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Editor
Prof. M. Afzal Wani

IILM School of Law
IILM UNIVERSITY
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# EDITORIAL

This is the second issue of the IILM Law Journal which was launched this year (in April, 2023) by the newly established IILM School of Law as a constituent part of the IILM University, Greater Noida (India). The vision of the school is: "To valiantly ascend as a globally acclaimed and competitive law school to groom legal eagles with velour, dexterity, skill and competence to become good, successful, innovative, adaptable and productive law professionals and performers, with fine humane alertness to cause for commitment to justice, fairness and good conscience in the contemporary fast altering world of cut throat competition, at home and abroad!" Our mission is, in compliance with the requirements of theNational Education Policy 2020, as: Making available a holistic, integrated, enjoyable, and engaging learning with all-inclusive and wide-ranging curriculum, through effectivepedagogy, to empower students all the way through to success, distinguished by firm foundational understanding and appropriate flexibility in course choices… Creation of an environment of envisioning the niceties of the field of law, to engage students in the activitiesof experiential learning and social outreach for preparedness as socially and nationally sensitive contributors and supporters to the society and the system of law and governance. Engagement of students with high quality professionals in litigation, governance and corporate sectors for their emergence as proficient, competent, and well statured knowledgeable academics, community leaders, judges, bureaucrats, diplomats and national representatives. Advanced career and culture-oriented programming for students in the Indiantradition and the national legal system, with necessary technological know-how, to promotein them the potential of working for their individual achievements, along with a spirit of empowering Nyaya Bandhu (Pro Bono Legal Services).

The present journal aims at engaging interested scholars with opportunity to contribute to the literary strength of emerging Indian Jurisprudence with minor and major noticeable writing on legal issues, preferably with interdisciplinary orientations.

This issue of the journal carries contributions from some young enthusiastic members of the Indian Legal Fraternity, which we appreciate with expectation of resulting in to more and more interest generation in legal writings. The focus of the authors is on significant issues

like Compulsory Licensing and the Covid-19 Pandemic; History of Prison Architecture through the Lens of Evolving Social and Legal Standards in National and International Perspectives; Socio-Legal Perspective of Secular India in the 21st Century; Equality, Safety and Non-Discrimination in Workplaces in India; Leveraging Alternative Dispute Resolution to Fortify Corporate Governance; Artificial Intelligence As A Threat to Privacy; Cyber- security and Data Privacy Laws; Deciphering the Interpretive Dilemma of Article 15(2) of the Indian Constitution; Beyond Consent: Challenging the Idea of Marital Rape As An Exception; and Humanitarian Norms During Armed Conflicts. Besides, a very special review is added here on a poetry book titled *THE RHYTHM OF LAW*. The book is a special effort forexploring the elemental impressions of truth, justice, duties, rights, life and love and also visualizes different dimensions of the relationship between law and justice.

The unconditional support of the management and the authorities of the University for Innovative academic-ventures has been the main cause for the launch and continuation of this journal. This spirit is highly appreciable. The editors expect a warm response from the scholars, across law and other disciplines, in the form of contributions on issues of concern topromote an expectedly vibrant research culture in tune with national and global humanaspirations.

**Prof. M. Afzal Wani**

**Editor**

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# COMPULSORY LICENSING AND THE COVID-19 PANDEMIC

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**Anushka Singh****

## Introduction

When the government authorizes a third party to exercise the same rights as the right holder without the right holder's approval, this is known as a "compulsory license." It's important to think about the ongoing controversy divergent opinions on the topic of compulsory licensing thatexist between more developed and less developed nations. To combat the high costs and limited supply of medicine, several developing nations support compulsory licensing. But wealthy nations disagree, saying that doing so would hamper pharmaceutical research and development. The conflict of interest between two parties can be resolved by compulsory licensing, leading to more stable and equitable financial returns for all involved. The pharmaceutical industry's systemof compulsory licensing enables for the disagreement to be addressed by a third party who is impartial and ultimately has the same goal of expanding access to life-saving pharmaceuticals throughout the world for everyone. Thus, in this case, compulsory licensing is the most crucial safety valve, as it helps to resolve the current healthcare system's dilemma of patients versus patents.[1]

When supply exceeds demand, meeting consumer needs becomes more difficult due to patent holders' monopoly power. The worldwide outbreak of COVID-19 brought a complete halt to all human activity. The pharmaceutical industry, however, was unaffected; in fact, corporations all over the world have been heavily investing in finding a cure for COVID19. If a pharmaceutical business successfully manufactures and tests a new medication or vaccine, it will seek patent protection for its creation without delay. Due to the high expense, many individuals are unable to take the necessary drugs to combat the COVID 19 outbreak. The COVID 19 outbreak should be recognized as a national emergency and a major problem.

[1]Devika J. Ashar, "Compulsory Licensing in the Pharmaceutical Industry", 4 *International Journal of Law Management & Humanities* 2259-2281 (2021).

It is necessary to consider that a compulsory licensing is a drastic step that seriously infringes upon the right of monopoly and exclusivity of a patent holder, and would thus force the patentee to accept for presumably a reduced eminence fee as contrasted to a voluntary license. This approach should only be pursued if the patentee is uncooperative in setting fair licensing terms for a constant stream of the patented drug/vaccine.[2]

**International and National Provisions for Compulsory License**

Pharmaceutical patents are intimately linked to compulsory licensing. The term refers to a situation in which a third party has been granted permission by the Controller General of Patents to use, create, or sell a patented product or technique. The patent holder's approval is not required to manufacture or sell the patented product or method under compulsory licensing.

Complementing the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") in 1995, the Doha Declaration on the TRIPS Agreement of 2001 and Public Health (Doha Declaration) affirms that nations may employ compulsory licensing and other flexibilities to protect public health, and that these countries may do so on any groundsthey see fit. Moreover, it specifies that WTO members may grant compulsory licenses undertheir own terms and conditions. The specific compulsory licensing regime covered by both the modified TRIPS Agreement and the previous 2003 waiver decision applies only to the manufacturing of pharmaceuticals destined for export.[3]Compulsory licensing to further public health goals is also permitted under Article 31 of the TRIPS Agreement and Paragraph 5(b) ofthe Doha Declaration.[4]

Before issuing a compulsory license, government authorities must sometimes first try to negotiate for a voluntary license on fair conditions. However, in cases of nationwide urgency,

[2]Sanjana, "Compulsory Licensing In India Amidst The COVID 19 Pandemic: Will India Consider It?", *Mondaq*, September 2, 2021, available at: https://www.mondaq.com/india/patent/1107588/compulsory-licensing-in-india-amidst-the-covid-19-pandemic-will-india-consider-it ( last visited on July 02, 2023).
[3]Doha Declaration, 2001, para. 6
[4] MSF Briefing Document, "COMPULSORY LICENSES, THE TRIPS WAIVER AND ACCESS TO COVID-19 MEDICAL TECHNOLOGIES",*AccesCampaign*, May 2021, *Available at:* https://msfaccess.org/sites/default/files/2021-05/COVID_TechBrief_MSF_AC_IP_CompulsoryLicensesTRIPSWaiver_ENG_21May2021_0.pdf (last visited on July 18, 2023)

other situations of exceptional urgency, public noncommercial usage[5] or as a remedy for competition breaches, prior agreement with the patent owners is not necessary. [6] In patent infringement proceedings, the courts may also permit the continuous infringement, in exchange for the payment of royalties of the patent owner's rights that were never authorized by the patent owner.[7]

