

**State Services Group - A  
Combined Probationary Training Programme**

**READING MATERIAL**

**Law and  
Judicial  
Process**



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Development Administration (YASHADA)**  
Rajbhavan Complex, Baner Road, Pune - 411 007



**State Services Group - A  
Combined Probationary Training Programme**

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**Reading Material  
Law & Judicial Process**

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यशवंतराव चव्हाण विकास प्रशासन प्रबोधिनी (यशदा)  
(महाराष्ट्र शासनाची शिखर प्रशिक्षण संस्था)



# COMPENDIUM

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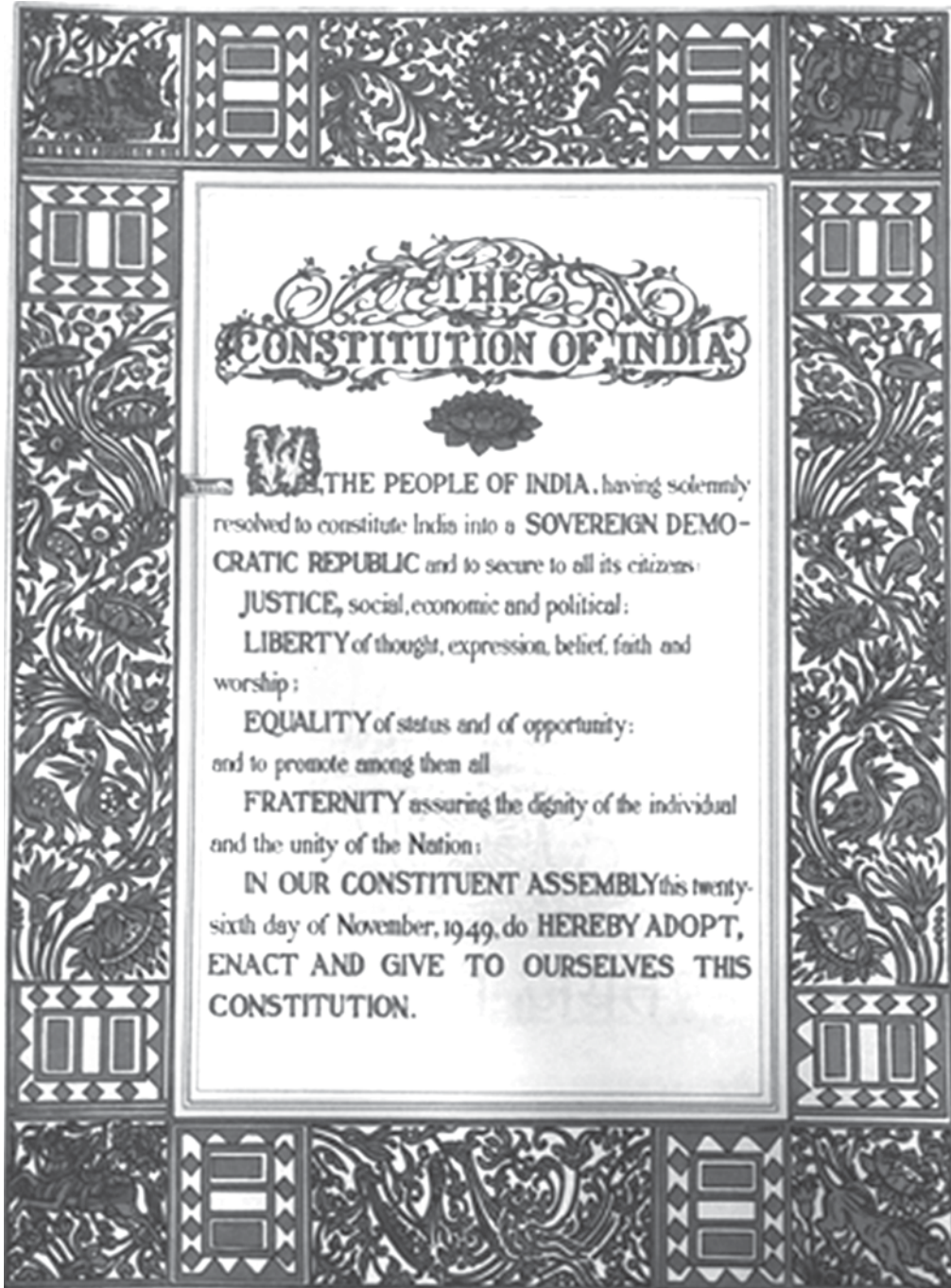


## LAW & JUDICIAL PROCESS





# PREAMBLE





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# Know our Constitution

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Constitution of any country is the supreme law of the land, Constitution constitutes a Nation. We are an Independent Sovereign Country only because of our constitution. Constitution of India came into force on 26<sup>th</sup> January 1950.

## **Making of Indian constitution**

First meeting of Constituent Assembly took place on 9<sup>th</sup> December 1946 with 296 elected representatives of British India. The first Elected President of Constituent Assembly was Dr. Rajendra Prasad, subsequently many committees were constituted within Constituent assembly, one of these was a Drafting Committee with Dr. Babasaheb Ambedkar as its Chairman and Six other Members and a Constitutional Expert, of these Six member one resign and one died and in their places new members were inducted. After passing of Independence of India Act 1947 in British Parliament, Constituent Assembly got absolute power to frame a Constitution for an Independent Country. First draft of constitution was presented by drafting Committee to the constituent assembly in November 1947, over 2000 amendments were introduced and each Article of the constitution was thoroughly discussed in the assembly for about 2 years. Finally constitution of India was enacted and adopted by the constituent Assembly on 26<sup>th</sup> November 1949, and this constitution came into Force on 26<sup>th</sup> January 1950 to create a new Country on the World arena, Republic of India. At the time of Passing Constitution of India Consist of 395 Article divided in 22 Parts and 8 schedules today it has 448 Article 22 Parts and 12 Schedules and 2 appendices.

## **Salient Features of Constitution of India**

In order to constitute a Nation three things are Necessary, a Defined territory, Set of people and a System of Governance. Our Constitution provide for all these essential components of a State in detail.

In Part one Its speaks of Union and Its territories, In Part Two it speaks of Citizenship of India And Part Three onwards deals with system of Governance at Centre as well as State level. Part Three speaks of Fundamental Rights while Part Four Deals with Directive Principles of State Policy. Part-V Speaks of Union Executive while Part-VI deals with the Executive of State.

## **Know your Rights**

Fundamental Rights are given in this Part of the Constitution. Fundamental Rights are the rights which make the Independence real for us. This is that part of the constitution which secures fruits of Independence to the citizens of this country who



fought bare footed with mighty British rulers with the Weapons of Truth and Non-violence as given by their leader the Great Sole of this Country Mahatma Gandhi.

First and Foremost in the list is Right to Equality.

### **Right to Equality**

Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties, and guarantees the following:

- **Equality before law:** Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State cannot discriminate any of the Indian citizens on the basis of their caste, creed, colour, sex, gender, religion or place of birth.
- **Social equality and equal access to public areas:** Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, the State may make any special provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward class or scheduled castes or scheduled tribes.
- **Equality in matters of public employment:** Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can only be filled by applicants who are domiciled in the area. This may be meant for posts that require knowledge of the locality and language of the area. The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society. Also, there a law may be passed which requires that the holder of an office of any religious institution shall also be a person professing that particular religion. According to the *Citizenship (Amendment) Bill, 2003*, this right shall not be conferred to Overseas citizens of India.
- **Abolition of untouchability:** Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law. The *Untouchability Offences Act of 1955* (renamed to *Protection of Civil Rights Act* in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.
- **Abolition of Titles:** Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State. The British government had created an aristocratic class known as *Rai*



*Bahadurs* and *Khan Bahadurs* in India — these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition".The Supreme Court, on 15 December 1995, upheld the validity of such awards.

### **Right to Freedoms**

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom in Article 19 guarantees the following six freedoms:

- Freedom of speech and expression, which enable an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.
- Freedom to assemble peacefully without arms, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.
- Freedom to form associations or unions on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
- Freedom to reside and settle in any part of the territory of India which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal peoples from exploitation and coercion. Article 370 restricts citizens from other Indian states and Kashmiri women who marry men from other states from purchasing land or property in Jammu & Kashmir.
- Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.

## Right to Life

The constitution guarantees the right to life and personal liberty, which in turn cites specific provisions in which these rights are applied and enforced:

- Protection with respect to conviction for offences is guaranteed in the right to life and personal liberty. According to Article 20, no one can be awarded punishment which is more than what the law of the land prescribes at that time. This legal axiom is based on the principle that no criminal law can be made retrospective, that is, for an act to become an offence, the essential condition is that it should have been an offence legally at the time of committing it. Moreover, no person accused of any offence shall be compelled to be a witness against himself. "Compulsion" in this article refers to what in law is called "Duress" (injury, beating or unlawful imprisonment to make a person do something that he does not want to do). This article is known as a safeguard against self incrimination. The other principle enshrined in this article is known as the principle of double jeopardy, that is, no person can be convicted twice for the same offence, which has been derived from Anglo Saxon law. This principle was first established in the Magna Carta.
- Protection of life and personal liberty is also stated under right to life and personal liberty. Article 21 declares that no citizen can be denied his life and liberty except by law. This means that a person's life and personal liberty can only be disputed if that person has committed a crime. However, the right to life does not include the right to die, and hence, suicide or an attempt thereof, is an offence. (Attempted suicide being interpreted as a crime has seen many debates. The Supreme Court of India gave a landmark ruling in 1994. The court repealed section 309 of the Indian penal code, under which people attempting suicide could face prosecution and prison terms of up to one year.<sup>[24]</sup> In 1996 however another Supreme Court ruling nullified the earlier one.) "Personal liberty" includes all the freedoms which are not included in Article 19 (that is, the six freedoms). The right to travel abroad is also covered under "personal liberty" in Article 21.
- Rights of a person arrested under ordinary circumstances is laid down in the right to life and personal liberty. No one can be arrested without being told the grounds for his arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also an arrested citizen has to be brought before the nearest magistrate within 24 hours. The rights of a person arrested under ordinary circumstances are not available to an enemy alien. They are also not available to persons detained under the *Preventive Detention Act*. Under preventive detention, the government can imprison a person for a maximum of three months. It means that if the government feels that a person being at liberty can be a threat to the law and order or to the unity and integrity of the nation, it can detain or arrest that person to prevent him from doing this

possible harm. After three months such a case is brought before an advisory board for review.

### **Right to Education**

- Article 21A - On 1 April 2010, India joined a group of few countries in the world, with a historic law making education a fundamental right of every child coming into force. Making elementary education an entitlement for children in the 6-14 age group, the Right of Children to Free and Compulsory Education Act will directly benefit children who do not go to school at present.
- Prime Minister Manmohan Singh announced the operationalisation of the Act. Children, who had either dropped out of schools or never been to any educational institution, will get elementary education as it will be binding on the part of the local and State governments to ensure that all children in the 6-14 age group get schooling. As per the Act, private educational institutions should reserve 25 per cent seats for children from the weaker sections of society. The Centre and the States have agreed to share the financial burden in the ratio of 55:45, while the Finance Commission has given Rs. 25,000 crore to the States for implementing the Act. The Centre has approved an outlay of Rs.15,000 crore for 2010-2011.
- The school management committee or the local authority will identify the drop-outs or out-of-school children aged above six and admit them in classes appropriate to their age after giving special training.

The constitution also imposes restrictions on these rights. The government restricts these freedoms in the interest of the independence, sovereignty and integrity of India. In the interest of morality and public order, the government can also impose restrictions. However, the right to life and personal liberty cannot be suspended. The six freedoms are also automatically suspended or have restrictions imposed on them during a state of emergency.

### **Right against Exploitation**

- The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and *Begar* (forced labor), and abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Child labour is considered a gross violation of the spirit and provisions of the constitution. *Begar*, practised in the past by landlords, has been declared a crime and is punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is also prohibited by law. An exception is made in employment without payment for compulsory services for public purposes. Compulsory military conscription is covered by this provision.



### **Right to Freedom of religion**

- Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.
- Religious communities can set up charitable institutions of their own. However, activities in such institutions which are not religious are performed according to the laws laid down by the government. Establishing a charitable institution can also be restricted in the interest of public order, morality and health. No person shall be compelled to pay taxes for the promotion of a particular religion. A State run institution cannot impart education that is pro-religion. Also, nothing in this article shall affect the operation of any existing law or prevent the State from making any further law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice, or providing for social welfare and reform.

### **Cultural and educational Rights**

- As India is a country of many languages, religions, and cultures, the Constitution provides special measures, in Articles 29 and 30, to protect the rights of the minorities. Any community which has a language and a script of its own has the right to conserve and develop it. No citizen can be discriminated against for admission in State or State aided institutions.
- All minorities, religious or linguistic, can set up their own educational institutions to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. But the right to administer does not mean that the State can not interfere in case of maladministration. In a precedent-setting judgment in 1980, the Supreme Court held that the State can certainly take regulatory measures to promote the efficiency and excellence of educational standards. It can also issue guidelines for ensuring the security of the services of the teachers or other employees of the institution. In another landmark judgement delivered on 31 October 2002, the Supreme Court ruled that in case of aided minority institutions offering professional courses, admission could only be through a common entrance test conducted by State or a university. Even an unaided minority institution ought not to ignore the merit of the students for admission.

### **Right to Constitutional Remedies**

- Right to constitutional remedies empowers the citizens to move a court of law in case of any denial of the fundamental rights. For instance, in case of imprisonment,

the citizen can ask the court to see if it is according to the provisions of the law of the country. If the court finds that it is not, the person will have to be freed. This procedure of asking the courts to preserve or safeguard the citizens' fundamental rights can be done in various ways. The courts can issue various kinds of writs. These writs are *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. When a national or state emergency is declared, this right is suspended by the central government.

Thus by knowing these rights one can really feel that he is a Citizen of real democratic country. To conclude we can say However Good or Bad a Constitution may be it depends on the people who are executing and implementing it how it turns to be. - Dr. B. R. Ambedkar

#### References:

- Basu, Durga Das (1988). *Shorter constitution of India*. New Delhi: Prentice Hall of India..
- Basu, Durga Das (1993). *Introduction to the constitution of India*. New Delhi: Prentice Hall of India..
- "*Bodhisattwa Gautam vs. Subhra Chakraborty*; 1995 ICHRL 69". World Legal Information Institute. Retrieved 2006-05-25. Date of ruling 15 December 1995
- "*Kesavananda Bharati vs. The State of Kerala*; AIR 1973 S.C. 1461, (1973) 4 SCC 225". Wikipedia. Retrieved 2006-05-25. In this case, famously known as the "Fundamental Rights case", the Supreme Court decided that the basic structure of the Constitution of India was unamendable.
- "Constitution Of India". NIC. Retrieved 2012-03-24. Full Text of Indian Constitution in Hindi and English
- "List of Amendments to the Constitution Of India". NIC. Retrieved 2012-03-24. List of amendments to Indian Constitution including 97th constitutional amendment act notified in Jan 2012
- Laski, Harold Joseph (1930). *Liberty in the Modern State*. New York and London: Harpers and Brothers..
- *Maneka Gandhi v. Union of India*; AIR 1978 S.C. 597, (1978).
- Pylee, M.V. (1999). *India's constitution*. New Delhi: S. Chand and Company. ISBN 81-219-1907-X..
- Sinha, Savita; Das, Supta; Rashmi, Neeraja (2005). *Social Science – Part II*. New Delhi: National Council of Educational Research and Training, India. ISBN 81-7450-351-X..

- Tayal, B.B.; Jacob, A. (2005). *Indian History, World Developments and Civics*. District Sirmour, Himachal Pradesh: Avichal Publishing Company. ISBN 81-7739-096-1..
- Review of "State" under Article 12<sup>1</sup>
- Part III of the Constitution deals with Fundamental Rights which are the restrictions on the powers of the legislature, executive and judiciary, that no one can encroach upon the rights conferred under this part. In order to define the scope of these rights and the scope of remedy under article 32, constitution makers have defined "State" in the beginning of this chapter as under,
  - "the Government and Parliament of India and the Government and the
  - Legislature of each of the State and all local or other authorities within
  - the territory of India or under the control of the Government of India".
- Therefore, to understand the expanded meaning of the term "other authorities" in Article 12, it is necessary to trace the origin and scope of Article 12 in the Indian Constitution. Present Article 12 was introduced in the Draft Constitution as Article 7. While initiating a debate on this Article in the Draft Constitution in the Constituent Assembly, Dr. Ambedkar described the scope of this Article and the reasons why this Article was placed in the Chapter on fundamental rights as follows :-
  - "The object of the fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority - I shall presently explain what the word 'authority' means - upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the fundamental rights are to be clear, then they must be binding not only upon the Central Government they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.
  - If that proposition is accepted - and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as 'the State', its we have done in Article 7; or, to keep on repeating every time, the Central Government the Provincial Government the State Government the

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<sup>1</sup> Author, Dr. Ravishankar K. Mor, Associate. Prof., Head, Dept. of Law, Yeshwant Mahavidyalaya, Wardha.



