ISSN 2394-5281

CHHATTISGARH LAW JOURNAL

An International Bi Annual Refereed/Peer Reviewed Research Journal

VOLUME -VI ISSUE-I 2020

Chief Editor
Dr.Suresh Mani Tripathi
Assistant Professor (Law)
Chhattisgarh Academy of Adminstration,Raipur
Chhattisgarh

The Concept of Witness and Witness Protection

Dr Shashikant Tripathi *

Witnesses play a very important role in the dispensation of justice1 in its totality. Various neans are used in investigation2 to ascertain facts and witness is one of those means whose vidence provides important links to connect the criminal with the crime, to bring the guilty to book o eliminate the innocent from being unnecessarily harassed. At the initial stage of investigation a vitness guides the Investigating Officer (I.O.) in the right lines thus helping him arriving at correct ndings about facts and circumstances of the crime.3 A truthful witness can render yeoman help to olice during the investigation of the crime and to the court during the trial of the case by giving uthful account of what he knows about the happening of the criminal incidence. Hence it is perfluous to say that the role of a witness in criminal investigation and trail is very vital and gnificant, and that without oral testimony of witnesses there can be no investigation no trial, no judication.It is not exaggerate to say that no prosecution case can be built up without the evidence witnesses. With due background an attempt has been made in this chapter to discuss the concept witness and witness protection. An attempt has also been made to examine the position of tness during different periods *viz.*, witness in Ancient Hindu Period; witness in Muslim period; d witness during pre and post Independence period.

H.O.D. Law , Govt D K P G College, Baloda Bazar Chhattisgarh .

he term 'justice' in the Preamble embraces three distinct forms- social, economic and political, secured ough various provisions of Fundamental Rights and Directive Principles. Social justice denotes the equal tment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It ns absence of privileges being extended to any particular section of the society, and improvement in the ditions of backward classes and women. Economic justice denotes on the non- discrimination between ple on the basis of economic factors. It involves the elimination of glaring in equalities in wealth, income property. A combination of social justice and economic justice denotes what is known as 'distributive ce'. Political justice implies that all citizens should have equal political rights, equal voice in the ernment. The ideal of justice- social, economic and political- has been taken from the Russian Revaluation 7). *Available* at: http://www.lawyers clubindia.com/ (Visited on 23 March 2010)

cording to Section 2(h) of the Cr.P.C. "Investigation" includes all the procedure under this code for the ection of evidence conducted by a police officer or by any person (other than a Magistrate) who is orized by a Magistrate in this behalf.

. Giriraj Shah, *Encyclopedia of Crime, Police and Judicial System* vol. 18, p. 159 (Anmol Publication Ltd., New Delhi, 2001). For more details see generally: Jagdish Lal, *The Code of Criminal Procedure* hi Law House, Allahabad, 1974), Justice Y.V. Chandrachud and V.R. Manohar (eds.), *The Code of inal Procedure* (Wadhwa and Company, Nagpur, 2004).

ISSN : 2348-5485

AD VALOREM

Journal of Law

An International Peer Reviewed Research Refereed Quarterly Journal

VOLUME : 4 ISSUE : II APRIL - JUNE : 2017

CHILD LABOUR: ISSUES & CHALLENGES

Rahul Tiwari *

Abstract

Child labour is a inflammable problem of the world, especially in the countries those are in the developing condition. In African and Asian countries the problem of Child labour is highly inflammable. A lot of reasons present behind the problem of Child labour. The most important reason is poverty which creates a pressure upon the Children for work. In developing countries, Children are not healthy paid by the employers, but they contribute to their family income. Illiteracy of the parents also contributes to Child labour.

Working Children are the object of mistreatment in sense of long working hours against minimal pay. The unhealthy working environment is responsible for the several physical and mental development problems of the working Children. They are also object of sexual exploitation. There are many problems creates obstruction in the way of abolishing Child labour. Any policy for abolishment of Child labour depends on the proper education of the Children. But the working pressure on the Children only hinders their education.

Key Words: Child, Child labour, Definition, Causes, Categories, Issues, Challenge, Education, Health, Sexual exploitation.

Introduction

"World's children cannot wait any longer. While international community debates and issues recommendations, statements and fine speeches, world's children - marginalised, socially excluded, poor and vulnerable - continue to suffer. We as the governments, workers, employers and civil society must declare a war on child labour. This war cannot be won without strong, committed, coherent, and well-resourced worldwide movement. Equally needed is a genuine and active coordination between intergovernmental agencies at the highest level."

..... ***(Kailash Satyarthi – Noble prize winner)***

Today, around 215 million children work, in different countries of the world. They do not attend any school and have very little time or no time to play. A lot of Children do not receive proper nutrition or care. They are deprived of the chance to be children. A large number of Children are exposed to the most horrible forms of child labour such as work in unhealthy and hazardous environments, slavery, or other forms of compulsory labour, illegal activities including drug trafficking, smuggling and prostitution, as well as taking part in armed conflict.

Most of the countries child labour is associated with agricultural activities. The percentage of all child labourers in the age group 5 - 17 years associated with agriculture activities is more than 60 percent, including farming, fishing, aquaculture, forestry, and livestock. 129 million girls and boys are engaged in such type of activities. The majority of child labourers are not paid family members. In agriculture field this percentage is much higher, and is combined with very early entry into work, sometimes between 5 and 7 years of age.

Term child labour simply explained as employment of children in gainful trade or business or a contribution to the income of the family. This term "child labour" not only associate with children working in industries but also to the children working in non-industrial organisation like homes, shops etc.

"When the business of wage earning or of participation in itself or family support conflicts directly or indirectly with the business of growth and education , the result is Child labour." [1]

Definition

Article I of the Convention on Rights of Children (CRC) defines a **child** as any one below the age of eighteen years.

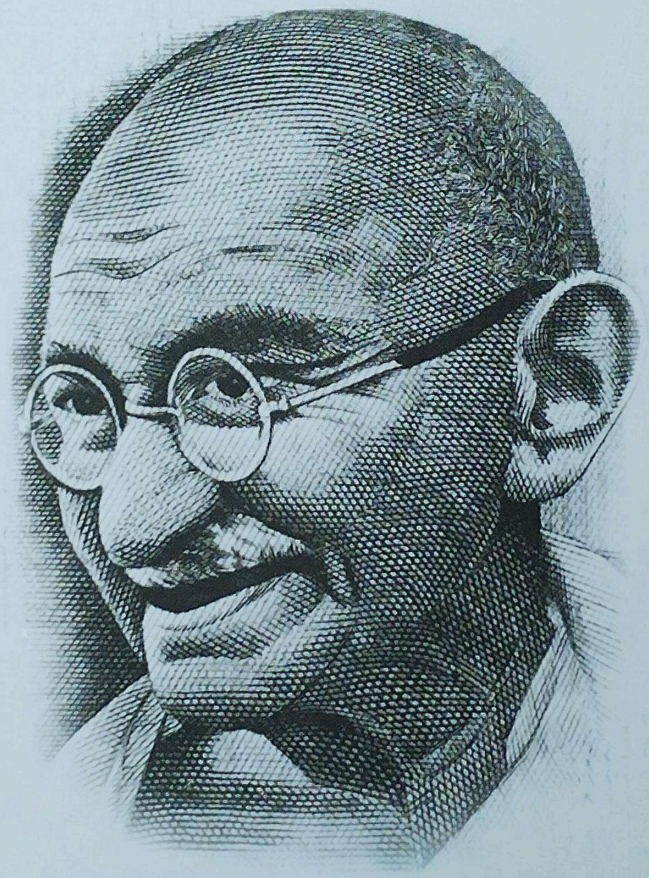
* Research Scholar (LAW), Bundelkhand University, Jhansi (U.P.)

[1] Helen R. Sekar, "Child labour Legislation in India: A Study in Retrospect and Prospect, National Resource Centre on Child labour, V.V. Giri National Labour Institute, Noida (U.P.),1997,p.7.