The Indian Constitution guarantees the right to health under Article 21[8] as a fundamental human right. In the end, it is the government's responsibility to ensure the well-being of its citizens. In light of this, the concept of compulsory licensing is in opposition to the commercialization of a patent and may be beneficial for the general public in cases of emergency such as COVID-19.[9]

The concept of Compulsory License is envisaged under Chapter XVI of the Patents Act, 1970 (herein referred to as the "Act") as amended in 2005. The provision regarding grant of Compulsory License is under Section 84 of the Act, wherein one can move an application to the Controller of patent office within 3 months of the patent grant. The application is contingent on availability of the product at a prohibitively high price, public demand isn't being met, or the product is not in the supply chain of the Indian Territory.[10] In certain conditions as prescribes under Section 92(3) of the Act, the controller can take *suomotu* action to grant compulsory license. The conditions that can emerge from a public health crisis include national emergency, exceptional urgency, and public non-commercial usage.[11] In order for the Controller to award licenses to all applicants who desire to produce the product, the Central Government must first make a notification indicating that certain patents can be compulsorily licensed due to a national health emergency.[12]

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[5] TRIPS Agreement 1995, art. 31(b)
[6] TRIPS Agreement 1995, art. 31(k)
[7] *F. Hoffmann-La Roche Ltd. &Anr. v/s Cipla Limited* CS (OS) 89/2008
[8] The Constitution of India 1950 , art 21- *Protection of life and personal liberty*- No person shall be deprived of his life or personal liberty except according to procedure established by law
[9] Yashi Agarwal, SpoortiReddy,*et.al.*, "A STUDY ON COMPULSORY LICENSING IN THE TIME OF COVID-19" 6(5) *The Law Brigade* 141-146 (2020).
[10] The Patents Act, 1970 (Act 39 of 1970), s. 84(1)
[11] SakshiPawar, "Using Compulsory Licensing to Address the Vaccine Shortage", *Vidhi legal policy*, May, 8, 2021, available at: https://vidhilegalpolicy.in/blog/using-compulsory-licensing-to-address-the-vaccine-shortage/ (last visited on July 02, 2023).
[12] *Supra* note 11, s. 92

The central government has the power to use the invention that has been patented and confer non-exclusive rights to a third party by authorization.[13] The central government just by a simple notification to the applicant of the patent can acquire the right to use the patent if necessary for public purpose such as health and safety.[14]

It is pertinent to note that the grant of compulsory license to a third party doesn't devoid the patent holder from any rights such as being compensated for the copies of any patented inventionthat are manufactured under the license.

Therefore, the Doha Declaration and the Patents Act both offer a framework for compulsory licensing of patented innovations under specific conditions, as do international agreements.[15]

**Prior Issuance of Compulsory License**

In the 2000s, developing nations such as Malaysia, Mozambique, Thailand, Rwanda, Zambia, Brazil, Zimbabwe, Ghana, and Ecuador awarded compulsory license to a few antiretroviral pharmaceuticals for their HIV/AIDS-afflicted populations. It was in 2003 wherein the obligation under Article 31(f) and 31(h) of the TRIPS Agreement was waived by the general council. Similarly, in 1997, the South African government changed Article 15(c) of their Medicines and Related Substances Act 1965, so permitting their government to award compulsory permits to import cheaper and generic medications to combat the epidemic of HIV in its country. In retaliation, the United States of America and a few of European nations threatened them with ineffective penalties.[16]

In the past, India has also issued compulsory licenses. For many in India, the price of the cancer medicine Nexavar, which is used to treat liver and kidney disease, was out of reach. One month's supply cost as much as Rs. 2.8 Lakh, or around $3,100. Natco Pharma was issued a compulsory license by the patent office to produce Nexavar in 2012.[17]As a result, Nexavar was made

[13]*Ibid.*, s.100
[14]*Ibid.* , s.102
[15]*et.al., "* Pharmaceutical Inventions and Intellectual Property Rights in the time of Global Pandemic like COVID-19", Excelon IP, *et.al*., available at: https://excelonip.com/pharmaceutical-inventions-and-intellectual-property-rights-in-the-time-of-global-pandemic-like-covid-19/ (last visited on July 06, 2023).
[16] Hilary Wong, "The case for compulsory licensing during COVID-19" 10(1) *Journal of Global Helath* (2020).
[17]Mahima Rath& Arnav Mohapatra, "The Futility of Depending On Compulsory Licenses to Accelerate Manufacturing Capacity of Covid19 Vaccines", 3 *Bennet Journal of Legal Studies* 130-146 (2022).

available to the public for a cost of just Rs. 9000. Hence, it was necessary to grant the compulsory license so that the price of the medicine could be reduced for public health.[18] After the grant Bayer Corporation appealed against the grant to the Intellectual Property Appellate Board (IPAB)[19] which upheld the decision of Controller of Patents and so did the Bombay High Court.[20]

It is necessary to negate the right of embarking on legal rights of a patent holder by the central government for effective implementation of a granted compulsory license. Since compulsory licenses are so drastic, they are rarely proposed in India. Furthermore, nations like the United States have voiced their unhappiness at the possibility of forced licensing for their enterprises operating in poorer countries, leading to some diplomatic and trade pressure to not implement such policies.[21]

In contrast to the CL, which does not necessitate the licensee's approval for commercialization of the medication in question, a voluntary license does require the licensee's approval before commercialization can begin. This will let the medicine to be produced and delivered more quickly, which might aid in containing the third wave of Covid expected in India in the near future.

The American pharmaceutical firm Eli Lily and Company is Baricitinib's official licensee. To produce Baricitinib, NATCO Pharma applied for a CL from India's Controller of Patents on May 3, 2021, in light of the country's second wave of COVID. Through these measures, the medicine might be made available to a larger percentage of the population in the event of a pandemic. The compulsory license was requested by NATCO to the government in furtherance of invoking national emergency clause in Section 92 of the Act, 1970. However, Eli Lily, the licensee, signed a voluntary, non-exclusive license agreement with NATCO and five other Indian pharmaceutical companies to produce and sell Baricitinib without paying royalties. This action was taken by NATCO Pharma on May 17, 2021, withdrawing their CL application for Baricitinib. As many times as Bajaj Healthcare (BHL) tried, they were unable to persuade Eli Lily to grant them the

[18] Compulsory License No. 1 of 2011
[19] *Bayer Corporation v/s Natco Pharma Ltd*., Order No. 45/2013
[20] *Bayer Corporation v/s Union of India &Ors*, Writ Petition No. 1323 OF 2013
[21] Ayushi Srivastava and Sanchita Jain, "Compulsory Licensing: A Remedy for COVID Vaccines?", 5 *International Journal of Law Management & Humanities* 737-744 (2022)

voluntary license. This resulted in Bajaj Healthcare Limited (BHL) applying to the Controller to grant compulsory license for the production and distribution of Baricitinib for the treatment of Covid disease on May 26, 2021. According to BHL, the cost of Eli Lilly's Baricitinib in India is too high for the average person to pay, and the company's own production of the medicine would reduce the cost significantly.[22]

**Limitations of Compulsory Licenses in a Pandemic**

It has been seen in previous instances that the developing nations, the use of compulsory have been hindered in pursuance of the pressures from the pharmacy companies and manufacturing partners. It is challenging to arrange compulsory licenses across different jurisdictions because each situation is unique. Establishing patent-free supply chains for products with multiple components and complicated underlying IP landscapes, like certain vaccines, is essential in the event of a worldwide pandemic. For new and developing patent obstacles, compulsory licensing is not a viable solution. After manufacture and delivery of particular medical goods have been halted due to patent hurdles, the only recourse is compulsory licensing. [23]

The primary focus of compulsory licensing should be on supplying the home market. The domestic supply of patented product is a mandate when compulsory license is granted in furtherance of Article 31(f) of the TRIPS Agreement. This means that governments may have to provide evidence that the quantity for export is a small fraction of the local supply if they wish toexport generic items manufactured under compulsory licensing. The context of Article 31(f) is insufficient and untenable in the context of a pandemic, where immediate significant humanitarian assistance is required at utmost priority. Export licensing requirements provide significant practical and administrative challenges. The specific compulsory license under Article 31(b) does not give a viable alternative to ease exports, although it imports, manufacture and export to nations with limited production capability, does not give a viable alternative to ease

[22]Archana Raghavendra , "Compulsory Licensing In View of Pandemic: Bajaj Healthcare Requests For License To Manufacture Baricitini" , *Mondaq* , February 02, 2022 , available at: https://www.mondaq.com/india/patent/1155308/compulsory-licensing-in-view-of-pandemic-bajaj-healthcare-requests-for-license-to-manufacture-baricitinib (last visited on July 02, 2023).