Municipality, the Local Board, the Port Trust or any other authority'. It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words<sup>2</sup>."

- From the above, it is seen that the intention of the Constitution framers in incorporating this Article was to treat such authority which has been created by law and which has got certain powers to make laws to make rules and regulations to be included in the term "other authorities" as found presently in Article 12.
- This definition has given birth to series of judgments and cases primarily due to inclusion of words "authority" in the last part of the definition.
- Attempts have been made to determine the scope this word initially the definition of State was treated as exhaustive and confined to the authorities or those which could be read ejusdemgeneris with the authorities mentioned in the definition of Article 12 itself.
- The next stage was reached when the definition of 'State' came to be understood with reference to the remedies available against it. For example, historically, a writ of mandamus was available for enforcement of statutory duties or duties of a public nature. Thus a statutory corporation, with regulations framed by such Corporation pursuant to statutory powers was considered a State, and the public duty was limited to those which were created by statute.
- The decision of the Constitution Bench of this Court in **Rajasthan Electricity Board v. Mohan Lal and Ors**<sup>3</sup>. is illustrative of this. The question there was whether the Electricity Board – which was a Corporation constituted under a statute primarily for the purpose of carrying on commercial activities could come within the definition of 'State' in Article 12.
- After considering earlier decisions, it was said:
- "These decisions of the Court support our view that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities".
- It followed that since a Company incorporated under the Companies Act is not formed statutorily and is not subject to any statutory duty via a vis an individual, it was excluded from the preview of 'State'

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<sup>2</sup> 1948 7 CAD 610

<sup>3</sup> (1968)ILLJ257SC



- In **Praga Tools Corporation v. Shri C.A. Imanual and Ors**<sup>4</sup>, where the question was whether an application under Article 226 for issuance of a writ of mandamus would lie impugning an agreement arrived at between a Company and its workmen, the Court held that:
- "...there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company".
- By 1975 Mathew, J. in **Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Ors**<sup>5</sup>, noted that the concept of "State" in Article 12 had undergone "drastic changes in recent year". The question in that case was whether the Oil and Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation each of which were public corporations set up by statutes were authorities and therefore within the definition of State in Article 12.
- The Court affirmed the decision in **Rajasthan State Electricity Board v. Mohan Lal** (supra) and held that the Court could compel compliance of statutory rules. But the majority view expressed by A.N. Ray, CJ also indicated that the concept would include a public authority which:
- "is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making profit for the public benefit"
- The use of the alternative is significant. The Court scrutinised the history of the formation of the three Corporations, the financial support given by the Central Government, the utilization of the finances so provided, the nature of service rendered and noted that despite the fact that each of the Corporations on profits earned by it nevertheless the structure of each of the Corporation showed that the three Corporations represented the 'voice and hands' of the Central Government. The Court came to the conclusion that although the employees of the three Corporations were not servants of the Union or the State, "these statutory bodies are 'authorities' within the meaning of Article 12 of the Constitution".
- Mathew J in his concurring judgment went further and propounded a view which presaged the subsequent development in the law. He said: "A state is an abstract

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<sup>4</sup> MANU/SC/0327/1969

<sup>5</sup> AIR1975SC1331

entity. It can only act through the instrumentality or agency of natural or juridical persons. Therefore, there is nothing strange in the notion of the state acting through a corporation and making it an agency or instrumentality of the State....."

- For identifying such an agency or instrumentality he propounded four indicia:
- (1) "A finding of the state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action."
- (2) .... "Another factor which might be considered is whether the operation is an important public function."
- (3) "The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a state agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a government agency, then even the presence or absence of state financial aid might be irrelevant in making a finding of state action."
- If the function does not fall within such a description then mere addition of state money would not influence the conclusion."
- (4) "The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?"
- **Sabhajit Tewary Vs union of India**<sup>6</sup> was decided by the same Bench on the same day as
- Sukhdev Singh (supra). The contentions of the employee was the CSIR is an agency of the Central Government on the basis of the CSIR Rules which, it was argued, showed that the Government controlled the functioning of CSIR in all its aspect. The submission was somewhat cursorily negated by this Court on the ground that all this
- ..... "will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and Industrial Research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner."

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<sup>6</sup> AIR1975SC1329

- And held that CSIR is not a authority as not an agent or instrumentality of the state.
- This was challenged in **Pradeep Kumar Biswas and Ors. vs. Indian Institute of Chemical Biology and Ors**<sup>7</sup> This case is considered to be final leading case on the issue of determining true scope of the term state till date. In this case though court distinguished from the case of Sabhjit Tewari Vs UOI but recognized the test of agency or instrumentality as laid down in Sukhdeo Vs Bhagatram. This is the law in this regard prevailing today. whereby court laid down the test of instrumentality of the state, and assert the method of function performed by the authority in determining the nature of the body, if the function is of national importance or can be classified as an essential governmental function, even if a private body is treated as "state" within the meaning of article 12 of the constitution.
- Again with the adoption of privatization, globalization and liberalization this issue of determining scope of article 12 has once again got importance, as functions performed by the state has undergone tremendous changes so also the manner of performance of state functions have got different mechanisms and methods like PPP, Public Private Partnerships, contracting out the implementation of various schemes, Build operate and Toll (BOT) etc. In these changed circumstances ascertaining true scope has become more difficult and more essential. If rights under part three are most dear to all and considered to be heart and sole of the constitution, these rights may be denied if court fails to decide, an authority is whether or whether not a state under article 12 of the constitution.
- In this article an attempt is made to understand the judicial development in this regard, so as to reach at most precise conclusion as to the scope of state under article 12 in the changed socio, economic political conditions in India.
- Again there are some recent decisions of the various high courts wherein thereby have ventured to protect the fundamental rights even against private bodies and companies saying that article 226 permits issuance of writ even against private bodies, question arises if fundamental rights are available against the state and if a body do not fall within the meaning of state under article 12 does this view taken by the courts is sustainable?
- Yes, looking at the modern development this shift in the approach of the Courts is welcome rather essential, today by way of privatization state is rapidly dissolving its departments by creating corporation, companies, government companies have been privatized or stakes in such companies have sold to private players, private companies are allowed to run businesses and functions which were once considered to be essential governmental function, like mineral exploration etc. under such circumstances following are some recent decisions which must be

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<sup>7</sup> (2002)5SCC111



taken into consideration while deriving meaning of state under article 12 of the constitution.

- In **Smt. Asha Vij & Ors. vs. The Chief of Army Staff & Ors**<sup>8</sup>. Court has taken a view contrary to its earlier view, therefore a short discussion on this case is called here,
- The appellants in the present case were working as teaching / non-teaching staff of Delhi Area Primary School at Noida and had filed the writ petition aggrieved from the notices issued by the Chief of Army Staff intimating them that they would be relieved from their duties with effect from 31.03.1999 and would be paid three months salary i.e. upto 30.06.1999 in lieu of three months notice period. The respondents took a preliminary objection as to the maintainability of the writ petition on the ground that Army Welfare Educational Society which was managing the school in question was neither a State nor an Authority as envisaged under Article 12 of the Constitution of India. In order to substantiate its argument reliance was placed on attention is invited to Air Vice Marshal J.S. Kumar Vs. Governing Council of Air Force<sup>9</sup> where a Division Bench of this Court had held the writ petition to be not maintainable against the Air Force Sports Complex and held that merely because Government had provided some benefits and facilities like land for the golf course or concession in liquor would not make such complex a 'State' under Article 12 of the Constitution of India and the complex remains a private body only, providing recreation to Armed Forces officers and not discharging any public function or public duty. Again case of **UOI Vs. Chotelal**<sup>10</sup> holding that the regimental funds are not public funds and a person paid out of such regimental funds cannot be said to be holder of civil post within the Ministry of Defence. While dismissing this appeal court made following observation we, "in the entirety of the facts aforesaid particularly considering that several of the appellants are re-employed elsewhere, the whereabouts of others are not known and the remaining also having attained the age of superannuation, are not inclined, in exercise of jurisdiction under Article 226 of the Constitution of India to interfere with the order of the learned Single Judge." Thus though court refuse to interfere but it was not because respondent school is not a state within the meaning of article 12 but on other consideration, this reveals that there is a change in approach of the court.
- Another case call for discussion here is:

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<sup>8</sup> MANU/DE/4012/2012

<sup>9</sup> 126 (2006) DLT 330 (DB)

<sup>10</sup> JT 1998 (8) SC 497

- The case of **VST Industries Ltd**<sup>11</sup>, also needs mention here as the question of maintainability of writ petition was dealt here against VST Industries Ltd. Which was a limited company, and was not a State or an instrumentality of a State as contemplated under Article 12 of the Constitution, hence, in the normal course, no writ could have been issued against the said industry. But it was the contention of the writ petitioner in that case that the said industry was obligated under the statute concerned to perform certain public functions; failure to do so would give rise to a complaint under Article 226 against a private body. While considering such argument, Hon'ble Supreme Court held that when an authority has to perform a public function or a public duty, if there is a failure a writ petition under Article 226 can be entertained.
- The issue of maintainability of writs are regularly challenged before court of law on the ground that respondents are not state within the meaning of article 12 of the constitution, following are some of the cases wherein court declares that writs can be entertained even against private bodies.
- Also in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors**<sup>12</sup>. It was argued that the management of the college being a trust registered under the Public Trust Act is not amenable to the writ jurisdiction of the High Court. The contention in other words, is that the trust is a private institution against which no writ of mandamus can be issued. While answering the question "Whether a trust can be compelled to pay the arrears of salary by way of mandamus?" Court responded in following words
- If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See-The Evolving Indian Administrative Law by M.P. Jain (1983) p. 266). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of

<sup>11</sup> [(2001) 1 SCC 298 : 2001 SCC (L&S) 227

<sup>12</sup> (1989) 2 SCC 691

the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus can not be refused to the aggrieved party.

- Thus it was answered in positive that writ can be issued even against a private body. Another important case in this regard is
- **Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh and Ors**<sup>13</sup>. this case is well known for recognizing right to education as a fundamental right but this was declare much before this in Francis Coral case so also in Mohini Jain case, what is important here is, in this case court held that Private colleges as performing important state function of imparting education can be amenable to minimum standards of fairness this means are amenable to interference by way of mandamus if failed to observed this minimum standards of fairness in admissions etc. Thus in addition to recognize right to established educational institution as an occupation court has also hinted at subjection of such institution by writ jurisdiction on observation of minimum standards of fairness as education is one of the important state function.
- **Ma. Gouthaman vs. The State of Tamilnadu, Rep. by its Secretary to Government**<sup>14</sup> Issue involve was whether a writ petition is maintainable against a Hindu "Mutt" from the definition of "Mutt", we find that Madathipathi has a dual role in managing the Mutt, one as a Religious Head connected with religious administration and another in administering the properties attached to the Mutt. Hence, if any irregularities committed by the religions institution in administering the properties attached to the Mutt, which is a secular act and not connected with religious activities, and if there is any delay on the part of the State to take action, Public Interest Litigation could be entertained for the limited purpose to give a direction to the supervisory authority to initiate action so far as secular act is concerned.
- On the other hand there are instances when court refuse to entertain petition on the ground that particular body do not fall with in the purview of state under article 12 of the constitution. Some of the recent decisions are discussed here
- **N.K. Aggarwal vs. UOI & Ors**<sup>15</sup>. In this writ petition the issue involve was Whether (KRIBCO) Krishak Bharati Cooperative Ltd. Is discharging any public function and, thus, amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India?

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<sup>13</sup> (1993) 1 SCC 645

<sup>14</sup> MANU/TN/1546/2012

<sup>15</sup> MANU/DE/4321/2012



- Court reproduced and stated the main objective of KRIBHCO. And held Merely because KRIBHCO is involved in philanthropic activities as well that would not change the main character of KRIBHCO. Those activities are in the nature of voluntary social responsibility, which term for private corporation is known as "Corporate Social Responsibility". Such types of philanthropic and charitable activities are organized by private entrepreneurs as well. In order to determine the character of KRIBHCO and to ascertain whether it is discharging public function or public duty, it is the main activity carried on by the KRIBHCO which has been the focal point. Examined from that angle, we do not find that KRIBHCO is covered by the test laid down.
- We are, therefore, of the opinion that KRIBHCO is not discharging any public functions or any public duties and, hence, is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.
- This case more important from our point of discussion, as corporate social responsibility in the era of privatization and globalization plays pivotal role wherein rights of citizen are involved and by virtue of this judgment companies have are now immune from being answerable to the court in writ jurisdiction on this issue.
- Another case which call for our attention is

➤ **Shri L.M. Khosla vs. Thai Airways International Public Company Limited<sup>16</sup>**

- Issue involve was can an employee invoke writ jurisdiction against termination of services by respondent Company? In response to this court issued following directions:
- (i) A contract of private employment is not similar to the public employment and in such private employment there is no scope of applicability of the principles of administrative law/public law.
- (ii) A contract of employment which provides termination of services by one month's notice, then, at best the employee will only be entitled to one month's pay in terms of the employment contract. An employee is not entitled to any relief of continuation in services or pay with consequential benefits for alleged remaining period of services till the date of his superannuation.
- (iii) As per the provision of Section 14(1)(c) of the Specific Relief Act, 1963, a contract which is determinable in nature cannot be specifically enforced. Since the service contract in the present case is determinable by one month's notice there does not arise the question of giving of any relief's which tantamount to enforcement of a determinable contract. As per Section 14(1)(b), a contract of

<sup>16</sup> MANU/DE/3868/2012



personal service cannot be enforced when the employer is not the Government or "State" as per Article 12 of the Constitution of India.

- In another case **Zee Telefilms Ltd. and Anr. vs. Union of India (UOI) and Ors**<sup>17</sup>. Hon'ble Supreme Court held that BCCI (Board of Cricket Control of India) is not a State under article 12.
- The term State under article 12 has undergone drastic changes in last many decades, the test of instrumentality and test of public duty performed by a private body have crossed miles to reach its present status but biggest blow all the efforts of judiciary in making it more real and dynamic come to an halt when in **Balco Employees Union Vs. UOI**<sup>18</sup> court held that disinvestment by the government in public company to the highest bidder was held valid. This was nothing but endorsing the view taken in International airport authority case, "no further development in the direction of including various bodies within the meaning of term "other authorities" is required as Government have started distancing itself from commercial activities and have decided to concentrate on governance". This case needs serious review by academician and jurist so that growth in realizing fundamental rights shall not come to a halt in the era of privatization and globalization.

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<sup>17</sup> AIR2005SC2677

<sup>18</sup> AIR2002SC350

# Rule of law

**Dr. Ravishankar K. Mor, Associate. Prof., Head, Dept. of Law,  
Yeshwant Mahavidyalaya, Wardha**

One of the basic constitutional principle recognised by the Democratic countries world over is “rule of law” after coming into force the Indian Constitution on 26<sup>th</sup> January 1950, it declared India as a democratic and republic country. Being largest democracy of the world recognizing rule of law, responsibility rested on the constitutional makers to see, this country should be Govern by Law and not by the men.

## ➤ **Evolution and meaning of Rule of Law**

The term Rule of Law is derived from the French phrase la principe de legalite (the principle of legality) which refers to a government based on principles of law and not of men.

Rule of law can be traced back to Aristotle,<sup>19</sup> he sees the rule of men, via their good judgment, as moderating excesses in the sovereignty of law. Aristotle, in other words, holds both that the rule of law, and especially, as we will see, the constitution, moderates the rule of men, and also that the rule of men moderates the rule of law, including the constitution. Medieval thinkers, Hobbes, Locke, Rousseau, Montesquieu also propagated the principal in medieval period after Socrates and Aristotle. With little modification to the rule of law German philosophers Kant, Hegel also supported this principal and opposed any rule of men as against rule of law.