आज़ादी का अमृत महोत्सव

अंक : 18 • वर्ष : 2021

मानव अधिकार: नई दिशाएं



राष्ट्रीय मानव अधिकार आयोग, भारत

आदिवासियों के मानव अधिकार

राहुल तिवारी*

बीज शब्द : आदिवासी, अधिकार, मानव अधिकार, भूमि अधिकार

सारांश

भारत दुनिया में दूसरी सबसे बड़ी जनजातीय आबादी वाला देश है। ये जनजातियाँ देश के विभिन्न हिस्सों में मुख्य रूप से जंगलों और पहाड़ी क्षेत्रों में फैली हुई हैं। इन समुदायों की विशेषताएं उनकी विशेष भौगोलिक स्थिति, विशिष्ट संस्कृति, आर्थिक पिछड़ापन और बड़े पैमाने पर समाज से अलगाव हैं। भारत में आदिवासी समुदाय, वर्चस्व और शोषण से ग्रस्त समाज में सबसे कमजोर समुदाय रहा है। वे अपने सामाजिक-आर्थिक और राजनीतिक अधिकारों की आधार रेखा पर हैं। सदियों के बाद भी भारत में आदिवासी समुदायों की स्थिति अपरिवर्तित है। मानवाधिकारों का उल्लंघन और सामाजिक बर्बरता उनको समाज की मुख्यधारा से पृथक कर देती है। जिसके कारण उन्हें अलगाव और सामाजिक भेदभाव का सामना करना पड़ता है।

प्रस्तावना :

भारत एक विषमताओं से भरा हुआ देश है। भारतीय समाज में विभिन्न धर्म एवं जाति के लोग निवास करते है। विश्व में चीन के बाद दूसरा सबसे बडी जनसंख्या वाला देश भारत है। भारत की कुल जनसंख्या का 8.6 प्रतिशत जितना एक बड़ा हिस्सा आदिवासियों का है। आदिवासी शब्द दो शब्दों आदि और वासी से मिल कर बना है और इसका अर्थ किसी स्थान विशेष पर निवास करने वाले मूल निवासियों से होता है। पुरातन संस्कृत ग्रंथों में आदिवासियों को अत्विका और वनवासी नामों से भी जाना गया है। राष्ट्रपिता महात्मा गांधी ने आदिवासियों को गिरिजन (पहाड़ पर रहने वाले लोग) कह कर सम्बोधित किया है। भारतीय संविधान के अनेकों अनुच्छेदों में आदिवासियों के लिए अनुसूचित जनजाति शब्द का उपयोग किया गया है। जनजाति शब्द आदिम और क्रूर परिस्थितियों में रहने वाले लोगों के समूह को दर्शाता है। ये जनजातियाँ एक निश्चित क्षेत्र में रहने वाले एक सामाजिक समूह हैं जिनके कार्यों की ऐसी कोई विशेषज्ञता नहीं है और इन सामाजिक समूहों में रहने वाले लोगों को जनजाति या आदिवासी लोगों के रूप में जाना जाता है। जनजातियों के कई उप समूह भी होते हैं और सामूहिक रूप से उन्हें जनजातीय समाज के रूप में जाना जाता है। जनजातियाँ पूर्व इतिहास से वनों की निवासी हैं और इस आधुनिक दुनिया में भी बहुत से लोग इस प्रवृत्ति का अनुसरण करते हैं।

भारत के आदिवासी समुदायों में भीलाला, धानका, गोंड, मुण्डा, खड़िया, हो, बोड़ो, कोल, भील, कोली, फनात, सहरिया, संथाल, कुड़मी महतो, मीणा, उरांव, लोहरा, परधान, बिरहोर,

* सहायक आचार्य, साई मीर विद्यि महाविद्यालय, छिबरामऊ, कन्नौज, उ0प्र0

ISSN : 0974-0066

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Vol-82 No.12
July - December : 2022

आज़ादी का अमृत महोत्सव

मध्य भारती

मानविकी एवं समाजविज्ञान की द्विभाषी शोध-पत्रिका

सांप्रदायिक हिंसा : पुलिस की भूमिका एवं समस्याएं

डॉ० राहुल तिवारी सहायक आचार्य, अटल बिहारी बाजपेयी स्कूल ऑफ लीगल स्टडीज, सी.एस.जे.एम. विश्वविद्यालय (पूर्ववर्ती कानपुर विश्वविद्यालय), कानपुर, उत्तर प्रदेश।

सारांश

पुलिस अन्य कानून प्रवर्तन तंत्र, जैसे स्थानीय प्रशासन और न्यायपालिका के साथ मिलकर, सांप्रदायिक हिंसा के नियंत्रण में एक महत्वपूर्ण भूमिका निभाती है। पुलिस राजनेताओं, नौकरशाहों, न्यायपालिका और बड़े पैमाने पर लोगों के सक्रिय सहयोग के बिना कानून और व्यवस्था को लागू करने की भूमिका नहीं निभा सकती। यह देखा गया है कि कुल मिलाकर, हमारे देश में नौकरशाह अनुष्ठानवादी हैं, राजनेता निहित स्वार्थों के आधार पर काम करते हैं, न्यायिक अधिकारी परंपरावादी हैं, और लोगों को पुलिस एवं अर्ध सैनिक बलों पर कोई भरोसा नहीं है। इस प्रकार, पुलिस को उनसे अपेक्षित भूमिकाओं को निभाने में कई प्रकार की बाधाओं का सामना करना पड़ता है। इसलिए, हिंसा को नियंत्रित करने और पुलिस द्वारा सांप्रदायिक हिंसा को रोकने के लिए इन बाधाओं की पृष्ठभूमि में जांच की जानी चाहिए।

बीज शब्द – सांप्रदायिक हिंसा, अतिभारित पुलिस बल, अवसंरचना की कमी, पुलिस की जवाबदेही, राजनीतिक हस्तक्षेप

प्रस्तावना –

भारत एक विषमताओं से भरा हुआ लोकतांत्रिक देश है। भारतीय समाज में विभिन्न धर्म एवं जाति के लोग निवास करते है। विश्व में चीन के बाद दूसरा सबसे बडी जनसंख्या वाला देश भारत है। लोकतंत्र में राज्य का कर्तव्य लोगों को शांति, समृद्धि और न्याय प्रदान करना है। इस कर्तव्य को लोकतांत्रिक सरकार कानून के शासन के सभ्य सिद्धांतों के माध्यम से पूरा कर सकती है। कानून का शासन प्राकृतिक कानून का आधुनिक नाम है। प्राकृतिक कानून की अवधारणा न्यायपूर्ण, निष्पक्ष और उचित पर आधारित है। विशेष गतिविधियों के माध्यम से कानून प्रवर्तन एजेंसियों द्वारा शांति स्थापित की जा सकती है। विशेष गतिविधियां अच्छे व्यवहार, दयालुता और लोगों की मदद पर जोर देती हैं। राज्य एजेंसियों में, समाज में कानून और व्यवस्था बनाए रखने में पुलिस की भूमिका और रवैया बहुत महत्वपूर्ण है। पुलिस के कामकाज को जनता के नजरिए से देखा जाना चाहिए, न कि सिर्फ सरकार के नजरिए से। आम तौर पर यह देखा जाता है कि ज्यादातर सांप्रदायिक दंगे एक ही इलाके में बार–बार रिपोर्ट किए जाते हैं, पुलिस सांप्रदायिक दंगों की भविष्यवाणी कर सकती है। राज्यों के कई स्थानों को संवेदनशील एवं अति–संवेदनशील स्थानों में वर्गीकृत किया जा सकता है और ऐसे स्थानों में पुलिस को इस तरह के खतरों से निपटने के लिए अच्छी तरह से तैयार होने की आवश्यकता होती है।

शोध समस्या –

ऐतिहासिक रूप से यह महसूस किया जाता है कि विभाजन से पहले सांप्रदायिक हिंसा के लिए ब्रिटिश शासकों की "**फूट डालो और राज करो**" की नीति को जिम्मेदार ठहराया गया था। ब्रिटिश शासकों द्वारा हिंदुओं और मुसलमानों के बीच विभाजन की रेखा दो समुदायों के अभिजात वर्ग के बीच प्रतिस्पर्धी राजनीति से बढ़ गई थी। परन्तु आजादी के बाद के भारत में धर्मनिरपेक्ष सिद्धांतों को अपनाने के बावजूद, सांप्रदायिक हिंसा हमारे समाज को परेशान कर रही है। आजादी के बाद सांप्रदायिक हिंसा की समस्या जबरदस्त रूप में बढ़ी है और सांप्रदायिक हिंसा में घायलों और मारे गए लोगों की संख्या भी जबरदस्त रूप में बढती जा रही है।

शोधपत्र का उद्देश्य –

इस शोधपत्र के महत्वपूर्ण उद्देश्य निम्नलिखित हैं –

1. भारत में सांप्रदायिक हिंसा के मामलों का अध्ययन करना।
2. भारत में सांप्रदायिक हिंसा के नियंत्रण में पुलिस बल की भूमिका का अध्ययन करना।
3. भारत में सांप्रदायिक हिंसा के नियंत्रण में पुलिस बल की समस्याओं का अध्ययन करना।

साहित्य की समीक्षा –

भारत में सांप्रदायिक हिंसा पर कई आधिकारिक और गैर–आधिकारिक अध्ययन किए गए हैं जिनमें से कुछ महत्वपूर्ण अध्ययन निम्नलिखित हैं –

भारत में सांप्रदायिक हिंसा पर कई अध्ययनों ने पुलिस बल की भूमिका का अध्ययन किया है, उदाहरण के लिए, ग्रोवर, 2002; दयाल, 2002; विल्किंसन, 2005; बर्नी, 2005; सीतावल, 2005; बुंसा, 2006; चेनॉय, 2002; सोंधी और मुखर्जी, 2002; वरदराजन, 2002, आदि।

न्यायमूर्ति श्रीवास्तव आयोग ने 1961 में जबलपुर, सागर, दमोह और नरसिंहपुर में हुए दंगों की जांच रिपोर्ट में पाया कि खुफिया विभाग पूरी तरह से विफल हो गया था।

ISSN : 2278 - 6864
UGC CARE Listed Periodically

शिक्षण आणि समाज
Education and Society

Since 1977

The Quarterly dedicated to the policy of "Education for Social Development and Social Development through Education"

Vol:46, Issue:04, No.:08, October - December : 2022

Indian Institute of Education

J. P. Naik Path, Kothrud, Pune-38

Education and Society (शिक्षण आणि समाज) ISSN: 2278-6864
(UGC CARE Journal) Vol-46, Issue-4, No.-08, October-December: 2022

LEGAL EDUCATION IN INDIA: AN OVERVIEW

Dr. Rahul Tiwari, Assistant Professor, Atal Bihari Vajpayee School of Legal Studies, C.S.J.M. University (Formerly Kanpur University), Kanpur, Uttar Pradesh.

