dna-testing-in-france/ (last visited on April 30, 2024)

- In AYCAGUER v. FRANCE, conviction for refusing DNA profiling was held to be "a disproportionate infringement of his right to respect for private life" [29].

- In Canonne v. France [30], upon allegation that refusal to paternity tests led to declaration that the applicant is the father, was struck down by the European Court of Human Rights on appeal, as it found that the French courts had considered other documents and eyewitness statements to declare the paternity. The refusal was an additional piece of evidence.

FORENSIC SCIENCE ABOUT DNA EVIDENCE

One of the initial things to know about this is Locard's Principle of exchange - it theorises that when two objects come into contact with each other, they always leave a trace on the other. Then all criminals can be connected to the crime scene using contact traces carried from or left at the crime scene. Analysis of circumstantial evidence using science can give vital information about the crime.

Here are couple of interesting but important facts about DNA evidence with relation to paternity.

Nuclear DNA is half inherited from mother, half from father. Mitochondrial DNA is from the mother. So if individuals share maternal lineage, they will be exact same in mDNA analysis. The mitochondria of a sperm is located in the tail and midsection, and since the head only fuses with the egg on fertilisation, the mitochondria is left behind, leading to mitochondrial DNA in a child being identical to a mother. This in turn is used for proving of maternal relationships.

In the body, DNA is the same in all cells.

In any sample with nucleated cells, there might be DNA.

In a real case example, DNA evidence was matched through comparison of DNA found in perspiration on a baseball cap discarded by the rapist, and the DNA in the saliva swabbed from a bite mark on a different rape victim.

If appropriately stored and properly collected, DNA evidence collected can be analysed later at any time.[31]

CONCLUSION

DNA and its evidential science is a new science, which is not even 40 years old. There has been a change of techniques, and all over the world it is being relied upon in criminal and civil cases. Often there is a controversy as to whether to accept it if it is the only piece of evidence, but in different cases courts have given different kinds of decisions, based on factors like likelihood of primary transfer of DNA, evidence of secondary transfer of DNA, high match with an existing sample . Also the need for privacy has been

[29] App no 8806/12 (ECtHR 22 June 2017)
[30] Application no. 22037/13
[31] Forensic Evidence in Civil & Criminal Trials- DNA Profiling available at: https://nja.gov.in/Concluded_Programmes/2021-22/SE-02_2021_PPTs/3.Forensic%20Science%20in%20Civil%20and%20Criminal%20Trials_DNA%20Profiling.pdf (last visited on April 28, 2024)

highlighted, specifically if the person was exonerated, also use beyond purpose of investigation. The introductory case also brings it to light, since we get to look at how police rummaged through private DNA profiles to catch the culprit. It is a concerning situation. Also paternity issues were highlighted, like in France refusal of the test alone wasn't inferred to be proof of the pudding, in India guidelines were given to not make it a roving enquiry tool, and protect reputation of the mother and child.

In conclusion, DNA evidences are an important tool in modern day justice systems, but it needs to be used carefully, and rules in stone can't be used mostly, they need to be attended on a case to case basis.

Human Rights PSDA – A Research Paper on

Human Rights and Status of Refugees

By Debaditya Dutta

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Introduction

The Convention relating to the Status of Refugees defines a refugee in its first article. But is it desirable to be a refugee? It is one of most soul-crushing, gut-wrenching thing that can happen to a human being, to watch your homeland burn and turn you into a ghost to be chased out. But it happens to numerous people each year. They are absolutely left to loiter in the face of earth, without a home. Tragic would be an understatement. But one person's greed and irrational hatred, turns others into sheep without the shepherd, toddlers without the mother. Normalcy vanishes from their lives.

Research problem

The two ongoing crises of Ukraine-Russia, and Israel-Palestine, with the latter being a historical skirmish that has flared up recently, and also the Taliban capture of Afghanistan in 2021 have resulted in a brutal and toxic atmosphere in these parts of the world, creating innumerable more refugees. The paper aims to delve into the status of human rights with such people after becoming a refugee, and what could be some measures to ensure they get to have better lives with respect to human rights thereafter.

Existing Legal Situation

The Universal Declaration of Human Rights, mentions essential human rights and some are more specific towards refugees.

The first article talks about freedom and equality in dignity and rights. Article 2 talks about entitlement to all the rights of this declaration to everyone minus any distinction. In Article 3, it grants right to life, liberty and security of person. Article 5 deals with prohibition on torture, Article 7, particularly its second section, appears to directly address refugees by ensuring their right to equal protection against discrimination that goes against the Universal Declaration of Human Rights, as well as any encouragement or support for such discriminatory actions. Article 12 while protecting against arbitrary interference with their home, also protects refugees. Article 13, 14, 15 and others also deal with refugees.

Specifically though according this document by Red Cross[1], these are the various international documents dealing with refugees.

1. Convention relating to the Status of Refugees, of 28 July 1951
2. Protocol relating to the Status of Refugees, of 31 January 1967
3. United Nations General Assembly Resolution 319 A (IV), of 3 December 1949 which established a High Commissioner's Office for Refugees
4. Statute of the Office of the United Nations High Commissioner for Refugees (Annex to General Assembly Resolution 428 (V), of 14 December 1950)
5. United Nations Declaration on Territorial Asylum (General Assembly Resolution 2312 (XXII), of 14 December 1967)
6. OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, of 10 September 1969
7. Cartagena Declaration on Refugees, of 19-22 November 1984

[1] Reports and Documents available at : https://international-review.icrc.org/sites/default/files/S1560775500119352a.pdf (last visited on December 06, 2023).

This though is a pretty old document so let us see whether all these have legal status still.

With regards to 1, And 2, the United Nations High Commissioner for Refugees website explicitly mentions them as foundational documents[2]. And since the website exists, we can conclude 3 too is in existence.

The statute mentioned in 4 is here[3]. Para 65 of R v. Secretary of State for the Home Department[4], mentions the same. 5th one is here[5], with a mention here[6]. 6th is here[7], with a here it being stated in Para 35 that South Africa being a signatory, is bound to it. The last one is here[8], mentioned in Kenya National Commission on Human Rights v. Attorney General[9].

It shows that none of the documents are irrelevant and haven't been discontinued till now.

In regards to India, it lacks legislations and also isn't a signatory or party[10] to neither the 1951 Convention nor its 1967 protocol.

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[2] ABOUT UNHCR, The 1951 Refugee Convention available at:https://www.unhcr.org/in/about-unhcr/who-we-are/1951-refugee-convention#:~:text=The%201951%20Refugee%20Convention%20and,of%20treatment%20for%20their%20protection.&text=Refugees%20are%20among%20the%20most%20vulnerable%20people%20in%20the%20world. (last visited on December 06, 2023).

[3] Statute of the office of the united nations high commissioner for refugees, General Assembly Resolution 428 (V) of 14 December 1950 available at: https://emergency.unhcr.org/sites/default/files/United%20Nations%2C%20Statute%20of%20the%20Office%20of%20the%20United%20Nations%20High%20Commissioner%20for%20Refugees%2C%20Annex%20to%20General%20Assembly%20Resolution%20428%20%28V%29%20of%2014%20December%201950.pdf (last visited on December 06, 2023).

[4] [2023] UKSC 42

[5] UN General Assembly, Declaration on Territorial Asylum, 14 December 1967, A/RES/2312(XXII), available at: https://www.refworld.org/docid/3b00f05a2c.html (last visited on December 06, 2023).

[6] Maja Janmyr, Charlotte Lysa, Saudi Arabia and the International Refugee Regime, International Journal of Refugee Law, 2023, available at < https://doi.org/10.1093/ijrl/eead027 > (last visited on December 06, 2023).

[7] Convention Governing The Specific Aspects Of Refugee Problems In Africa available at: https://au.int/sites/default/files/treaties/36400-treaty-0005_-_oau_convention_governing_the_specific_aspects_of_refugee_problems_in_africa_e.pdf (last visited on December 06, 2023).

[8] Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Cartagena de Indias, Colombia, 22 November 1984 available at:https://www.unhcr.org/in/media/cartagena-declaration-refugees-adopted-colloquium-international-protection-refugees-central (last visited on December 06, 2023).

[9] 2017 SCC OnLine Ken 1257

[10] United Nations Treaty Collection Chapter V Refugees And Stateless Persons Convention relating to the Status of Refugees Geneva, 28 July 1951 available at:https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en (last visited on December 06, 2023).

The legislations that apply on foreigners are applied upon them[11]. They are

1. Passport (Entry into India) Act, 1920
2. Passport Act, 1967
3. Registration of Foreigners Act, 1939
4. Foreigners Act, 1946
5. Foreigners Order, 1948

However, it is a party to several agreements regarding human rights, refugee concerns, and associated subjects, despite this fact. Alongside being a signatory to the Universal Declaration of Human Rights[12].

Literature Review

Scope and Objective

The paper seeks to examine the general position of human rights, its denial, what determines the state of being a refugee, causes of a crisis , and human rights with respect to various aspects like camps, asylums, followed by a brief overview of countries, including India, and a few possible measures for betterment.

It seeks to know how much Human Rights and statutes like the Universal Declaration of Human Rights have reached refugees.

Research Methodology

It is a doctrinal research paper, based upon United Nations statutes, Indian Statutes, internet articles, books, national and international judgements etc.

Research Questions

In the course of this paper, light is to be shined upon

1. What it means to have human rights?
2. What consists of denial of human rights?
3. What entails the status of a refugee?
4. Causes of refugee crisis (through real life illustrations)
5. Refugee Camps and Human Rights
6. Various Countries including India and Refugees
7. Possible Solutions

Hypothesis

[11] Human Rights of Refugees and Asylum Seekers in India Issues and Challenges available at: https://nhrc.nic.in/sites/default/files/Group%204%20June.pdf (last visited on December 06, 2023).
[12] India's Refugee Policy By - Pooja, Faculty of Law, DU available at:https://www.indianbarassociation.org/indias-refugee-policy/ (last visited on December 06, 2023).

Refugee crisis arises out of savagely, brutal and prolonged discrimination upon religious, linguistic and racial lines, and also situations of war, civil war etc. The paper attempts to raise awareness about such discrimination, and help humanity move an inch towards a more unified world where such crises are nonexistent

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Human Rights and its denial

A prime resource to explore human rights, especially concerning India, is the Constitution of India, particularly Article 21. It says "*No person shall be deprived of his life or personal liberty except according to procedure established by law*." So what is means is that Supremacy of Law is the gist of Human Rights. But it also means that such law needs to be fair, and bereft of arbitrary, callous decisions.

Justice VR Krishna Iyer, in Maneka Gandhi v. Union of India[13], discusses "procedure established by law". He states by use of the strong word "established", it means "settled firmly". Not "whimsical" in nature. He states that though reasonableness is a part of Articles 14 and 19, fairness is implied here. He concludes the argument by saying that "not any enacted piece" can be the procedure; it is "reasonable law".

So it is settled that Supremacy of "reasonable law" is the cornerstone of human rights.

When posed by the question whether Article 21 is the sole repository of right to life and personal liberty, the dissenting opinion by Justice HR Khanna in ADM, Jabalpur v. Shivakant Shukla[14], is extremely relevant. He backs his argument that it is not by quoting Magna Carta, and also the fact that "*except according to procedure established by law*" was taken from Article 31 of the Japanese Constitution. He discussed how the Constitutional Adviser Mr B.N. Rau, through discusssions with American Constitutional experts came to the conclusion that "due process of law" allowed judges to veto legislation, while "*except according to procedure established by law*" prevents that uncertainty. But he later clarifies that they comprise only valid legislation and not one's infringing fundamental rights, as was discussed above in this paper as well. He explicitly states that the right wasn't "gifted" by the Constitution; it existed prior to that as well.

So human rights are "basic" and it is not needed be to recognised in a specific statute. Recognising them only helps create a source of power within the country, which the courts can use to implement human rights.

Now what does it mean to deny "human rights"?

Discrimination based on gender violates fundamental freedoms and human rights in all its forms[15].