## ➤ **Dicey’s concept of Rule of Law**

According to A. V. Dicey<sup>20</sup> whenever there is discretion there is room for arbitrariness. In his book, the law and the constitution, published in the year 1885, Dicey attributed three meanings to the doctrine of rule of law:

1. Supremacy of Law
2. Equality Before The Law
3. Predominance of Legal Spirit

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<sup>19</sup> Jill Frank, Aristotle on Constitutionalism and the Rule of Law, Theoretical Inquiries in Law 8.1 (2007) Page no 37

<sup>20</sup> Albert Venn (A. V.) Dicey, KC, FBA (4 February 1835 – 7 April 1922) was a British jurist and constitutional theorist. He is most widely known as the author of Introduction to the Study of the Law of the Constitution (1885). The principles it expounds are considered part of the uncodified British constitution. He became Vinerian Professor of English Law at Oxford and a leading constitutional scholar of his day. Dicey popularised the phrase "rule of law",<sup>[1]</sup> although its use goes back to the 17th century.

➤ **Supremacy of Law**

It implies the absolute power of law, dominance and the supremacy of it. It is opposed to the influence of arbitrary power and wide discretionary power. In Dicey's words, "wherever there is discretion, there is room for arbitrariness and that in a republic no less than under a monarchy discretionary authority on the part of the government must mean insecurity for legal freedom on the part of its subjects. In India neither Chief Justice of India nor Parliament of India or even the President of India are bound to follow the constitutional limitation and any act transgressing the limits of the constitution could be unconstitutional by the Supreme Court and therefore bad in law. Thus we can say in India, Constitution is supreme i.e. supremacy of law is there.

➤ **Equality Before The Law**

The law administered should be the ordinary rule of law applicable to all the people equally irrespective of caste and creed or religion. This element has been also included in the Indian Constitution in the form of Article 14. The excerpts of which can also be seen in Article 15. Law should be equal for equals, no one should be above the law and law should also be equally administered is the meaning of equality before law. Starting from the constable up to the Prime Minister everybody should be treated equal by the law.

➤ **Predominance of legal spirit**

The Constitution is not the source but the consequence of the rights of the individuals. Here, Dicey emphasized on the role of the courts. Without an authority to protect and enforce the rights conferred upon citizen, their inclusion in a document etc. is of little value. Mere inclusion is not authoritative and its provisions might be abridged, trampled or overlooked. Thus unless there is a public spirit in favour of obeying laws, no rule of law could be established in any country.

➤ **Supreme Court on RULE OF LAW**

➤ **ADM Jabalpur v. Shivakant Shukla<sup>21</sup>**

In this case, the question before the court was 'whether there was any rule of law in India apart from Article 21'. This was in context of suspension of enforcement of Articles 14, 21 and 22 during the proclamation of an emergency. The answer of the majority of the bench was in negative for the question of law. However Justice H.R. Khanna dissented from the majority opinion and observed that "*Even in absence of Article 21 in the Constitution, the state has got no power to deprive a person of his life and liberty without the authority of law. Without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning...*".

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<sup>21</sup> AIR 1976 SC 1207

➤ **Som Raj v. State of Haryana<sup>22</sup>**

The Supreme Court observed that the absence of arbitrary power is the primary postulate of Rule of Law upon which the whole constitutional edifice is dependant. That the government should be conducted within a framework of recognized rules and principles which restrict discretionary powers.

➤ **Chief settlement Commr; Punjab v. Om Prakash<sup>23</sup>**

It was observed by the supreme court that, "In our constitutional system, the central and most characteristic feature is the concept of rule of law which means, in the present context, the authority of law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the matter into the courts notice."

➤ **In Menaka Gandhi vs. Union of India<sup>24</sup>**

The Supreme Court declared that Article 14 strikes against arbitrariness and any action of the authority which is not, just fair and reasonable cannot stand the test the rule of law. In this case for the first time Supreme Court of India interpreted "Procedure established by law" as "due process" thus mere having procedure of law is not sufficient but the procedure prescribed must be just fair and reasonable as well.

➤ **In Indira Gandhi Nehru vs. Raj Narayan<sup>25</sup>**

Article 329-A was inserted in the Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329-A as invalid since it abridges the basic structure of the Constitution i.e. Judicial Review which is an integral part of rule of law.

➤ **Sukhdev v. Bhagatram<sup>26</sup>**

Supreme court held "that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement."

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<sup>22</sup> AIR 1990 SC 1176

<sup>23</sup> AIR1996 SC 33

<sup>24</sup> 1978 AIR 597

<sup>25</sup> 1975 AIR 1590

<sup>26</sup> 1975 AIR 1331



## ➤ **Criticism**

The rule of law is not without criticism; its application in India and in various other countries is also questioned on different grounds. Justice Ramaswamy said, There is a large amount of discretion involved in the administrative work. For e.g.: for the purpose of national planning the executive is armed with vast powers in respect of land ceiling, control of basic industries, taxation, mobilization of labour etc. Even Parliament passes acts which are opposed to personal liberty such as preventive detention act or maintenance of Internal Security act 1971, National Security Act 1980.

- No process for the arrest or imprisonment of the President, or the Governor of a state, shall issue from any court during his term of office.
- No case can be filed against the Bureaucrats and Diplomats in India
- The privileges enjoyed by the members of parliament with respect to legal actions against them.
- There are separate tribunals for administrative cases.

The constitutional recognition of Rule of Law is criticised on these grounds which affects the supremacy of law which is first element of rule of law as given by Prof. A.V.Dicey.

## **Conclusion**

- Constitution of India recognises doctrine of Rule of law.
- The rule of law is an idea about law, justice, and morality. It considers what laws, norms, rules, procedures, systems, and structures should be and what they should not be.
- Inherent in the formulation of Rule of Law are three realities. One is that the law governs people as well as the government itself. Next, persons should obey the law. Third is that the norms we call law need to be obeyable - not only in the sense of being known, knowable and predictable, but in the deepest sense of being just.

# Review of "State" under Article 12<sup>27</sup>

**Dr. Ravishankar K. Mor, Associate. Prof., Head, Dept. of Law,  
Yeshwant Mahavidyalaya, Wardha**

Part III of the Constitution deals with Fundamental Rights which are the restrictions on the powers of the legislature, executive and judiciary, that no one can encroach upon the rights conferred under this part. In order to define the scope of these rights and the scope of remedy under article 32, constitution makers have defined "State" in the beginning of this chapter as under,

- "the Government and Parliament of India and the Government and the
- Legislature of each of the State and all local or other authorities within
- the territory of India or under the control of the Government of India".

Therefore, to understand the expanded meaning of the term "other authorities" in Article 12, it is necessary to trace the origin and scope of Article 12 in the Indian Constitution. Present Article 12 was introduced in the Draft Constitution as Article 7. While initiating a debate on this Article in the Draft Constitution in the Constituent Assembly, Dr. Ambedkar described the scope of this Article and the reasons why this Article was placed in the Chapter on fundamental rights as follows :-

"The object of the fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority - I shall presently explain what the word 'authority' means - upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the fundamental rights are to be clear, then they must be binding not only upon the Central Government they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

If that proposition is accepted - and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law then, what are we to do to make our intention clear ? There are two ways of doing it. One way is to use a composite phrase such as 'the State', its we have done in Article 7; or, to keep on repeating every time, the Central Government the Provincial Government the State Government the Municipality, the Local Board, the Port Trust or any other authority'. It seems to me not only most cumbersome but stupid to

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<sup>27</sup> Author, Dr. Ravishankar K. Mor, Associate. Prof., Head, Dept. of Law, Yeshwant Mahavidyalaya, Wardha.

keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words<sup>28</sup>."

From the above, it is seen that the intention of the Constitution framers in incorporating this Article was to treat such authority which has been created by law and which has got certain powers to make laws to make rules and regulations to be included in the term "other authorities" as found presently in Article 12.

This definition has given birth to series of judgments and cases primarily due to inclusion of words "authority" in the last part of the definition.

Attempts have been made to determine the scope this word initially the definition of State was treated as exhaustive and confined to the authorities or those which could be read ejusdemgeneris with the authorities mentioned in the definition of Article 12 itself.

The next stage was reached when the definition of 'State' came to be understood with reference to the remedies available against it. For example, historically, a writ of mandamus was available for enforcement of statutory duties or duties of a public nature. Thus a statutory corporation, with regulations framed by such Corporation pursuant to statutory powers was considered a State, and the public duty was limited to those which were created by statute.

The decision of the Constitution Bench of this Court in **Rajasthan Electricity Board v. Mohan Lal and Ors**<sup>29</sup>, is illustrative of this. The question there was whether the Electricity Board – which was a Corporation constituted under a statute primarily for the purpose of carrying on commercial activities could come within the definition of 'State' in Article 12.

After considering earlier decisions, it was said:

"These decisions of the Court support our view that the expression "other authorities" in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities".

It followed that since a Company incorporated under the Companies Act is not formed statutorily and is not subject to any statutory duty via a vis an individual, it was excluded from the preview of 'State'

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<sup>28</sup> 1948 7 CAD 610

<sup>29</sup> (1968)ILLJ257SC



In **Praga Tools Corporation v. Shri C.A. Imanual and Ors**<sup>30</sup>, where the question was whether an application under Article 226 for issuance of a writ of mandamus would lie impugning an agreement arrived at between a Company and its workmen, the Court held that:

"...there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ petition for a mandamus or an order in the nature of mandamus could lie against the company".

By 1975 Mathew, J. in **Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Ors**<sup>31</sup>, noted that the concept of "State" in Article 12 had undergone "drastic changes in recent year". The question in that case was whether the Oil and Natural Gas Commission, the Industrial Finance Corporation and the Life Insurance Corporation each of which were public corporations set up by statutes were authorities and therefore within the definition of State in Article 12.

The Court affirmed the decision in *Rajasthan State Electricity Board v. MohanLal* (supra) and held that the Court could compel compliance of statutory rules. But the majority view expressed by A.N. Ray, CJ also indicated that the concept would include a public authority which:

"is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making profit for the public benefit"

The use of the alternative is significant. The Court scrutinised the history of the formation of the three Corporations, the financial support given by the Central Government, the utilization of the finances so provided, the nature of service rendered and noted that despite the fact that each of the Corporations on profits earned by it nevertheless the structure of each of the Corporation showed that the three Corporations represented the 'voice and hands' of the Central Government. The Court came to the conclusion that although the employees of the three Corporations were not servants of the Union or the State, "these statutory bodies are 'authorities' within the meaning of Article 12 of the Constitution".

Mathew J in his concurring judgment went further and propounded a view which presaged the subsequent development in the law. He said: "A state is an abstract entity. It can only act through the instrumentality or agency of natural or juridical persons.

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<sup>30</sup> MANU/SC/0327/1969

<sup>31</sup> AIR1975SC1331

Therefore, there is nothing strange in the notion of the state acting through a corporation and making it an agency or instrumentality of the State....."

For identifying such an agency or instrumentality he propounded four indicia:

- (1) "A finding of the state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action."
- (2) .... "Another factor which might be considered is whether the operation is an important public function."
- (3) "The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a state agency. If a given function is of such public importance and so closely related to a governmental function as to be classified as a government agency, then even the presence or absence of state financial aid might be irrelevant in making a finding of state action.

If the function does not fall within such a description then mere addition of state money would not influence the conclusion."

- (4) "The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public. In other words, the question is, for whose benefit was the corporation carrying on the business?"

**Sabhajit Tewary Vs union of India**<sup>32</sup> was decided by the same Bench on the same day as

Sukhdev Singh (supra). The contentions of the employee was the CSIR is an agency of the Central Government on the basis of the CSIR Rules which, it was argued, showed that the Government controlled the functioning of CSIR in all its aspect. The submission was somewhat cursorily negated by this Court on the ground that all this

...."will not establish anything more than the fact that the Government takes special care that the promotion, guidance and co-operation of scientific and Industrial Research, the institution and financing of specific researches, establishment or development and assistance to special institutions or departments of the existing institutions for scientific study of problems affecting particular industry in a trade, the utilisation of the result of the researches conducted under the auspices of the Council towards the development of industries in the country are carried out in a responsible manner."

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<sup>32</sup> AIR1975SC1329

And held that CSIR is not a authority as not an agent or instrumentality of the state.

This was challenged in **Pradeep Kumar Biswas and Ors. vs. Indian Institute of Chemical Biology and Ors**<sup>33</sup> This case is considered to be final leading case on the issue of determining true scope of the term state till date. In this case though court distinguished from the case of Sabhjit Tewari Vs UOI but recognized the test of agency or instrumentality as laid down in Sukhdeo Vs Bhagatram. This is the law in this regard prevailing today. whereby court laid down the test of instrumentality of the state, and assert the method of function performed by the authority in determining the nature of the body, if the function is of national importance or can be classified as an essential governmental function, even if a private body is treated as “state” within the meaning of article 12 of the constitution.

Again with the adoption of privatization, globalization and liberalization this issue of determining scope of article 12 has once again got importance, as functions performed by the state has undergone tremendous changes so also the manner of performance of state functions have got different mechanisms and methods like PPP, Public Private Partnerships, contracting out the implementation of various schemes, Build operate and Toll (BOT) etc. In these changed circumstances ascertaining true scope has become more difficult and more essential. If rights under part three are most dear to all and considered to be heart and sole of the constitution, these rights may be denied if court fails to decide, an authority is whether or whether not a state under article 12 of the constitution.

In this article an attempt is made to understand the judicial development in this regard, so as to reach at most precise conclusion as to the scope of state under article 12 in the changed socio, economic political conditions in India.

Again there are some recent decisions of the various high courts wherein thereby have ventured to protect the fundamental rights even against private bodies and companies saying that article 226 permits issuance of writ even against private bodies, question arises if fundamental rights are available against the state and if a body do not fall within the meaning of state under article 12 does this view taken by the courts is sustainable?

Yes, looking at the modern development this shift in the approach of the Courts is welcome rather essential, today by way of privatization state is rapidly dissolving its departments by creating corporation, companies, government companies have been privatized or stakes in such companies have sold to private players, private companies are allowed to run businesses and functions which were once considered to be essential governmental function, like mineral exploration etc. under such circumstances following

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<sup>33</sup> (2002)5SCC111



are some recent decisions which must be taken into consideration while deriving meaning of state under article 12 of the constitution.

In **Smt. Asha Vij & Ors. vs. The Chief of Army Staff & Ors**<sup>34</sup>. Court has taken a view contrary to its earlier view, therefore a short discussion on this case is called here,

The appellants in the present case were working as teaching / non-teaching staff of Delhi Area Primary School at Noida and had filed the writ petition aggrieved from the notices issued by the Chief of Army Staff intimating them that they would be relieved from their duties with effect from 31.03.1999 and would be paid three months salary i.e. upto 30.06.1999 in lieu of three months notice period. The respondents took a preliminary objection as to the maintainability of the writ petition on the ground that Army Welfare Educational Society which was managing the school in question was neither a State nor an Authority as envisaged under Article 12 of the Constitution of India. In order to substantiate its argument reliance was placed on attention is invited to Air Vice Marshal J.S. Kumar Vs. Governing Council of Air Force<sup>35</sup> where a Division Bench of this Court had held the writ petition to be not maintainable against the Air Force Sports Complex and held that merely because Government had provided some benefits and facilities like land for the golf course or concession in liquor would not make such complex a 'State' under Article 12 of the Constitution of India and the complex remains a private body only, providing recreation to Armed Forces officers and not discharging any public function or public duty. Again case of **UOI Vs. Chotelal**<sup>36</sup> holding that the regimental funds are not public funds and a person paid out of such regimental funds cannot be said to be holder of civil post within the Ministry of Defence. While dismissing this appeal court made following observation we, "in the entirety of the facts aforesaid particularly considering that several of the appellants are re-employed elsewhere, the whereabouts of others are not known and the remaining also having attained the age of superannuation, are not inclined, in exercise of jurisdiction under Article 226 of the Constitution of India to interfere with the order of the learned Single Judge." Thus though court refuse to interfere but it was not because respondent school is not a state within the meaning of article 12 but on other consideration, this reveals that there is a change in approach of the court.