"Democracy cannot succeed unless those who express their choice are prepared to choose wisely. The real safeguard of democracy, therefore, is education. "

- Franklin D. Roosevelt

Abstract:

The sector of legal education in India is one of the fastest growing educational sectors in our country. The interest among students in pursuing law as a career has been steadily on the rise and this can be seen from the fact that the year 2022 saw a great number of applicants to the Common Law Admission Test (CLAT) with more than fifty-six thousand students applying for the test. legal education helps in awareness of the law and people start to trust law. Also, legal education is a must in today's environment as it will help shape the future of our nation. It is the duty of every citizen of India to know about the legal rights and the fact that ignorance of law cannot be excused. This paper will examine the concept of legal education and also examine the new dimensions of legal education in India.

Key Words: legal education, Courses, Importance, Structure, Reforms, Clinical education, National institutes, Universities, NEP

Introduction:

Education is the fundamental right of each citizen of India under part III of the Indian constitution. When we speak about the legal education it is offered at various levels in the universities of the country. It is necessary for us to know and understand the meaning of legal education. When we say, legal education it means acquiring knowledge of the legal spectrum to gain the legal degree and become a legal professional. Rather, legal education is the right of every citizen of India. If we speak more about the modern legal education system it was started by British India, and thus equating them with the law and how the nation should be ruled.

The law commission of India defines 'Legal education as a science which imparts to students' knowledge of certain principles and provisions of law to enable them to enter the legal profession'. Law, legal education and development have become inter-related concepts in modern developing countries. The main function of the legal education is to produce lawyers with social vision. However, in modern times legal education should not only produce lawyers, it should be regarded as a legal instrument for social design.

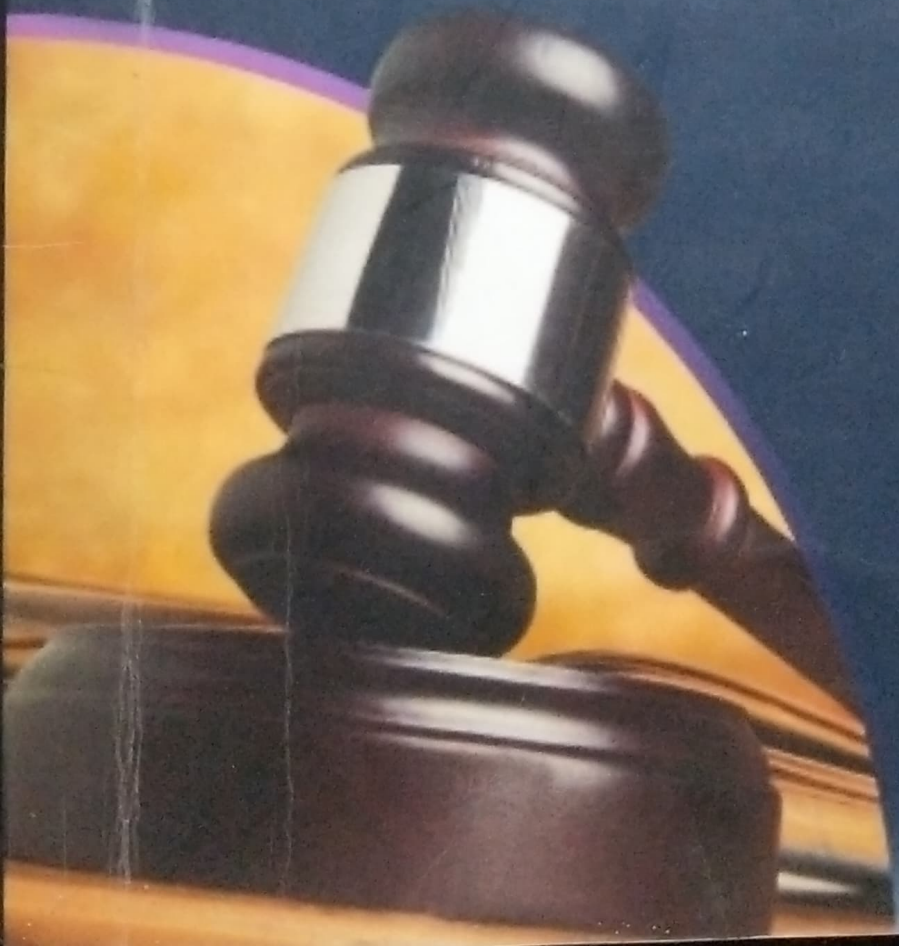
Review of literature:

Rajashree, K., Singai, C., & Shimray, S. A. (2021), Social, economic and political changes have brought new challenges and divergent views to twenty-first-century legal education. Law is an expression of the social idea, and more creative solutions evolve from interdisciplinary collaborations. The resolution by legal luminaries to elevate legal research to a high standing, on par with other disciplines, is yet to find a foothold even after the introduction of reforms to legal education in the past two decades. This article makes an attempt to explore the emerging interdisciplinary trends, with the innumerable challenges that require exploration, identification, analysis and quality enhancement while conducting legal research in order to strike a fine balance between teaching and research, as they supplement each other.

Law is a mechanism for ushering in social change, and the fact that it can never be studied in isolation demands the convergence and divergence of multiple disciplines. Yet, the traditional conceptualization of legal research is largely confined to the judicial process and the exclusion of

Bi-Annual ISSN–2277–7296

GLOBAL JOURNAL For LEGAL STUDIES



Vol.- 6/1
Jan-June 2017

GLOBAL JOURNAL For LEGAL STUDIES

Judicial Remedies in Cases of Medical Negligence-An Overview

Dr. Pankaj Dwivedi*

Abstract

At present scenario medical negligence is a significant problem in India. With the development of standard of medical services and awareness among the population, such dissatisfaction among patients is bound to increase. Due to increased impact of commercialization of the medical sector, the self- regulatory standard in the profession has been declined. Questions of medical negligence arise in a medical setting. But the principles determining liability are legal. Medical negligence is thus the interface of law and medicine. It is the point at which purely medical judgements leave off and legal standards begin to operate[1]

Keywords: *negligence, medical negligence, patients, consumer protection, duty of care, breach of duty, doctors, compensation.*

There is a continuum of development in the field of medical technology and refinement of medical skills. New drugs and vaccines are being developed; blood component therapy, genetic experiments, newer investigation techniques, and organ transplantation are being researched into and are evolving. These new developments have created new moral and ethical questions as well as legal problems. Doctors are alarmed by the increase in the number of negligence cases in India and they are often unaware, ignorant, and worried about the legal validity of their day-to-day practice. The time has arrived when every doctor knows about the different aspects of medical law in relation to medical negligence and other aspects of patient care.[2] Before proceeding towards the law and appreciate ancillary concepts such as medical indemnity, it is important to understand the meaning of negligence and what it entails.[3]

Negligence is a term finding its origin in the law of tort, which evolved primarily through common law or the judgements of courts in England. A tort signifies a civil wrong, an actionable claim against another for having done or not done something. No study as to the concept of negligence can be undertaken without

* Associate Professor, School of Law and Legal Affairs, Noida International University.

1. P.M.Bakshi, Law and Medicine97,(Wadhwa & Company Law Publisher)1987
2. Tapas Kumar Koley, *Medical Negligence and Law in India:Duties,Resposbilities,Rights*22(Oxford University Press)1st edn.2010
3. Sandeep Bhatt

ISSN 2456-3153

UGC Approved

JOURNAL OF LEGAL VIEWS AND REVIEWS

(A Peer Reviewed Refereed Journal)

Vol. No.2, Issue No.1
August 2017

Published By

Sanskriti Welfare Trust
Knowledge Based Culture

Sanskriti Welfare Trust

ISSN 2456-3153

Restitution of Conjugal Rights : An Analysis

*Dr. Pankaj Dwivedi

The term restitution means the restoration of something that is lost or is stolen. In terms of personal rights, it means reinstatement of the rights and in terms of relationship; it means restoration of the relationship. According to the Oxford Dictionary, the word conjugal means lelating to marriage or the relationship between husband and wife. The essence of marriage is a sharing of a common life, a sharing of all the happiness that life had to offer and all the misery that is faced in life, living together is a symbol of such sharing. Living apart is a symbol indicating the negation of such sharing.[1] It is one of the remedies available to a spouse whose other half has withdrawn from his or her society and house, without giving any proper reason or justification.