[23]Hana Onderkova**, "**Compulsory Licensing in India and changes brought to it by the TRIPS Agreement", *IP Helpdesk EU Commission*, October 12, 2021, available at: https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/compulsory-licensing-india-and-changes-brought-it-trips-agreement-2021-10-12_en (last visited on July 02, 2023).

exports. Non-patent intellectual property restrictions are difficult for compulsory licenses to overcome. Small molecule drugs may typically be quickly manufactured by other manufacturers thanks to patent overriding alone. In a grave environment of a pandemic, it becomes necessary to enable substitute procedures for instantaneous reach to other Intellectual Property assets which are protected because immediate production and approval from the regulation to manufacture multifarious pharmaceuticals such as the vaccine.[24]

**Judicial Parlance of Compulsory License in COVID-19**

When it comes to granting compulsory licenses, the courts have held that the public interest must take precedence over inventors' rights and that such license are granted for the greater good. Given that the epidemic has spread to people of all socioeconomic statuses, it stands to reason that any treatment or vaccine created to combat COVID 19 should be made broadly availableand at a fair price. It is necessary that the patent holder who has made the drug or vaccine is fairly reimbursed for their work so that they are not dissuaded from doing more research in the field. It is possible to strike a middle ground between the two if the patent holders oblige to a voluntary license that ensure widespread distribution of the drug or vaccine in question, thus preventing the government from issuing a compulsory license and removing the patentee's abilityto set the price and other terms of the license.[25]

In a previous precedent of the court wherein it had to be deciphered as to when the production of a drug meets the need of public, it elucidated that it is sufficient only when the drug reaches readily to everyone who needs it. In furtherance of this the court held that Controller of Indian Patent can issue compulsory license.[26]

In a *suo motu* writ petition[27] , the Supreme Court questioned the government in a stern manner as to why the government is not invoking its powers to grant compulsory license or authorized use as the current situation of COVID-19 qualifies as a public health emergency as per Section

[24]Chintan Bhardwaj and Sanat Prem, "COVID-19 Vaccine: A Case of Compulsory Licensing for Social Utility!", SSRN, June 11, 2021, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3853761 (last visited on July 02, 2023).
[25]Khaitan & Co, Compulsory Licensing amidst the COVID-19 Pandemic, *Lexology*, July 16, 2020, *available at:* https://www.lexology.com/library/detail.aspx?g=253ff273-55fb-46cf-9331-04d632ac055e (last visited January 27 , 2023)
[26]*Supra* note 21, Bombay High Court
[27]*Re: Distribution Of Essential ... v/s Unknown*, Suo Motu Writ Petition (Civil) No.3 of 2021

92(3)(i) of the Patent Act, 1970. In addition, the recommendation made by the Delhi High Court[28] in that the government should ponder upon issuing compulsory license in furtherance of COVID-19. The Division Bench of the Court made the following findings in an order dated April 20, 2021: - "*Looking to the present-day situation, there can be no doubt that a case ismade out for exercise of its power by the Central Government / Controller… At the same time, the interests of the patent holders/ licensees should be kept in mind…… the lives of thousands of people are being lost each day in the country due to COVID. The lives of the people take priorityor everything else……*" [29]

In lieu of the grave second wave of Covid-19, other cases such as of Rajasthan High Court *in Mallika Singh & Anr. v/s Union Of India & Anr*[30] and Kerala High Court [31] saw filing of Public Interest Litigations requesting the government to take appropriate action on invoking compulsory license and their negligence regarding it.

**Stance of Central Government**

Although India has asked other nations to waive intellectual property rights, it has not taken steps to ensure broad manufacture of its own domestic vaccine. Despite a severe scarcity of vaccinations in India, just two businesses across the country produce the two most commonly given vaccines, *Covaxin* and *Covishield*. If present production capacities are shown to be inadequate to fulfil the demands of India's population, the onus will shift to the government to guarantee that the vaccines are made on a large scale in India, whether they are home-grown or bought under appropriate license agreements. The federal government must have faith in its own authority under the Patent Act, 1970 and employ the resources at its disposal to accomplish this goal.[32]

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[28]*Dharmendra Kumar Aggarwal v/s Govt. of NCT of Delhi* , W.P.(C) 5173/2021

[29] MZM Legal LLP, "The Indian Dilemma On Compulsory Licensing Of The Covid-19 Vaccines", *Mondaq*, November 4, 2021, available at: https://www.mondaq.com/india/operational-impacts-and-strategy/1126130/the-indian-dilemma-on-compulsory-licensing-of-the-covid-19-vaccines (last visited on July 18, 2023).

[30] Civil Writ Petition (PIL) No. 5947/2021

[31] Lydia Suzanne Thomas, "High Time Govt Opens Doors To Enable Capable Vaccine Manufacturers To Produce Vaccines': PIL In Kerala High Court Seeks Compulsory Licensing Of Covid Vaccines", *Live Law*, May 11, 2021, available at: https://www.livelaw.in/news-updates/pil-kerala-high-court-compulsory-licensing-of-covid-vaccines-173984(last visited on July 18, 2023).

[32]AdyashaSamal, "After Natco's Withdrawal, Bajaj Healthcare files for Compulsory License to Manufacture Baricitinib", *Spicy IP* , July 7, 2021, available at: https://spicyip.com/2021/07/after-natcos-withdrawal-bajaj-healthcare-files-for-compulsory-license-to-manufacture-baricitinib.html (last visited on July 18, 2023).

Among the first governments to engage in "vaccine diplomacy", India's government helps developing nations gain access to experimental vaccines they would not have otherwise been able to afford. The Indian government's Ministry of External Affairs claims that "the Government of India has received many requests for the supply of Indian produced vaccinations from neighboring and vital regional partners."[33] As a result of these demands, and in accordance with India's declared commitment to employ India's vaccine manufacturing and shipping capabilities to aid the global community in its fight against the Covid epidemic, India will begin producing and distributing vaccines.