Another case call for discussion here is:

The case of **VST Industries Ltd**<sup>37</sup>. also needs mention here as the question of maintainability of writ petition was dealt here against VST Industries Ltd. Which was a limited company, and was not a State or an instrumentality of a State as contemplated under Article 12 of the Constitution, hence, in the normal course, no writ could have been

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<sup>34</sup> MANU/DE/4012/2012

<sup>35</sup> 126 (2006) DLT 330 (DB)

<sup>36</sup> JT 1998 (8) SC 497

<sup>37</sup> [(2001) 1 SCC 298 : 2001 SCC (L&S) 227

issued against the said industry. But it was the contention of the writ petitioner in that case that the said industry was obligated under the statute concerned to perform certain public functions; failure to do so would give rise to a complaint under Article 226 against a private body. While considering such argument, Hon'ble Supreme Court held that when an authority has to perform a public function or a public duty, if there is a failure a writ petition under Article 226 can be entertained.

The issue of maintainability of writs are regularly challenged before court of law on the ground that respondents are not state within the meaning of article 12 of the constitution, following are some of the cases wherein court declares that writs can be entertained even against private bodies.

Also in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V.R. Rudani and Ors**<sup>38</sup>. It was argued that the management of the college being a trust registered under the Public Trust Act is not amenable to the writ jurisdiction of the High Court. The contention in other words, is that the trust is a private institution against which no writ of mandamus can be issued. While answering the question "Whether a trust can be compelled to pay the arrears of salary by way of mandamus?" Court responded in following words

If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See- *The Evolving Indian Administrative Law* by M.P. Jain (1983) p. 266). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus can not be refused to the aggrieved party.

Thus it was answered in positive that writ can be issued even against a private body. Another important case in this regard is

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<sup>38</sup> (1989) 2 SCC 691

**Unni Krishnan J.P. and Ors. v. State of Andhra Pradesh and Ors**<sup>39</sup>. this case is well known for recognizing right to education as a fundamental right but this was declare much before this in Francis Coral case so also in Mohini Jain case, what is important here is, in this case court held that Private colleges as performing important state function of imparting education can be amenable to minimum standards of fairness this means are amenable to interference by way of mandamus if failed to observed this minimum standards of fairness in admissions etc. Thus in addition to recognize right to established educational institution as an occupation court has also hinted at subjection of such institution by writ jurisdiction on observation of minimum standards of fairness as education is one of the important state function.

**Ma. Gouthaman vs. The State of Tamilnadu, Rep. by its Secretary to Government**<sup>40</sup> Issue involve was whether a writ petition is maintainable against a Hindu "Mutt" from the definition of "Mutt", we find that Madathipathi has a dual role in managing the Mutt, one as a Religious Head connected with religious administration and another in administering the properties attached to the Mutt. Hence, if any irregularities committed by the religions institution in administering the properties attached to the Mutt, which is a secular act and not connected with religious activities, and if there is any delay on the part of the State to take action, Public Interest Litigation could be entertained for the limited purpose to give a direction to the supervisory authority to initiate action so far as secular act is concerned.

On the other hand there are instances when court refuse to entertain petition on the ground that particular body do not fall with in the purview of state under article 12 of the constitution. Some of the recent decisions are discussed here

**N.K. Aggarwal vs. UOI & Ors**<sup>41</sup>. In this writ petition the issue involve was Whether (KRIBCO) Krishak Bharati Cooperative Ltd. Is discharging any public function and, thus, amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India?

Court reproduced and stated the main objective of KRIBHCO. And held Merely because KRIBHCO is involved in philanthropic activities as well that would not change the main character of KRIBHCO. Those activities are in the nature of voluntary social responsibility, which term for private corporation is known as "Corporate Social Responsibility". Such types of philanthropic and charitable activities are organized by private entrepreneurs as well. In order to determine the character of KRIBHCO and to ascertain whether it is discharging public function or public duty, it is the main activity

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<sup>39</sup> (1993) 1 SCC 645

<sup>40</sup> MANU/TN/1546/2012

<sup>41</sup> MANU/DE/4321/2012



carried on by the KRIBHCO which has been the focal point. Examined from that angle, we do not find that KRIBHCO is covered by the test laid down.

We are, therefore, of the opinion that KRIBHCO is not discharging any public functions or any public duties and, hence, is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India.

This case more important from our point of discussion, as corporate social responsibility in the era of privatization and globalization plays pivotal role wherein rights of citizen are involved and by virtue of this judgment companies have are now immune from being answerable to the court in writ jurisdiction on this issue.

Another case which call for our attention is

**Shri L.M. Khosla vs. Thai Airways International Public Company Limited<sup>42</sup>**

Issue involve was can an employee invoke writ jurisdiction against termination of services by respondent Company? In response to this court issued following directions:

- (i) A contract of private employment is not similar to the public employment and in such private employment there is no scope of applicability of the principles of administrative law/public law.
- (ii) A contract of employment which provides termination of services by one month's notice, then, at best the employee will only be entitled to one month's pay in terms of the employment contract. An employee is not entitled to any relief of continuation in services or pay with consequential benefits for alleged remaining period of services till the date of his superannuation.
- (iii) As per the provision of Section 14(1)(c) of the Specific Relief Act, 1963, a contract which is determinable in nature cannot be specifically enforced. Since the service contract in the present case is determinable by one month's notice there does not arise the question of giving of any relief's which tantamount to enforcement of a determinable contract. As per Section 14(1)(b), a contract of personal service cannot be enforced when the employer is not the Government or "State" as per Article 12 of the Constitution of India.

In another case **Zee Telefilms Ltd. and Anr. vs. Union of India (UOI) and Ors<sup>43</sup>**. Hon'ble Supreme Court held that BCCI (Board of Cricket Control of India) is not a State under article 12.

The term State under article 12 has undergo drastic changes in last many decades, the test of instrumentality and test of public duty performed by a private body have crossed miles to reach its present status but biggest blow all the efforts of judiciary in

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<sup>42</sup> MANU/DE/3868/2012

<sup>43</sup> AIR2005SC2677



making it more real and dynamic come to an halt when in **Balco Employees Union Vs. UOI**<sup>44</sup> court held that disinvestment by the government in public company to the highest bidder was held valid. This was nothing but endorsing the view taken in International airport authority case, “no further development in the direction of including various bodies within the meaning of term “other authorities” is required as Government have started distancing itself form commercial activities and have decided to concentrate on governance”. This case needs serious review by academicians and jurists so that growth in realizing fundamental rights shall not come to a halt in the era of privatization and globalization.

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<sup>44</sup> AIR2002SC350

# Conceptual Analysis of Natural Justice In India

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## Introduction

In India there is no statute laying down the minimum procedure which **administrative agencies** must follow while exercising decision-making powers. This minimum fair procedure refers to the principles of natural justice. Natural justice is a concept of **common law** and represents higher procedural principles developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual. Natural justice implies **fairness, equity and equality**. In a welfare state like India<sup>45</sup>, the role and jurisdiction of administrative agencies is increasing at a rapid pace. The concept of Rule of Law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging these functions in a fair and just manner. By rule of law it is meant to maintain a balance between administrative expediency and efficiency on the one hand and the prevention of administrative arbitrariness and capriciousness on the other<sup>46</sup>.

## Origin of the Principles of Natural Justice

It is said that principles of natural justice is of very ancient origin and was known to Greek and Romans. The Principles were accepted as early as in the days of Adam and of Kautilya's Arthashastra. According to the Bible, "when Adam & Eve ate the fruit of knowledge, which was forbidden by God, the latter did not pass sentence on Adam before he was called upon to defend himself". Something was repeated in case of Eve. Later on, the principle of natural justice was adopted by English Jurist to be so fundamental as to over-ride all laws. The principles of natural justice were associated with a few 'accepted rules' which have been built up and pronounced over a long period of time.

The word 'Natural Justice' manifests justice according to one's own conscience. It is derived from the Roman Concept '*jus - naturale*' and '*Lex naturale*' which reflects the principle of natural law, natural justice, eternal law, natural equity or good conscience. Lord Evershed, in *Vionet v Barrett*<sup>47</sup> remarked, "Natural Justice is the natural sense of what is right and wrong."

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<sup>45</sup> Refer the Preamble of the Indian Constitution.

<sup>46</sup> Accessed from [http://shodhganga.inflibnet.ac.in/bitstream/10603/105638/10/10\\_chapter%205.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/105638/10/10_chapter%205.pdf) last visited 20/07/2017

<sup>47</sup> 1985, 55LLJ QB, 39

Principles of natural justice are great humanizing principles intended to invest law with fairness and to secure justice and over the years they have grown into widely pervasive rules affecting large areas of administrative action<sup>48</sup>. To ensure equal treatment and to exclude arbitrary power the requirement of natural justice was read into the statutes and applied to particular fact situations.

### **Components of Principles of Natural Justice**

The principle of natural justice encompasses following two rules: -

1. **Nemo judex in causa sua** - No one should be made a judge in his own cause or the rule against bias.
2. **Audi alteram partem** - Hear the other party or the rule of fair hearing or the rule that no one should be condemned unheard.
3. **Speaking orders (Reasoned decisions):** The party, against whom an order is passed, in fair play, must know the reasons of passing the order.

### **Nemo Judex in Causa Sua**

Bias means an operative prejudice, whether conscious or unconscious in relation to a party or issue. The rule against bias flows from following two principles: -

- No one should be a judge in his own cause
- Justice should not only be done but manifestly and undoubtedly be seen to be done.

Thus a judge should not only be impartial but should be in a position to apply his mind objectively to the dispute before him. The rule against bias thus has two main aspects: -

1. The administrator exercising adjudicatory powers must not have any personal or proprietary interest in the outcome of the proceedings.
2. There must be real likelihood of bias. Real likelihood of bias is a subjective term, which means either actual bias or a reasonable suspicion of bias.

It is difficult to prove the state of mind of a person. Therefore, what the courts see is whether there is reasonable ground for believing that the deciding factor was likely to have been biased.

The deciding authority must be impartial and without bias. It implies that no man can act as a judge for a cause in which he himself has some interest, may be pecuniary or otherwise. Pecuniary interest affords the strongest proof against impartiality. The emphasis is on the objectivity in dealing with and deciding a matter.

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<sup>48</sup> Maneka V. Union of India, A.I.R. (1978) S.C.597. 625

This may be in the shape of some personal relationship with one of the parties or ill will against any of them. In the case of *A.K.Kraipak v. Union of India*<sup>49</sup>, a precaution was taken by a member of the selection Board to withdraw himself from the selection proceedings at the time his name was considered. This precaution taken could not cure the defect of being a judge in his own cause since he had participated in the deliberations when the names of his rival candidates were being considered for selection on merit.

However the applicability of the principles of natural justice depends upon the facts and circumstances of each case. The Supreme Court has reiterated that the principles of natural justice are neither rigid nor they can be put in a straight jacket but are flexible. It is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and background of statutory provisions, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. The reason for the flexibility of natural justice is that the concept is applied to a wide spectrum of the decision-making bodies.

#### **Audi Alteram Partem or Rule of Fair Hearing**

The principle of audi alteram partem is the basic concept of principle of natural justice. The expression audi alteram partem implies that a person must be given opportunity to defend himself. This principle is sine qua non of every civilized society. This rule covers various stages through which administrative adjudication passes starting from notice to final determination. Right to fair hearing thus includes:-

- Right to notice
- Right to present case and evidence
- Right to rebut adverse evidence (i) Right to cross examination (ii) Right to legal representation
- Disclosure of evidence to party
- Report of enquiry to be shown to the other party

A person cannot incur the loss of property or liberty for an offence by a judicial proceeding until he has a fair opportunity of answering the case against him. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision.

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<sup>49</sup> AIR 1970 SC 150



In *A.K. Kraipak V Union of India*<sup>50</sup>, the Hon'ble Supreme Court observed that the rules of natural justice operate only in areas not covered by any law validly made. These principles thus supplement the law of the land. In the case of *Smt. Maneka Gandhi v. Union of India and another*<sup>51</sup>, it has been observed that even where there is no specific provision for showing cause, yet in a proposed action which affects the rights of an individual it is the duty of the authority to give reasonable opportunity to be heard. This duty is said to be implied by nature of function to be performed by the authority having power to take punitive or damaging action.

The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not. In one of the recent decisions of the Hon'ble Supreme Court reported in *C.B. Gautam v. Union of India and others*<sup>52</sup>, the Hon'ble Supreme Court invoked the same principle and held that even though it was not statutorily required, yet the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, namely, the compulsory purchase of the property.

The opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on this principle was applied to other quasi-judicial and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.

### **Speaking Orders (Reasoned Decisions)**

The third principle which has developed in course of time is that the order which is passed affecting the rights of an individual must be a speaking order. This is necessary with a view to exclude the possibility of arbitrariness in the action. A bald order requiring no reason to support it may be passed in an arbitrary and irresponsible manner. It is the reason for passing an order, which checks the arbitrariness<sup>53</sup>. It is a step in furtherance of achieving the end where society is governed by Rule of law.

The other aspect of the matter is that the party, against whom an order is passed, in fair play, must know the reasons of passing the order. It has a right to know the reasons. In *Maneka Gandhi's case*, it has been held that withholding of reasons for impounding the passport of the petitioner was violative of the principles of natural justice. The orders against which appeals are provided must be speaking orders. Otherwise, the aggrieved party is not in a position to demonstrate before the appellate authority, as to in what

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<sup>50</sup> AIR 1970 SC 150

<sup>51</sup> AIR 1978 SC 597

<sup>52</sup> (1993) 1 SCC 78

<sup>53</sup> Justice Brijesh Kumar, "PRINCIPLES OF NATURAL JUSTICE", Institutes Journal July-September 1995 accessed from <http://www.ijtr.nic.in/articles/art36.pdf> last visited on 20/7/2017

manner, the order passed by the initial authorities is bad or suffers from illegality. To a very great extent, in such matters bald orders render the remedy of appeal nugatory. However, it is true that administrative authorities or tribunals are not supposed to pass detailed orders as passed by the courts of law. They may not be very detailed and lengthy orders but they must at least show that the mind was applied and for the reasons, howsoever briefly they may be stated, the order by which a party aggrieved is passed. There cannot be any prescribed form in which the order may be passed but the minimum requirement as indicated above has to be complied with. Our Supreme Court has many times taken the view that non-speaking order amounts to depriving a party of a right 'of appeal. It has also been held in some of the decisions that the appellate authority, while reversing the order must assign reasons for reversal of the findings. As a matter of fact, the 7 principles of natural justice apply where there may not be any specific provisions in the statute. These principles are inherent and natural in application requiring no statutory provision for the same but the application of these principles can be excluded by express provision under the law. For example, we have the provisions of Article 311<sup>54</sup> of the Constitution of India where it is provided that before an officer is dismissed, removed or reduced in rank, he must be afforded a reasonable opportunity of being heard in respect of the charges levelled against him but at the same time it also provides that it may not be necessary to afford that opportunity where for reasons recorded in writing it is found that it is reasonably not practicable to hold an enquiry or where the President or the Governor has specified that in the interest of security of the State it is not expedient to hold such enquiry. The relevant case on the question is reported as *Tulsiram Patel case*<sup>55</sup>. Thus, there may be circumstance by reason of which statutorily, application of principles of natural justice may be excluded.

### **Salient Features of Natural Justice**

The salient features of Natural Justice are summed up as follows:

1. Allegations should be specific and precise and ought to be produced in writing.
2. Reasonable time should be given to the delinquent employee to reply to the charge-sheet and prepare of his defence, if a formal enquiry is to be conducted.
3. Enquiry officer appointed for conducting domestic enquiry should be totally unbiased and not connected with the incident. He should not be allowed to appear as a prosecution witness himself.
4. All prosecution witnesses should be examined individually in the presence of the delinquent employee and their statements recorded. Pre-recorded statements should not be brought on the record of the enquiry proceedings.

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<sup>54</sup> Refer Article 311 of the Constitution of India for details

<sup>55</sup> 1985(3) SCC 398

5. When a statement of a particular witness is being recorded the other prosecution witnesses should not be present to hear the same.
6. The delinquent employee or his Defence Representative should be given ample opportunity to cross examine the witnesses and the replies of the witnesses should be recorded by the enquiry officer.
7. The delinquent employee should not be examined as a witness unless he volunteers himself, as none could be compelled to give evidence against himself.
8. Delinquent employee should be allowed to take assistance from a co-employee or a union official of his choice, although, legal practitioner may not be permitted for this purpose.
9. The delinquent employee should be given reasonable opportunity to produce and examine defence witnesses.
10. Enquiry officer should base his findings only on the evidence tendered in the enquiry proceedings. He should not rely upon any record or document which is not brought to the notice of the delinquent employee.
11. Ex-parte decisions should not be taken as far as possible unless the enquiry officer is fully convinced that the delinquent employee does not want to appear before him or wants to drag on the proceedings, unnecessarily.