Article 21 of the Iranian Constitution of 1979, specifically states that the rights of women are to be ensured in all respects in conformity with Islamic criteria [mavazin-e eslami], which shows that by excluding men from any such restriction, it seeks to impose the discriminatory practices imposed on women[16].

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[13] (1978) 1 SCC 248
[14] (1976) 2 SCC 521

[15] Valsamma Paul (Mrs) v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772
[16] Ann Elizabeth Mayer, Islam And Human Rights- Tradition and Politics 73 (Routledge, New York, 5th edn., 2018)

But initially things were different, it is said that it afforded dignity to women when they had lost it in the Arabic Peninsula. Claims of equality are also made[17]. But local cultures obscured that initial burst of freedom into an inferior status of women being written into Islamic jurisprudence[18].

Juristic statements by pre-modern jurists holding authority were seen as a source of law, and they saw women as needing male tutelage, and control, imposing a proper subordinate role unlike men, and seclusion in domesticity. Other restrictions include the exclusive monogamity, obedience of husbands with the consequence of violence and so on[19].

This clearly is a bundle of discriminatory practices that lower the status of human rights in Islam with respect to women.

But any voice raised against this subjugation is also met with ferocity. Only 16 executions (till then) had taken place for protesting the death of Mahsa Amini on September 16 2022 while in the custody of Iran's morality police. The crime was of "improperly wearing her hijab". The first execution was of 23-year-old Mohsen Shekari for the crime of "waging war against God,"[20].

This is what denial of human rights looks like. Blatant, ghastly disregard of human rights illustrated. And god is the justification stated.

Causes for becoming a Refugee

Often migration is seen as being led by a singular goal. Like it could be in search of better employment and working prospects, or it could be leaving behind religious, linguistic persecution, or homelessness due to a state of war. They are looked to be divided up into forced migrants versus voluntary migrants[21].

Mixed movements, or mixed migration, entail the movement of individuals traveling together, typically in an irregular fashion, along similar routes and using the same modes of transportation but for diverse purposes. These groups comprise men, women, and children who have either been displaced from their homes due to armed conflict or persecution, or are in transit seeking improved living conditions[22].

But often the motivations are not singular, and both persecution and economic prospects could be driving a migrant. It makes it difficult to distinguish, yet it is necessary. It is because through the 1951 Geneva Convention Relating to the Status of Refugees, states endeavoured to specifically protect refugees[23].

Art 1 gives two distinctive set of persons –

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[17] Imam Khomeini, Islam and Revolution 24 (Mizan Press, 1981)
[18] Supra note 16 at 100
[19] Supra note 16 at 100-101
[20] Iran's months-long protest movement, explained available at:https://www.vox.com/2022/12/10/23499535/iran-protest-movement-explained (last visited on December 06, 2023).
[21] Anna Triandafyllidou (ed.), Routledge Handbook of Immigration and Refugee Studies 297 (Routledge, New York, 2016)
[22] Asylum and migration available at:https://www.unhcr.org/in/what-we-do/safeguard-human-rights/asylum-and-migration (last visited on December 07, 2023).
[23] Supra note 21 at 297-298

Firstly – considered a refugee under

- Arrangements of 12 May 1926
- And 30 June 1928
- the Conventions of 28 October 1933
- And 10 February 1938
- the Protocol of 14 September 1939
- the Constitution of the International Refugee Organization
  But in a case of holding someone ineligible by the International Refugee Organization, but fulfils the conditions listed after this, he shall not be prevented from holding the status of a refugee.

  Secondly becoming a refugee due to

1. events occurring before 1 January 1951
2. and well-founded fear of persecution for
    a. race
    b. religion
    c. nationality
    d. membership of particular
        i. social group
        ii. political opinion
3. also is outside the country of his nationality
4. alongside being unable to get protection of such country due to such fear
5. or lacks nationality
6. and outside country of habitual residence
7. due to above described events
8. unable or due to fear unwilling to return

In case of multiple nationalities

1. "the country of his nationality" = each country of which they are national
2. Not deemed to be lacking protection
3. If lacking valid reason
4. For availing protection of one of such countries

Also "events occurring before 1 January 1951" is also defined as

- "events occurring in Europe before 1 January 1951";
- Conversely "events occurring in Europe or elsewhere before 1 January 1951",

  But the contracting state through declaration shall have to adopt one of the two meanings for performing its obligations under this convention. The Declaration could be of signature, ratification or accession.
  Also if the first meaning is adopted, then extension to adopt the second one can be done by notification to the UN Secretary General.

The rest of the Article deals with inapplication of refugee status due to various causes like

1. Taking protection again of country
2. Retaken nationality after losing it
3. New nationality
4. Re-established in very country of persecution
5. Circumstances of being refugee non existent now
6. Can return to habitual residence due to the previous reason etc.
7. Receiving from organs of UN other than UNHRC
8. Committed war crime, crime against humanity etc

Refugee is the later stage of seeking asylum in a country .Asylum seekers are the same as a refugee, just that the decision whether the country grants them asylum or not is awaited[24].

Types of Refugee Generating Conflicts[25]

1. Inter-state wars
2. Ethnic Conflicts
3. Non-ethnic civil conflicts
4. Authoritarian and revolutionary regime

Let us look at illustrations of each to understand these better.

1. As of October 2023, 5.8 million refugees from Ukraine were recorded across Europe[26].

"It has claimed tens of thousands of lives of men and women, many of them innocent civilians, and created the largest refugee crisis in Europe, once again since the end of World War II. In the following months, the number of women, children, and elderly who fled the fighting in Ukraine reached a total of twelve million people, and those who found refuge in the countries of Eastern and Central Europe exceeded five million[27]."

2. *"In 1998, systematic violence against ethnic Kosovar Albanians erupted, and by the fall an estimated 250,000 Albanians had been driven from their homes by Yugoslav military and paramilitary forces[28]."*
   "On January 15, 1999, a massacre of 45 civilians allegedly occurred in the village of Racak[29]."

[24] Refugees, Asylum Seekers And Migrants available at: https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/ (last visited on December 08, 2023).
[25] Myron Weiner, "Bad Neighbors, Bad Neighborhoods: An Inquiry into the Causes of Refugee Flows" 21 International Security 9-10 (1996)
[26] Europe Situations: Data And Trends - Arrivals And Displaced Populations - October 2023 available at: https://data.unhcr.org/en/documents/download/105246 (last visited on December 07, 2023).
[27] Serhii Plokhy, The Russo-Ukrainian War, xix, (Penguin Random House UK,2023)
[28] Andrew J. Bacevich and Eliot A. Cohen (eds.), War Over Kosovo Politics and Strategy in a Global Age, 1, (Columbia University Press, New York, 2001)

3. *"Authoritative figures of the casualties, the degree of physical destruction, and the enormity of the refugee problem inside and outside Syria are unavailable, but most sources agree that by the middle of 2020 close to half a million people had died in Syria and close to twelve million Syrians had become refugees or IDPs (internally displaced persons). The United Nations estimates that of the eighteen million people who currently live in Syria, almost twelve million are in need of humanitarian help. Six million Syrian Sunnis now live outside x preface Syria, and their return is uncertain if not unlikely. The extent of this human tragedy goes beyond numbers and is forcefully described in the writing of several Syrian and other author"[30]s."*
4. *"After more than four decades of conflict and instability in Afghanistan, an estimated 28.3 million Afghans - two-thirds of the population, including women and girls - are in need of humanitarian and protection assistance. More than 1.6 million Afghans have fled the country since 2021, bringing the total number of Afghans in neighboring countries to 8.2 million - accounting for one of the largest protracted refugee situations in the world[31]."*

These illustrations articulate the human tragedy such crises are, and how many homeless souls these have created. Refugee crisis be through any cause has wrought upon the world lot of pain and suffering.

Humans are made to look alike by the heavens, in order to stay united, but we still manage to find reasons to divide us.

Human Rights and Refugee Camps

The Kakuma Camp in Kenya, in 1991 hosted teenaged boys who had fled from Ethiopia after fleeing the war infested South Sudan. Huge numbers of them died due during this mass exodus due to lack of food and hostility from people from whom they looked out for help. 7000 of them stayed in the camp as of 1996. UNHCR gave responsibility to a NGO, Lutheran World Federation (LWF), in charge of setting up Kakuma camp and assisting them there. 40,000 refugees stayed there as of then, but with no opportunity for agriculture, and local hostility and competition stops them from cattle rearing also, leaving them aid dependent for survival. UNHCR is mostly involved in supervising and coordination, while the sub contracted NGO's handle delivery of services. 4 NGOs were involved there in charge of aspects like health, food and education. In theory though Kenyan laws applied on the camp, but special courts have been established inside by the NGOs. The courts meted out several inhumane treatments like flogging. Access to Kenyan government and judiciary was hindered severely due authorisation hassles and transportation troubles. Also arbitrary arrests and detentions by the Kenyan government exacerbated the human rights situation to gruesome levels[32].

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[29] Id at 2

[30] Itamar Rabinovich Carmit Valensi, Syrian Requiem The Civil War and Its Aftermath
, ix-x, (Princeton University Press, New Jersey, 2021)

[31] Afghanistan Refugee Crisis Explained available at: https://www.unrefugees.org/news/afghanistan-refugee-crisis-explained/ (last visited on December 07, 2023).

[32] Guglielmo Verdirame, "Human Rights and Refugees: The Case of Kenya" 12 Journal of Refugee Studies 8-10, 61-63, 73 (1999)

"With an influx of new arrivals in 2014, Kakuma surpassed its capacity by over 58,000 individuals, leading to congestion in various sections. Following negotiations between UNHCR, the National Government, the County Government of Turkana and the host community, land for a new settlement was identified in Kalobeyei, 20km from Kakuma town[33]."

Various countries and Refugees

UNHCR India as of 31 January 2022, has upwards of 46000 refugee and asylum seekers registered with it. 46% of refugees are female and minors. The Agency works closely with the government in ensuring hosting of these across 11 states[34].

There is an urgent need for a legislation, since it would alleviate the constant exploitation, regulate their influx through set framework, and strengthen India's efforts in curbing human rights violation[35].

With regards to the United Kingdom if the asylum seekers fall under the definition of refugee as per the 1951 convention, they will be recognised and given refugee documents with permission for 5 years stay[36].

Refuge seekers with regards to USA, can apply if physically there in the US, and not already a citizen. They need to file an online Form I-589 . They may not file it if they are already in immigration proceedings, are an unaccompanied alien child in removal proceedings, are among some special categories, or have already filed the form[37].

Possible Solutions

1. Reduce the red tape involved to bare minimum, since refugees are mostly victims.
2. Penalise human rights violations severely, specially if could lead to a refugee crisis. Though this is slightly difficult owing the nature of international law.
3. Ensure the conditions in refugee camps are hospitable, and create economic opportunities for them to not dependent on aid completely.
4. Raise awareness about past conflicts.

Conclusion

Refugees are victims of persecution, left in lurch and it is up to rest of humanity to help them live again. They need a safe place where they can live and work. Humanity finds reasons to divide a lot unfortunately. Greed drives a single man, then a bunch, then the way to god is twisted for selfish goals, resulting in broken families and nations.

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[33] Kakuma Refugee Camp and Kalobeyei Integrated Settlement available at: https://www.unhcr.org/ke/kakuma-refugee-camp (last visited on December 08, 2023).
[34] India available at: https://www.unhcr.org/in/countries/india (last visited on December 08, 2023).
[35] Supra note 11
[36] The truth about asylum available at: https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/the-truth-about-asylum/ (last visited on December 08, 2023).
[37] Asylum available at: https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum (last visited on December 08, 2023).

“No one puts their children in a boat unless the water is safer than the land.” - Warsan Shire (Poem - Home[38])

[38] Refugee quotes available at: https://separatedchild.org/our-work/refugee-quotes/ (last visited on December 08, 2023).