However, the government was reluctant to move through with a compulsory license for Covid medications such as *Remdesivir* and *Tocilizumab*. To avoid alienating the pharmaceutical industry during this crisis, it had favoured cooperation through discussions and voluntary licensing in its testimony to the Apex court. Baricitinib is a good example of why the government is reluctant to approve a compulsory license. Eli Lilly swiftly released additional licenses on seemingly favourable conditions to meet the demands, resulting in cheaper drugs, once a shortfall was identified. If the price difference between BH and other options is small, it's hard to envision the government taking the risk of alienating the pharmaceutical firms that are making these efforts on their own will by giving a compulsory license.[34]

In order to address the insufficient availability and accessibility of COVID-19 vaccines and pharmaceuticals during a pandemic emergency, the Parliamentary Standard Committeesuggested that the government look into the potential of temporarily abolishing patent rights and establishing Compulsory Licensing. The United States, which had previously been the mostvocal opponent of CLs internationally, changed its tune and not only supported the use of CLs during the pandemic as documented in the USTR Special 301 Report[35] , but also advocated for a limited TRIPS Waiver. However, the government was slow to give a CL for anti-COVID drugs like *Remdesivir* and *Tocilizumab*.

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[33]Vishwas Nagori &Vaishnavi Deshpande , "IPR Waiver And Covid-19 Vaccines", *Mondaq*, December 8, 2021, available at: https://www.mondaq.com/india/patent/1139264/ipr-waiver-and-covid-19-vaccines (last visited on July 18, 2023).

[34]Praharsh Gour, "Centre Sees No Compulsion to Issue Compulsory Licenses for Covid Drugs", May 10, 2021, *Spicy IP*, available at: https://spicyip.com/2021/05/centre-under-no-compulsion-to-issue-compulsory-licenses-for-covid-19-treatments.html (last visited on July 18, 2023).

[35] Michael B.G Froman, "Special 301 Report, Office of The United States Trade Representative", April 2015, available at https://ustr.gov/sites/default/ files/2015-Special-301-Report-FINAL.pdf (accessed on 27 January 2023).

In May 2021, the government sought to dispel several "myths" about its monopoly on vaccinations through its press release. The role of the Centre in increasing domestic vaccine production was one such issue the Government addressed. It is evident from its brief statement that the government has actively facilitated discussions between *Bharat Biotech* and other corporations (three in particular). The government will also keep a close check on the six businesses led by *Dr. Reddy's* as they produce the *Sputnik* vaccine. It is evident from the government's answer that the government, or the relevant enterprises under government supervision, is taking all necessary steps to increase domestic manufacturing of the vaccinations.

The government rejected the proposal to use Section 84 of the Act to protect vaccinationsbecause of the complex nature of their manufacture. The best biosafety labs, collaborativeefforts, trained staff, reliable supplies, and more all fall under this category. The government's position plays down its own position on IP exemptions before the World Trade Organization (WTO).[36] To counter its incompetency regarding invocation of compulsory license, the government through its "NITI Aayog" press release blamed the manufacturers of the vaccine to have not entered into voluntary license agreements with "Moderna" who has made it clear that a company cannot be sued for producing vaccines.[37]

Although India has asked other nations to waive intellectual property rights, it has not taken steps to ensure broad manufacture of its own domestic vaccine. Despite a severe scarcity of vaccinations in India, just two businesses across the country produce the two most commonly given vaccines, *Covaxin* and *Covishield*. If present production capacities are shown to be insufficient to fulfill the demands of India's general populace, the onus will shift to the government to guarantee that the vaccines are made on a large scale in India, whether they are home-grown or bought under appropriate license agreements. The federal government must havefaith in its own authority under the Act and employ the resources at its disposal to accomplish this goal. [38]

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[36] Council for Trade-Related Aspects of Intellectual Property Rights, "Waiver from Certain Provisions of the TRIPs Agreement for the Prevention, Containment and Treatment of COVID-19", *World Trade Organisation IP/C/W/669/Rev.1*, May 21, 2021, available at: https://www.keionline.org/wp-content/uploads/W669Rev1.pdf

[37] *Supra* Note 30

[38] V. Parthasarthi, "Analysis of Compulsory Licensing in India and its Perceived Impact During the Covid Era", 4 *GLS Law Journal* 21-30 (July- December 2022)

**TRIPS Waiver for COVID-19 Vaccine**

In furtherance of the 12th WTO Ministerial Conference in October 2020 at Geneva [39] , India and South Africa suggested a time-bound and specialized waiver to permit producers in developing economies to produce vaccines without the authorization of the patentee in the times of pandemic with respect to the TRIPS Agreement provisions. Governments are no longer bound byArticle 31(f) of TRIPS, and the plan calls for a three-year IPR moratorium and the classification of medical products as global public goods. All other developing and least developed countries, which lacked the industrial ability to produce medicines and pharmaceuticals, were also granted this exemption.[40]

Although the QUAD process of the WTO relaxed one of the requirements for the issuing of compulsory licenses, the preliminary proposed waiver allowed the members of WTO to eliminate intellectual property restrictions with respect of COVID-19 response instruments including vaccines, by November 2021.[41] The nations settled on the fundamentals of a COVID- 19 vaccine intellectual property waiver in March 2022. In March of 2022, the countries reached an agreement on the fundamental aspects of a farsighted sought after intellectual propertyexemption for COVID-19 vaccines.[42] WTO countries agreed to a five-year patent waiver for COVID-19 vaccines during a meeting of the TRIPS Council in June 2022. A vaccine may be developed without the permission of the original manufacturer if the government grants a compulsory license to local pharmaceutical companies. The export of vaccines was also permitted.[43] On 13 November 2022, at an informal WTO meeting, delegates reached a consensus

[39] Council for Trade-Related Aspects of Intellectual Property Rights, "WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19 REVISED DECISION TEXT" IP/C/W/669/Rev.1 *WTO* (May 25 2021).
[40]*Supra* note 10
[41] Ravi KanthDevarakonda, "TRIPS Waiver: How India Abandoned its Own WTO Proposal" , *The Wire* , June 15 2022, *available at:*https://thewire.in/health/trips-waiver-how-india-abandoned-its-own-wto-proposal (last visited on July 18, 2023).
[42]KunalKhureja, "COVID-19 Vaccine and TRIPS IP Waiver – Explained, pointwise" *ForumIAS* , April 05 2022, *available at :*https://blog.forumias.com/COVID-19-vaccine-and-trips-ip-waiver/ (last visited on July 18, 2023)
[43] Ministerial Conference Twelfth Session Geneva, "DRAFT MINISTERIAL DECISION ON THE TRIPS AGREEMENT Revision" WT/MIN (22)/W/15/Rev.2, *WTO* (June 17 2022).

on the question of whether or not an IP waiver should be extended to COVID-19 therapies and diagnostics.[44]

On January 12, 2023, the Indian government refused to disclose any agreements or investments it had made with other parties to develop or acquire India's Covid 19 vaccine, *Covaxin*, or the Indian *mRNA* or intranasal vaccine candidates.[45]

Given the worldwide nature of the epidemic and the inability of the patent holders to supply the demand for vaccinations, as well as the usage of public funds, grounds might be made in support of a waiver. It's important to remember the arguments put forth by those who oppose the waiver, including the fact that drug makers would see fewer or no returns on their R&D investments, that vaccine production is expensive and requires cutting-edge technology and the brightest minds, and that drug makers might be hesitant to take the lead the next time a crisis like COVID-19 arises.[46]

## Conclusion

The current infrastructure of accessibility to medications has been shown to be inadequate in the face of the COVID-19 epidemic and the major issues it has presented to the international community. While the financial incentives provided by patent protection are critical to encouraging ongoing innovation, emergencies affecting public health such as the present COVID-19 issue qualify for an exception from the normal licensing requirements. Governments worldwide should take all necessary measures to end the current epidemic. Compulsory licensingis a tool that may benefit greatly from the guidance of international organizations, which canboth provide the necessary legal expertise and build a climate of general support. As such, poor nations implementing such public health initiatives during a pandemic should neither be discouraged nor punished by pharmaceutical firms or the G20[47].