## **Conclusion**

The natural justice forms the cornerstone of every civilized legal system. It is not found in the codified statutes. But it is inherent in the nature. Being uncoded, the natural justice does not have a uniform definition. However, it lays down the minimum standard that an administrative agency has to follow in its procedure. Even God never denied the natural justice to the human beings. So the human laws also need to be in conformity with the rules of natural justice. Every Administrative order which involves civil consequences must follow the rules of Natural Justice. The rule of fair hearing must be followed to prevent.



# What is Administrative Law?

## It's Sources & Scope

Ms. Sayalee S. Surjuse

### Meaning of Administrative Law -

Administrative law, to put it simply, is that body of law which governs the Administration. Administrative law is not a new concept; in fact it is as old as Administration itself, because both cannot exist separately. However, with the advent of time, the definition and meaning of administrative law has undergone a great deal of transition.

Administrative Law is said to be one of the most outstanding legal development of the 20<sup>th</sup> century, where it has grown by leaps & bounds. Administrative law has grown and developed tremendously, in quantity, quality and relative significance. In the twentieth century, it has become more articulate and definite as a system in democratic Countries; it has assumed more recognisable form in the present century so much so that it has come to be identified as a branch of public law by itself, distinct and separate from Constitutional Law.<sup>56</sup> The growth of Administrative Law is directly proportional to the growth of Powers & Functions of the Administration. However, it was not so in the 19<sup>th</sup> century, where the concept of 'State' as a political Institution was completely different from what it is today. The political gospel that ruled those times was - "Laissez Faire" which manifested itself in the theories of Individualism, Individual enterprise and self-help. The concept of 'State' was that of Police State and its role was considered by and large negative. This resulted in human misery. It came to be realised that State should take active efforts in ameliorating the conditions of poor. This gave rise to the political dogma of 'Collectivism' which favoured state intervention in and social control and regulation of State enterprise. Gradually, this concept of 'collectivism' paved the way for 'social welfare state'. Today, the Government is construed as protector, provider, entrepreneur, economic controller and arbiter. This has resulted in the rise of Governmental functions by manifold, yet the largest expansion of powers in depth and range can be seen in the Executive cum Administrative organ of the Government. Such is the expanse of administration today that at times it is explained in a negative manner by saying that what does not fall within the purview of Legislature or the Judiciary is Administrative.

Therefore, it is the task of administrative law to ensure that the Governmental functions are exercised according to law, on proper legal principles, and according to rules of reason and justice; that adequate control mechanism, judicial and other, exists to check administrative abuses without unduly hampering the administration in the discharge of

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<sup>56</sup> M.P. Jain & S.N. Jain, Principles of Administrative Law (5<sup>th</sup> Edition, Reprint 2009)



its functions efficiently.<sup>57</sup> The powerful engines of authority must be prevented from running amok.<sup>58</sup> Therefore, Administrative Law seeks to balance the Governmental powers and Personal rights.

### **Sources of Administrative Law**

Constitution is the foremost source of Administrative Law. Acts and Statutes passed by legislature are important sources of administrative law because they elaborately detail the powers, functions and modes of control of several administrative bodies.<sup>59</sup> Ordinances issued by the President or by the Governor give additional powers to administrators in order to meet urgent needs. Administrative directions, notifications and circulars provide additional powers by a higher authority to a lower authority. In some cases, they control the powers. The ultimate source is that of the Judiciary whereby the judiciary is credited to have evolved several principles related to administrative law.

### **Scope -**

It is difficult to evolve a satisfactory definition of administrative law so as to articulately demarcate its nature and scope. According to Sir Ivor Jennings, Administrative Law is that law relating to the Administration. It determines the organization, Powers and duties of administrative authorities.<sup>60</sup> Dicey had defined Administrative law as denoting that portion of a nations legal system which determines the legal status and liabilities of all the state officials, which defines the rights and liabilities of private individuals in their dealings with public officials, and which specifies the procedure by which those rights and liabilities are enforced. <sup>61</sup> These definitions are restrictive in the sense that they leave out the procedure to be followed by the administrative authorities.

Therefore a satisfactory definition of administrative Law appears to be that given by M. P. Jain & S. N. Jain in the Principles of Administrative Law which says, "administrative law deals with the structure, powers and functions of the organs of administration; the limits of their power; the methods & procedure followed by them in exercising their powers and functions; the methods by which their powers are controlled including the legal remedies available to a person against them when his rights are infringed by their operation."

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<sup>57</sup> Ibid

<sup>58</sup> W.R.Wade, Administrative Law (ELBS Edition 1984, Reprint 1985)

<sup>59</sup> www.lawnotes.in, Sources of Administrative Law, retrieved on 23.07.2017

<sup>60</sup> M.P. Jain & S.N. Jain, Principles of Administrative Law (5<sup>th</sup> Edition, Reprint 2009)

<sup>61</sup> ibid

This concept of administrative law is founded on the following principles <sup>62</sup>-

- a. Power is conferred on the administration by law,
- b. No power is absolute or uncontrolled however broad the nature of the same might be.
- c. There should be reasonable restrictions on the exercise of such powers depending on the situation.

In a nutshell, administrative power is all about the organization of power and individual liberty, the procedure how individuals can exercise their powers and the remedies for the individuals if their powers are abused by the administrative authorities.<sup>63</sup>

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<sup>62</sup> <http://publicadministrationtheone.blogspot.com/2012/08/administrative-law-meaning-scope-and.html>,  
retrieved on 23.07.2017

<sup>63</sup> <http://www.legalservicesindia.com>, Administrative Law, retrieved on 23.07.2017

# **Industrial/Labour Laws and Labour Management Relations - An Overview**

**Dr. Deepak Taywade**

## **Introduction**

Labour management relations are a dynamic socio-economic process. Both parties, namely, employers and employees constantly strive to maximize their preferred values by applying resources to institutions, in their efforts, they are influenced by and are influencing others. In order to meet these situation labour laws seeks to evolve a rational synthesis between conflicting claims of the employers and employees. It examines the merits of the rival contentions and seeks to resolve the conflict by evolving solutions, which without causing any injustice to the employers meet the employees' legitimate claims. The position has changed since 1919, when two major developments took place, namely, (i) the Government of India Act has passed and (ii) the International Labour Organization was set up, of which India is a founder member. A number of legislations can be traced directly or indirectly to the Conventions and Recommendations adopted by the International Labour Conference. Labour laws seek to regulate the relations between employer and employees. The access of this law is wider than any other law as it touches the lives of billions of workers besides employer and consumers.

## **Labour and Management Relations**

Land, capital and labour emerged as factors of production and economic power belonged only to those who could control use of these key factors. Capital and labour were wedded to land and economic power belonged to those who control its use. With the industrial Revolution in certain part of the world, capital became the vital factor of production. Industrialization brought about far reaching changes in the working methods, manpower management relations on the shop-floor. This led to emergence of two distinct classes on the industrial scene, namely, the capitalist and the working class. Initially, the capitalist were more powerful as they provided capital. Because the labour were unorganized and untrained and lack mobility hence did not receive fair deal from the employers. With the technological advancement, the use of out workers declined and factory system gradually started setting but this only worsened the plight of workers. Industrial jurisprudence in our country developed gradually. Its birth may be traced back to the industrial revolution. Until independence, it was existed in the rudimentary form in our country. Legislations regarding industrial relations though were in the primal state, it did have benign intentions to ameliorate the conditions of labours.

After independence, the Indian government followed a socialist policy with stress on mixed economic policy, i.e. both private & state owned enterprises were encouraged

but were regulated with licenses and controls. In order to bring greater equity and harmony in industrial relations, the government played an active role by enacting various labour protective labour laws in the interest of the weaker labour class, which was open for exploitation by the employers. It also instituted tripartite labour conferences and ratifying Convention of the International Labour Organization. This encouraged the dependency of the labour on the government, which was very willing to take on role of an arbiter in labour - management disputes and gain political advantage.<sup>64</sup> The purpose of these interventions of the government in the labour matter was to extend benefits of industrial prosperity to workers being he is important partner in the production to seek his active co-operation. This was an attempt to ensure social justice, social security and create cordial atmosphere, which have not adequately protected by earlier legislations. In addition, to fortify the Constitutional goals enshrined in the preamble, fundamental rights and Directive principles of State policy with regards to Labours. In this process Government/State evolves, influences, mould and shapes labour relations with instruments of laws, rules, agreement, awards of the courts, and emphasis on usages, customs, traditions, other considerations, implementations of its policies and interference through executive and judicial machinery. Thus, industrial relations affect the economic social and political life of the whole community and industrial life in particular. Here all methods are available, welfare model dealing with labour management relations ranging from conciliation, arbitration, worker participation in management, collective bargaining to the ethical codes and the bipartite and tripartite forums for consultation. The government has shifted its emphasis from time to time, and pragmatism has alternated with ideology of mixed economy and Gandhian Philosophy of trusteeship. The growth of labour laws and industrial jurisprudence in India subsequent to 1950 bears close resemblance to the growth of Constitutional law. The Constitution through Directive Principles of State Policy and Fundamental Rights provided safeguards to protect the interest of weaker and disadvantaged class of labour. Quite apart from this, the Supreme Court and the High Courts in the process of judicial interpretation has played a creative role in protecting the interest of the bonded labour, child labour, contract labour, women workers, labour getting less than minimum wage and labour becoming jobless on closure of the establishments by invoking the new concept of public interest litigation. Indeed the court assumed the role of protector of weaker, poor and struggling masses of the country. Further have elaborated the notion of social justice and sought to ensure just humane conditions of work.<sup>65</sup>

That the theory of 'hire and fire' as well as the theory of 'supply and demand', which allowed free scope under the doctrine of 'laissez faire' no longer hold the field. While constructing a wage structure the industrial adjudication has to take into account to some extent the considerations of right and wrong, propriety and impropriety, fairness

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<sup>64</sup> Memoria C B Dynamic of Industrial Relations, Himalaya Publishing House, Nagpur, 5<sup>th</sup> Edn 2009 p 177

<sup>65</sup> *Supra* 1, at p 3



and unfairness. As the social conscience of general community becomes more alive and active, as the 'welfare policy' of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilized and progressive society also comes to be recognized.<sup>66</sup>

Labour legislation has intimate relations with human factor in industry. In fact, labour legislation had originally introduced to curb the excesses of the early factory system and offer relief to the factory workers groaning under inhuman conditions of service. Labour laws that were protective in character to start with, gradually became ameliorative with the inclusion of welfare measures. In various countries, the basic or protective legislation had enacted through the efforts of more enlightened and liberal sections of society who could not stand the appalling hardships of the workers. In other words, social conscience revolted against the degradation of the workers into sub-human existence. The Governments were pressurized to meet to enact progressive welfare legislation to protect and to promote the interest of working class. Gradually, the concept of welfare has become an integral part of the philosophy of industrial jurisprudence.<sup>67</sup>

The present emphasis of law on achieving the social welfare of the people along with the fact of great economic and technological advancements have placed great burdens on law and the courts of law. Because, of the necessity to enact laws for workers being weaker partner in industrial relations, on complex and diverse subjects it has become inevitable for the legislature to leave gaps in the statutes and deliberately give discretion to the courts to evolve doctrines, principles, standards, and norms themselves in the process of application of the law from case to case. Over the year the relationships between employers and employees has changed from masters and servants to one of co-partners. Earlier it was a one-sided relationship with employer wielding absolute power to 'hire and fire' employees. Gradually government and unions intervened to prevent ones-sided exploitation by the employer and to wield countervailing power over them. Today the relationship between employer and employee is contractual, reciprocal, and mutual. The employee has certain rights and obligations and so does the employer. The obligations of the employer are relatively precise and specific whereas those of the employees are imprecise and elastic. The substantive terms of the contract of employment have prescribed wages, working hours, holidays, etc. in definite terms, but the obligations of the employee to provide an honest, efficient, and faithful service and to obey orders are not easily measurable and, therefore, application of sanctions against workers for non-fulfillment of obligations often becomes difficult. In the employment

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<sup>66</sup> Standard Vacuum Refining Co of India Ltd v Its Workmen (1961) I-LLJ 227, 282 (SC)

<sup>67</sup> IGNOU, study material on Labour Laws Ms-28, Industrial jurisprudence- at p. 29

relationship, employee's expectations become employer's obligations and employers expectations become the employees' responsibilities. Therefore, there is bound to be certain area of conflict where either party is not able to live up to the other's expectations. Therefore, to meet the aspiration of both the parties the State plays a very vital role in harmonizing the industrial relation, the role of the State in industrial relations is determined by its political, ideological, and socio-economic orientation. This has a direct impact on the model it adopts for economic development. The role of the state varies depending on the status of development/industrialization and the level (international, national, industry) of interactions.<sup>68</sup>

## **2. Industry and Labour-Constitutional Perspective**

The preamble of the Constitution, inter alia, seeks to provide Justice, social economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity, Fraternity, assuring the dignity of the individual and unity, integrity of nation. These principles enshrined in preamble of our Constitution provide the bedrock for framing all labour and social legislations and their progressive and creative interpretation in favour of working classes. These principles run through our labour legislations like golden threads and provide them strength and stamina to meet the aspirations of working classes; whether it is protective legislations, social security legislations, welfare legislations or even industrial relations legislations, they all heavily lean towards working classes due to the philosophy provided in the preamble. The Constitution is the Source of all legislations. Therefore, it is necessary to have a close look at the Indian Constitution.

### **Constitutional Perspective**

The policy matters related to labour legislations have covered in list III (Concurrent list) of the Seventh Schedule to the Constitution of India. The important entries relevant to labour laws in this list are: Entry No. 22- Trade unions; industrial and Labour disputes, Entry No. 23- social security and social insurance, Entry No. 24 – Welfare of labour including conditions of work, provident funds, employers liability, workmen compensation, invalidity and old age pensions and maternity benefits, Entry No. 36- Factories, the only exception is that industrial disputes concerning union employees are contained in List I, (i.e. Union List) and thus is a union subject. The Central Government as well as the State Government can pass laws in respect of labour matters. However, most of the labour laws have been passed by the Parliament and are uniform all over India. Some of the Acts have been modified by States to suit their requirements.<sup>69</sup> It is worth noting the observation of the National Commission on Labour it stated that “the current dichotomy between laying down policy and its administration has not been without difficulties. Equally serious has been the States’ desires to have new legislation. On

<sup>68</sup> Venkata Ratnam C S, *Industrial Relations*, Oxford University Press, New Delhi, 2009 at p. 263-64

<sup>69</sup> Padhi P K *Labour & Industrial Laws*, PHI Learning Pvt. Ltd, New Delhi, 2007, at p. 1, 2

occasions, there have been debates over the responsibilities of administering specific pieces of legislation as between Centre and States. For, a long time since independence, question of this type were sorted out in the Labour Ministers' Conference or in the tripartite. There have been instances when, on the advice of Central Government, a State had stayed its proposed action in the field of labour Legislations".<sup>70</sup> Article 245(1) empowers the Parliament to make laws for the whole or any part of the territory of India, and the legislature of a state to make laws for the whole or any part of the territory of the State. The parliament has an exclusive power to make laws with respect to any matters contain in list 1 in the seventh schedule of the Constitution, while the parliament and the legislature of the any State have the power to make laws with respect to the matters enumerated in list three of the Seventh Schedule of the Constitution. The fundamental rights, which run from Article 12 to 35, are contained in Part III of the Constitution, limit and control legislative competency. Any law including labour laws contravening any fundamental right is void. Any citizen affected by such a law has a right of access to the Courts under Article 32 and 226; where under it is the duty of the Supreme Courts or a high court, respectively, to enforce fundamental rights by issuing writs or suitable orders or directions. The following Article of the Constitution is having a direct relationship with labour related matter and industrial laws are;

**Article 14** : enjoins that the State shall not deny to any person equality before the law or the equal protection of the laws.

**Article 19(1)** : All citizens shall have the right- (a) to freedom of speech and expression, (b) to assemble peaceably and without arms, (c) to form association and unions..., (d) to practice any profession, or to carry on any occupation, trade or business.

**Article 21** : No person shall be deprived of his life and personal liberty except according to procedure established by law.

**Article 23** : (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service; the State shall not make any discrimination on grounds only of religion, race, caste, or class or any of them.