Law and Technology PSDA – A Research Paper on Technology and Gender: Examining the Impact of Sex Determination Tests and Gender-Based Abortion Laws

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BA LLB 2020-25

02951103920

Introduction

Article 2 of the Universal Declaration of Human Rights, clearly states "sex" as of the one of the grounds for distinction which must not be made for enjoyment of all the rights enumerated in the historic declaration, which also in Article 3 provides everyone the right to life, liberty and the security of person.[1] Article 14, disallows the state from denial of equality before law and equality protection of laws to "any person" within the territory of India.[2] But yet the subjugation of half of the human race has flowed like a river through centuries of mankind, and only recently there have attempts to dam up this river of discrimination. Specifically with respect to India, there has been a platter of social evils that served as hammers on the heads of the female sex just for the virtue of being female. Prominent ones include child marriage, dowry, Sati etc. Child marriage still continues in some parts of India, but there has been some crack down on dowry in India though it still continues in India and in case of Sati it has more or less been eradicated from the face of India which started with the Sati Prevention Act of 1820, by the British which was egged on by Indian reformers like Raja Ram Mohan Roy and Pandit Vidyasagar. Today we are to focus on another social evil that is female foeticide and the root cause of that which is the technology of sex determination at birth. This is primarily a modern social evil though emerging from the deeply entrenched patriarchal notions only but facilitated by modern technology.

The origins of modern sex determination techniques began with the discovery by Antonie van Leeuwenhoek of the "spermatic animalcules" in men and dogs, which he went on to describe in a letter to the Royal Society in London in 1676 . In 1672 Reinier de Graaf dissected rabbits and various intervals after mating and managed some success in tracing the eggs while they pass from the ovary to the uterus. In 1827 Carl von Baer published his work on mammalian and human eggs describing and illustrating the ovum inside the Graffian follicle. For over a century factors like temperature and nutrition were thought to determine the gender of the baby. The discoveries of Hanking, in 1891 and McClung in 1902 established the presence of the X

[1] Universal Declaration of Human Rights, 1948, § 1,3, (United Nations)
[2] INDIA CONST. art. 14

chromosome . EB Wilson, and Netty Stevens's investigations resulted in the discovery of the Y chromosome and the pair being titled sex chromosomes. By the second quarter of the 20th century, there was enough evidence for researchers to state the presence of Y chromosomes in human . In 21st century it has been observed that the male sexual organs develop faster than females, and also perhaps interact with the environment and also broke the previous belief of Identical development until development of testes, with the fact being likely that sex differentiation begins shortly after conception .[3]

In India though, there have been 3 techniques that have been used in the determination of sex. At first amniocentesis and chorionic villous biopsy techniques were used and later on nowadays, ultrasonograms are used. The first two are invasive in nature while the latter is not. Amniocentesis involves a sample of amniotic fluid from the amniotic sac with surrounds the foetus by using a needle in the abdomen. In chorionic villous biopsy, passing of a plastic canula through the vagina and collecting a few chorionic cells from the placenta. Ultrasonogram relies on development and visualization of external sex organs of the foetus. In the earlier to techniques there is a waiting period for the results which is not the case in the case of the latter. [4]

These techniques have led to heavily skewed male to female ratios.

FEMALE FOETICIDE IN INDIA

The apparent burden of having another woman in the family drives not only the modern day foeticide but also the historical female infanticide. The burden relates to not only social evils like dowry, but also the cost of raising someone who has to stop being a part of the family in the future, and also sponsoring their wedding. These factors drive the burdensome aspect of the girl child home. But it is a shame that such factors make people commit murder, that too of their own offspring. Since these factors are deeply entrenched in families, it also ends up being a factor in peer pressure for the mother and father. This deeply rooted patriarchy is not only prevalent in rural areas but a little surprisingly in urban areas as well.

[3] Ursula Mittwoch, Sex determination in mythology and history, 49, AB E& M, 7, 7-13, 2005, https://pubmed.ncbi.nlm.nih.gov/16544030/

[4] Roli Varma, Technological Fix: Sex Determination in India, 22, No. 1, BST&S, 21, 21-30, 2002, https://www.unm.edu/~varma/print/BSTS_Sex%20Determination.pdf

A well-known Abortion Centre in Mumbai, after undertaking the sex determination tests, out of the 15,914 abortions performed during 1984-85 almost 100 per cent were those of girl foetuses.[5] This was the scenario 38 years back, but lets see if legislation and modernity has made any effect.

Statistics

- 13.5 million missing girls during three decades from 1987-2016.
- Missing female births increased from 3.5 million to the garangutan figure of 5.5 million, comparing the decades of 1987-1996 and 2007-2016.
- The states of Punjab, Haryana, Gujarat, and Rajasthan comprised nearly a third of the national totals of missing second-born and third-born females at birth.
- These states had the most skewed sex ratios in the entire nation.[6]

The instances of decoy agents being used to catch illegal abortion offenders illustrate that how deep this menace is. In one instance, the doctor came out and informed about the female sex of the girl as a "bad news". The doctor was willing to commit the abhorrent sin for a measly Rs. 15000. In another instance, the doctor asked for Rs 35000 for sex determination test. The decoy woman got him successfully arrested in 2016.[7]

Provisions

From the IPC there are 4 provisions with Section 312 relating to causing of miscarriage, Section 313 dealing with the same but with more specificity that such act is without the woman's consent, Section 314 dealing with the specific offence of again causing miscarriage but that

[5] Tulsi Patel, Sex-Selective Abortion In India Gender, Society and New Reproductive Technologies 97 (SAGE Publications 2007)

[6] Nandita Saikia, Catherine Meh, Prof Usha Ram, etc., Trends in missing females at birth in India from 1981 to 2016: analyses of 2·1 million birth histories in nationally representative surveys, The Lancet- Global Health,(April 08, 2021), https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(21)00094-2/fulltext#%20

[7] Jigyasa Mishra, The Unwanted Daughters of Rajasthan: Sex Determination And Female Foeticide, (Nov. 14, 2023, 9:29 PM), https://www.indiaspend.com/gendercheck/the-unwanted-daughters-of-rajasthan-sex-determination-and-female-foeticide-857635

specific act resulting in death of the woman, Section 315 deals with act done to prevent birth of child, or cause death after birth, and Section 316 deals with causing death of unborn child resulting into culpable homicide.

Hence the certain offences are punishable in India under the IPC.

1. Intentionally causing Miscarriage, without good faith for saving woman
2. Intentionally causing Miscarriage, without good faith for saving woman and also without consent of woman
3. Intending to cause miscarriage but causing death of woman
4. Act with intention of preventing birth of child or cause death of the child after the birth
5. Rendering an unborn child dead, with the circumstances constituting the offence of culpable homicide

- Section 312: Causing miscarriage
    - Punishment: Up to 3 yrs' jail, fine, or both.
    - If woman's "quick" with child: Up to 7 yrs' jail, fine.
- Section 313: Causing miscarriage without consent
    - Punishment: Life imprisonment or up to 10 yrs.
- Section 314: Death by intent to cause miscarriage
    - Punishment: Up to 10 yrs' jail, fine, or life if without consent.
- Section 315: Act to prevent child's birth or cause post-birth death
    - Punishment: Up to 10 yrs' jail or fine.
- Section 316: Causing death of quick unborn child
    - Punishment: Up to 10 yrs' jail.[8]

The primary act though governing abortions in India is Medical Termination of Pregnancy Act, 1971.

The act works by restricting the grounds for abortion to the following, where the continuation of pregnancy meant a risk to the life of the pregnant women or was a harmful proposition which could cause grave injury to the physical and mental health of the pregnant woman.

[8] Indian Penal Code, 1860, § 312, 313, 314, 315, 316, Acts of Parliament, 1860 (India)

The second mental and physical health ground includes pregnancy triggered by rape or failure of contraceptives. Also another includes the child being born with serious physical or mental abnormality. Then the timeline for abortion is specified with within 12 weeks on opinion of one registered medical practitioner, opinion of 2 such practitioners if its below 20 weeks, and if it crosses 20 weeks then only on the first ground such abortion is allowed which is risk to the life of pregnant woman. Also the consent of the woman is essential, and for minors or mentally ill women, guardian's consent is necessary.[9]

Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994:

It also put some other restrictions like making registration of Genetic Counselling Centres Genetic Laboratories or Genetic Clinics compulsory under the act and otherwise illegal. The taking of consent from the pregnant women is mandatory and alongside it is prohibited to pass any information about the sex of the foetus by words, signs or any other manner. All records, charts, forms, reports, etc. as required to be maintained under this Act are to be preserved for a period of 2 years or as prescribed and if a legal proceeding is instituted against the clinic or laboratory or centre then the documents have to be preserved till the proceedings are disposed of and also keep search documents available for inspection by the appropriate authority. The act also tries to create awareness among the people but placing the board of prohibition on sex determination. [10]

Cases

In the case of Centre for enquiry into Health & Allied Themes (CEHAT) v. Union of India[11], Supreme Court issued directions Observing the then non implementation status of the act by the central and state governments. the directions related to creation of public awareness implementation of the act and the rules directions to the central supervisory board Which relate to regular meetings reviewing and monetary the implementation of the act the board to issue directions to all state and union territories for furnishing quarterly returns to the board and so on.

[9] Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971 (India)
[10] Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 , No. 57, Acts of Parliament, 1994 (India)
[11] (2001) 5 SCC 577

In the case of Voluntary Health Assn. of Punjab v. Union of India[12], as well directions in this regard were issued.

Sabu Mathew George v. Union of India[13], - In this case a writ petition was filed for banning advertisement related to prenatal sex determination from search engines in India. The petitioner provided a list of keywords for the search engines to ban. The court acknowledge the constitution of nodal agency for removing the content, directed a meeting between the agency expert committee and the search engine representatives for solutions, the Union of India to prevent violations of the act and address the falling sex ratio, and urged the search engines to cooperate instead of contesting the directions.

Current status

In this instance a paediatric doctor in Chennai , in cahoots with another doctor and that doctor who had a hospital would facilitate the communications through its receptionist. The hospital was where the foeticides took place. They had committed multiple abortions of women who did not prefer girl children.[14]

In Haryana decoys are being used in covert strategic operations to combat illegal prenatal sex determination and abortion clinics. Government initiatives like Beti Bachao Beti Padhao have aims to improve the sex ratio, but deep rotted patriarchy persists. ASHA workers face dangers and societal pressures while working to curb these operations. Some decoys even fake pregnancies to uncover such clinics.[15]

These instances depict an ongoing battle despite legislations, and showing how comprehensive these efforts need to be.

Conclusion

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[12] (2013) 4 SCC 1
[13] (2018) 3 SCC 229
[14] Nikita Gupta, Female Foeticide Racket Busted; Doctor, 2 Women Arrested, Shethepeople, (Nov. 14, 2023 04:40 PM), https://www.shethepeople.tv/news/female-foeticide-racket-busted-1695637
[15] Aiswarya Raj, Pregnant and undercover: How decoys in Haryana are taking on female foeticide, one quack or tout at a time, The Indian Express, (August 10, 2023 07:40 AM), https://indianexpress.com/article/india/pregnant-and-undercover-how-decoys-in-haryana-are-taking-on-female-foeticide-one-quack-or-tout-at-a-time-8884843/

Women need to be empowered further, and for that reaching all the corners of the country is important, not restrict it to urban centres and not let the empowerment messages be just surface level, they need to be understood and convinced. Let people not look at their daughters from the angle of marriage only, let the equality be understood. Let liberal mindset be the default mindset atleast with respect to women, since these are plain human rights violations.

Conclusion

Gender Equality is a basic human right, and female foeticide is one of the most heinous ways we violate that. Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, and the Medical Termination of Pregnancy Act, 1971 both are combatant legislations but it is yet to be won. Technology must not be used to depreciate gender equality, rather it must be used to cut these deep lines of patriarchy running across India and also beyond. Education and not just surface level discourses but proper focused teaching for shift in mindset is needed.