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[44] Council for Trade-Related Aspects of Intellectual Property Rights, "ANNUAL REVIEW OF THE SPECIAL COMPULSORY LICENSING SYSTEM, REPORT TO THE GENERAL COUNCIL" IP/C/94, *WTO* (November 22, 2022).

[45]Aparajati Lath, "Indian government denies access to Covid 19 vaccine collaboration agreements", *Spicy IP*, January 12, 2023, available at: https://spicyip.com/2023/01/indian-government-denies-access-to-covid-19-vaccine-collaboration-agreements.html (last visited on July 18, 2023).

[46]Olga Gurgula**&**John Hull*, "*Compulsory licensing of trade secrets: ensuring access to COVID-19 vaccines via involuntary technology transfer", 16 *Journal of Intellectual Property Law & Practice* 1242-1261 (2021)

[47]G20 or Group of Twenty is an intergovernmental forum comprising nineteen countries along with the European Union

In the midst of a worldwide pandemic, the legal arguments swing from the jurisprudence of patent laws to the spirit of basic rights. The former emerged out of a desire to preserve innovations so as to encourage healthy market competition and broaden people's access toresources. The author's strong convictions in favour of basic rights lead him to advocate for a worldwide exemption from the requirement to get the Covid-19 vaccination. Provisions ofSection 84 and 92 of the Act shall be construed as establishing for a catastrophe like the Covid19worldwide pandemic the legislative intent of the provisions. As a result, it's crucial to be awareof the protections guaranteed by laws designed to be used in times of emergency. In addition, intellectual property rights over the Covid19 vaccine are now a matter of societal utility in the fight to rescue mankind and to defend the values entrenched in India's Constitution.

The epidemic completely devastated the world, posing a threat to healthcare systems everywhere. Compulsory licensing is a helpful tool in the fight against this epidemic, which requires widespread distribution of covid vaccinations. Legal requirements for drug approval are an effective means of protecting public health, and they will help address both the chronic shortage of essential medications and the astronomical cost of treating their symptoms. During a global epidemic, legal considerations range from the spirit of basic rights to the jurisprudence of patent laws. The need for safeguarding innovation has spawned the aforementioned, which inturn promotes healthy market competition and broadens access for consumers. While the financial incentives provided by patent protection are essential to encouraging ongoing innovation, public health catastrophes like as the current COVID19 pandemic trigger an exception to the rule that requires companies to grant licenses to the public at large.

The COVID-19 outbreak is a completely unique health catastrophe, making it extremely challenging for emerging and disadvantaged countries to provide inexpensive drugs and treatments to their populations. Compulsory licensing is the most workable solution in this dire circumstance due to the high demand for particular pharmaceuticals and their prohibitive costs. The author goes on to recommend that governments should impose compulsory licenses on medicines used to treat the primary and secondary COVID-19 symptoms as well , so that they can be made widely available at prices that make them affordable to people living below the poverty threshold.

Even though it's true that granting CL can help increase access to life-saving medications and immunizations, this is by no means a complete answer. There are a lot of other things that need to be considered while making vaccines. As a practical step toward addressing the critical situation the world is in right now, the authorities and the global network need to take a giantleap forward and reduce the current constraints within the IPR system.

To allow governments to create commonly used variants of medicinal products without obtaining approval from the patent proprietor, CL clearly assures without being permitted for the same in times of national emergency and for public usage which is non-commercial. The developing world often proposes compulsory licensing as a solution to the procurement problem, however there are at least two reasons why this may not be effective. Additionally, the extended determination is needed to complete the compulsory licensing process results in a major disadvantage. There was a time when it took years for the medicine to spread over the populationof the licensee. For two of the four years, the producer and patent holder have been working together to negotiate the contractual terms and conditions, which includes financial compensation. The procedural hurdles, such as a requirement for a judicial or impartial evaluation, slow down the acquisition of vaccinations.

Hence, in the wake of the current circumstances where there is reluctance by the pharmaceutical manufacturing companies to enter into non-exclusive compulsory license agreements, the global leaders should work together in finding sustainable resolutions to solve the provisional and procedural issues. The issues that came into the forefront during the Covid-19 makes it of utmost importance that the world level trade agreements concerning intellectual property rights are amended and enhanced in such a manner that if any future emergency which risks public health is occurred there is hassle free domestic and trans-border exchange of health technologies and pharmaceutical materials.

# A HISTORY OF PRISON ARCHITECTURE THROUGH THE LENS OF EVOLVING SOCIAL, LEGAL STANDARDS: NATIONAL AND INTERNATIONAL PERSPECTIVES

**Teena Sundarbanshi***

*"As an architect, you design for the present, with an awareness of the past for a future which is essentially unknown" -- Norman Foster.*[48]

## A. Introduction

As per this statement, architecture is not only a design but it is more than that which has specifically prepared to achieve certain aim and objectives. Architecture and human civilization have close connection with each other. Each architect is representing a culture, moral values, andway of thinking of each society.[49] Architecture has a close connection with human society and crime is not an exception for it. Society and its members always expect peace around them. To maintain that peace, society always tries to trace those elements of the society who are responsible for causing disturbances in society. Mostly some anti-social elements, law breakers, offenders are the one who mostly traced by existing law of the land in order to punish them in the isolation. The moment law tried to make this anti-social element apart from society, the need and role of specific architecture came into a picture.

Each species requires a specific kind of architecture to fulfill specific purpose. If we talk about human beings, then there is a need for a different architecture, especially for those who are prisoners. Prisoners are humans with evil natures. Their existence is harmful for the society at large. However, they are recognized as a human by the law with different rights which should not be violated at any cost. The law has purpose to isolate them from the society, however, law cannot avoid their existence as human and their rights to merge with society after certain time period.

The architecture of prisons and their creation is itself a complex issue because a prison is a building that has been constructed to achieve many contradictory goals simultaneously. It is

[48]https://www.mchmaster.com/news/best-architecture-quotes/, visited on 1 September 2022.
[49] Ibid.

responsible to hold prisoners in such a way that they do not become a part of society. However, it needs to prepare them in a way so that whenever they get a chance to fit into society, they should fit into it. Prisoners should be kept in such a way that although they are physically halted by authority, mentally they should always feel tempted for the outer world, because it is an ultimate goal of prison and prisoners. As a result, there was a need for such an architecture that serves all purposes without violating the rights of prisoners and without sacrificing the existing rights, safety and peace of the law binding citizens.

Overall, construction for these anti-social elements has never been an easy task; this architecture is the history that developed throughout the centuries. The existing and changing law added more challenges to it. The birth of human rights and its rampantly growing importance is demanding more architectural development in this area. The case of *Vijay Maliya* could be cited as best example for it. [50],[51]As in order to ask for his custody, Indian government thinking to prepare such prison architecture which can fulfill the existing requirement of the law. The impact of the law is the reason which converted four walls of prison in to the open sky prison. Overall prison is an architect which is a developing concept which has developed throughout the centuries. It is new trend of correctional justice system.[52] There are so many factors which are impacting on it and the laws one of them, however, it is the history which can be traceable into two types first is international and other is national.

**B. International History**

Crime is an issue that has been faced by everyone, irrespective of territories. It is a universal issue that has tried to be solved by everyone. However, from the point of view of prison architecture, international history is more valuable than national history. It is divided into many phases like before birth of Modern punishment, after birth of Modern punishment, Human Rightsetc.