The concept of restitution of conjugal rights is an English concept and goes back to the early 1800s. In England, the concept of restitution of conjugal rights was not recognised earlier it was controlled by the Ecclesiastical Courts[2] which looked after all marriage related cases and it did not recognise desertion. The court developed the concept that when a spouse leaves without any justification or explanation, he/she could obtain an order of restitution and on obtaining such order from the court the other spouse under the order of the court had to return back to his/her matrimonial house and failure to comply with such order, the deserting spouse was penalised with excommunication[3], it, basically, meant banishment of the person who did not follow the order of restitution.

Before the advent of the British, India did not recognise any such concept, as the concept of marriage in India was and is still sacramental and separation is considered sin. It was neither considered by Dharmashashtra nor Muslim law made any provision for it[4]. The concept of restitution of conjugal rights came in India with the British and was introduced for the first time in the year 1866 by the Privy Council in the case of *Moonshee Bazloor v. Shamsoonaissa Begum.*[5] In this case, such an action was considered as specific performance.[6]

Essential Ingredients

To obtain the relief of restitution of conjugal rights, the aggrieved party needs to establish the presence of the following essential ingredients:

*Asso. Professor, School of Law and Legal Affairs, Noida International University, NOIDA

ISSN: 0974-2735

BIHAR JOURNAL OF PUBLIC ADMINISTRATION

(A Bi-Annual Refereed Research Journal of IIPA Bihar Regional Branch, Patna)
(S.No. 41 In UGC-CARE Reference List of Quality Journals, S.Sc.)

New Series
Vol. XVIII, No. 2 A
(Supplement)

Vol. XVIII No. 2 A (Supplement) Sept. 2021

Editor
R.K. Verma

Special Supplement on Family and Personal Laws

Indian Institute of Public Administration
Bihar Regional Branch, Patna

BJPA ISSN: 0974-2735
New Series Vol. XVIII No. 2A (Supplement), Sept., 2021

REPERCUSSIONS OF DIVORCE ON CHILDREN: A SOCIO-LEGAL STUDY

Pankaj Dwivedi* and Suvesh Kumar**

Abstract

This article evaluates the traumatic experience of the children of divorced parents. Initially, the pain experienced by children is distressing as they see the family disintegrating and sense vulnerability. Divorce in any circumstances, rips a toddler apart, emotionally and sensitively offensive upon the children's wellbeing. However, long term effects are determined by the behavior on the part of the parents which determine good adjustment for children going through divorce. The present paper finds that divorce is inarguably intensely distressing for children. Outside the family, due to the stigma of divorce the children faces tough time attempting to be accepted by the society.

Keywords: Children, Parents, Divorce, Parent-children Relationship, Parental Rights

INTRODUCTION

A significant effect of divorce is on the parent- children relationship. The amount and nature of contact among youngsters and non-custodial parents usually fathers- will in general diminish and the relationship with the custodial parent-normally the mother gives indications of tension.[4] Further, separate from raises the requirements of authoritative enunciation of children rights in the current setting and how they should be addressed in a divorce continuing. Divorce is an amazingly upsetting

* Dr. Pankaj Dwivedi, Principal, Vijay Singh Pathak Institute of Law, Bheel Akbarpur, Dadri GB Nagar; E-mail: atpankajdwivedi.law@gmail.com; Mob.: 9560357766

** Mr. Suvesh Kumar, Research Scholar, Noida International University, Greater Noida, can be reached at suvesh215@gmail.com, Mob.: 8587012770

ISSN : 2250-0588
Impact Factor : 6.452

www.indusedu.org
editorindus@gmail.com

UGC APPROVED

International Journal of Research in Engineering IT & Social Sciences

Volume 08 Issue 7
JULY 2018

Indus Foundation For
Education, Research & Social Welfare
A Registered Foundation With Global Linkages

A Monthly Double - Blind Peer Reviewed Refereed Open Access and Indexed International Journal included in the International Serial Directories.

Dr. Pankaj Dwiwedi and Arun Kumar Singh, International Journal of Research in Engineering, IT and Social Sciences, ISSN 2250-0588, Impact Factor: 6.452, Volume 08 Issue 07, July 2018, Page 290-292

Environmental Protection and Religious and Cultural Legacy in India

Dr. Pankaj Dwivedi[1] and Arun Kumar Singh[2]

[1](Head, School of Law and Legal Affairs Noida International University, Greater Noida)

2(Research Scholar, SLLA, Noida International University, Greater Noida)

I. INTRODUCTION

Professor Paras Diwan has expressed the view that "traditionally aware a pollution loving nation". According to him:

"*We pollute air by bursting crackers on Dussehra, Diwali and on the occasion of marriages and other festivals. We pollute our rivers by disposing of our dead bodies and all other human and other waste*".

We take out so much wood from our trees for fuel that in many areas trees have become scare. We are primarily a vegetarian nation, but our wild life is on the verge of extinction. We are lover of cleanliness and therefore, broom out all our household and other waste on the public street. Any space is good enough for us to ease. We are a country which believes in open latrines. Municipalities are oblivious of their duties and all city wastes, human and industrial effluents are allowed to flow in open drains and to flood the streets. We are equally fond of noise pollution. Godmen's voice must be heard by all, day and night, and our *Ratjagas*, *Akhandpaths* and *Azan* must use loudspeakers and amplifiers, no one should be deprived from hearing God's and God's man voice and God too are far away beyond the hell and heaven. Our voice must reach them; otherwise our spiritual need will remain unministered. We are not less noisy in our secular matters. Our burial processions must be accompanied by band, twists and Bhangras.[1]

However from the above observations it should not be understood that in ancient India there was no concern for environment protection and that this concern is only of recent origin. In fact the concern for environment protection in India can be traced back to the period between 321 and 320 B.C. The ancient Indian law on environment protection is found in Kautilya's ***Arthashastra***[2]. It was the ***Dharma*** of each individual in the society to protect the nature. The people worshiped the objects of nature. The trees, water, land and animals gained important position in the ancient times[3]. The cultural and religious heritage of Indians shows a deep concern for the protection and prevention of the Environment.

Environmental Pollution was controlled rigidly in the ancient times. It was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment.[4]

The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main motto of social life has been "to live in harmony with nature" Sages and saints of India lived in forests. Their preaching's contained in Vedas, Upannishadas, Smrities, etc. are ample evidences of the society's respect for plants, trees, earth, sky, air, water and every form of life. It was regarded as a sacred duty of every one to protect them. In those days, people worshipped trees, rivers, and sea which were treated as belongings to all living creatures. The children's were educated by their grandparents and parents about necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.[5]

India is a land of rites and rituals. Almost all major religions of the world are presented in India. All these religions realized the proximity of mankind with nature. All religions regulated the conduct of mankind in such a manner which was conducive to nature and not adverse to nature.

In ***Hinduism***, we find that from ***Vedic*** period, the environment was part of ethos of ancient people. In ***Rig Veda*** it is mentioned that the universe consists of five basic elements. They are Earth, Water, Air, Fire and Ether (Space). These five elements provide the basis for life in everything and man is ordained to conserve them. It is further ordained that nobody will destroy vegetation and no one shall kill animals. Thus, it shows compassion for both animals and plants.

---

[1] "10 year later- what on Earth Have" *India today* 38-39 (02-09-2002)

[2] Armin Rosencranze, Shyam Divan and Martha L. Nobel, *Environmental Law and Policy in India- Cases, Material and Statutes*, 27 (1991)

[3] C.M. Jariwala, "Changing Dimensions of Indian Environmental Law", in P. Leelakrishanan(Ed.) *Law and Environment*, 1-25 at 2 (1992)

[4] *T. N. Godavarman Thirumalpad* v. *Union of India*, (2002) 10 SCC 606 para 20