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The Doha Development Agenda

-Background and impact

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A BRIEF RECAP OF THE WTO UNTIL DOHA

Lets look at the various conferences and meetings that led to Doha, right from Brussels Conference in 1920.
The Brussels Finance Conference of 1920 anchored its destination in rebuilding of global economy post the World War and the Spanish Flu, but ended up with a homogenous and orthodox viewpoint that called for austerity and low taxes.[1]

The genoa conference of 1922 had the goals of addressing political and economic issues arising from world War 1, which included trade but ended up much in a chaos as secret bilateral agreements got concluded as a result, and was mostly a failure.[2]

"Collective Action" was put forward by the next two Geneva Conferences of 1927 in order to egg on expansion of international trade set off by excessive customs tariffs.

The same year a Convention on the Abolition of Import and Export Prohibitions and Restrictions took place. Adopted by the League of Nations, it took the mantle of most comprehensive multilateral economic agreement ever concluded upto that time. [3]
Bruce Committee had been established by the League of Nations for study of grave and continuing economic problems, and its recommendations paved the way for the United Nations Economic and Social Council.[4]

With the Atlantic Charter, the idea that legitimate trade will not suffer was stated, which was followed by the mutual aid agreement between USA and UK which dealt with promotion of advantageous economic relations. It progressed to become the White-Keynes Plan, followed by the Bretton woods conference which branched out into the institutions of International Monetary Fund (IMF), and International Bank for Reconstruction and Development (IBRD) commonly known as the World Bank.[5]

With regards to the preparatory committee meeting in London in 1946, the conflict remained between free trade and full employment policies, and the 1947 Geneva meeting led to the Havana Charter.[6] As the Charter failed due to the US President's refusal to submit it to the US

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[1] The Brussels Finance Conference of 1920: a lesson in the perils of focusing on the past, available at: https://theconversation.com/the-brussels-finance-conference-of-1920-a-lesson-in-the-perils-of-focusing-on-the-past-142822 (last visited on April 17, 2024).
[2] Kenneth O. Morgan, Consensus and Disunity: The Lloyd George Coalition Government 1918-1922 312-316 (Clarendon Press. Oxford 1979).
[3] Autar Krishen Koul, Guide to the
WTO and GATT, 2 (Springer Singapore, Satyam Law International, New Delhi 6th edn., 2018)
[4] Id. at 3.
[5] Id. at 4.
[6] Id at 5.

Congress, the already taken place separate tariff negotiations at the Geneva Conference birthed the General Agreement on Trade and Tariffs 1947.[7]

It laid its goalpost in tariff concessions and fair trade rules, and operated as a contractual agreement which resembled the Havana Charter, and it operated provisionally. The countries could withdraw through giving of a notice, and membership was through either accepting the agreement, or negotiating a provisional accession.[8]

In Annecy, Torque, and Geneva tariffs were discussed and the number of contracting parties grew from 23 to 37. In Dillon and another Geneva round, followed by Kennedy and another Geneva round, tariffs continued to be the focal point with number of countries increasing to 99, alongside though an anti-dumping code was discussed. In Tokyo, topics other than tariffs were also discussed and agreements were reached regarding technical barriers to trade; subsidies and countervailing measures; etc. and the anti-dumping code was revised.
The most significant and the last round prior to the World Trade Organisation was the Uruguay Round and the ground for GATT 1994 was laid here with stronger rules compared to 1947, alongside negotiations took place on trade-related investment measures, trade in services and intellectual property rights.[9]

The Marrakesh Agreement then signed in 1994 replaced GATT 1947, with the objectives of improving international trade, encourage sustainable development. Also lay the foundation for reciprocal agreements trimming down tariffs, and kill discriminatory trade practices. The agreement held the World Trade Organisation as the governing authority pertaining to international trade. The Ministerial Council, General Council and other specialised councils will oversee its functions, structure, decision-making processes, and mechanisms for accession and withdrawal[10].

Following this, came the Doha Development Agenda.

[7] Id at 7.
[8] Id at 8
[9] Id at 15-16
[10] Marrakesh Agreement Establishing the World Trade Organization , available at: https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm (last visited on April 18, 2024).

The Ministerial Conferences

No. 4 Doha-

It took place from November 9-14, 2001, in Doha, Qatar. It was intended by some countries like USA, to expand negotiations on agriculture and services from the ones in Uruguay round, to achieve further liberalised trade. Also need for political cohesion due to 9/11 attacks and the effects of terrorism and recession further drove the conference.

Three documents were adopted which include the Ministerial Declaration with a preamble, The Declaration on the TRIPS Agreement and Public Health and Implementation-Related Issues and Concerns .

The first one set the agriculture and services negotiations into a broader agenda, the second one is a a political interpretation of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS), and the last combines a bunch of decisions that developing countries will be interested in. Since the preceding Seattle Ministerial Conference, the dominance of the developed countries had been receding , and in Doha due to their now mighty influence , it became the Doha "Development" Agenda. The initially planned deadline was planned to be January 1, 2005.

No. 5 Cancún-

Held in Cancún, Mexico in September 10-14, 2003, it concluded without any roadmap for future negotiations, terribly increasing chances of missing the above set deadline. The Singapore Issues seemed like at a dead end. The issues were set at the first WTO Ministerial Conference in Singapore in 1996, with working groups set on 4 issues, transparency in government procurement, trade facilitation (customs issues), trade and investment, and trade and competition.

Also it was felt whether all countries wanted to seriously negotiate, repeating previous demands, thirdly positions of developed vis a vis developing countries were poles apart, and the fact that the talks were ended earlier by Cancun Ministerial chairman, Mexico’s Foreign Minister Luis Ernesto Derbez, when the talks could've been shifted to areas with potential to progress.

Due to this paucity of progress, the trade ministers asked the General Council chair, to convene a meeting not after than December 15, 2003, to successfully conclude the negotiations. But Cancún did lead to the Derbez text. It was severely scrutinised at the conference, but in the next couple of months it was seen as a possible negotiating framework.

Negotiations resumed in March, 2004, and on July 31, 2004, WTO members approved a Framework Agreement. That had primarily developments in agriculture, and due to its prominence, this document was considered an important achievement, but talks fell back into a stalemate with few but the most technical issues getting concluded.

No. 6 Hong Kong-

Hong Kong was crucial for advancing the Doha Development agenda, and was critical in ensuring conclusion prior to the de facto deadline resulting from the expiration of U.S. trade promotion authority. Yet a comprehensive agreement on modalities could not be reached. The ministerial Declaration of December 18, 2005, focused on agriculture, industrial tariffs, and access for least developed countries, and yet again a deadline of 2006 end was set only to be flouted.

It achieved an agreement on cotton, and also set out a framework for agriculture and non-agricultural market access. One crucial highlight post the round, was the "20-20-20 proposal" suggested by Director-General Pascal Lamy, which was aimed at farm subsidies and tariffs but wasn't adopted following criticism.
In 2007, talks resumed, and draft texts were put forth by the chairs of the agriculture and industrial market access negotiating groups. These had a few controversial elements, yet helped continue the rounds in Geneva.[11]

The July 2008 package- Geneva
In Geneva 2008, WTO meetings operated on the basis of consensus. The Single Undertaking Principle was adhered to here, which translates to nothing is agreed upon unless everything is in complete agreement. It fosters consensus, which is also aided by the Green Room process, of the Director-General.[12] In Agriculture, it proposed variable percentage cuts for each specific countries for different types of support, and tariff reductions was founded on a formula of steeper cuts for higher tariffs and flexibility for certain products.[13]

The primary objective of the Non-Agricultural Market Access (NAMA) negotiations was to curtail and do away with tariffs and non-tariff barriers, and hence enhance market access in non-agricultural products. The Swiss formula which has different coefficients for developed and developing country members is used. And Least-developed countries (LDCs) are not required to commit to tariff reduction commitments. [14]

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[11] CRS Report for Congress - World Trade Organization Negotiations:
The Doha Development Agenda , available at:
https://web.archive.org/web/20080725063111/http://www.nationalaglawcenter.org/assets/crs/RL32060.pdf (last visited on April 19, 2024).
[12] DOHA DEVELOPMENT AGENDA: JULY 2008 PACKAGE How the meeting was organized , available at:
https://www.wto.org/english/tratop_e/dda_e/meet08_org_e.htm (last visited on April 19, 2024).
[13] JULY 2008 PACKAGE: BRIEFING NOTES
Agriculture available at: https://www.wto.org/english/tratop_e/dda_e/meet08_brief01_e.htm (last visited on April 19, 2024).
[14] JULY 2008 PACKAGE: BRIEFING NOTES
Non-agricultural market access (NAMA) available at:
https://www.wto.org/english/tratop_e/dda_e/meet08_brief02_e.htm (last visited on April 19, 2024).

With respect to intellectual property rights, this led to formation of a multilateral register for geographical indications for wines and spirits, and there was debate on extension of such stringent protection to other products like cheeses, ceramics, meat, tea, and coffee.[15]

Bali 2013

Trade ministers met in Bali, Indonesia, from 3 to 7th December 2013, chaired by Indonesia's Trade Minister Gita Wirjawan. The Bali Package is considered as the biggest major agreement since formation of WTO. Trade facilitation was achieved through minimising bureaucracy and port clearances made more efficient. With regards to agriculture, there were couple of issues, with first being "shielding public stockholding programmes for food security in developing countries", and second being "tariff quota administration".
First was given a interim solution, with a work programme set up aiming to produce a permanent solution in four years.[16]

The commitment to food security was re-emphasised in Nairobi in 2015.[17]

With regards to non-agricultural market access, Bali revolved mostly around cotton. Earlier commitments were reaffirmed, yet regret over objectives unfulfilled also seeped in, alongside a compromise text by "Cotton Four" — Benin, Burkina Faso, Chad and Mali which proposed reformation of trade in cotton through Market access and export subsidies, and also through domestic support.[18]
As for intellectual property, cases which deal with the technical question of whether there can be legal grounds for complaint about loss of an expected right under the WTO's intellectual property agreement, even when the agreement has not been violated were agreed to be not inserted in the WTO dispute settlement process.

IMPACT OF DOHA

AGREEMENTS-

- WTO members have been debating 10 Agreement-specific proposals relating to countries that are members of the Organisation of African, Caribbean and Pacific States (OACPS), the African Group and the LDC Group, and they are mostly developing countries and least developed countries and these proposals is based Paragraph 44 of the Doha

[15] JULY 2008 PACKAGE: BRIEFING NOTES
Intellectual property: Geographical indications and biodiversity available at:
https://www.wto.org/english/tratop_e/dda_e/meet08_brief05_e.htm (last visited on April 19, 2024).
[16] Days 3, 4 and 5: Round-the-clock consultations produce 'Bali Package' available at:
https://www.wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm (last visited on April 19, 2024).
[17] Ministerial Conference Tenth Session Nairobi, 15-18 December 2015 Public stockholding for food security purposes Draft ministerial decision of 19 December 2015 available at:
https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN15/W46.pdf&Open=True (last visited on April 19, 2024).
[18] Briefing note: Cotton negotiations — commitment and regret in Bali available at:
https://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_cotton_e.htm (last visited on April 19, 2024).

Ministerial Declaration, which has been guiding the WTO's work on special and differential treatment since 2001.[19]

ISSUES INTRODUCED POST 1995

- Singapore issues was something new compared to the Uruguay round of negotiations, though not explicitly started in Doha but dealt with extensively throughout the Doha ministerial conferences and few of the subsequent ones.
- These issues of transparency in government procurement, trade facilitation (customs issues), trade and investment, and trade and competition, faced challenges in the Cancun Ministerial. India and other developing countries, brutally opposed two of those issues , namely investment and competition, which in turn cornered the EU into a box, undermining its credibility. Subsequently transparency in government procurement, was also dropped by the EU, leaving only the age old issue of trade facilitation. This indicates the paper thin impact of this part of the agenda, becoming a footnote in history. It closed down further areas of negotiation. The remaining issue was for improvement and clarification of existing GATT provisions on freedom of transit, fees and formalities connected with imports and exports, as well as on publication and administration of trade regulations, hence clearly not a new issue.

- Another new issue of trade and environment, is partially a part of traditional market access, and the language of Doha declaration being extremely cautious means that any substantial results or new commitments will hardly germinate.