**Article 24**: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The above narrated rights mainly freedom of speech and expression, freedom of assembly, freedom of association, , the prohibition of forced labour, employment of children in factories and protection of life and personal liberty, protect some of the crucial interest of the workers, strengthening their hands in forming trade unions, staging

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<sup>70</sup> supra 6



demonstration and carrying on collective bargaining. On the other hand the freedom of trade and occupation may presumably be help principally to the employers in carrying and organize his business. The right to equality, however, protects both capital and labour, though in different manner.<sup>71</sup>

The Part IV of the Constitution of India enshrined the goals and values to be secured by the State, as a welfare State and enumerated directive principles run from article 36 to 51.

According to Article 37, though these principles are not justifiable, they are nevertheless fundamental in the governance of the country. These principles give certain direction to the legislature and the executives, to show in what manner they are to exercise the legislative and executive power vested in them. Hence, with a view to ensure that both the legislature and the executive do 'not merely pay lip-service to these principles, by that they should made the basis of all legislative and executive action...in the matter of governance of the country, the state has been enjoined to apply these principles while making laws. The National Commission on Labour said that Directive principles can be said to give a broad picture of the progressive philosophy, on which the Indian Republic expects to function in social, economic, political and international matters. The directive principles read as a whole, have in them, the running thread that also binds various elements that has often cited as the objectives of a social society.<sup>72</sup>

The preamble to Constitution emphasizes that India should be a socialist secular democratic republic based on social, economic and political justice. The directive principles therefore spell out in details the goal of economic democracy the socio-economic content of political freedom, the concept of welfare state. These principles have been characterized as 'basic to our social order' as they seek to build a social justice society. These principles have played a crucial role in legislative and administrative policy making in the country. They have inspired the idea of socialist pattern of society; the process of planning has been oriented towards achieving the goals contained in them, an especially public industrial and economic sector has extended and a pervasive system of government regulation of private economic enterprise has been created. Constant efforts are being made to improve the position of backward and economically weaker section of society in general and industrial workers in particular.<sup>73</sup>

Some of the important directive principles having direct impact on labour legislation include- i. social order based on justice, ii. To secure social, economic and political justice for all, to minimize the inequalities in income, to eliminate inequalities in status, facilities and opportunities to all section of society, iii. An adequate means to

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<sup>71</sup> Supra 1 at p.34

<sup>72</sup> Ibid at p. 35.

<sup>73</sup> Jain M. P. Indian Constitutional Law 4<sup>th</sup> edn. (1998), Wadhwa and Company Nagpur at p. 737,38



livelihood, iv. Prevention of concentration of wealth and means of production, v. equal pay for equal work for both women and men, vi. Protecting and preservation of the workers health; vii To make provision for securing right to work to education and the right to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved wants, viii. Just and human conditions of work and for maternity benefits; ix living wage to the workers; x Participation of workers in management and decent standard of life to the workers. Thus, Article 38, 39, 41, 42, 43 and 43-A provides the basis of a large body of labour laws that obtain in India. Mostly an industrial law has been directed towards the implementation of these directives. Referring to Article 42 and 43, the Apex Court has emphasized that the constitution express a deep concern for the welfare of the workers. The court may not enforce directive principles as such, but they must interpret laws as to further and not hinder the goal set out in the directive principles.<sup>74</sup> Some of the basic principles evolved by the Supreme Court and various High Courts in India over a period of time while interpreting the fundamental rights and directive principles, namely- Equity and Fairness, Social Justice in Interpretation of welfare Statutes, Welfare. It is fruitful to discuss some of the landmark cases to understand the application of these principles by the Courts in India.

**Equity and Fairness:** Equity refers to equal treatment to one and all under comparable circumstances. Equity and fairness are used synonymously in industrial relations. The concept of fairness in an objective when one applies a technical yardstick like market forces or job evaluation. For instance, the management may consider it fair to freeze wages in times of recession, while worker may feel that it is unfair to do so in view of the rise in the cost of living. The concept of fairness is utilitarian when one goes by what the majority accepts. The notion of fairness becomes relative when one considers whether or not one is getting a fair share of pay in relation to what others with similar qualification and experience are receiving.<sup>75</sup>

**Social Justice in Interpretation of welfare Statutes:** Social justice is an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. It operates at the levels of both distributive justice and corrective justice. The clearest manifestation of distributive justice is found in our concept of wages, dearness allowances, bonus other benefits to the workers. Social justice is concerned with the distribution of benefits and burdens throughout a society. In fact, the very object of industrial jurisprudence is to meet the growing need for social justice to the working class.<sup>76</sup> The pattern of social justice differs with the pattern of society. The concept of social justice may change with changes in society and social norms. Social Justice postulates the hopes and aspirations of a particular society and depends upon cultural, political and social development at a given time. It is justice according to the conscience

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<sup>74</sup> U. P. S. C. Board v Harishankar, AIR 1979 SC 65

<sup>75</sup> Supra 6, at p. 33.

<sup>76</sup> Sharma A M Industrial Jurisprudence and Labour Legislation, Himalaya Pub. House, 6<sup>th</sup> Edn 2009 at p 48.

of society. This changing pattern is indicative of the fact that the concept of social justice is a living and vibrant thing, and is a means to the establishment of a new social order. The concept of social justice derived its source from I.L.O. Conventions, Universal Declaration of Human Rights and above all, from the Constitution of India. It is find pride of place in Directive Principles of State Policy., in Part IV of the Constitution of India. The Constitution Provisions contemplated not only economic justice or equitable distribution of wealth, but also social justice with a view to providing adequate means of livelihood, work, equal opportunity, and opportunities for proper growth and development of health and welfare, especially of children and youth. These welfare and protective provisions enshrined in the Constitution have gone a long way in emancipating labour from bondage and repression, and have emboldened them to form trade unions. In short, the fundamental law of our country enshrines the concept of social justice as one of the objective of State Policy. Social justice as the mother of industrial jurisprudence is a philosophy superimposed on the legal systems and has emerged in its present shape when the old principles of absolute freedom of contract and the doctrine of Laissez faire or hire and fire yielded place to the new principles of social welfare and common good.<sup>77</sup> In addition, in the process of dispensing social justice, the Supreme Court has laid down principles and guidelines based on which wages, bonus and allowances do have to be fairly divided among persons contributing to production of wealth. The compass of social justice has been extended far beyond its original frontiers by several decisions of the Supreme Court. The Apex Court said: "All legislation in a welfare State is enacted with the object of promoting general welfare; but certain types of enactment are more responsive to some social demands and also have a more immediate and visible impact on social vices, by operating more directly to achieve social reforms".<sup>78</sup> The concept of social justice is not narrow, or one-sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic equality and its aim is to assist the removal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach. It, therefore, endeavors to resolve the competing claims of employers and employees by finding a solution, which is just and fair to both parties to establishing harmony between capital and labour, and good relationship. Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes.<sup>79</sup> In *Air India Statutory Corporation v United Labour Union and Ors*<sup>80</sup>, while underlining the significance of doctrine of 'social justice', the Apex Court observed that "Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits,

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<sup>77</sup> *Supra* 5 at p. 23

<sup>78</sup> *Works Manager Central Rly Workshop v Vishwanath* (1970) 1 LLJ 351, 356-358(SC).

<sup>79</sup> *JK Cotton & Spinning Mills Co Ltd v Labour Appclate Tribunal* (1963) II LLJ 436, 444 (SC)

<sup>80</sup> *Air India Statutory Corporation v United Labour Union and Ors* (1997) 1 LLJ 1113, 1135(SC)



tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc from handicaps, penury to ward off distress and to make their life livable, for greater good of the society. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and human conditions of work and leisure to workman are part of his meaningful right to life and to achieve self expression of his personality and to enjoy the life with dignity.

### **Welfare**

The labour legislations being a welfare statutes have aimed at ameliorating the economic status and improving the working conditions of the working people, to attain these ends in such statutes, therefore, there are not only beneficial provisions to benefit the workers, but there are also generally enacted penal provisions, to assure the compliance of the beneficial effects of these statutes, such statutes, generally, have to be liberally construed, so as to make the power conferred by them real and not illusory, with a view to achieve the purpose for which the power was conferred.<sup>81</sup> A construction which would defeat the rights of the have-nots and the underdogs and which would lead to injustice should always be avoided. Thus, it is clear that while interpreting the welfare statute the court would follow the liberal construction rule, which would ameliorate the conditions of the workers being a weaker section in industrial sectors.

Thus, Labour legislation has intimate relations with human factor in industry. In fact, labour legislation has been originally introduced to curb the excesses of the early factory system and offer relief to the factory workers groaning under inhuman conditions of service. Labour laws that were protective in character to start with, gradually became ameliorative with the inclusion of welfare measures. In various countries, the basic or protective legislation was enacted through the efforts of more enlightened and liberal sections of society who could not stand the appalling hardships of the workers. In other words, social conscience revolted against the degradation of the workers into sub-human existence. The Governments were pressurized to meet to enact progressive welfare legislation to protect and to promote the interest of working class. Gradually, the concept of welfare has become an integral part of the philosophy of industrial jurisprudence.<sup>82</sup> The present emphasis of law on achieving the social welfare of the people along with the fact of great economic and technological advancements have placed great burdens on law and the courts of law. Some of the important labour legislation enacted for the welfare of the labours includes namely:- Workmen Compensation Act 1923, Trade Union Act 1926, Payment of Wages Act 1936, Industrial Disputes Act 1947, Industrial Employment

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<sup>81</sup> Malhotra O P, The law of Industrial Disputes 6<sup>th</sup> edn 2009, Butterworth Wadhwa, Nagpur at p 47

<sup>82</sup> Supra 5 at p. 29

(Standing Orders) Act, 1946, Factories Act, 1948, Minimum Wages Act 1948, Employees' State Insurance Act, 1948, Employees' Provident Fund and Miscellaneous Act, 1952, The Payment of Bonus Act 1965, Payment of Gratuity Act 1972, The Child Labour(Prohibition & Regulation) Act 1986, etc.

To sum up, industrial and labour laws is developed in respect to the vastly increased awaking of the workers of their rights, particularly after the advent of independence. Government and other stakeholders, concerned with the determination of the terms of employment and conditions of labour of the workers. Escalating expectations of the workers, the hopes extended by Welfare State, uncertainties caused by tremendous structural developments in industry, the decline of authority, the declining attraction of the work ethics and political activism in the industrial field, all seem to have played some role.<sup>83</sup> The Government shaped a mixed economic policy to extend benefits of industrial prosperity to workers he being an important partner in the production process. The policy of the Government with respect to industrial workers had informed by the ideal of workers' welfare as enshrined in the preamble and directive principles of the Constitution. To give shape to this policy the governments in India, both the Federal as well as State, indulged into the profuse legislative activity. India showed remarkable sensitivity to the welfare of industrial workers by framing policies and enacting laws to ameliorate the woes of the industrial workers.

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<sup>83</sup> Supra 21 at p. 19



# Cyber Crime: A Conceptual Note

Dr. Deepti Khubalkar

Cyber crime is the latest and perhaps the most complicated problem in the cyber world. "Cyber crime may be said to be those species, of which, genus is the conventional crime, and where either the computer is an object or subject of the conduct constituting crime". "Any criminal activity that uses a computer either as an instrumentality, target or a means for perpetuating further crimes comes within the ambit of cyber crime"

A generalized definition of cyber crime may be "unlawful acts wherein the computer is either a tool or target or both" The computer may be used as a tool in the following kinds of activity- financial crimes, sale of illegal articles, pornography, online gambling, intellectual property crime, e-mail spoofing, forgery, cyber defamation, cyber stalking. The computer may however be target for unlawful acts in the following cases- unauthorized access to computer/ computer system/ computer networks, theft of information contained in the electronic form, e-mail bombing, data didling, salami attacks, logic bombs, Trojan attacks, internet time thefts, web jacking, theft of computer system, physically damaging the computer system.

## Cyber Criminals

The cyber criminals constitute of various groups/ category. This division may be justified on the basis of the object that they have in their mind. The following are the category of cyber criminals-

### 1. Children and adolescents between the age group of 6 – 18 years –

The simple reason for this type of delinquent behaviour pattern in children is seen mostly due to the inquisitiveness to know and explore the things. Other cognate reason may be to prove themselves to be outstanding amongst other children in their group. Further the reasons may be psychological even. E.g. the BalBharati (Delhi) case was the outcome of harassment of the delinquent by his friends.

### 2. Organised hackers-

These kinds of hackers are mostly organised together to fulfil certain objective. The reason may be to fulfil their political bias, fundamentalism, etc. The Pakistanis are said to be one of the best quality hackers in the world. They mainly target the Indian government sites with the purpose to fulfil their political objectives. Further the NASA as well as the Microsoft sites is always under attack by the hackers.

### 3. Professional hackers / crackers –

Their work is motivated by the colour of money. These kinds of hackers are mostly employed to hack the site of the rivals and get credible, reliable and valuable information.

Further they are even employed to crack the system of the employer basically as a measure to make it safer by detecting the loopholes.

**4. Discontented employees-**

This group includes those people who have been either sacked by their employer or are dissatisfied with their employer. To avenge they normally hack the system of their employer.

## **Mode and Manner of Committing Cyber Crime**

**1. Unauthorized access to computer systems or networks / Hacking-**

This kind of offence is normally referred to as hacking in the generic sense. However, the framers of the Information Technology Act 2008 have nowhere used this term so to avoid any confusion we would not interchangeably use the word hacking for 'unauthorized access' as the latter has a wider connotation.

**2. Theft of information contained in electronic form-**

This includes information stored in computer hard disks, removable storage media etc. Theft may be either by appropriating the data physically or by tampering with it through the virtual medium.

**3. Email bombing-**

This kind of activity refers to sending large numbers of mail to the victim, which may be an individual or a company or even mail servers, thereby ultimately resulting in crashing.

**4. Data diddling-**

This kind of attack involves altering raw data just before a computer processes it and then changing it back after the processing is completed. The electricity board faced a similar problem of data diddling while the department was being computerised.

**5. Salami attacks-**

This kind of crime is normally prevalent in the financial institutions or for the purpose of committing financial crimes. An important feature of this type of offence is that the alteration is so small that it would normally go unnoticed. E.g. the Ziegler case wherein a logic bomb was introduced in the bank's system, which deducted 10 cents from every account and deposited it in a particular account.

**6. Denial of Service attack-**

The computer of the victim is flooded with more requests than it can handle which causes it to crash. Distributed Denial of Service (DDoS) attack is also a type of denial of service attack, in which the offenders are wide in number and widespread. E.g. Amazon, Yahoo.

#### **7. Virus / worm attacks-**

Viruses are programs that attach themselves to a computer or a file and then circulate themselves to other files and to other computers on a network. They usually affect the data on a computer, either by altering or deleting it. Worms, unlike viruses do not need the host to attach themselves to. They merely make functional copies of themselves and do this repeatedly till they eat up all the available space on a computer's memory. E.g. love bug virus, which affected at least 5 % of the computers of the globe. The losses were accounted to be \$ 10 million. The world's most famous worm was the Internet worm let loose on the Internet by Robert Morris sometime in 1988. Almost brought development of Internet to a complete halt.

#### **8. Logic bombs-**

These are event dependent programs. This implies that these programs are created to do something only when a certain event (known as a trigger event) occurs. E.g. even some viruses may be termed logic bombs because they lie dormant all through the year and become active only on a particular date (like the Chernobyl virus).

#### **9. Trojan attacks-**

This term has its origin in the word 'Trojan horse'. In software field this means an unauthorized programme, which passively gains control over another's system by representing itself as an authorised programme. The most common form of installing a Trojan is through e-mail. E.g. a Trojan was installed in the computer of a lady film director in the U.S. while chatting. The cyber criminal through the web cam installed in the computer obtained her nude photographs. He further harassed this lady.

#### **10. Internet time thefts-**

Normally in these kinds of thefts the Internet surfing hours of the victim are used up by another person. This is done by gaining access to the login ID and the password. E.g. Colonel Bajwa's case- the Internet hours were used up by any other person. This was perhaps one of the first reported cases related to cyber crime in India. However this case made the police infamous as to their lack of understanding of the nature of cyber crime.

#### **11. Web jacking-**

This term is derived from the term hi jacking. In these kinds of offences the hacker gains access and control over the web site of another. He may even mutilate or change the information on the site. This may be done for fulfilling political objectives or for money. E.g. recently the site of MIT (Ministry of Information Technology) was hacked by the Pakistani hackers and some obscene matter was placed therein. Further the site of Bombay crime branch was also web jacked. Another case of web jacking is that of the 'gold fish' case. In this case the site was hacked and the information pertaining to gold fish was changed. Further a ransom of US \$ 1 million was demanded as ransom. Thus web jacking



is a process where by control over the site of another is made backed by some consideration for it.