[5] *Fomento Resorts and hotels Ltd.* v. *Minguel Martins*, (2009) 3 SCC 57

ISSN 2277 - 7083

आधुनिक साहित्य

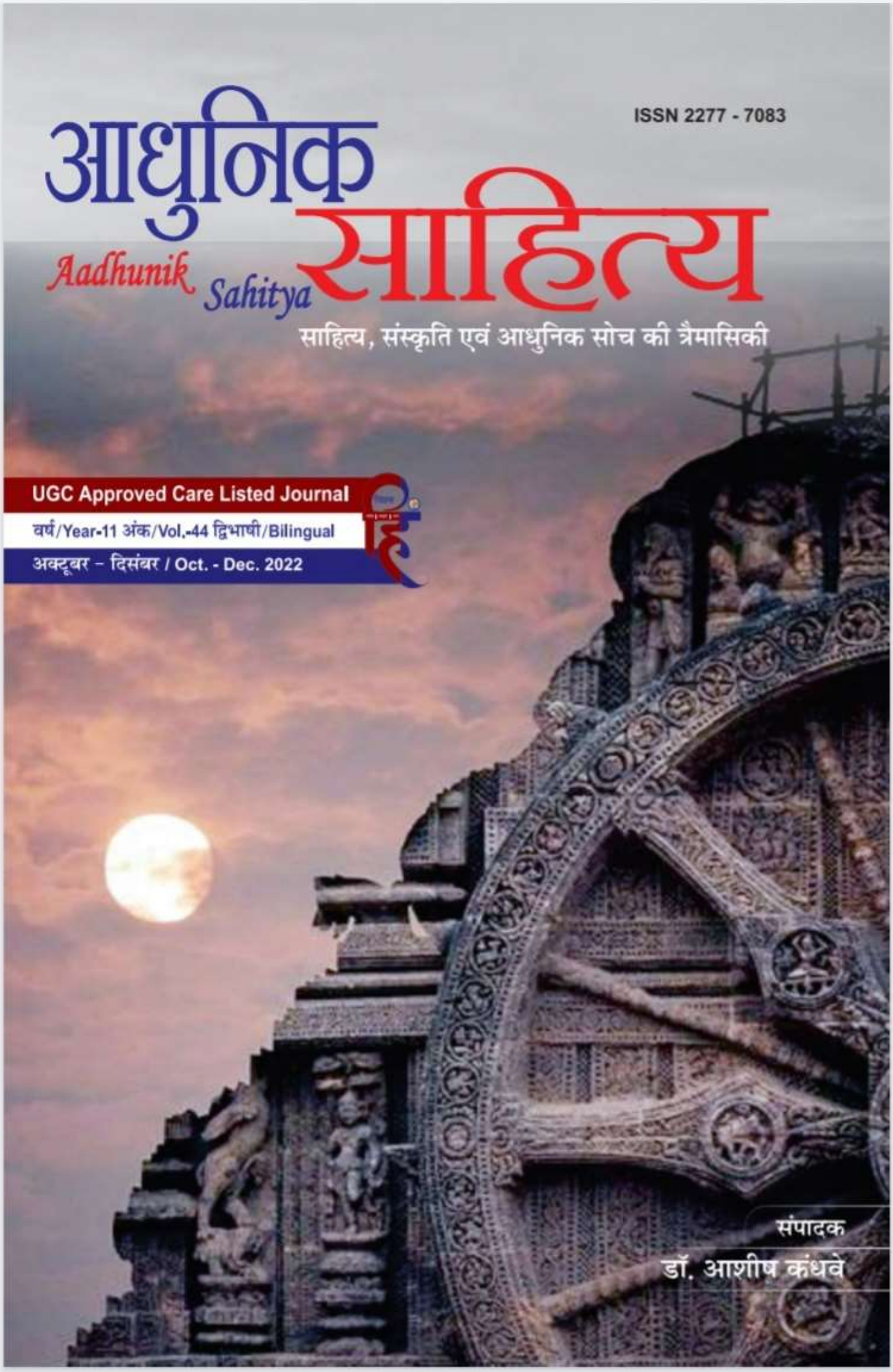
Aadhunik Sahitya

साहित्य, संस्कृति एवं आधुनिक सोच की त्रैमासिकी

UGC Approved Care Listed Journal

वर्ष/Year-11 अंक/Vol.-44 द्विभाषी/Bilingual

अक्टूबर – दिसंबर / Oct. - Dec. 2022



संपादक

डॉ. आशीष कंधवे

Research Article

Offences Relating to Marriage: An Analysis

–Dr. Pankaj Dwivedi
–Dr. Pramod Kumar

Abstract

The word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined. The offence of bigamy is provided against in Sections 494 & 495, but those provisions had to be made necessarily elastic so as to provide for the diverse customs of the various races inhabiting the peninsula. The third offence of adultery is a departure from the English law under which adultery is not a crime, but merely a misconduct against which the aggrieved party has no redress against the adulterer or adulteress except in damages awarded in a suit for divorce or a judicial separation. The offence of seduction of a married woman is one closely cognate to the offence of adultery, so that, really speaking, there are only three offences constituted.

Key words: Offence, Adultery, Criminal elopement, Cruelty and Domestic Violence.

According to section 497 IPC Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either

Introduction

According to most recent surveys Gender Inequality Index Rank of India is 135[1] among all the other countries.[2] Despite the obtainable data on gender-based violence, there is no precise information on gender-based violence in India. Therefore, in this paper, author has tried to discuss offences relating to marriage in detail such as meaning of offence and cruelty, adultery etc.

Meaning of offence

Section 40 of Indian Penal Code 1860 defines the term offence according to the section offence denotes "a thing made punishable by IPC and it also

ISSN : 0974-0066

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Vol-82 No.20
July - December : 2022

आज़ादी का
अमृत महोत्सव

मध्य भारती

मानविकी एवं समाजविज्ञान की द्विभाषी शोध-पत्रिका

AN OVERVIEW OF COPYRIGHT LAW IN THE DIGITAL ERA

SOUMIT SINGH Research Scholar, Department of Law, Atal Bihari Vajpayee School of Legal Studies, C.S.J.M. University, Kalyanpur, Kanpur , Uttar Pradesh
Dr. PRAMOD KUMAR Assistant Professor, Department of Law, Atal Bihari Vajpayee School of Legal Studies, C.S.J.M. University, Kalyanpur, Kanpur , Uttar Pradesh

ABSTRACT

The advent of the internet and advancement in technologies in the twentieth century raised a completely new set of challenges to the copyright domain. The digitization of content has brought about an astonishing increase in the distribution of unauthorised copyrighted works and has caused a tremendous impact on copyright law. Now that most forms of content are in digital format and are globally accessible, hence the need to protect the interest of the authors have risen over the decade. The paper reflects upon the copyright issues faced in the digital era which have been left unacknowledged. Further, this paper deliberates and analyses the problems faced by copyright holders due to circumvention of laws by people to access content illegitimately and also looking at judicial responses in the digital era which has been unaddressed. The paper concludes with some solutions and ideas that could be useful for regulating digital copyright infringement.

INTRODUCTION

Intellectual property refers to the ownership of intangible goods. These include ideas, designs, symbols, writings and creations. It also refers to digital media such as audio and video clips those are accessible through the electronic media. Since intellectual property is intangible, if it is stolen, it may be difficult to recover.

The influence of digital technology on information technology is phenomenal. The present millennium is witnessing a new culture that is cyber culture. IPR awareness is the key to technological innovations and in the emerging knowledge-based economy; the importance of IPR is likely to go further. The awareness among the creators of information and knowledge about IPR has become essential in the digital environment because in the digital environment it is becoming difficult to prove rights' violation whenever they occur. With the enhancement of technology the importance of intellectual property has also increased. Information Technology is growing faster than any other communication vehicle in the history of mankind. Invention of digital technology was the most important revolution in the last century. This new technology may be in the field of Patent, trade mark, Copyright etc.

So, when we talk about Copyright protection, it comes in our mind that it is generally granted to original literary, musical, dramatic or artistic works. But the growth of new technology has given rise to new concepts like computer programs, computer database, computer layouts, various works on web, etc. So, it is very necessary to know more about copyright with regard to computer programs/software, computer databases and various work in cyber space. Copyright is a key issue in intellectual property rights in digital era. This paper deals with scope and coverage of various concepts connected with Copyright, also the Copyright issues associated with digital / electronic information and protection of digital right.

keywords: *Copyright, Digital Era, Trade, Trade-Related Aspects of Intellectual Property Rights (TRIPS), World Intellectual Property Organization (WIPO).*

1. COPYRIGHT OVERVIEW:

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia,* rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work. Copyright is basically the right to copy or reproduction of the work where copyright exists.

RNI No. 46269/87 ISSN-0975-4520 वर्ष- 24 2021

कला एवं धर्म शोध संस्थान, लोक कल्याणकारी ट्रस्ट, वाराणसी

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KALA SAROVAR

(भारतीय कला एवं संस्कृति की विशिष्ट शोध पत्रिका)

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कला सरोवर-2021

RNI No. 46269/87 ISSN-0975-4520 वर्ष- 24 2021

Kala Sarovar **ISSN: 0975-4520**
(UGC Care Group-1 Journal) **Vol-24 No.01(D) January-March 2021**

FAKE NEWS – THE NEW FACE OF MODERN MEDIA

Nargis Nurain
PhD at Amity University Madhya Pradesh, Gwalior

Dr. Pramod Kumar
Assistant Professor at Amity University Madhya Pradesh, Gwalior

The Democracy is balanced by the three pillars namely, the Executive, the Legislative and the Judiciary but now this democracy has also the forth pillar that is media. The term media as 'Forth Pillar of Democracy' is coined by 'Thomas Caryle'. Media adds a merit in democratic set up society as it provides freedom of speech and expression as a fundamental right. In very simple term media is the communication tool used to deliver information or data. Media act as mirror of the world as it reflects the truth and harsh realities at the same time. The purpose of media is to deal in accuracy and facts while covering news but the truth is not always shown by them. In present day media contracts with non- media companies for making news viral, trending and for TRPs. This is termed as paid news syndrome.

The judiciary and media are two different institution inhabiting separate spheres and theirfunctions do not overlap. This article examines that media should engage in the act of journalismrather than acting as a special agency for the court. This article also brings out standard of media coverage and imposes restrictions in the interest of the administration of justice.