[50]SmitaChukkraburtty "Plans of a Swanky Prison Cell for Vijay Mallya Violate Equality Before Law: Mumbai's Arthur Road jail plans to build new cells in a bid to facilitate millionaire expat Vijay Mallya's stay in prison under 'humane conditions" https://thewire.in/rights/plans-of-a-swanky-prison-cell-for-vijay-mallya-violate- equality-before-law, visited on 1 September 2022.

[51] Yogesh Naik "Our jails are good enough for Vijay Mallya: State" https://mumbaimirror.indiatimes.com/mumbai/other/our-jails-good-enough-for-king-of-good-times, (Visited on 1 September 2022)

[52]Norman Johnston "RECENT TRENDS IN CORRECTIONAL ARCHITECTURE" The British Journal of Criminology, Vol. 1, No. 4 (APRIL 1961), pp. 317-338.

**London as birth place of prison**

Punishment and prison are very closely associated with London. There were many remarkable changes were occurred at London regarding punishment and Jail. The London was the city which was supported the capital punishment in public. There were several causes of public punishment. One of the important causes was display of power of sovereignty. It was a massage to the public at large regarding crime and its effect on them. However, king always wants to punish the criminal amongst the larger public so that larger public should be prevented to choose a crime as their way of life. Generally, Punishment and its implementation constitute an inseparable part of the criminal justice system. The accused was punished by the ruler, but its immediate implementation was an issue, especially when crimes were increasing. To deal with this situationa place where the accused could wait for their punishment was established, which was known asa prison. In order to provide halt to the prisoner new gate prison was established in the 12th century by King Henry II and remained in use all the way through to 1902. It is said that between1790 and 1902 over one thousand people were put to death at new gate; these were carried out outside the prison walls on the Old Bailey Road but letter on the public executions wereabandoned in 1868.[53]As an impact of it there was the Birth of modern punishment.

**Birth of modern punishment**

Prior to Modern period of punishment, punishment and its implementation were the only aims, but gradually there was the birth of some philosophers who started to oppose this violation of inhumanity in the name of punishment. Before the 18th century, punishment was directed at the human body. Violent torture, mutilation of convicts' bodies and cruel executions were a public spectacle aimed at teaching a lesson and deterring others from committing similar crimes. The horrible suffering of wrongdoers was seen as proof the sovereign's absolute power over every citizen. In the 18th century, French reformists began to question the penal system and called for less spectacular and violent punishments. However, it was not the welfare of criminals that concerned them, but social control. The spectacle of torture would often provoke unintended consequences: witnessing extreme violence, citizens would sometimes side with the tortured convict, which led to riots. The advent of a new economy and politics of the body took "the art of

[53] "NewgatePrison" https://www.historic-uk.com/HistoryMagazine/DestinationsUK/ExecutionSitesinLondon (visited at 30 August 2022).

punishing" to a new level. Reformists of the penal system believed that the main goal should not be to take revenge on the criminal, but to prevent future crime. The state would now focus on controlling the potential consequences of a crime, making the punishment less violent on the bodies of the criminals, while ensuring a stronger effect on their minds. This shift led to the proliferation of prisons and the emergence of correctional facilities for criminals[54].

**View of Jeremy Bentham**

Jeremy Bentham was a philosopher who strongly believed in the principle of "utilitarianism". Maximum benefits and happiness should be secured for society. Bentham believed that any person or group who carried out acts that were detrimental to society should be punished with imprisonment. If we punish them with the death penalty, that person cannot serve society. In his opinion, the death penalty is a less painful method of deterrence, especially when a prisoner has been awarded punishment for hard labor. Jeremy Bentham not only shows his contradictory view towards the death penalty and the orthodox method of punishment, but he also suggested some solutions for it. This solution is nothing but the "birth of the era of Modern Prison Architecture".

**Panopticon**

The first prison architecture which was an idea of Bentham was known as "Panopticon". The basic principle behind the "Panopticon" was to monitor the maximum numbers of prisoners. A jail building is the only one cell has an open side that faces the main tower, although it has bars covering it, this open side is otherwise completely exposed to the tower. As, result, every cell is completely viewable to the guards at all times, making the inmates always exposed and visible. Onthe other hand, the tower is sufficiently removed from the cells and has modestly sized windows sothat the inmates cannot see the guards within. However, the Machel Foucault represented the idea of "Panopticon" as symbol of social structure or symbol of discipline. As per Michel Foucault the discipline, law, and its terror are necessary to force a people to follow the law. The concept of "Panapticon" was that symbol of social control for the Michel Focault. However, the architectural idea was belonging to the Bentham but its utility can be interpreted by the Michel Foucault.

[54] "History of Prison" https://garagemca.org/en/programs/publishing/michel-foucault-discipline-and-punish-the-birth-of-the-prison, (visited on 29 August 2022).

**Pennsylvania system**

The panopticon prison system has its own lacunas. It was based upon the principle of continued observation with a minimum of guards. According to many philosophers, this idea of remaining under continuous surveillance has a deep psychological impact on prisoners. In this era of criticism, there were some philosophers who supported the concept of punishment from theperspective of reformation. The views of Cesare Beccaria were adopted by Jeremy Bentham. However, due to certain loopholes, there was the birth of the Pennsylvania system. It was a system based on isolation and solitary confinement with the goal of reforming prisoners, but in this system, prisoners were allowed to see the institution officer. Prisoners were kept in solitaryconfinement in cells 16 feet high, nearly 12 feet long, and 7.5 feet wide (4.9 by 3.7 by 2.3 m). However, soon the bad side effects of the Pennsylvania system were noted. The utmost isolation and no communication with other inmates started to have a deep impact on the health of the prisoners. The Pennsylvania system was first adopted in Europe and was banned by the European Union due to the disadvantages that it had on prisoners.[55]

**Auburn system**

The Auburn System was combinations of small cells which were constructed for the prisoners at the New York in the year 1819; the theme of this system was absolute forced silence. This silence was enforced on the prisoners in order to provide them the strict isolation. In the silence thinking procedure of prisoner could work better. It is like meditation but if they allowed communicating with someone then there must be exchange of negativity and feeling of companionship. Hence this system had more emphasis on silence. The Auburn prison administrators developed a system that was almost the opposite of that used at the Eastern Penitentiary. Inside cells- prison cells that do not touch the outside walls of the cell block. An unfortunate by-product of the badly planned Auburn experiment was the use of solitary confinement as a means of punishment within the prison. The discipline regimen at Auburn also included congregate work in the shops during the day, separation of prisoners into small individual cells at night, silence at all times, lockstep

[55]Penhnsylvania system, https://www.britannica.com/topic/Pennsylvania-system (visited on 2 September 2022)

marching formation, and a congregate meal at which the prisoners sat face-to-back. There was great emphasis on silence. [56]

**Mark system**

This marking system was developed by Alexander Maconochie at Norflock Island, which was situated near the American colonies. This system was prison reform centric. However, the method was absolutely different. In this system, prisoners were detained by the officers so that they could earn good marks for their behaviour in order to be released from that prison. This marking system is based on the seriousness of the crime. The seriousness of the crime will decide the requirements for marks. Grievous crime is directly proportionate to the number of marks required to be released. As the punishments were not time-bound, as soon as prisoners earned the required marks, they were released from prison. This system was designed in such a way that it could work as a motivating factor to show their best reformation, which they achieved through isolation. If we analyse the existing position then it was considered as best existing method of its time.