The above mentioned offences may discussed in brief as follows:

**1. Harassment via e-mails-**

Harassment through e-mails is not a new concept. It is very similar to harassing through letters. Recently I had received a mail from a lady wherein she complained about the same. Her former boy friend was sending her mails constantly sometimes emotionally blackmailing her and also threatening her. This is a very common type of harassment via e-mails.

**2. Cyber-stalking-**

The Oxford dictionary defines stalking as "pursuing stealthily". Cyber stalking involves following a person's movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim with emails etc.

**3. Dissemination of obscene material/ Indecent exposure/ Pornography (basically child pornography) / Polluting through indecent exposure-**

Pornography on the net may take various forms. It may include the hosting of web site containing these prohibited materials. Use of computers for producing these obscene materials. Downloading through the Internet, obscene materials. These obscene matters may cause harm to the mind of the adolescent and tend to deprave or corrupt their mind. Two known cases of pornography are the Delhi BalBharati case and the Bombay case wherein two Swiss couple used to force the slum children for obscene photographs. The Mumbai police later arrested them.

**4. Defamation-**

It is an act of imputing any person with intent to lower the person in the estimation of the right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule. Cyber defamation is not different from conventional defamation except the involvement of a virtual medium. E.g. the mail account of Rohit was hacked and some mails were sent from his account to some of his batch mates regarding his affair with a girl with intent to defame him.

**5. Unauthorized control/access over computer system-**

This activity is commonly referred to as hacking. The Indian law has however given a different connotation to the term hacking, so we will not use the term "unauthorized access" interchangeably with the term "hacking" to prevent confusion as the term used in the Act of 2000 is much wider than hacking.



## **6. E mail spoofing-**

A spoofed e-mail may be said to be one, which misrepresents its origin. It shows it's origin to be different from which actually it originates. Recently spoofed mails were sent on the name of Mr. Na.Vijayashankar (naavi.org), which contained virus.

Rajesh Manyar, a graduate student at Purdue University in Indiana, was arrested for threatening to detonate a nuclear device in the college campus. The alleged e- mail was sent from the account of another student to the vice president for student services. However the mail was traced to be sent from the account of Rajesh Manyar.

## **7. Computer vandalism-**

Vandalism means deliberately destroying or damaging property of another. Thus computer vandalism may include within its purview any kind of physical harm done to the computer of any person. These acts may take the form of the theft of a computer, some part of a computer or a peripheral attached to the computer or by physically damaging a computer or its peripherals.

## **8. Transmitting virus/worms-**

This topic has been adequately dealt herein above.

## **9. Intellectual Property crimes / Distribution of pirated software-**

Intellectual property consists of a bundle of rights. Any unlawful act by which the owner is deprived completely or partially of his rights is an offence. The common form of IPR violation may be said to be software piracy, copyright infringement, trademark and service mark violation, theft of computer source code, etc.

The Hyderabad Court has in a land mark judgement has convicted three people and sentenced them to six months imprisonment and fine of 50,000 each for unauthorized copying and sell of pirated software.

## **10. Cyber terrorism against the government organization**

At this juncture a necessity may be felt that what is the need to distinguish between cyber terrorism and cyber crime. Both are criminal acts. However there is a compelling need to distinguish between both these crimes. A cyber crime is generally a domestic issue, which may have international consequences, however cyber terrorism is a global concern, which has domestic as well as international consequences. The common form of these terrorist attacks on the Internet is by distributed denial of service attacks, hate websites and hate emails, attacks on sensitive computer networks, etc. Technology savvy terrorists are using 512-bit encryption, which is next to impossible to decrypt. The recent example may be cited of – Osama Bin Laden, the LTTE, attack on America's army deployment system during Iraq war.

Cyber terrorism may be defined to be “ the premeditated use of disruptive activities, or the threat thereof, in cyber space, with the intention to further social, ideological, religious, political or similar objectives, or to intimidate any person in furtherance of such objectives”

Another definition may be attempted to cover within its ambit every act of cyber terrorism.

A terrorist means a person who indulges in wanton killing of persons or in violence or in disruption of services or means of communications essential to the community or in damaging property with the view to –

- (1) putting the public or any section of the public in fear; or
- (2) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or
- (3) coercing or overawing the government established by law; or
- (4) endangering the sovereignty and integrity of the nation

and a cyber terrorist is the person who uses the computer system as a means or ends to achieve the above objectives. Every act done in pursuance thereof is an act of cyber terrorism.

#### **11. Trafficking**

Trafficking may assume different forms. It may be trafficking in drugs, human beings, arms weapons etc. These forms of trafficking are going unchecked because they are carried on under pseudonyms. A racket was busted in Chennai where drugs were being sold under the pseudonym of honey.

#### **12. Fraud & Cheating**

Online fraud and cheating is one of the most lucrative businesses that are growing today in the cyber space. It may assume different forms. Some of the cases of online fraud and cheating that have come to light are those pertaining to credit card crimes, contractual crimes, offering jobs, etc.

Recently the Court of Metropolitan Magistrate Delhi found guilty a 24-year-old engineer working in a call centre, of fraudulently gaining the details of Campa's credit card and bought a television and a cordless phone from Sony website. Metropolitan magistrate Gulshan Kumar convicted Azim for cheating under IPC, but did not send him to jail. Instead, Azim was asked to furnish a personal bond of Rs 20,000, and was released on a year's probation.

## **Statutory Provisions Information Technology Act 2000**

The Indian parliament considered it necessary to give effect to the resolution by which the General Assembly adopted Model Law on Electronic Commerce adopted by the United Nations Commission on Trade Law. As a consequence of which the Information Technology Act 2000 was passed and enforced on 17th May 2000. The preamble of this Act states its objective to legalise e-commerce and further amend the Indian Penal Code 1860, the Indian Evidence Act 1872, the Banker's Book Evidence Act 1891 and the Reserve Bank of India Act 1934. The basic purpose to incorporate the changes in these Acts is to make them compatible with the Act of 2000. So that they may regulate and control the affairs of the cyber world in an effective manner.

The Information Technology Act deals with the various cyber crimes in chapters IX & XI. The important sections are Ss. 43, 65, 66, 67. Section 43 in particular deals with the unauthorised access, unauthorised downloading, virus attacks or any contaminant, causes damage, disruption, denial of access, interference with the service availed by a person. This section provides for a fine up to Rs. 1 Crore by way of remedy. Section 65 deals with 'tampering with computer source documents' and provides for imprisonment up to 3 years or fine, which may extend up to 2 years or both. Section 66 deals with 'hacking with computer system' and provides for imprisonment up to 3 years or fine, which may extend up to 2 years or both. Further section 67 deals with publication of obscene material and provides for imprisonment up to a term of 10 years and also with fine up to Rs. 2 lakhs.

Information Technology Act 2000 is passed to regulate electronic regime. It seeks to provide protection against cyber wrongs. It has adopted a unique mode of classification of cyber wrongs into contraventions and computer offences. While the contravention have resultant monetary penalties, the cyber offences punishable with imprisonment or fine or with both.

### **A.4.1 -I - Cyber Contraventions**

In view of section 43 of Information Technology Act 2000, the following acts if done without the authority of the owner or any person who is in charge of a computer, network etc. are contraventions-

- Accessing or securing access to the computer or network or computer resource;
- Downloading any data or information from the computer/network;
- Introducing or causing to be introduced any computer contaminant or computer virus into the computer/network;
- Damaging or causing to be damaged the computer/ network, data, computer database or any other programmes residing in it;
- Disrupting or causing the disruption of the computer/network;



- Denying or causing the denial of access to any person authorised to access the computer/ network by any means;
- Providing assistance to any person to facilitate access to the computer/ network in contravention of the provisions of the act, rules or regulations made thereunder;
- Charging the services availed of by a person to the account of another person by tampering with or manipulating any computer/network;
- Destroying deleting or altering any information residing in a computer resource or diminishing its value or utility or affecting it injuriously by any means.
- Stealing, concealing , destroying, or altering or causing any person to steal, conceal, destroy or alter any computer source code used for a computer resources with an intention to cause damage.

The person contravening any of these clauses will be liable to pay damages by way of compensation to the person so affected. For these contraventions, Act provides for appointment of adjudicatory authority to adjudicate, inquire and impose penalties.

Chapter XI of the Information Technology Act 2000 provides punishments for the offences. Following acts are specifically punishable under the Information Technology Act 2000.

#### **A.4.2 -II - Computer Offences**

- Source code theft is punishable with imprisonment up to three years or with fine up to two lack rupees, or with both.
- Damage to computer, computer system without permission of the owner or in charge of a computer, computer system or network dishonestly or fraudulently-
  - a) Accessing or securing access to;
  - b) Downloading, copying or extracting any data or information from;
  - c) Introducing or causing to be introduced any computer contaminant or computer virus into;
  - d) Damaging or causing to be damaged;
  - e) Disrupting or causing disruption of ;
  - f) Denying or causing the denial of access to any person authorised to access any;
  - g) In contravention of the provisions of the Act, Rules and
  - h) Regulations providing assistance to any person to facilitate access to;
  - i) Changing the services availed of by a person to the account of another person by tampering with or manipulating any;



- j) Destroying deleting or altering any information or diminishing value or utility or affecting injuriously to such information residing in;
- k) Stealing, concealing, destroying or altering or causing any person to steal, destroy, or alter any such computer, computer system or network or computer resource.

These offences shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

- Section 66A provides punishment for sending offensive messages by means of a computer resource or communication device. Thus this section covers variety of offences such as stalking, defamation, and invasion to privacy. However, recently on 24.3.2015, this section is struck down by the Supreme Court in *Shreya Singhal v. Union of India*<sup>84</sup>
- Section 66B provides punishment for receiving stolen computer resource or communication device. This provision is identical to the provision of section 411 of IPC.
- Section 66C provides punishment for Identity theft. This provision covers variety of economic and other offences. Sometime identity theft is one of the step to commit various traditional offences.
- Section 66 D provides punishment for cheating by personation.
- Section 66 E provides punishment for violation of privacy in physical form.
- Section 66F covers the offence of cyber terrorism. This is the only offence which provides punishment with life imprisonment under Information Technology Act 2000.
- Section 67 provides punishment for publishing or transmitting obscene material in the electronic form. Cl. B of this section includes punishment for child pornography also.
- Section 68 provides punishment for failure to comply with controller's directions.
- Section 69 criminalises subscriber or intermediary's failure to extend facilities and technical assistance.
- Section 70 provides punishment accessing to the protected system.
- Section 71 for misrepresentation to the CCA.
- Section 72 punishes for breach of confidentiality and privacy. Any person including intermediary if under the terms of contract has secured access to

<sup>84</sup> Writ Petition(Criminal) No. 167 of 2012

personal information and discloses it to third person without his consent is punishable under the Act.

- Sec 73 and 74 provides punishment for publishing false electronic signature certificate and making available electronic signature for fraudulent purpose.

The Act sets up special procedures for the investigation of computer offences. Only a police officer of the rank of Inspector or upwards shall investigate any offence under the Act. However, with respect to provisions of search and seizure provisions of Cr. P.C. will be applicable.

### **Cybercrime Investigation**

Cybercrime Investigation involves the collection and investigation of digital evidence.

In India, the procedure for investigation of crimes is prescribed under Code of Criminal Procedure, 1973 (Cr. P.C.) as a general procedural code. Criminal courts are also constituted under this code. There is no special court constituted under Information Technology Act 2000 for trial of offence declared under the Act. But some provisions under the Act are relating to the investigation of computer crime. Thus the investigation of cybercrime requires application of both Information Technology Act 2000 and Cr.P.C. As per the requirement of the specialized agency in cyber investigation, the Cybercrime Investigation Cell (CCIC) of the CBI, was notified in September, 1999 and started functioning with effect from 3<sup>rd</sup> March, 2000. The Cell is headed by a superintendent of Police. The jurisdiction of the Cell is across the India, and besides the offence punishable under Information Technology Act 2000, it also has power to look into other high-tech crimes.<sup>85</sup>

### **Cases**

**JOLLY BANSAL Vs. STATE OF HIMACHAL PRADESH sec. 67**

PRESENT petition filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with case FIR No. 12 of 2013 dated 14.6.2014 registered under Sections 292, 465, 469 and 471 of the Indian Penal Code and under Section 6 of Indecent Representation of Women (Prohibition) Act, 1986 and under Section 66E and 67A of the Information Act 2000 at Police Station CID Bharari District Shimla HP.

IT is pleaded that applicant is 50 years of age and is established member of the society and having deep roots in the society. It is further pleaded that applicant is a doctor by profession with specialization in field of Cardiology and is practising at Delhi Metro Heart Institute a well -known hospital for cardiac services across India. It is further pleaded that applicant is suffering from pre -frontal lobe -space occupying lesion with cancerous tumor growth in brain and had undergone surgery in the past and at present

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<sup>85</sup> Supra, Note 1

he is on prescription of oral chemotherapy and is continuously under medication of tablet used for oral chemotherapy i.e. 'Sutin'. It is further pleaded that on dated 14.6.2011 one person by name Hem Singh who was the cook of the then Telecom Minister Pundit Sukh Ram sent a complaint against one JhonnyBansal to Police Station CID Bharari Shimla HP inter alia alleging that at around 6 AM he found one CD lying on the stairs leading to his house. It is further pleaded that he witnessed a person resembling with the face of Ex Central Minister Pundit Sukh Ram having sexual intercourse with some lady and expressed doubt that one person by name Jolly Bansal had made CD and circulated the same in the city in order to harm and destroy the image of Pundit Sukh Ram. It is further pleaded that on the complaint of Hem Singh FIR No. 12 of 2013 under Sections 292, 465, 469 and 471 IPC and under Section 6 of Indecent Representation of Women (Prohibition) Act 1986 and under Section 66E and 67A of the Information Act 2000 was registered at Police Station CID Bharari Shimla HP against applicant. It is further pleaded that in the month of August 2013 investigating agency at Police Station CID Bharari Shimla HP called the applicant at Himachal BhawanMandi House New Delhi and inquired about the alleged incident dated 14.6.2013. It is further pleaded that on dated 20.10.2013 a notice was issued by Police Station CID Bharari Shimla HP to applicant directing him to appear before them. It is further pleaded that on dated 22.10.2013 being aggrieved by notice dated 20.10.2013 and in apprehension of arrest app

#### **Sec 66A, 66D**

#### **Smt Rutaksha Rawatvs State By Cyber Crime Police ... on 14 October, 2014**

The records disclose that the respondent No.2 has filed FIR stating that some unknown person has been sending hate, malicious and scandalous mail under her signature from her email account and she has requested to investigate the matter and submit report to the Court. It is also alleged that a person who knows the second respondent and knows about her personal and business affairs which are freely discussed in their office, must have sent those e-mails to hundreds of her clients and customers across India. She has also furnished the list of employees along with the complaint. The investigation has taken up and the Police have registered FIR in Crime No.12/2012. During the course of investigation, the Police found that the petitioner has committed the offence and charge sheet has been laid against the petitioner herein for the offence punishable under Section 66A and 66D of Information Technology Act, 2000. The second respondent who is present before the Court submitted that it is purely personal dispute between herself as well as the petitioner herein. There is no impact on the society so far as the dispute between themselves is allowed to be compromised. Therefore, she has no objection to quash the proceedings. court applied the ruling of Gian Singh Vs. State of Punjab reported in (2012) 10 SCC 303, the above said rulings clearly disclose that the offences arising from commercial, financial, mercantile, civil partnership or like transactions or offences arising out of matrimony relating to dowry, etc., or family disputes where the wrong is basically private or personal in nature and parties have resolved their entire dispute, High Court may quash criminal proceedings. However, the



court has to give its finding after considering the factual matrix of the cases with regard to the exigencies of the above said circumstance, then only the court can quash the proceedings.

6. Applying the above said principles, as admitted by the parties, it is purely personal in nature, relating to their business transactions. Therefore, there is no legal impediment for this court to quash the proceedings as sought for.

Hence, the petition is allowed. Consequently, the proceedings pending before the I Addl. CMM, Bangalore in CC No.2895/2013 and all further proceedings therein are hereby quashed.

Here has been numerous instances application of the Section 66-A, Information Technology Act, 2000 ("ITA") in the lower courts. Currently, there are six High Court decisions, in which the section has been mentioned or discussed. In this blog post, I will be summarizing facts of a few cases insofar as they can be gathered from the orders of the Court and are pertinent to the application of 66-A, ITA.