- Another new issue was Aid for trade that bloomed into existence in the July 2004 package. It is for nurturing and nourishing the developing and least developed countries, into their required supply side capacities , and other infrastructural requirements for trade that ensures they can implement and benefit from WTO Agreements. But it has been pushed back since they are to function through existing multilateral and bilateral funds.

- The new issues have mostly lacked the power that backed the trending issues of the Uruguay Rounds. The agenda has been a whimper as far as fresh issues are concerned. But the single undertaking rule and consensus rule extinguish any flickers of hope in refurbishing this state of new issues in the agenda in coming times.

[19] MC12 BRIEFING NOTE
Trade and development available at:
https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfdevel_e.htm (last visited on April 20, 2024).

- With regards to Market Access, the main issue has been agriculture. In Doha a tiered formula was taken, to cut down upon domestic support and tariffs. In Hong Kong the fact that deviation from this formula was possible, was given through "sensitive" products (open for all members) and "special" products (only for developing members), based upon food security, livelihood security and rural development. Effectively this curtailed market access to some extent. As for export subsidies, the ambition is greater since it calls for phasing out all export subsidies.[20]
- Currently after Nairobi, the situation is that developing countries have a deadline of 2018, 2022 in exceptional circumstances. For cost covering related to exports, the deadline is 2023. Poorest countries and food importers have their horizon shifted further.[21]
- In Doha, Market access sits on goods only, and success is only from getting the EU, USA, or developed countries to budge.[22]
- Hong Kong meeting in 2005 introduced the use of the so-called "Swiss formula" for reducing and harmonizing tariff levels for industrial products.In principle to apply to all products.[23]

AMBITION IN DOHA AGENDA

- Development stimulus is at the peak in terms of importance and that will not be achieved unless the agenda is more ambitious than the Uruguay Round in respect of depth of cuts in bound tariffs and domestic support. And as we saw above the ambition has been mixed in the Doha Development agenda, plenty of progress and plenty of setbacks.[24]

OTHER IMPACTS OF DOHA

- One impact of the Doha Agenda was that income distribution in Brazil was improved due to expansion of agriculture.[25]
- The next impact or inference is that allowing exemptions for sensitive and special agricultural products may let developing countries have more flexibility during trade negotiations and help with food security and rural development.[26]

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[20] So alike and yet so different: A comparison of the Uruguay Round and the Doha Round By Peter Kleen, available at:
https://ecipe.org/wp-content/uploads/2014/12/so-alike-and-yet-so-different-a-comparison-of-the-uruguay-round-and-the-doha-round.pdf (last visited on April 20, 2024).

[21] AGRICULTURE: FACT SHEET
Export subsidies and other export support measures available at:
https://www.wto.org/english/tratop_e/agric_e/factsheetagric17_e.htm (last visited on April 20, 2024).

[22] Supra note 20

[23] Thomas W. Hertel and L. Alan Winters (eds.), Poverty and the WTO Impacts of the Doha Development Agenda 36 (Palgrave Macmillan and the World Bank, Washington, 2006)

[24] Id. at 44.

[25] Id. at 58

[26] Id at 58

- This finding we would agree with since as we have seen that developing countries have often asked for exemptions on special products often, related to agriculture .
- But the cost of allowing sensitive products and such exceptions could be huge.[27]
- Developing country tariffs if slashed further, would make Doha more poverty friendly.[28]

CONCLUSION

To conclude, Doha Development Agenda is unlikely to be continuing as of now. None of the final documents of the latest Abu Dhabi, Ministerial Conference explicitly mention the Agenda. It is likely a conscious decision to move on from the agenda.

Particularly because changing geopolitics has led to lack of consensus. Advanced and emerging market countries continue to disagree, due to unfulfilled demands of market access by the advanced countries. The deepest divide since 2008, is in sectoral tariff cutting initiatives for industrial goods.[29]

To conclude, the Doha Development Agenda had good intentions, achieved few things, and failed elsewhere.

[27] Kym Anderson, "Globalization's effects on world agricultural trade, 1960 –2050" 365 Philosophical Transactions of the Royal Society B: Biological Sciences 3018 (2010)
[28] Supra note 23 at 31.
[29] INTERNATIONAL MONETARY FUND
The WTO Doha Trade Round—Unlocking the Negotiations and Beyond available at: https://www.imf.org/external/np/pp/eng/2011/111611.pdf (last visited on April 21, 2024).

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AN ANALYSIS OF MAINTENANCE LAWS IN INDIA - WITH SPECIAL EMPHASIS ON WIVES AS UNDER SECTION 125 OF THE CRIMINAL PROCEDURE CODE 1973

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DELHI METROPOLITAN EDUCATION, NOIDA, INDIA

INTRODUCTION

Humans are not self-sufficient throughout their lives. At the start of life, and while nearing departure, they are often fragile and need assistance. Also apart from them, in the institution of marriage, historically due to the prevalence of patriarchal societies, women are often the dependants. Religious codes often have maintenance provisions, but to ensure that a secular and a proper alternative to those is in existence, the section 125 of CrPC was enacted.

SECTION 125

It deals with maintainor (term not used in bare act) i.e., any person who's duty is to maintain, and the maintainee (term not used in bare act) who is supposed to be maintained. The first is a person, who himself is not a maintainee and has sufficient means to maintain respective maintainee(s). The maintainee is divided into three categories, wife, parents and children. Wife should either be legally married under a valid marriage, or divorced but hasn't remarried. She should be unable to maintain herself, husband has sufficient means to maintain, and either was refused normal maintenance or was neglected upon, and she must not be committing adultery, living separately without mutual consent, and must not have refused cohabitation in want of sufficient reasons. A father could be asked to give maintenance to his minor daughter if husband does not have sufficient means. Minors are persons under 18 yr.'s of age according to the Indian Majority Act, 1875. Inability to maintain themselves is a common requirement in all 3. Father is the major maintainor here. The minor could be legitimate or not, both sexes, irrespective of marital status only if husband also is minor, with major husband it's decided on a case-to-case basis. And once the daughter is major, responsibility shifts to husband. In case of the child being mentally or physically challenged, they remain eligible even after majority.

Only exception would be married major daughter. And also, even if the wife i.e., the mother is refused maintenance for any reason, it shall not constitute a ground for refusing the child.

In case of parents, either the children have sufficient means or they themselves don't have sufficient means. Parents also include, step ones and adoptive ones. They could also depend on married son or daughter if they are solely dependent on them. While the proceedings are pending, magistrate can order for interim maintenance for any of the three categories of maintainees, and must contain reasonable costs for the proceedings.

PURPOSE

Purpose can be gauged from the text mentioned, and also the fact that by putting it in criminal law, the seriousness can be gauged and it helps the society by putting on a mandatory duty of maintaining wives, parents and children. It helps prevent inhuman negligence, and starvation and homelessness related deaths as a result. The rest of paper mostly discusses maintenance of wives only.

LEGISLATIVE INTRODUCTION

The provision arrived as Section 488 of the Criminal Procedure Codes of 1882 and 1898. Both notably excluded parents as maintainees. It was as Section 488 in 1882 and 1899 criminal Procedure Codes. In 1973, it was kept as Section 125 and the provision of maintaining parents was added.

SIGNIFICANT CASES

With regards to significance, two cases are absolutely landmark ones. First was the case of Mohd.Ahmed Khan v Shah Bano Begum[1]- The Supreme Court decreed the right of maintenance under Section 125 for women, emphasising that it's on a higher pedestal since it is provided by criminal law. Not a legal right through civil law provisions. And also, this same fact makes it secular in nature and allows it exist without conflict with Muslim Personal laws. If it was a civil law there might have been an opportunity for conflict.

Elaborating on this further, despite it being a pretty routine case, it was unique because of the circumstances, the manner how the apex court came up with the verdict and the glare of limelight it got. Also important was how it got entangled into religious politics despite it being a judicial decision.

It starts with the concept of triple talaq, which was ultimately revoked in India in a similar sounding case of Shayara Bano v Union of India[2] in 2017. Now going back to the facts, a prosperous muslim lawyer, the respondent gave triple talaq to his wife of 40 years in the year 1978.

He quite generously parted away with the amount of Rs 3000, to the now divorced wife in the period of iddat, which is discussed below. Following this, the appellant after being rendered homeless filed an application under Section 125, alleging that her ex-husband has an annual professional income of Rs 60,000. A meager maintenance of Rs 25 was granted initially, which after revision was upgraded to Rs 179.20 by the Madhya Pradesh High Court.

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[1] AIR 1985 SC 945: (1985) 2 SCC 556
[2] AIR 2017 9 SCC 1 (SC)

A two-judge bench of the Supreme Court was summoned when the husband challenged the high court's decision. They could have followed the precedents and done away with the case, but they were disregarded and a 5 judge Constitution bench was created.

All 5 of the judges were Hindu, though one of them refused to be labelled so.

The question before the Supreme Court was framed by it as such "Is the law so ruthless in its inequality that, no matter how much the husband pays for the maintenance of his divorced wife during the period of iddat, the mere fact that he has paid something, no matter how little, absolves him forever from the duty of paying adequately so as to enable her to keep her body and soul together? Then again, is there any provision in the Muslim Personal Law under which a sum is payable to the wife 'on divorce'?"

Unanimous verdict was delivered the secular nature of section 125 was re-emphasized. The bench pointed out that the object was to delivered Social Justice and hence there was no reason to discriminate against Muslims with this provision. Also was the aspect of that the payment during iddatisn't for protection against destitution, while Chapter IX of the Criminal Procedure Code is for that purpose.[3]

This was met by protests from the Muslim community, and as a compromising measure the then Union Government brought out The Muslim Women (Protection of Rights on Divorce) Act, 1986, which effectively diluted the above judgement. It said that maintenance liability exists only for the period of Iddat only, which is in tune with Islamic personal laws. The period of iddat is defined as "i) three menstrual courses after the date of divorce, if she is subject to menstruation; (ii) three lunar months after her divorce, if she is not subject to menstruation; and (iii) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;"[4] for a divorced woman.

In the second landmark case, of Daniel Latifi v. Union of India[5], creative interpretation of the above-mentioned statute made up for some of the injustice being done by the law. "The court held that a careful reading of the impugned law revealed that a divorced woman was entitled to a reasonable and fair provision for maintenance to be made by her husband within the period of iddat. He could not wash his hands by providing for her only for the period of iddat but such a provision must be for her life and the only requirement was that it should be made during the period of iddat. Unless the Act was interpreted in this manner, it would violate Articles 15(2) and 21 of the Constitution."[6]

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[3]Zia Mody, 10 Judgements That Changed India 31-33 (Penguin Group, New Delhi, 2013)
[4] The Muslim Women (Protection of Rights on Divorce) Act, 1986, s.2 (b)
[5] (2001) 7 SCC 740, 757
[6] Archana Parashar and Amita Dhanda (eds.), Redefining Family Law in India:
Essays in Honour of B. Sivaramayya 187 (Routledge, New Delhi, 2008)

In another case, the Supreme Court held that in proceedings under Chapter IX - Order for Maintenance of Wives, Children and Parents- by a magistrate the findings are not final, and can be legitimately argued upon in a civil court and even the relief granted is of a civil nature.[7]

Supreme Court in the case of D. Velusamy vs. D. Patchaiammal[8], observed that without giving notice to the alleged wife of the appellant, there could not have been observed by the lower courts that the appellant was not already married. There is no question of a marital relationship between the two parties without examining that alleged marriage. The case was remanded back to the Family Court.

Constitutional validity of the sub-section 2 was challenged in a High Court and found to be violative of Article 14 but since it was without notice to the Attorney General and such contention wasn't raised in the pleadings so it held to be unsustainable.[9]

In Shikhar Goel v. Robina Kaushik[10], the Delhi High court expressed that if the respondent has two places of residence, then the territorial jurisdiction can confer upon in both places. It also observed that the essence of the section is social welfare, and such petty issues like jurisdiction should not be an obstacle.