Keyword: media, fake news, media trials, manipulation.

1. Introduction

It is an indubitable fact that media act as a watchdog in the society, but it is also a fact that the prime objectives of media has turned their way on climbing the ladder of TRPs. The news is highly based on emotions and low in information. In a democratic set up society right to press is one of the important elements that act as a voice of people in general. In past few years the sensations which are covered by media are senseless, noisy and chaos. This period of news delivery is termed as Yellow Press.

Engineering and Technology Journal for Research and Innovation (ETJRI)
ISSN 2581-8678, Volume II, Issue II

A Review of Conditions for the Grant of Patent in Engineering

Pramod Kumar[1], Ravindra Kumar Verma[2] and Manvandra Kumar Singh[3*]
[1]*Amity Law School, Amity University Madhya Pradesh, Maharajpura Dang, Gwalior (MP) 474005, pkumar@gwa.amity.edu*
[2]*Department of Computer Application, Mewar University, Chittorgarh, Rajasthan, 312901, rverma@mewaruniversity.co.in, ravindra.bhumca08@gmail.com*
[3*]*Department of Mechanical Engineering, Amity School of Engineering and Technology, Amity University Madhya Pradesh, Maharajpura Dang, Gwalior (MP) 474005, mksingh@gwa.amity.edu, mksingh.rs.mec13@itbhu.ac.in*

***Abstract*-Patent is an exclusive right granted for an invention in the field of engineering and others. It may be for product or process, which gives new way of preparing and providing solution to a problem. It protects novel inventions and manufacturing process for the period of 20 years. The nature of patent is territorial and can be sold or licensed. The invention must be: New/Novel, involve an inventive step and be capable of industrial or engineering applicability.**

***Keywords*- Patent, Novel, Invention, Engineering applicability**

I. INTRODUCTION

The property which comes from Intellectual skill and labour is known as Intellectual Property. It is Intangible Property. Patent is also covered under the Intellectual Property regime. Patent is granted for new scientific innovation or development. In India, the Patent Act, 1970 provides the conditions for the grant of patent and procedure of the grant of patent [1]. This research paper deals with the conditions for the grant of patent as well as procedure for the grant of patent in details. Therefore, this paper is divided into two parts, in which first part deals with the conditions for the grants of patent and second part deals with the procedure of the grant of patent.

II. PATENTABILITY CONDITIONS

Any kind of inventions which fulfill the patentability criteria of patent can have the Patent under the Patent Act, 1970. The patentability criteria of the invention are as follows [1].

Novelty –It is defined as the new invention which is not revealed to the public who is residing anywhere in the world in any manner or medium. *Non-obviousness/Inventive step* –there should not be obvious invention to a person skilled in the relevant field of technology. It necessitates inventive characteristics which is unique from the available inventions revealed in the same area.

Industrial application –The capability of the new process or product should be in such way that can be used in an industry. It should play a good role in economic significance.

III. PATENTABILITY LIMITS

According to the section 3 and 4 of the patents act 1970, the following inventions are not considered and patentable:

- The invention, which asserts anything evidently an tithetical to well-accepted natural laws;
- The invention whose principal or deliberate use or commercial misuse is antithetical to public order or ethics or which causes significant damage to the environment and health etc.
- The trifling discovery of a scientific concept or the development of an abstract proposition.
- Discovery of a living/non-living matter transpire in nature;
- The trifling discovery of a new design of a known matter which does not improve the known potency of the same matter, the trifling discovery

ISSN: 0976-0822

Kalyan Bharati

Volume – 36 No. (XIV) 2021

Kalyan Kumar Dasgupta Memorial Committee
Kolkata, West Bengal

Kalyan Bharati

ISSN No. 0976-0822

(UGC-CARE List Group I)

THE SOCIO-LEGAL STATUS OF WOMEN IN INDIA: FROM ANCIENT TO MODERN ERA

Dr. Pramod Kumar

Assistant Professor, ALS, Amity University Madhya Pradesh

Dr. Rajesh Kumar Mahawar

Assistant Professor, ALS, Amity University Madhya Pradesh

ABSTRACT

There is no doubt that we are in the midst of a great revolution in the history of women. The evidence is everywhere; the voice of women is increasingly heard in Parliament, courts and in the streets. While women in the West had to fight for over a century to get some of their basic rights, like the right to vote, the Constitution of India gave women equal rights with men from the beginning. Unfortunately, women in this country are mostly unaware of their rights because of illiteracy and the oppressive tradition.[1]

India is remarkably unique, in the sense that it faces a dichotomy in nearly aspects of its vibrant democracy. Indira Gandhi's rule as Prime Minister of India was a triumph for women in leadership, yet the nation under her rule was populated by hundreds of millions of impoverished women, whose lives changed remarkably little during her term.[2] Maternal mortality rates in some rural areas of India are among the worst in the world, yet India has the world's largest number of professionally qualified women, with more trained female doctors, surgeons, scientists and professors than even the United States. The legal sphere commands equality, yet the social sphere, where most Indian women live, has remained unchanged despite clear legal and constitutional rights.[3]

In most of the human societies, social differentiation between the sexes, the male and female existed and in majority of them women were assigned an inferior position. In recent times in the socialist societies equality of status has been assigned to women, but it is often legal than

[1] For auxiliary reference see http://www.legalserviceindia.com/laws/women_issues.htm Last Retrieved on 18th day of March 2019.

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ILI Law Review

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ILI Law Review -2019 (Winter Issue)

(A Peer Reviewed/ Refereed Journal)

e-ISSN-0976-1489

Editorial Committee

CONTENTS

GENE PATENTING IN PLANTS: INDIAN SCENARIO

*Smita Srivastava**

Abstract

Today, demand for high production in agricultural sector is increasing rapidly due to increase in world population. Biotechnology through genetic engineering has paved the way for the production of super crops with desired qualities by manipulating the genome of plants. In order to give incentive to research in agricultural sector, some legal protection is required. Patent is one of such methods. Granting of patent like monopoly on plant genetic resources give rise to issue of bio-piracy. Biotech companies of developed countries have obtained many patents on genes of plants misappropriating the genetic resources of developing or underdeveloped countries which are rich in biodiversity. This free flow of genetic resources and information related therewith from South to North take place due to concept of "free access" and "common heritage of mankind." Huge profit is generated from such resources without compensating the country of origin. This paper aims to analysis the law relating to gene patenting of plants in India and measures taken to address the issue of bio-piracy.

I Introduction

GENES ARE vital component of biotechnology and represents an increasingly significant area of research and development. Gene sequence offer a wealth of knowledge and information to genetic researcher. The ability to identify and utilize the gene has great potential for the medical and agricultural sector. Research in agriculture sector mainly focuses on evolving new plant varieties capable of catering the modern-day needs. Genetic researches are boon for the agricultural sector as improved varieties with high productivity fulfill the food security need of

* Senior Research Fellow, Faculty of Law, Banaras Hindu University, Varanasi.

NATIONAL CAPITAL LAW JOURNAL

Special Issue on International Law

VOLUME XVII, 2018-19

Published by,
Law Centre II
Faculty of Law
University of Delhi
Delhi-110007

INTERNATIONAL LEGAL REGIME ON GENE PATENTING IN PLANTS

Smita Srivastava[*]

I. INTRODUCTION

Under international legal regime there is considerable room for genetic patenting, especially in cases of plants. Due to this flexibility, gene patenting in plants is permitted in many developed countries as biotech industry is dominated by them. Taking the advantage of this legal regime, agro-biotech companies have obtained several patents on genetic inventions relating to plants. They generate huge profits by misappropriating the genetic resources of developing or under-developed countries, which are rich in biodiversity. This free flow of genetic resources and associated knowledge from South to North take place due to concept of "free access" and "common heritage of mankind." Therefore, while accessing the genetic resources consent of country of origin is not obtained. Further, genetic material is taken without compensating and acknowledging the contribution of indigenous communities of provider country. This gives rise to issue of 'bio piracy' and 'cultural piracy'. Convention on Biological Diversity 1992 and Nagoya Protocol 2010 recognize the "sovereign right of state over its natural resources" and address these issues by providing necessary framework for appropriate access to genetic resources and traditional knowledge associated therewith. They also provide for fair and equitable sharing of benefits arising out of them. Purpose of this paper is to make analysis of basis of gene patenting in plants at the international level and to explore the concerns of developing countries in this regard. It further makes critical analysis of present international 'Access and Benefit Sharing regime' in addressing those concerns.

II. GENE PATENTING IN PLANTS AND TRIPS AGREEMENT

At the international level, Article 27 of TRIPS Agreement lays down minimum standards of patent protection that must be met by all WTO members. Article 27.1 provides**:**

> "……patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application."

With regard to gene patenting the provision is not very clear. However, there is considerable room for gene patenting in plants. It says that patent shall be available for 'anyinvention.'It does not distinguish between inventions having life and inventions not having life, therefore, inventions having life form can be patented. Patent is available for both products and processes. Therefore, patent can be granted on isolated or artificial gene of plant, which is ultimate product. However, with regard to new "uses" of product Article 27.1 is silent. Therefore, member countries are free to allow or disallow the patenting of new use of known substance (e.g. genes).[1] It guarantees patents in all the fields of technology without any discrimination and that off course include the agricultural sector.