**Elmira prison**

The Elmira system was based on two ideas. The first one was the marking system, and the other one was the Elmira structure to detain the prisoners. Elmira is a symbol of the bifurcation of prisoners as per the seriousness of the crime, age, etc. The Elmira system supported the bifurcationof prisoners so that they could be reformed as per their approach. As per their requirements and needs, this system was the first where words like vocational training, education, and other value- enhancing skills were used to reform prisoners. [57]

In the era of the 18$^{th}$ to 19$^{th}$ century, there were many causes that had a deep impact on prison architecture and its evolution. The first cause was the changing perspective of human society towards punishment. As a result, prisons were built. However, there were so many people who were raising the question of the existence of prison, its isolation, and forced silence. As a result, those hurdles that were used to prevent the inmates from communicating with other prisoners wereremoved. Overall, philosophical perspectives, changing social perspectives and the need for implementation of reformation in order to utilize prisoners for societal purposes are some of the

[56]"The Aurburn system" https://worldclassroom.webster.edu/courses/1371060/pages/week-1-the-pennsylvania-and-auburn-systems-and-prison (visited on 2 September 2022).
[57]"Elmira system and Penology" http. Britanica. Com, visited on 1 September 2022.

causes that result in a large number of changes in prison architecture. This changing architecture brings the most remarkable change in the history of prison architecture. Thereafter, it was 19th century where law and piece of legislature leaved a remarkable mark everywhere including prison. Internationally, there are countries which have introduced required changes in their prison to meet the requirement of law. High-rise city jails flourished in the US following the erection in 1975 of NYC's rugged Metropolitan Correctional Center. In Chicago, by contrast, we find a smooth,sharply angled tower designed by Harry Weese, architect of the coffered Washington DC metro stations.[58] Now a day's changing prison architecture as per the requirement of law is in trend.[59]

**C. Indian Prison and Its Architect**

India is a country of peace and love. Love, none violence is deeply rooted in Indian culture. Still, crime and its existence in India are not being denied, and as a result, prisons have become an inseparable part of the Indian Criminal Justice Administration. India has had a prison system for ages. However, the present prison architecture is mixed architecture. It is influenced by the Panopticon, Elmira system, and other systems in its mix. The history of prison architecture from the national perspective and international perspective is almost the same because India had the prison in our Vedic times but the Britishers were brought modern prison and prison administration to India. Hence, there are no identical dissimilarities in the history or architecture of prisons that exist internationally and nationally. However, from the British period till now there are endnumbers of changes occurred from the perspective of law. Whether the existing prison architectureof India is according to the evolving legal standard of law is a question which need to be analyse.

**Evolving legal standard and need of changes in architecture**

There are lots of legal standards that are evolving every day. These legal standards are demanding various changes to the existing prisons system and the conditions of prisoners. Even the judgments of the judiciary every day are showing enough concern for the condition of prisoners, which can be improved by various methods, including prison architecture. In this legal

[58]The Architectul review, https://www.architectural-review.com/, visited on 2 September 2022.
[59]Norman Johnston "RECENT TRENDS IN CORRECTIONAL ARCHITECTURE" The British Journal of Criminology, Vol. 1, No. 4 (APRIL 1961), pp. 317-338.

evolution, the Right to life, Human Rights, and other policies [60]that are specifically showing good physical and mental health for the prisoners to availed other reformation and rehabilitation opportunities. Architecture and Human Rights has close connection with each other.[61] Without architecture there is impossibility to protect the human rights. [62]In 2015, at the height of the refugee crisis, the platform "Architecture for Refugees" was launched. Its initiators are meanwhile thinking bigger and, under the catchy and memorable slogan "Architecture is a Human Right,"[63] As early stated good architecture have capability to provide everything which is necessary from the perspective of law. Over all, there is close connection between human rights and architect.

However, can these needful changes be able to trace in Indian prison is a question and after analyzing present conditions and issues answer could be cited as no[64]. Indian prison is full of challenges and issues which have been faced in the prisoner's day to day life. It is impacting on the prisoners and their reformation as well. The prison cells are built close to each other and there is not much space for an inmate to move inside the prison, in the old architecture." This makes prisoner feel 'restricted', in turn, causing a delay in reformation. The freedom to move inside prison is closely related to the pace of reformation. "A prison should be perceived as a place where the inmate seeks reformation rather than feel punished [65]Hence there is needed to introduce some modern architectural changes in Indian prison. Indian prison needs some architectural reform.[66]

**Need for architectural reform**

[60] Article 21 of the Indian Constitution "Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law".

**[61]**Graeme Bristol "ARCHITECTURE & HUMAN RIGHTS" research gate, pp. 659-668.

**[62]**Tiziana Kassahun, **"**What is the Link Between Human Rights and Architecture Design?https://inclusivus.org/inpowered-perspectives/2017/4/3/what-is-the-link-between-human-rights-and-architecture-design, visited on 1 September 2022.

[63]Elisa Baumgarten "Architecture is Human Rights!"https://www.world-architects.com/en/architecture-news/found/architecture-is-a-human-right-1, (visited on 1 September 2022).

[64]Kiran R. Naik "The Problem of Prisoners and Analysis" 2019 IJRAR June 2019, Volume 6, Issue 2 www.ijrar.org (E-ISSN 2348-1269, P- ISSN 2349-5138), https://www.ijrar.org/papers/IJRAR1AXP012.pdf, (visited on 1 september 2022).

[65]Ajay Moses "Chanchalguda Central Prison architecture impeding reformation? The New Indian Express, 03rd June 2019.

[66]Hemantika Nath "Reform of Architecture of Prisons in India" SPAST JOURNAL, Nath, H.(2021). Reform of Architecture of Prisons in India. *SPAST Abstracts*, *1*(01), Retrieved from https://spast.org/techrep/article/view/782.

As per recent trend, the Indian Bureau of Police Research and Development (BPR&D), Ministry of Home Affairs organized the first conference on Prison design and prison Architectures. In this conference changes have been suggested for the prison and prison architecture. This includes Natural day light, access to nature, colour and acoustics. A good architecture, day light, access to nature provides reduction of psychological stress posed by incarceration. Nature and its access always played an important role to boost the mental condition of human being. Otherwise, thenthat, the colour with which prisoners will get connected will leave direct impact on their mental conditions, thinking capacity, and released the prisoner from anxiety, depression etc. as well as other present fundamental humanitarian principles that are applicable regardless of the level of resources or development of prison system and should be respected by everyone involved to minimize human cost and maximize positive outcome. [67]

Overall, it was time when prison was constructed to torture prisoners but presently there are lots of amendments in the laws which are advocating to such changes in the prison which can suit to the present legal standard. These architectural changes are necessary to protect the human rights of prisoners as well as to promote their qualities.

**D. Conclusion**

- ¶ Architecture is an instrument to protect human rights. A well-constructed architect can bring lots of metal physical changes in human vice versa, hence it is necessary to construct the architecture so that through it we can provide benefit to everyone.
- ¶ In India, prison and prisoners have so many issues and the one of the causes of their issue is poorly constructed architecture. Hence as per present law and evolving standard there is needed to introduce some architectural changes which can suit to the legal standard of India.
- ¶ The suggestion of National Conference on Prison Design for Principal Secretary Home, States/UTs, Senior Police Officers, Prisons Officers of States/UTs National Conference on Prison Design for Principal Secretary Home, States/UTs, Senior Police Officers, Prisons

[67] "National Conference on Prison Design for Principal Secretary Home, States/Uts, Senior Police Officers, Prisons Officers of States/Uts & Police HousingCorporations" file:///C:/Users/Teena%20Sundarbanshi/Downloads/National%20Conference%20on%20Prison%20Design%20proceedings.pdf, (visited on 6 September 2022).