In the case of Rajnesh v Neha[11], the Supreme Court gave safeguards for the prevention of abuse of this Section. With the issue of overlapping jurisdiction, previous proceedings awards would be considered as adjustment and set-off on the current proceeding, mandatory declaration of such earlier proceedings, and if any modification of the previous order is needed, it must be done in the present one. It mandated filing of Affidavit of Disclosure of Assets and Liabilities by both parties in all proceedings including ongoing ones all over the country. It also gave a bunch of criteria for determining the amount of maintenance. It said factors like "status of the parties, reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified",etc. Though the criteria were specified to be only partial, and courts must also use their discretion and other case specific factors for calculation. Date of start of maintenance was mandated to be to be the date the application was filed. Enforcement was to be done under Sec 128 of the Criminal Procedure Code, or Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act as applicable. The order may be enforced as a money decree under the Civil Procedure Code.

The husband ultimately was ordered to pay all previous payments and also additionally make additional interim maintenance payments. In the issue of overlapping jurisdiction, there was

[7] Nandlal Misra v KL Misra; AIR 1960 SC 882
[8] AIR 2011 SC 479
[9] Basant Lal v State of UP, (1998) 8 SCC 589
[10] 2021 SCC OnLine Del 4989
[11] (2021) 2 SCC 324

earlier conflict of opinion between the High Courts of Madhya Pradesh, Calcutta and others. MP and Calcutta High Court, believed that maintenance proceedings under other statutes are independent and hence no question of adjustment or setoff. Bombay and Delhi High Courts had contrary opinions, insisting on set-offs.[12]

In this recent case[13], the Punjab and Haryana High Court ordered a husband in a divorce case to pay Rs.5000 as interim pendent lite maintenance, even if he is a professional beggar. This is extremely problematic considering that it adheres to misogynistic ideals of men being breadwinners always, and nothing was commented on the wife's ability to earn for herself. Just that the husband could not establish wife not having means to earn or has sufficient property, does not mean that he needs to pay up. The onus should have ideally been on the wife, but since no details on the wife were available that cannot be commented upon[14].

In the case of Rithu Maria Joy vShejoy Varghese[15], the Kerala High Court ruled against any perjury proceedings against the wife because "If in all such cases complaints under Section 199 IPC are to be filed, not only there will open up floodgates of litigation but, it would unquestionably be an abuse of the process of the Court.[16]" But letting the wife of the hook this lightly after she lied about her earning status as a doctor, and claimed maintenance from the husband, is incorrect. It would encourage such cases of perjury further.

But among these questionable judgements, a positive one back in the 20th century from Jammu and Kashmir High Court stands like a beacon of hope. In Lalit Mohan v. Tripta Devi[17],permanent alimony and proceedings expenses were granted to the husband and it was observed to 'revolutionary'[18].

In a Madras High Court judgement, where the lower courts had decreed the payment of interim maintenance to the husband, by the wife because he had undergone angioplasty was struck down.[19] I believe complete striking down wasn't the best decision; the amount of 20,000 could have been reduced only.

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[12] Court Frames Comprehensive Guidelines on Maintenance available at:http://surl.li/hqzgd(last visited on June 05, 2023)
[13] 2023 LiveLaw (PH) 50
[14]Even A Professional Beggar Has A Moral & Legal Liability To Maintain His Wife, Who Is Unable To Maintain Herself: P&H High Court available at : https://www.livelaw.in/news-updates/punjab-and-haryana-high-court-professional-beggar-moral-legal-liability-maintain-wife-unable-maintain-herself-225086 (last visited on June 04, 2023)
[15] 2023 SCC OnLine Ker 1780
[16]Courts Will Not Have Time For Any Other Matter If They Proceed Against Every False Statement Made: Kerala High Court, available at : https://www.livelaw.in/news-updates/courts-will-not-have-time-for-any-other-matter-they-proceed-against-every-false-statement-made-kerala-high-court-225082(last visited on June 04, 2023)
[17] AIR 1990 J&K 7
[18] Flavia Agnes, 1, Family Law:Family Laws and Constitutional Claims, 24, (Oxford University Press, New Delhi, 2011)
[19] Suba Ravikumar v M.C. Ravikumar Madras HC (27.02.2023)

MISUSE, ITS CONSEQUENCES AND CRITICISMS

From these judgements we can easily see the misuse of Section 125, and also encourages women to disrespect the sanctity of marriage and harass the men.
Section 125 provides for maintenance to wives, children, and parents, but not to husbands. This provision assumes that wives are always financially dependent on their husbands, which is not always the case. This assumption is based on gender stereotypes and social norms that have been historically prevalent in India.Men in India are traditionally the breadwinners of the family. Thus, it becomes an ego issue when the wife woman starts earning more than the husband.[20] However, in modern day, there are many cases where wives are earning more than their husbands or are the sole breadwinners of the family. In such cases, the husbands may also be in need of financial support. And they rarely have been granted so.

Furthermore, the provision only provides maintenance to wives who are or were (noremarriage) legally married to their husbands. This excludes women in live-in relationships, who may also be financially dependent on their partners. This exclusion is based on the assumption that live-in relationships are not as legitimate as marriages, which is not supported by the Constitution of India.[21] Though in the above quoted case[22], there was a discussion at length as to how the Domestic Violence Act, 2005 even considers "marriage-like-relationships" i.e., living relationships and others in its purview.

The gender bias in Section 125 can also be seen in the way courts interpret and apply the provision. In many cases, courts have granted maintenance to wives based on assumptions about their financial needs and without considering the actual financial position of the husband. This has resulted in many cases where husbands are ordered to pay maintenance even though they are not financially capable of doing so. It has been illustrated well, above.

Potential consequences of misuse include less faith of the public (men) in the institution of marriage,
live in relationships becoming more popular, stringent regulations being added which may affect genuine cases .

Most affected directly would be men, but also as the faith in marriages is lost, women would also end up being affected. Alternatives exist in personal laws, but as seen they are weaker and cumbersome in some cases, except for provisions under HAMA, 1956. Potential remedies include, establishment of committees instead of single judges deciding rate of maintenance and all. They could study according to the guidelines given in this case[23] more comprehensively and come up with a better judgement.

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[20] Jehangir Bharucha, "Couples and breadwinning in low-income dual-earner households in India" 10 *International Journal of Sustainable Society*67 (2018)
[21] S Khushboo v Kanniammal (2010) 5 SCC 600
[22] Supra note 6
[23] Supra note 9

PROPOSED AMENDMENTS

In 8th law commission report[24], Section 125 was proposed to be applicable to Section 18 of the Hindu Adoptions and Maintenance Act, 1956, uncodified personal law recognising a substantive right and maintenance granted under Section 25 of the HAMA, 1956 which is granted after conclusion of proceedings for matrimonial relief. Also gave two exceptions where it won't apply. It also suggested proper criminal sanctions on failure of payment of maintenance. It also suggested placing it in the Indian Penal Code, 1860 alongside offences related to marriage.

The 12th law commission report suggested removal of Rs 500 ceiling which was done by a later amendment. It was also suggested that an explanation for the words "unable to maintain herself" in 125(1) relates to the actual separate income of the wife and not mere future possibility of her earning and sustaining herself. Another explanation to must clarify that for rates of monthly allowance, magistrate must consider not only food and other basic expenses,and also amount to set out for meeting emergencies arising from accidents, etc. Also was suggested that the day of starting maintenance begins from the day of application, which actually was dealt 31 years later by the apex court in this above-mentioned case[25].

Some other general recommendations include depositing 6 months advance maintenance, debiting it from the salary of the person, right to appeal alongside the existing right of revision and provision to deal with maintenance in cases where the man misled the woman into marrying.

CONCLUSION

So, to conclude, the situation isn't too bright for marriages in India for men, though I would say despite the ultimate result of Rajnesh v Neha case[26] , the guidelines are definitely a step in the right direction, and makes it hopeful that despite this pervasive bias as to men being the breadwinners always, and women's earnings being more like pocket money, the situation is moving towards some measure of equality.And also, the fact that secular laws like CrPC must be the way to go, rather than some ancient personal laws governing such an important thing like maintenance.

[24] Law Commission of India, "73rd Report on Criminal liability for failure by husband to pay maintenance or permanent alimony granted to the wife by the court under certain enactments or rules of law" 4,5 (May, 1978)
[25] Supra note 9
[26] Supra note 9

Delhi Metropolitan Education

Affiliated to GGSIP University, New Delhi & Approved by Bar Council of India

Role of Advocate in providing Legal Aid

Made by – Debaditya Dutta

BA LLB

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Section – A

INTRODUCTION

"Be kind, for everyone you meet is fighting a hard battle."

- Socrates[1]

Kindness is a virtue, that underlines humanity. Empathy is important for keeping peace, and for letting wars end. Legal aid as a concept draws itself from the same fountain of empathy, so that getting justice in courts is not a bastion of the rich and able.

Legal Aid is defined as -Legal Aid refers to the provision of free legal services to individuals who are poor and unable to afford a lawyer for their cases or legal proceedings in courts, tribunals, or before other authorities. This initiative aims to ensure that financial constraints do not prevent anyone from receiving professional legal assistance. The primary goal is to make equal access to justice available to the underprivileged, marginalized, and vulnerable segments of society.[2]

HISTORY

There was a time when defence counsel wasn't a thing. It began to be provided in trials of treason, through the Treason Trials Act of 1696, since government was able to put up a counsel, and how complicated the charge of treason was. Judges began to appoint counsels in ordinary felony cases in the 1930s.[3]

Fair trial had a different meaning when the words fair and trial came together in the 17th century , and that meaning lasted until the 19th century. Then the meaning had to more to do with whether all the evidence was heard, deaf witness was not excluded, it was impartial etc. Free from blemish was the meaning. By the 19th century, the meaning became about procedural fairness, where certain rights were held to be possessed by each party, and they were part of a checklist.[4]

These were two important pieces to puzzle to the advocacy, and hence is important when studying legal aid.

Now let us look at how legal aid might have started off. We all know religions across the world profess charity to the poor, and hence possibly, legal aid also sprouts from this universal religious principle. Our story here, began in 451AD in Europe where the Council of Chalcedon, formalised the policy of the Catholic Church that clergymen are duty bound in providing legal counsel and representation for the one's in need, including widows and orphans. The policy was rooted in Christian scriptures that imposed the duty of assisting the poor, and protecting them from exploitation. It

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[1] Socrates > Quotes > Quotable Quote available at: https://www.goodreads.com/quotes/216276-be-kind-for-everyone-you-meet-is-fighting-a-hard (last visited on November 03, 2024)

[2] Madhya Pradesh State Legal Services Authority available at: https://www.mpslsa.gov.in/legal-aid-mp.php (last visited on November 03, 2024)

[3] John Felipe Acevedo, "The Ideological Origins of the Right to Counsel" 68(1) South Carolina Law Review 93-95

[4] Ian Langford, "Fair Trial: The History of an Idea" 8(1) Journal of Human Rights 38

was affirmed by the twelfth century book Decretum Gratiani.[5]

Moving to the 19th century, in Denmark, there existed a "Student Association for Securing Legal Aid for the Poor", where law students of the Copenhagen University in collaboration with practicing lawyers made legal aid services accessible to the poor. It inspired similar activities, in USA, Norway, China, Chile , Belgium, Australia, South Africa, Mexico and after the 1960s, even in India with student-run legal aid clinics.[6]
Legal Aid is also professed as a universal human right by the International Covenant on Civil and Political Rights, 1966 in Article 14 (3) (d).
India had ratified the convention on 10th April 1979.[7] But the 42nd Amendment Act, added the the Directive Principle of State Policy pertaining to legal aid by creation of Article 39A in 1976 only.[8]
In India, the hustle for Legal Aid began with the Law Commission's 14th report in 1958, where the recommendation was such that free legal aid as a service is an obligation for the state towards the poor, and also simultaneously arrange for funds to provide it. Legal Community is to be the pivot in administrating and turning the wheels of the legal aid scheme. The Bar Association has to voluntarily provide the services.[9] This recommendation came on the wheels of various such schemes spearheaded by Justices N.H. Bhagwati, and Trevore Harris, then associated with the Bombay High Court and Calcutta High Court respectively.[10]
The CILAS (Committee for Implementing Legal Aid Schemes was set up in 1980 under the chairmanship of Justice P.N. Bhagwati, an esteemed judge of the Supreme Court for overseeing and supervision of legal aid programmes all across the nation.[11]

The Legal Services Authorities Act, was enacted on 11th October 1987 for providing free and competent legal services to enable the weaker section of the society to secure justice, and not face denial due to financial and other disabilities. Also the act makes provisions for Lok Adalats to promote justice founded on equal opportunity[12].
And then on 5th December, 1995, the National Legal Services Authority was constituted.[13]

These were the steps taken by the state, but a crucial part of the justice delivery system are those fountains of legal knowledge, who with their skills assist in the road to justice. The officers of the court, the advocates are the limbs of these system. Effort for this universal need of empathy, and assistance to the lower strata of society must also come from them, and that leads to the story of PIL in India, the Hussainara

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5 Felice Batlan and Marianne Vasara-Aaltonen (eds.), *Histories of Legal Aid - A Comparative and International Perspective* 3 (Palgrave Macmillan, Cham, 2021)
6 *Id.* at 18-19
7 Ratification Status for India available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=en (last visited on November 07, 2024)
8 The Constitution (Forty-second Amendment) Act, 1976 s. 8.
9 Law Commission of India, 14th Report on Reforms of Judicial Administration (Vol. 1) (September, 1958).
10 Gurmeet Nehra, "Access to justice: Role of legal aid in its complete realization" 2(5) *International Journal of Law* 77 (2016)
11 National Legal Services Authority- About us *available at:* https://nalsa.gov.in/about-us (last visited on November 07, 2024)
12 Legal Services Authorities Act, 1987 (Act 39 of 1987)
13 Supra note. 11

Khatoon[14] case.