#### **Sajeesh Krishnan v. State of Kerala (Kerala High Court, Decided on June 5, 2012)**

Petition before High Court for release of passport seized by investigating agency during arrest

In the case of Sajeesh Krishnan v. State of Kerala (Decided on June 5, 2012), a petition was filed before the Kerala High Court for release of passport seized at the time of arrest from the custody of the investigating agency. The Court accordingly passed an order for release of the passport of the petitioner.

The Court, while deciding the case, briefly mentioned the facts of the case which were relevant to the petition. It stated that the "gist of the accusation is that the accused pursuant to a criminal conspiracy hatched by them made attempts to extort money by black mailing a Minister of the State and for that purpose they have forged some CD as if it contained statements purported to have been made by the Minister." The Court also noted the provisions under which the accused was charged. They are Sections 66-A(b) and 66D of the Information Technology Act, 2000 along with a host of sections under the Indian Penal Code, 1860 (120B – Criminal Conspiracy, 419 – Cheating by personation, 511- Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment, 420 – Cheating and dishonestly inducing delivery of property, 468 – Forgery for purpose of cheating, 469 – Forgery for purpose of harming and 201 – Causing disappearance of evidence of offence, or giving false information to screen offender read with 34 of Indian Penal Code, 1860)

#### **Nikhil Chacko Sam v. State of Kerala (Kerala High Court, Decided on July 9, 2012)**

Order of the Kerala High Court on issuing of the summons to the petitioner



In another case, the Kerala High Court while passing an order with respect to summons issued to the accused, also mentioned the charge sheet laid by the police against the accused in its order. The accused was charged under section 66-A, ITA. The brief facts which can be extracted from the order of the Court read: "that the complainant and the accused (petitioner) were together at Chennai. It is stated that on 04.09.2009, the petitioner has transmitted photos of the de facto complainant and another person depicting them in bad light through internet and thus the petitioner has committed the offence as mentioned above."

**J.R. Gangwani and Another v. State of Haryana and Others (Punjab and Haryana High Court, Decided on October 15, 2012)**

Petition for quashing of criminal proceedings under section 482 of the Criminal Procedure Code, 1973

In the Punjab and Haryana High Court, an application for quashing of criminal proceeding draws attention to a complaint which was filed under Section 66-A(c). This complaint was filed under Section 66-A(c) on the ground of sending e-mails under assumed e-mail addresses to customers of the Company which contained material which maligned the name of the Company which was to be sold as per the orders of the Company Law Board. The Complainant in the case received the e-mails which were redirected from the customers. According to the accused and the petitioner in the current hearing, the e-mail was not directed to the complainant or the company as is required under Section 66-A (c).

The High Court held that, "the petitioners are sending these messages to the purchasers of cranes from the company and those purchasers cannot be considered to be the possible buyers of the company. Sending of such e-mails, therefore, is not promoting the sale of the company which is the purpose of the advertisement given in the Economic Times. Such advertisements are, therefore, for the purpose of causing annoyance or inconvenience to the company or to deceive or mislead the addressee about the origin of such messages. These facts, therefore, clearly bring the acts of the petitioners within the purview of section 66A(c) of the Act."

Mohammad Amjad v. SharadSagar Singh and Ors. (Criminal Revision no. 72/2011 filed before the Court of Sh. Vinay Kumar Khana Additional Sessions Judge – 04 South East: Saket Courts Delhi)

Revision petition against the order of the metropolitan magistrate

In a revision petition came up before the Additional Sessions Judge on the grounds that the metropolitan magistrate has dismissed a criminal complaint under Section 156(3) of the Criminal Procedure Code without discussing the ingredients of section 295-A, IPC and 66-A, IT Act.

In this case, the judge observed that, "...section 66A of Information Technology Act (IT Act) does not refer at all to any 'group' or 'class' of people. The only requirement of

Section 66A IT Act is that the message which is communicated is grossly offensive in nature or has menacing character.” He also observed that the previous order “not at all considered the allegations from this angle and the applicability of Section 66A Information Technology Act, 2000 to the factual matrix of the instant case.”

### **Cyber Stalking and defamation**

In the case of *State of Tamil Nadu V. SuhasKatti*<sup>86</sup> the accused SuhasKatti was sending obscene, defamatory and annoying messages to a divorcee woman on e-mails and in the yahoo message group. He had opened a false e-mail account in the name of the victim. The e-mail carried a message that the victim lady was soliciting and therefore, she was receiving annoying phone calls from callers to have sex. She filed FIR against unknown accused. The police investigation showed that the accused was family friend of the victim and was interested in marrying her. She however married another man whom she divorced. So the accused again started contacting her for marriage to which she denied. Thereupon, he started harassing her by sending obscene and defamatory messages. The court relied on the experts evidence including cyber café owner’s evidence and convicted the accused.

Cyber stalking cases are mostly found against the women. Here the accused by hiding his identity annoys the victim sexually. In internet sending false messages by hiding the identity of the sender is possible and easy. But to find out the true culprit experts knowledge is required it includes the searching of IP address, forensic experts report etc.

Ritu Kohli’s case<sup>87</sup> is the first case of stalking reported in India. In this case the complainant worked with an embassy in New Delhi. In the year 2001 she started receiving a series of threatening and annoying e-mails from unknown source. In the mails and letters, the accused threatened Kohli, that he would put up her morphed pictures on the adult sites along with her telephone and home address. He also alleged to put up these same pictures in her neighborhood, where she lived. Adding to her worries, the accused did send her the photographs, through mail, which Kohli later confirmed to be the same photographs which she had in her mail folder. Not only that, she also received numerous unsolicited phone calls from strangers at odd hours, asking her for sexual favors. She lodged a police complaint. Police traced down the IP address of the hacker to cyber café.

Later it was confirmed that the accused had managed to hack Kohli’s email address and password, which enabled him to access her pictures. The accused had also chatted on behalf of her on a chatting portal where he had distributed her phone number to the various chatters. Manish Kathuria, later got arrested by the Delhi police and was booked under sec 509 of the IPC for outraging the modesty of a woman and also under the IT Act, 2000.

<sup>86</sup> Decided by chief Metropolitan Magistrate, Egmore, on November 5, 2004, referred in Paranjpe, Cyber crime and law, central law agency, Allahabad, 2010, pg.131

<sup>87</sup> State of New Delhi v. Manish Kathuria

# The Concept of the Contempt of Court

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Anything that curtails or impairs the freedom of limits of the judicial proceedings must of necessity result in hampering of the administration of Law and in interfering with the due course of justice. This necessarily constitutes contempt of court. Oswald defines contempt to be constituted by any conduct that tends to bring the authority and administration of Law into disrespect or disregard or to interfere with or prejudice parties or their witnesses during litigation. Halsbury defines contempt as consisting of words spoken or written which obstruct or tend to obstruct the administration of justice. Black Odgers enunciates that it is contempt of court to publish words which tend to bring the administration of Justice into contempt, to prejudice the fair trial of any cause or matter which is the subject of Civil or Criminal proceeding or in anyway to obstruct the cause of Justice.

In case of India, under Section 2(a) of the Contempt of Courts Act of 1971 defines contempt of court as civil contempt or criminal contempt, it is generally felt that the existing law relating to contempt of courts is somewhat uncertain, undefined and unsatisfactory. The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizens, namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinized by a special committee.

In pursuance of this, a committee was set up in 1961 under the chairmanship of the late H N Sanyal, the then additional solicitor general. The committee made a comprehensive examination of the law and problems relating to contempt of court in the light of the position obtaining in our own country and various foreign countries. The recommendations, which the committee made, took note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of courts and interests of administration of justice.

The recommendations of the committee have been generally accepted by the government after considering the view expressed on those recommendations by the state governments, union territory administrations, the Supreme Court, the high courts and the judicial commissioners.

A case of contempt is C.K. Daphtary v. O.P. Gupta (1971 1 SCC 626), the respondent published and circulated a booklet in public purporting to ascribe bias and dishonesty to Justice Shah while acting in his judicial capacity. Mr C.K. Daphtary, along with others, filed a petition alleging that the booklet has scandalised the judges who participated in the decision and brought into contempt the authority of the highest court of the land and thus weakened the confidence of the people in it. The Supreme Court, in examining the scope

of the contempt of court, laid down that the test in each case is whether the impugned publication is a mere defamatory attack on the judge or whether it will interfere with the due course of justice or the proper administration of law by the court.

### **Law Point**

For the concept of Contempt of Court, the Contempt of Court Act, 1971 was passed which dealt with such a concept. Article 129 and 215 of the Constitution of India empowers the Supreme Court and High Court respectively to punish people for their respective contempt. Section 10 of The Contempt of Courts Act of 1971 defines the power of the High Court to punish contempts of its subordinate courts. Power to punish for contempt of court under Articles 129 and 215 is not subject to Article 19(1)(a).

### **Essentials**

The elements generally needed to establish a contempt are:

1. the making of a valid court order,
2. knowledge of the order by respondent,
3. ability of the respondent to render compliance, and
4. wilful disobedience of the order.

### **Types**

According to Lord Hardwick, there is a three-fold classification of Contempt:

1. Scandalizing the court itself.
2. Abusing parties who are concerned in the cause, in the presence of court.
3. Prejudicing the public before the cause is heard.

### **However in India contempt of court is of two types:**

#### **1. Civil Contempt**

Under Section 2(b) of the Contempt of Courts Act of 1971, civil contempt has been defined as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

#### **2. Criminal Contempt**

Under Section 2(c) of the Contempt of Courts Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

- (i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or



- (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.
- (a) 'High Court' means the high court for a state or a union territory and includes the court of the judicial commissioner in any union territory.

### **Object**

There can be no doubt that the purpose of contempt jurisdiction is to uphold the majesty and dignity of law courts and their image in the minds of the public is no way whittled down. If by contumacious words or writings the common man is led to lose his respect for the judge acting in the discharge of his judicial duties, then the confidence reposed in the courts is rudely shaken and the offender needs to be punished. In essence of law of contempt is the protector of the seat of justice more than the person sitting of the judge sitting in that seat.

### **Third Party**

A third party to the proceeding may be guilty of contempt of court if they have a part to play in the offence. In *LED Builders Pty Ltd v Eagles Homes Pty Ltd* ([1999] FCA 1213) Lindgren J stated:

"It is not necessary to show that a person who has aided and abetted a contempt of court was served with the order breached. It is necessary to show only that the person sought to be made liable knew of the order."

### **Limitation**

The Limitation period for actions of contempt has been discussed under Section 20 of the Contempt of Courts Act of 1971 and is a period of one year from the date on which the contempt is alleged to have been committed.

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# Contempt of Court: Time for a relook?

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Contempt of court is the offense of being disobedient to or disrespectful towards a court of law. Being disrespectful to legal authorities in the courtroom, or wilfully failing to obey a court order may attract Contempt of Court proceedings. A judge may impose sanctions such as a fine or jail for someone found guilty of contempt of court.

## Why is Contempt of Court in news recently?

The recent confrontation between Justice Markandeya Katju and the Supreme Court has raised some issues on contempt jurisdiction in India. There is also an ongoing issue between Calcutta High Court judge CS Karnan and Supreme Court on contempt of court.

In another instance, Justice Kurian Joseph of the Supreme Court of India has said that the trial by the media on pending cases is tantamount to contempt of court.

The Supreme Court in *Kuldeep Kapoor & Ors vs. Court* on its Motion has observed that a litigant refusing to answer a question put to him by the Court does not constitute criminal contempt of Court.

Besides all these, there are various allegations that judges in the superior courts routinely misuse the power to punish for contempt of court more to cover up their own misdeeds than to uphold the majesty of the law.

## Article 129 of Indian Constitution: Supreme Court to be a court of record

“The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

## Contempt of Courts Act of 1971

In India, contempt of court is of two types: Civil Contempt and Criminal Contempt.

### Civil Contempt

- Under Section 2(b) of the Contempt of Courts Act of 1971.
- civil contempt has been defined as wilful disobedience to any judgment, decree, direction, order, writ or other processes of a court or wilful breach of an undertaking given to a court.

### Criminal Contempt

- Under Section 2(c) of the Contempt of Courts Act of 1971.

- criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:
- (i) Scandalises or tends to scandalize, or lowers or tends to lower the authority of, any court, or
- (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
- (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

#### **The amendment to the Contempt of Courts Act, 1971 in 2006**

Neither truth nor good faith was defenses against the law of contempt in India. This was rectified only in 2006 by an amendment to the Contempt of Courts Act.

The 2006 amendment to the Contempt of Courts Act, 1971 clarifies that the Court may impose punishment for contempt only when it is satisfied that substantially interferes, or tends to substantially interfere with the due course of justice.

But this was not followed in the Mid-Day case, where the Delhi high court sentenced employees of the publication for contempt of court for publishing content that portrayed a retired Chief Justice of India unfavorably. Mid-Day raised the defense of truth and good faith but was not entertained.

#### **Court Cases connected with Contempt of Court in India**

- In *Duda P.N. v. Shivshankar, P.*, the Supreme Court observed that the contempt jurisdiction should not be used by Judges to uphold their own dignity. In the free market places of ideas, criticism about the judicial system or the Judges should be welcomed, so long as criticisms do not impair or hamper the “administration of justice”.
- In *Auto Shankar’s Case*, Jeevan Reddy J, invoked the famous “Sullivan doctrine” that public persons must be open to stringent comments and accusations as long as made with bonafide diligence, even if untrue.
- In *Arundhati Roy, In re*, the Supreme Court observed that a fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if made in good faith and in public interest.
- In *Indirect Tax practitioners’ Association v. R.K. Jain*, the S.C. observed that the Court may now permit truth as a defense if two things are satisfied, viz., (i) it is in public interest and (ii) the request for invoking said the defense is bona fide. (S.13, Contempt of Courts Act,1971).

## Freedom of Speech and Expression vs Contempt of Court

**Article 19(1)(a)** of the Constitution gives the right of freedom of speech and expression to all citizens.

**Articles 129 and 215** give the power of contempt of court to the higher judiciary, and this power limits the freedom granted by Article 19(1)(a).

As Justice Krishna Iyer said, the law of contempt has a vague and wandering jurisdiction with uncertain boundaries. Such a law, regardless of public good, may unwittingly trample upon civil liberties.

Further, the assumption that respect for the judiciary can be won by shielding judges from criticism misjudges public opinion. Surely an enforced silence, in the name of preserving the dignity of the judiciary, would cause resentment, suspicion and contempt, more than it would enhance respect.

In a democracy, the people should have the right to criticize judges. The purpose of the contempt power should not be to uphold the majesty and dignity of the court but only to enable it to function.

The right of the citizens to free speech and expression under Article 19(1)(a) should be treated as primary, and the power of contempt should be subordinate.

### **What is the relevance of contempt law in a free society?**

The power to punish for contempt was draconian in nature without commensurate safeguards in favour of the persons charged with the accusation of having committed contempt of court.

Such a power is not in consonance with the constitutional scheme of India. The basic principle in a democracy is that the people are supreme. Once this concept of popular sovereignty is kept firmly in mind, it becomes obvious that the people of India are the masters and all authorities (including the courts) are their servants.

In many countries, contempt jurisdiction is regarded as archaic and exercised sparingly. In the US, courts no longer use contempt to silence comments on judges or legal matters. The First Amendment to the US Constitution forbids imposition of contempt sanctions on a newspaper.

The concept of criminal contempt in India owing its origin to mid-British times was a corollary of the adage that the king could do no wrong. But this drastic power is often used by the judges in an arbitrary manner. (Note: You may read about Judicial Overreach).

In a free society criticism of the judiciary is inevitable.



Judges have vast powers and people will not remain silent about the exercise of such powers. Just as decisions of other branches of government attract criticism, judicial decisions would also invite the same.

The test to determine whether an act amounts to contempt of court or not is this: does it make the functioning of the judges impossible or extremely difficult? If it does not, then it does not amount to contempt of court even if it is harsh criticism.

The law of contempt should be employed only to enable the court to function, not to prevent criticism.

It's time for the legislature to take steps to amend the Contempt of Court Act and eschew definition of criminal contempt.

Judiciary should balance two conflicting principles, ie freedom of expression, and fair and fearless justice.

A mature and "broad-shouldered" approach to criticism can only inspire public confidence, not denigrate the judiciary, for justice, as Lord Atkin said, is "no cloistered virtue".

**REFERENCE:** <http://www.clearias.com/contempt-of-court/>