[*] Senior Research Fellow, Faculty of Law, Banaras Hindu University, Varanasi, India.

[1] UNCTAD-ICTSD, *Resource Book on TRIPS and Development* 356-357 (Cambridge University Press, New York, 2005).

NIU INTERNATIONAL JOURNAL OF HUMAN RIGHTS A UGC CARE Listed Journal Volume 8, Nov. 2021 ISSN: 2394-0298

NOIDA INTERNATIONAL UNIVERSITY
Plot No 1, Sector – 17 A, Yamuna Expressway, Gautam Buddha Nagar, Uttar Pradesh
Website: www.niu.edu.in

NOIDA INTERNATIONAL UNIVERSITY

ज्ञान–विज्ञान विमुक्तये

Volume 8, Nov. 2021 ISSN: 2394-0298

NIU International Journal of Human Rights

A UGC CARE Listed Journal

NOIDA INTERNATIONAL UNIVERSITY
www.niu.edu.in

Protection of Farmers in Indian Sui Generis Plant Variety Protection Regime: A Critical Analysis

*Smita Srivastava**

Abstract

At the international level TRIPS Agreement requires the member states "to protect the plant varieties either by patent or by effective sui generis system." It is considered that International Convention for Protection of New Varieties of Plants, 1961 (UPOV) provides a model law for "effective sui generis system" for protection of plant variety. It provides for breeder's right regime, which also recognizes the breeder's exemption and farmer's privilege. However, biggest criticism of this Convention is that it over-appreciates the role of breeders. Being an agricultural economy, in order to protect the interest of its farmers, India has adopted its own sui generis system for protection of plant variety. For that purpose, India has enacted the Protection of Plant Varieties and Farmer's Right Act, 2001, which is progressive legislation and strikes a balance among right and interest of various stakeholders.

Key words: - *Farmer's Rights, Plant Variety, TRIPS, UPOV.*

Introduction

India is basically an agricultural economy and vast majority of its people are farmers. Even though the share of agriculture in GDP has declined relatively fast in the past few decades, it still accounts for 17.1 percent of the gross domestic product and employs an overwhelming majority of the population.[1] Overall, agriculture provides livelihood to about 70 percent of the population. India is very rich in terms of plant genetic resources for food and agriculture and is leading producer of many crops like wheat and rice. Further, a number of industries, such as the cotton and jute industries or the sugar industry, are

* *Dr. Smita Srivastava, Assistant Professor, Sharda University, Greater Noida. Email: smita.srivastava07@gmail.com*

1. Ministry of Finance, Economic Survey 2017-2018.

dependent on agricultural commodities. [2]

Indian agriculture is characterized by pre-dominance of small and marginal farmers. It has slowly developed over thousands of years with the domestication of plants and animals. Farmers and rural community by their traditional practices have greatly contributed to the creation, conservation, exchange and utilization of genetic diversity. Agriculture is and will continue to be central to all strategies for planned socio-economic development of this country. [3]

Rise of the modern technology culminated in agricultural research. It is essential to achieve self-sufficiency in food production. Research in agriculture field mainly focuses on evolving new plant varieties capable of catering the modern-day needs. It involves huge investment and laborious efforts which deserve protection. Therefore, there was a need to encourage research in agriculture sector by offering protection to the new plant varieties. At the same time farmers and other groups contributed to the conservation of plant generic resources and in making them available for use in evolving new varieties deserve recognition through rewards. So, there was need to balance two interests.

Since agriculture is backbone of India's economy, therefore, Indian policy was based on the concept that plant varieties and seeds are common heritage of mankind. India did not want to monopolies the crucial areas like agriculture, therefore, Indian Patent Act, 1970 specifically excluded the plant in whole or part thereof including seeds, varieties, species and essential biological process for production of plants from purview of patent protection. However, under TRIPS Agreement, it was also obliged to provide either a patent protection or a combination thereof to plant varieties. This led to a heated debate as to the system of protection to be adopted for plant varieties. Being an agrarian economy, patent protection for plant varieties was not considered to be in the interest of the country and India opted for sui generis legislation. Primary breeders of India are farmers and hence it was necessary to protect the interest of farmers.[4] In order to make balance between the rights of farming community and the breeders, India enacted the Protection of Plant Varieties and Farmer's Right Act, 2001.

2. See Philippe Cullet, *Intellectual Property Protection and Sustainable Development* (LexisNexis Butterworths, New Delhi, 2005) 188.
3. See Sanjit Kumar Chakraborty, *Intellectual Property Rights Over Plant Genetic Resources: Enviro-Legal Issues and Perspective in India*, (2(1) KJLS 2012) 78, 83.
4. See Elizabeth Verkey, Law of Plant Varieties Protection (1st ed., Eastern Book Company, Lucknow, 2007) 120.

CLIMATE CHANGE, DISPLACEMENT AND ITS IMPACT ON HUMAN RIGHTS

Dr. Aparna Singh* & Samiuddin**

Abstract

Environmental change has especially genuine ramifications for the acknowledgment of individual and aggregate privileges of tenants of low-lying little island creating state. These states are helpless against the impacts of ocean level ascent and other environmental change impacts. They are fundamentally reliant on condition for the pay like angling, agribusiness and tourism and profoundly subject to outside guide and imports. Countries which are most vulnerable to climate change are Bangladesh, Cambodia, Democratic Republic of Congo, Haiti, Sierra Leone, Malawi, Mozambique, Madagascar, Philippines and Zimbabwe. The Maldives consists of around 1200 islands 80 percent of which are less thar. one meter above sea level. Its economy largely depends on tourism and fishing, both of which are highly vulnerable to climate change, account for substantial portion of GDP and government revenue.[1]

Most of low lying small island developing states are therefore both geographically and socio-economically vulnerable to a range of climate change related impacts including rising food and fuel prices, adverse weather events, and sea level rises – which is predicted to range from 0.18-0.59 meters by 2100, and up to 7 meters thereafter.[2] *These may result in number of short term and long term harms, including increased rates of mortality and disease, damage to basic infrastructure, destruction of arable land through erosion, contamination of fresh water supplies, loss of traditional livelihoods and sources of income, temporary or permanent displacement and eventually loss of political sovereignty in the event that state's territory becomes uninhabitable.*[3]

These environmental change related effects have unfriendly outcomes for a scope of globally perceived human rights, for example, appropriate to life, nourishment, wellbeing, lodging and versatile water with other human rights at hazard. The paper aims to make the analysis of these human rights and the climate change impact on human being and affecting their rights.

Introduction:

The beginning stage of linkage between human rights and environmental change is that environmental change will undermine or as of now undermining the acknowledgment of a scope of globally secured human rights, for example, ideal to life, wellbeing, ideal to nourishment, water, shield, property, job and culture with movement and resettlement. The between linkage between environmental change and human rights are profound and complex. The most exceedingly awful impacts of environmental change are relied upon to happen in world's poorest nations, where human rights insurances are excessively feeble for assortment of reasons. Low-lying socio-financially hindered little island creating States are among those most helpless against the mischief postured by the environmental change with the ascent of ocean level and outrageous climate conditions debilitating the livability of their domain and the happiness regarding major human rights. The pulverization or vanishing of a state without a quick successor and its suggestions for statehood, sway, self-assurance and the

* Assistant Professor of Law, Dr. Ram Manohar Lohiya National Law University, Lucknow
Email: greeneyeaparna@gmail.com
** LL.M Scholar, Dr. Ram Manohar Lohiya National Law University, Lucknow
Email: samiuddinziamalik@gmail.com

[1] World Bank , *Maldives: Sustaining Growth and Improving the Investment Climate* (2006) 60.
[2] Intergovernmental Panel on Climate Change (IPCC), IPCC Fourth Assessment Report (AR4): Climate Change 2007 – Synthesis Report (2007)
[3] Susannah Willcox, "A Rising Tide: The Implication of Climate Change Inundation for Human Rights and State Sovereignty" 9 (1) Essex Human Rights Review (2012) 1-19

Research Discourse - ISSN 2277-2014
An International Refereed Research Journal
Published by : South Asia Research & Development Institute
Varanasi, U.P. (INDIA)

Indexed by : IIJIF, I2OR, SJIF
IIJ Impact Factor : 2.471
Year-VII, No. XXV
October-December, 2017
Page No. : 145-147

Environment Degradation and Corporate Responsiveness

Samiuddin*

Abstract : *The need of the hour has become the application of business ethics by corporations in their processes and functions, fulfilling their liabilities as a 'corporate citizen' to challenge the menace of depleting environment and thereby averting Industrial disasters. This paper tries to enumerate the ways in which this pious goal can be achieved and bridge the gap between concepts unexplored. The organization has to find and obtain needed resources, interpret and act on environmental changes, dispose of outputs, and control and coordinate internal activities in the face of environmental disturbances and uncertainty.*

Key Words: CSR, Globalization, Environment, Corporate citizen, Industrial Disaster.