It all started with two articles of the Indian Express newspaper, published on 8th and 9th January 1979, that highlighted the pitiable state of undertrial prisoners "languishing" in several jails in the state of Bihar for toweringly inhuman amounts of time, being absolutely buried in misery due to their poverty. It deeply impacted the advocate couple, Nirmal and Kapila Hingorani that they sprang into action moving the Supreme Court for habeas corpus. The case was almost hurdled immediately into the abyss of technicalities, because the two neither had the power of attorney nor was the next friend of the prisoners, leading to non compliance of the then Supreme Court rules. But the Supreme Court Registry wisely chose to record its objections and also agree to place the case before the court, along-with an office report containing the objections. The apex court took up the petition leading to a cascade of proceedings that resulted in the immediate release of 40000 undertrial prisoners. The court observed how it was a crying shame that the judicial system had room for such incarceration in a shocking state of affairs.
It relied on Article 39A to pronounce that every accused unable to engage a lawyer, and access legal services due to poverty or indigence, holds the right to a lawyer at state expense[15].

INCENTIVES FOR LEGAL AID IN INDIA

Now pro bono is difficult to practice due to lack of remuneration from the client but the courts try to incentivise it through making it a requirement for certain positions like senior advocate.

To begin with the notification that pertains to replace existing Chapter 6-L of the Delhi High Court Rules, which deals with Rules For Designating an Advocate as a Senior Advocate, provides in point number 5, pertaining to eligibility that in sub point no 4 that "has appeared and argued cases or provided legal services pro-bono". Also in the format assessment for designation, 50 points out of a total 100 points have been allocated to a combination of -Judgments reflecting the legal formulations put forth by the advocate during the proceedings; pro bono work by the advocate; expertise in specialized areas of law; and five best synopses for evaluation.[16] It illustrates the importance the Delhi Court provides towards having its advocates practice pro-bono work.

A similar requirement is imposed by the Supreme Court through point number 17 of the 2018 guidelines for designation of senior advocates. It is worth 40 points out of a total 100 points[17].

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[14] 1979 AIR 1369

[15] Aman Hingorani, "Indian public interest litigation: Locating justice in state law" 17 *Delhi Law Review* 163-164 (1995)

[16] High Court of Delhi, "Notification to substitute for existing Chapter 6-L " (14 March 2024) available at: https://delhihighcourt.nic.in/uploads/notifications/91103665865f7dfaac0904.pdf (last visited on November 07, 2024)

[17] The Supreme Court Guidelines to Regulate Conferment of Designation of Senior Advocates, 2018 available at:https://main.sci.gov.in/pdf/seniorAdvocatesDesig/guidelines.pdf (last visited on November 07, 2024)

The Bombay High Court also has a similar assessment criteria on page number 11 of the Bombay High Court Original Side Rules, 1960 as amended by Notification No. P.3603/2018. This similar combination requirement is again worth 40 points out of a total 100 points[18].

The Punjab and Haryana High Court also has a similar requirement in combination, provided by Chapter 6-C of Vol V of its Rules[19].

The Karnataka High Court also has a requirement worth 40 points, provided by the High Court of Karnataka (Designation Of Senior Advocates) Rules, 2018[20].

LEGAL AID AND ADVOCATES ABROAD

LEGAL AID IN USA

The foundation of legal aid in the United States was established by the Supreme Court's ruling in Gideon v. Wainwright (1963), which affirmed that an indigent individual charged with a felony in state court has the right to free legal counsel under the Sixth Amendment of the U.S. Constitution. Currently, there are three primary systems for providing legal aid in criminal cases: public defender offices, contracts with private law firms, and lists of individual attorneys appointed by trial judges. These services are funded by state budgets, which may include federal, state, or local resources. However, this constitutional right does not extend to discretionary appeals or to prisoners already serving sentences. In non-criminal contexts, legal aid is funded through appropriations from national, state, and local legislatures or through fundraising efforts by legal aid programs. The Legal Services Corporation stands out as the largest provider of civil legal services for low-income individuals.[21].
Despite advancements in access through technology and self-help initiatives, as of 2017, there remains a significant shortage of staff lawyers, paralegals, lay advocates, law students, and private attorneys available to meet the needs of low-income individuals seeking assistance.[22].

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[18] The Bombay High Court Original Side Rules, 1960 available at: https://samarthsevak.mumbaicustomszone1.com/Uploads/TrainingMaterials/22/4970e4.pdf (last visited on November 07, 2024)

[19] The Punjab High Court: Rules And Orders-Volume V Chapter 6-C available at: https://highcourtchd.gov.in/sub_pages/left_menu/Rules_orders/high_court_rules/Vol-V--PDF/chap6partCV5.pdf (last visited on November 07, 2024)

[20] The High Court of Karnataka (Designation Of Senior Advocates) Rules, 2018 available at: https://karnatakajudiciary.kar.nic.in/SrAdvoateDesgNotifications/Senior%20Advocate-rules-2018.pdf (last visited on November 07, 2024)

[21] Richard J. Wilson, "Legal Aid and Clinical Legal Education in Europe and the USA: Are They Compatible?" in Ole Hammerslev and Olaf Halvorsen Ronning (eds.), *Outsourcing Legal aid in the Nordic Welfare States* 265-266 (Palgrave Macmillan, 2018)

[22] Alan W. Houseman, "Civil Legal Aid In The United States An Update For 2017" 77-78 (2018)

LEGAL AID IN UK

It was introduced in the modern era, through the Legal Aid and Advice Act 1949, and it was a part of expanding Britain's efforts in becoming a welfare state after World War 2. It incorporated the recommendations from the Beveridge report published in 1942, like availability of legal aid in cases involving private individual clients, providing it to not only the ones normally classed as poor, but also to ones with 'small or moderate means'. The subsequent Rushcliffe Committee examining feasibility of such a legal aid committee, gave its report in 1945, stating there was a growing need for legal aid. It asked for a comprehensive system where it is administered by the practitioners but funded by the state. The implementation began with matrimonial cases in the High Court in 1950s, gradually expanding into other civil areas, and criminal areas, continuing till the 1980s.
The present act is the Legal Aid, Sentencing and Punishment of Offenders Act 2012, where the focus was on 4 aspects, discouraging unnecessary adversarial litigation at public expense, target the scheme at the ones who were in critical need of it, save significant expenses towards the scheme, provide better value for money to the taxpayer. Now it was available only in certain, exceptional circumstances only. The current scheme reduced its scope by removing matters covering private family, employment, welfare benefits, housing, debt, clinical negligence and non-asylum immigration law matters.
With regards to lawyers as well, there was a blanket 10% reduction of fees to those undertaking work under the scheme in regards to civil cases, even uplifts to hourly rates were capped or removed, also fees paid in criminal cases were also amended. Even the number of practitioners and firms involved in legal aid has dropped in great numbers, as of 2021.[23]
So to conclude, legal aid in the UK is crippled financially, and has a very narrow scope presently.

CASE LAWS

In M.H Hoskot v. State Of Maharashtra (1978)[24], the apex court ruled that if a prisoner is unable to hire a lawyer due to financial constraints or is in a situation where they cannot communicate (incommunicado), the court must consider the specifics of the case, the seriousness of the sentence, and the pursuit of justice when appointing a qualified defense attorney. This appointment is contingent upon the prisoner having no objections to the chosen lawyer. Furthermore, the state responsible for prosecuting the prisoner and depriving them of their liberty is obligated to compensate the appointed counsel at a rate determined by the court.

In State of Maharashtra v. Manubhai Pragaji Vashi and Ors.[25],the Supreme Court, citing Article 39A, noted that a significant number of individuals trained in law is crucial to fulfill the requirements of free legal aid and ensure a speedy trial. Legal aid is vital for obtaining legal advice, resolving disputes in court, and addressing various

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[23] Catrina Denvir, Jacqueline Kinghan *et.al., Legal Aid and the Future of Access to Justice* 4-14 (Hart Publishing, Oxford, 2023)
[24] 1978 AIR 1548
[25] 1995(5) SCC 730)

other legal matters. Additionally, the Court strongly emphasized the importance of quality legal education, warning that insufficient funding for such education could have serious negative consequences.

It can be implied that it might lead to to lack of access due to hiked up fees, and potentially reducing number of professionals.

STATE OF LEGAL AID IN INDIA

In India, after 3 years of opening of a legal aid clinic, there are more number of cases that are disposed of, there are more number of acquittals than convictions, which also helped by early dismissals. It also promotes the use of Alternate Dispute Resolution mechanisms[26].

CONCLUSION

The role of an advocate here in legal aid is to be driven by a sense of justice and empathy. But again kindness does not satiate hunger, so state has to support advocates who have the empathy to provide legal aid to the needy. If that foundation is strong, and an absence of greed permeates the advocate, they can be at forefront of delivering justice, and prevent instances where a lack of pennies in the pocket stops them from going after a unscrupulous wealthy person.

[26] NK Bharti and Jonathan Lehne "Justice for all? The impact of legal aid in India." available at: s https://www.parisschoolofeconomics.eu/app/uploads/2024/11/bharti-nitin-kumar-jmp.pdf (last visited on November 08, 2024)

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Role of the Delhi Development Authority (DDA) in Urban Development

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Section – A

What is Urban Development?

Urban Development comprises of many aspects like urban planning, cultural heritage exploitation and sustainable urban tourism, the effect of urban development on ecosystems and environment, the sociological consequences of urban development, and the economic problems relating to all of these factors.[1]

It reveals the complex and multifaceted nature of the process, especially as it addresses a product as intricate as a city, along with towns, suburbs, and other inhabited areas. A city encompasses a vast platter of places, each dealing with distinct aspects and scenarios of human life, making the endeavor highly detailed. Additionally, the objective goes beyond merely creating a city; it requires addressing all related consequences, including impacts on heritage, environmental considerations, and financial implications. These factors must be thoroughly managed, as they are integral to the overall planning and development process.

History

Uptil 10,000 years back, seasonal movement for resources and water was common. Agriculture brought with itself the culture of sedentary communities, leading to growth of villages. But in order to provide for larger communities, the Urban Revolution began, and initially believed to be in Mesopotamia[2].

After the 1800s, the Regent Street of London was one of the first examples of urban planning, and it was carefully chosen to be close to important locations, and whose inhabitants were few in number for rehabilitation[3].

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[1] Serafeim Polyzos (ed.), *Urban Development* IX-X (InTech, Rijeka, Croatia, 2012)

[2] Thomas Elmqvist, Charles L. Redman, et.al., "History of Urbanization and the Missing Ecology", in Thomas Elmqvist, Michail Fragkias, et.al. (eds.), Urbanization, Biodiversity and Ecosystem Services: Challenges and Opportunities : A Global Assessment 14-16 (Springer, 2013)

[3] Mark Girouard, Cities & People 271-272 (Yale University Press, New Haven & London 1985)

By the efforts of the London Municipal Reform League, the London County Council bill was passed, and the first elections were held on 17th January 1889[4]. It was one of the first such councils in the world.

The Delhi Development Authority, in its earliest form started in British Era in 1922, in the form of a "tiny Nazul Office", with 10-12 officials. It was set up in the Collectorate of Delhi, being the first authority for regulation of planned development of the city. In 1937 it was transformed into an Improvement Trust,for regulation of building operations and land usage. In 1947, due to India's independence, a massive migration took place, greatly increasing the population from 7 lakhs to a garangutan 17 lakhs.

This Trust and the Municipal Body could not handle this new scenario under their present set of powers, unable to correct the collapse of civic services.

For a planned development of Delhi, going any further, the Union Government appointed a committee in 1950. Its chairman was Sh. G D. Birla, which recommended a Single Planning & Controlling Authority for all of Delhi's urban spaces. So a new body got constituted, which is the precursor of the DDA, the Delhi Development (Provisional) Authority - DDPA, through the Delhi (Control of Building Operations) Ordinance, 1955.

The existing DDA came into existence, when that ordinance got swapped by the Delhi Development Act, 1957. The act's objective was to develop Delhi in accordance to a plan. DDA was formally formed on 30th December, 1957[5].

Composition of the Delhi Development Authority

[4] Sir Gwilym Gibbon and Reginald W. Bell, *History Of The London County Council 1889 — 1939* 76-77 (Macmillan And Co., Limited, London, 1939)

[5] Delhi Development Authority- About Us available at: https://dda.gov.in/about-us (last visited on November 11, 2024)

It is composed of a Chairman (Lieutenant Governor of NCT of Delhi- ex officio), a vice chairman, a finance and accounts member, an engineer member (these 3 appointed by the Central Government), 2 representatives of the Municipal Corporation of Delhi (elected by the councillors and aldermen of the Corporation from among themselves), three representatives from the Legislative Assembly of the National Capital Territory of Delhi (elected by single transferable vote among themselves, with 2 from ruling party, and 1 from opposition(as recognised by speaker), but no one should be from council of ministers) , three nominated members (by the Central Government with one experienced in town planning or architecture), and the Commissioner of the Municipal Corporation of Delhi, ex officio[6].

Object and Powers of the Delhi Development Authority

Section 6 of the the Delhi Development Act, 1957 provides for the objects of the authority.

It deals with the object of promoting and securing the development of Delhi.

It for these objects provides the following powers -

1. acquire, hold, manage and dispose of land and other property
1. to carry out building, engineering, mining and other operations
2. , to execute works in connection with supply of water and electricity
3. disposal of sewage and other services and amenities
4. General clause - do anything necessary/expedient for purpose of development and for purpose incidental thereto

[6] The Delhi Development Act, 1957 s. 3 ss.3

5. The Act does not authorise (unless provided in the Act) disregarding of law that at that time is in force[7].

   We had earlier looked at the facets of Urban Development, lets read it in conjunction with the powers.

Urban planning is generally implemented to prevent the disorganized and chaotic expansion of a city. Without structured planning, cities can experience uncontrolled growth, which can lead to numerous issues, particularly where labor is in demand. In areas where a substantial labor force is required, informal settlements or slums often develop due to a lack of affordable and suitable housing. To avoid these problems and ensure the sustainable development of urban areas, proper planning is essential. It addresses housing needs, infrastructure, and resources, creating a more balanced environment for the city's growth.

A. Some important aspects that have affected urban planning (the below is with respect to the USA but we will attempt to modify it to suit the Indian scenario)

1. Globalisation and immigration leading to growth of ethnic spaces and informal spaces
2. Economy revolving around Consumption, tourism and entertainment services
3. Urban migration and increasing automobile ownership
4. Growth of Information technology and means of communication

B. Also three other aspects:
1. Fear of crime and terrorism
2. Sustainability
3. Sedentary lifestyle health concerns[8]

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[7] The Delhi Development Act, 1957 s. 6

[8] Anastasia Loukaitou-Sideris, "Addressing the Challenges of Urban Landscapes: Normative Goals for Urban Design" 17 *Journal of Urban Design* 470 (2012)

The phenomenon of "Globalisation and immigration leading to growth of ethnic spaces and informal spaces" is a distinctive trend often observed in the USA, where diverse immigrant populations shape distinct cultural neighborhoods. However, this trend is also evident in India, as interstate migration has given rise to notable cultural areas like "CR Park" in Delhi, known for its Bengali community, and "Sowcarpet" in Chennai, home to a strong Marwari influence. Additionally, the "Economy revolving around Consumption, tourism and entertainment services" has undeniably led to the proliferation of Shopping Malls, Cinema Multiplexes, Water Parks, and similar spaces that cater to consumer leisure and entertainment demands.

Urban migration patterns often result in the formation of Slums and the establishment of government schools to accommodate and educate low-income or migrant populations. Increasing "Automobile ownership" has created a demand for expansive Parking Spaces, while the construction of Wider roads has become necessary to manage the ever-growing urban traffic congestion. The continuous growth in "information technology and means of communication" has led to a significant need for the installation of more network towers, as well as increased electricity consumption, necessitating the development of additional power plants to meet this rising demand.

The "Fear of crime and terrorism" has resulted in a rise in security measures, including more police stations, gated communities, and enhanced surveillance in many urban areas to address security concerns. Meanwhile, the emphasis on "Sustainability" drives a transition toward renewable, less polluting energy sources to power devices and appliances, reducing environmental impacts and promoting cleaner energy alternatives. Lastly, as "Sedentary lifestyle health concerns" continue to grow, there is a rising need for designated spaces for physical activity, such as parks, gyms, and recreational areas dedicated to sports and exercise, addressing both mental and physical health within urban environments.

So for tackling all this, like urban migration needs construction and supply of flats, which involves the first two powers like acquiring and holding land, building and engineering it further. Then to make it liveable, water and electricity consumption is absolutely necessary. In the case of Bandhua Mukti Morcha v. Union of India[9] the court held the right to clean water as part o right to healthy environment. In Om Parkash v. Balkar Singh[10] the Punjab and Haryana High Court held right to electricity as a basic necessity under Article 21. Disposal of sewage is absolutely important again, considering human inhabitation will always produce some waste or the other. Consequently, the Delhi Development Authority (DDA) must allocate designated land for commercial purposes, which includes spaces for Shopping Malls, Parking lots, office complexes, and other business-oriented facilities. These allocations are essential to meet the growing urban demand for consumer amenities, workspaces, and adequate infrastructure that supports both local businesses and larger commercial enterprises. By strategically setting aside land for these commercial uses, the DDA can help ensure that Delhi's urban landscape accommodates a balanced mix of residential, recreational, and commercial areas, promoting organized growth and reducing the risks of haphazard urban sprawl.

That it does through disposition of commercial properties as commercial plots or built up shops, which is mostly through auction or tender. But 43% is allocated to a special category comprising of SC/ST, physically handicapped, ex-servicemen etc[11].

With Regards to work on environmental Conservation, The Delhi Development Authority proceeded to develop a biodiversity park named the Aravalli Biodiversity Park- a

[9] 10 SCC 549

[10] 2022 SCC OnLine P&H 3733

[11] Delhi Development Authority- Commmercial Properties available at: https://dda.gov.in/commercial-properties (last visited on November 11, 2024)

natural reserve. As of 2021, there were 1000 Plant species and a great variety of insect species which resulted in attracting a number of birds and other animals in this park. Many types of animals, including different species of snakes, monitored lizards, jackals, porcupines, monkeys, Nilgai, have been seen there. Trees, including Dhak or Tesu, Kadamb, Bel, Safed, Kikar etc have been found in the park.
Also, the ridge area in Delhi has been declared as a protected area.
The Indraprastha Park of Delhi has been created on a sanitary landfill site covering 34 hectares and 2.7 kilometres on the ring road[12].

But it comes under harsh scrutiny because the lack of cooperation with the Delhi Jal Board leads to Delhi Development Authority developed planned areas getting excluded from water supply[13].

In order to smoothen the process of electricity supply, the Delhi Development Authority has allowed power Distribution companies supply electricity to urbanised villages , colonies regularised by MCD, and other lands where any government agency has issued a certificate of no objection[14].

Master Plans of the Delhi Development Authority

[12] Ranjana Saxena, Rita Rath, et.al., "A review on ecological degradation, its causes and sustainable development in Delhi, India" 13(4) Journal of Applied and Natural Science 1301-1302 (2021)
[13] Ashok Kumar Nitin Singh et.al., "Infrastructural Violence: Five Axes of Inequities in Water Supply in Delhi, India." 3 Frontiers in Water 13 (2021)

[14] DDA allows DISCOMs to provide new electricity connections without reference to authority available at: https://energy.economictimes.indiatimes.com/news/power/dda-allows-discoms-to-provide-new-electricity-connections-without-reference-to-authority/113867383 (last visited on November 11, 2024)

The 20 year dynamic master plans of Delhi, shaping the urban environment are the main instruments of urban development in the hands of the DDA. It looks after development, redevlopment which is guided by the future directions contained in the plans which deal with development, the policy of development and the implementation side of it. Since it's purpose is to guide the development, it is high level in nature, laying out objectives and strategies for the future keeping in mind characteristics of areas, and what needs to be conserved, or enhanced. Delhi has so far seen 3 master plans, with 4th in development[15].

CASE LAWS

In Yamuna Khadar Slum Union v. Union of India[16] , the Delhi High Court upheld demolition of slums on the Yamuna Floodplains, observing that such illegal construction endangers the floodplains, and since it had been acquired by the DDA for channelisation of the river, the removal is in public interest.

In Pracheen Shiv Mandir Avam Akhada Samiti v. DDA[17], the court held that protection of the Yamuna Floodplains, was paramount than the temple. This is despite the temple being a public place, and illegal encroachments must be removed nevertheless.

In Kamlesh Jain v. State (NCT of Delhi)[18], the court rebuked a cafe owner for illegal use of public land and playing loud music beyond permissible hours, and directed DDA to regulate the same.

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[15] Delhi Development Authority- Planning Department available at: https://dda.gov.in/about-master-plan (last visited on November 11, 2024)

[16] 2024 SCC OnLine Del 4634

[17] 2024 SCC OnLine Del 4156

[18] 2024 SCC OnLine Del 4182

In the case of Shree Hanumant Dharmik Ramleela Committee v. DDA[19], the court upheld the need of Standard Operating Procedure ('SOP') for the booking and allotment of sites for organizing Ramleela in Delhi, so that there is no confusion. It directed DDA to come up with the same and barred bookings until they are published.
In Delhi Development Authority v. Kenneth Builders and Developers and Ors[20], the court held that contract between the two parties was frustrated. Despite it falling within the extended ridge area, the Delhi Development Authority had marked it as residential.

These cases are all read in conjunction with the powers given in Section 6. The DDA has power to hold acquired land, and regulate use of public land.

Conclusion

Urbanisation began with first creation of sedentary communities in villages due to agriculture, starting in Mesopotamia. Then came Regent Street of London in the modern area, following which organisations like the London County Council, and the Delhi Development Authority came into existence. It consists of members from the government of NCT of Delhi, Municipal Corporation and some appointed and nominated members. It has wide ranging powers in regards to development, like construction, mining, engineering etc including a general clause. It uses them for managing various aspects like interstate and urban migration, etc. The DDA also has Master Plans which act as guidelines for the future. It also has to conserve ecologically sensitive areas like the Yamuna Floodplains.

To conclude, the DDA plays an active role in developing Delhi.

[19] 2024 SCC OnLine Del 3965

[20] 2016 Indlaw SC 552