INTRODUCTION : *"We do not claim to be more unselfish, more generous or more philanthropic than other people. But we think we started on sound and straightforward business principles, considering the interests of the shareholders our own, and the health and welfare of the employees, the sure foundation of our success."*[1]
-J.R.D. Tata

This message by the stalwart holds much ground in the present context where in order to sustain itself in the market as in the current economic crunch which the world is exposed to, the only recourse left to corporations is to have a human face thereby complying with all the norms and requirements of the society in the nature of environment, labour issues, health et al. Earlier businesses were more focusing on financial goals so their strategic initiatives and annual reports were packed with achieving the same. However, with growing environmental and social concern in the world motivated them to initiate into environmental and social domains. A business cannot succeed in a society which fails.[2]

INDUSTRIAL DISASTERS– THE BLAMEWORTHINESS LIES ON GLOBALIZATION– THE PARADOX : The term globalization is perhaps one of the most widely used and least precisely defined concepts in contemporary business. According to Schwartz and Gibb (1999) the term 'globalization' does not refer to a single process but "serves as shorthand for several related processes" one being 'trend away from nation states'. It acts as a force internationalization, liberalization, universalization and deterioration, environmental effect on globalization being largely felt in the Economic and Governance domains.Due to globalization there can be environment degradation. Rachel Carson's 'Silent Spring' warned the potential long-term harms to humans from pesticides[3]. Over the years, the international community has increased its awareness on the relationship between environmental degradation by way of Industrial disasters and human rights abuses such as:

1) exhaustion of natural resources leads to unemployment and emigration to cities.
2) this affects the enjoyment and exercise of basic human rights. Environmental conditions contribute to a large extent, to the spread of infectious Diseases and
3) new problems such as environmental refugees.

Herein comes the coinage of the term **'Environmental Ethics'** which is expected to be practiced by the corporations not only in letter but also in spirit. Anthropocentric (human centered) environmental ethics hold that only human beings have a moral value. It involves the application of standards of ethical principles to environmental principles. The crux issue is of Environmentalism which has a major impact of how business conducts itself in the form of governmental regulations dealing with environmental protection and preventing Industrial catastrophe. The two approaches appended to it are a) **Preservationists**- who are obliged to keep nature in its pristine beauty and b) **Conservationists**- who keep nature in its current state without depleting its resources much.[4]

On the other hand, there are three general principles of environmental protection, that are of special importance in the development of MNE responsibilities namely- a) **'precautionary'** principle which stresses incumbence upon the regulator to act and to prevent damage from arising even where there is lack of full scientific certainty. b) **'preventive'** principle which applies not only to states but also non-state actors and enacted in Principle 09 of the 1992 Rio Declaration which requires states to enact 'effective environmental legislation'[5] and c) **'polluter pays principle'** which echoes as 'the costs of pollution should be borne by persons responsible for causing the pollution'[6] It will include full environmental cost and not just those, which are immediately tangible.

*Ph.D. Scholar, Dr. Ram Manohar Lohiya National Law University, Lucknow

Research Discourse - ISSN 2277-2014
An International Refereed Research Journal
Published by : South Asia Research & Development Institute
Varanasi, U.P. (INDIA)

Indexed by : IIJF, I2OR, SJIF
IIJ Impact Factor : 2.471
Year-VII, No. XXII, January-March, 2017
Page No. : 139-142

Environmental Refugees and Their Protection Under the Convention Relating to the Status of Refugees, 1951: An Analysis

Samiuddin*

Abstract

Environmental catastrophes have been in the news, resulting in deaths of thousands of people and displacement of hundreds of thousands of people. Scientists are of the opinion that the global warming will lead to rise in sea level, desertification in some areas and floods in others, which means that the millions will be rendered homeless, never to return back. Apart from natural disasters, human-induced environmental changes have also resulted in the forced displacement of people. The term 'environmental refugee' has been used in this paper to refer to people who have been forced to leave their home area because of environmental disruptions. Such displaced people do not have their own instrument of international protection and are instead dependent upon goodwill of agencies or other countries for their recovery. Attempt has been made in this paper to analyse whether 'environmental refugees' can be protected under the Convention Relating to the Status of Refugees, 1951.

The legal definition of 'refugee' and the rights and entitlements it entails are set out in the 1951 Convention and its 1967 Protocol. A 'refugee' is defined as someone who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[1]

Here, it is important to point out that while international law defines 'refugee' in a particular way, it does not mean that the people outside this definition are unworthy of protection, or necessarily denied it.[2] Definitions serve an instrumental purpose. They delimit rights and obligations, and may seek to bolster some kind of ethical claim to protection or assistance as well.[3]

There are a number of reasons that make it difficult to argue that people displaced by the impacts of climate change are refugees within the meaning of the Refugee Convention.

First, refugee definition applies only to people who have already crossed an international border. Much of the movement is and is anticipated to be internal and thus does not meet this preliminary requirement. This criterion also means that the Refugee Convention does not facilitate direct resettlement from the country of persecution. Thus, any proposal to extend the Refugee Convention regime for displaced by climate change impacts, whether through opening up that instrument to renegotiation or drafting a protocol, would have this same limitation.[4]

Secondly, there are difficulties in characterizing 'climate change' as 'persecution'. 'Persecution' entails violations of human rights that are particularly serious, either because of their inherent nature or because of their repetition (for example, an accumulation of breaches which, individually, would not be severe but which together constitute a serious violation).[5] It remains very much a question of degree and proportion. Whether something amounts to 'persecution' is assessed according to the nature of the right at risk, the nature and severity of its restriction or impairment, and the likelihood of the restriction or impairment eventuating in the individual case.[6]

Although adverse climate impacts such as rising sea levels, salination and increase in the frequency and severity of extreme weather events (e.g. storms, cyclones and floods) are harmful, and in some cases fatal, they do not meet the threshold of 'persecution' as this is currently understood in international and domestic law.[7]

There is nothing implicit in the Refugee Convention that would preclude recognition of environmental harms amounting to persecution provided that the requisite elements of Article 1A(1)

*LL.M Scholar, Dr. Ram Manohar Lohiya National Law University, Lucknow, U.P.

Attested.
Samiuddin
19.05.2

pISSN: 2454-7107, eISSN: 2455-4189

Indian Journal of Law and Human Behavior
Volume 3 Number 1, January - June 2017
DOI: http://dx.doi.org/10.21088/ijlhb.2454.7107.3117.1

Review Article

Environmentally Displaced Persons and Protection of Their Rights: Issues and Challanges

Aparna Singh*, Samiuddin**

Author Affiliation
*Assistant Professor of Law
**LL.M Scholar,
Dr. Ram Manohar Lohiya National Law University, Lucknow.

Reprint Request
Aparna Singh,
Assistant Professor of Law
Dr Ram Manohar Lohia National Law University Lucknow
LDA, Kanpur Road Scheme,
Lucknow-226012.
E-mail: greeneyeaparna@gmail.com

Received on 08.04.2017
Accepted on 24.04.2017

Abstract

Environmentally Displaced Persons by virtue of being human beings have human rights which must be protected. Though there is evidence of population migrating for environmental reasons there is still no comprehensive definition of Environmentally Displaced Persons. The CEDEW CRC and the Refugee Convention, 1951 were promulgated to protect the vulnerable class of people. Similarly, EDPs are at-risk population, whose fundamental rights must be protected. In this paper, the authors have dealt with the need to protect the EDPs as vulnerable population and their basic fundamental rights. The attempts have been made to throw light on the problem of EDP. The paper highlights and throws emphasis on to incorporated a model definition of EDP which can be adopted by the world community to give such population a definitive legal status.

Keywords: EDP; Refugee; Community; Population; Displaced; Protection; Women; Children.

Introduction

EDPs by being members of human race are entitled to basic human rights. The CEDAW, CRC and the Refugee Convention establish connection between the importance of fundamental human rights enshrined in U.N. Charter and the UDHR. The purpose of the conventions being to propagate and promote these rights. The Preamble of the 1951 Refugee Convention makes reference to the UDHR thereby indicating the desire of the drafters of the refugee convention to develop the definition of refugee in line with human rights principles. EDPs are almost placed at the same footing as the IDPs and the refugees since all of them are forcibly displaced from their natural habitat. In fact, EDPs are in a more vulnerable position as they are being denied the fundamental rights which are simultaneously protected under the CEDAW, CRC and the 1951 Refugee Convention. EDPs by being members of humanity deserve that their fundamental human rights should be protected.

Of all the human rights the right to life is the most central one. The right to life is of particular concern to EDPs, IDPs and the refugees. They all leave their homes and countries of origin because their lives are in peril. Those leaving their homes for environmental reasons are specifically leaving

because they are either temporarily are permanently uninhabitable. Once they leave their life, physical health is under threat and they are deprived of the basic needs. Their right to physical integrity is directly related to the right to life in the sense that one cannot have life without physical integrity.[1] EDPs are deprived of their right to life which is protected for refugees and the IDPs because they do not have the same protection. But all EDPs, IDPs and the refugees have the same needs.