Officers of States/UTs & Police Housing Corporations s & Police Housing Corporations 2019, should be incorporated till possible extends.

Prison is an important building which has been constructed to achieve various purposes like prevention of crime, halt to the prisoner's etc. prison is nothing but the reflection of the morality, social environment etc. hence if we trace the history of prison then as per social, moral and legal changes there is lots of changes was introduced in the prison architecture. Presently, this era is belonging to the human rights where every human is important irrespective of his status in law or society. Unfortunately, available prison architecture is a reflection of Britishism period, although from that period till now there are lots of legal, social changes has occurred. These changes need to be reflected in the present prison architecture. It is demand of present time because good architecture designs have capability to achieve all aims and objectives which supposed to be achieve by the prisoners.

# SECULAR INDIA IN THE 21ST CENTURY: A SOCIO-LEGAL ANALYSIS

**Jainendra Kumar Sharma*** **&**

**Vanshika Katara****

## Introduction

"*India will be a land of many faiths, equally honoured and respected, but of one national outlook."* [*Jawaharlal Nehru, 24 January 1948*]

The concept of secularism in India 21st Century and examines its socio-legal implications in the contemporary era. Secularism in India refers to the principle of state neutrality towards religion, where the government treats all religions equally and does not favor or discriminate against any particular religion. Secularism, as a contemporary political and constitutional principle, encompasses two fundamental ideas. The initial proposition asserts the equality of individuals from diverse religious and sectarian backgrounds under the law, constitution, and government policies. The second requirement emphasizes the separation of religion and politics, disallowing any blending of the two spheres. Consequently, discrimination based on religion or faith is prohibited, and there is no space for the dominance of any particular religion or its aspirations. This twofold concept underscores the essence of secularism: the protection of individual faiths while maintaining a clear distinction between religion and the secular realm. The concept of "secularism" in the United States refers to the principle of allowing the state and the church to coexist within society without interfering with each other. In Europe, secularism has developed as the rejection of all religious aspects, particularly in political affairs. However, in India, secularism embodies the idea of equal respect for all religions, representing a contrasting approach. In the Indian context, a "secular state" signifies a state that impartially safeguards all religions and does not endorse any particular religion as the state religion. The Indian vision of a secular state and society can be best captured by the Sanskrit phrase "Sarva Dharma Sambhava" which means the equal acceptance of all religions. It is important to highlight that the Indian constitution, both in 1950 and in 1976 when it was incorporated into the preamble, does not

* Law Researcher at the Indian Law Institute, New Delhi
** School of Law, Galgotias University

provide an explicit definition or explanation of the term "secular." However, Mahatma Gandhi exerted a profound influence on the development of the concept of secularism by elucidating the relationship between the state and religion. It is intriguing to note that Gandhi personally rejected the ideology of secularism without any reservations. Nevertheless, he consistently advocated for a secular state that maintains a complete separation from the religious matters concerning the people.[68]

**The Concept of Secularism**

The concept of secularism emerged during the Renaissance in Europe, although it was not explicitly referred to as such at the time. It developed as a response to the inclination during the Medieval Ages to disregard worldly affairs and focus solely on religious contemplation. The Oxford English Dictionary defines "secularism" as the belief that moral principles should be based exclusively on the well-being of humanity in the present life, without consideration for God or an afterlife. The term was coined by George Holyoake (1817-1906), who openly professed this belief. "Secularism" is derived from the Latin term "saecularis," meaning unrelated to religion, not sacred, or non-monastic. Initially, the term was used in a theoretical sense in Europe in 1851, during a conflict between the Church and the state. It was primarilyused in a political context in the West but later expanded to encompass independence from any particular religion.[69]

Achin Vanaik suggests that secularism entails a greater emphasis on rationality in thought and behaviour. He argues that it is a multifaceted process involving the gradual reduction of religious influence in economic, political, and social aspects of human life. On the other hand, theReligion and Ethics Encyclopedia describes secularism as a deliberate movement with ethicaland negatively religious characteristics, intending to provide a particular theory of life and conduct. As a result, it can be considered a form of negative religiosity since it attempts to fulfil religious functions without relying on deities or an afterlife. While its origin was primarily influenced by political conditions and philosophical ideas, secularism gradually acquired a distinct identity.[70]

[68]Gandhi M. K, An Autobiography or the Story of My Experiments with Truth, Navjivan Publishing House, Ahmedabad 1940, 383, also Madan 1998, 305.
[69]Chambers Concise Dictionary, Allied publishers Limited, New Delhi, 1993
[70]AchinVanaik, Communalism Contested, Religion Modernity and Secularization,1998.

In the Indian context, secularism refers to the equal status of all religions. According to Dr. Radha Krishnan, no religion should receive preferential treatment or special distinction. Ensuring that no religion is granted privileged status in national or international affairs aligns with the fundamental principles of democracy and serves the best interests of both religion and government. Dr. V.P. Luthra outlines three prevalent systems in Western countries. The first is a secular system in which religion is regarded as a private matter, and the state remains unconcerned with it. This system is prevalent in the United States. The second system involvesan established church that is controlled by the state in various significant aspects, while other religions are tolerated and allowed to manage their own affairs.[71]

**Secularism in India**

Secularism, a critical part of protected standards, began in the Western world. India's constitution was based on liberal democratic principles after it gained independence in 1947. However, significant efforts were made to contextualize and incorporate these principles into the rich tapestry of a society with multiple languages, cultures, and religions. The Constituent Assembly of India faced numerous obstacles while drafting the Indian Constitution, one of which was accommodating a variety of interest groups within a unified legal framework. The majority of these groups were the 584 independent princely states, separatist factions led by the Muslim League, and the Indian National Congress (INC). To advance public solidarity and address worries about larger part rule, the Drafting Board took on the obligation of uniting these dissimilar gatherings by recognizing and protecting components of majority and variety through state foundations. After broad considerations and conversations, the Constituent Get together arrived at an agreement that the state ought to similarly safeguard all religions and embrace the strict and social varieties intrinsic in the country. They acknowledged that there should not be a strict separation between religion and the state, as well as the significance of avoiding the establishment of an official state religion. As a result, the Indian Constitution's Preamble declaresIndia to be a sovereign nation governed by socialist, secular, democratic, and republican principles, highlighting the country's dedication to upholding these ideals.

The Indian Constitution introduced the concept of secularism through a constitutional amendment in 1976. However, the Indian Supreme Court, in the S. R. Bommai case, has

[71] The term of Secularism as defined and explained in Britannica Encyclopaedia.

recognized secularism as an inherent and indispensable element of the Constitution that surpasses the impact of any amendment. Although the term "secularism" was not explicitly mentioned in the original version of the Constitution, the principles of secularism were thoroughly incorporated as part of individual rights and freedoms. Article 14 of the Constitution prohibits the state from denying equality before the law or equal protection of the laws to any person. Additionally, Articles 15 and 16 prevent the state from discriminating against individualsbased on religion or gender, including matters concerning employment within the state. These provisions signify the integration of secular objectives within the constitutional framework, ensuring equal treatment and non-discrimination for all individuals, regardless of their religious or gender identity.

The Indian Constitution's Articles 25 to 28 define the scope and scope of the right to freedom of religion in India. This right is guaranteed to everyone, regardless of nationality, allowing them to freely practice, practice, and spread their religion while taking into account other fundamental rights, public order, morality, and health. Additionally, every strict division has the option to lay out, keep up with, and oversee establishments for strict and beneficent purposes. In addition, the Constitution prohibits religious instruction in government-aided educational institutions and ensures that individuals cannot be compelled to contribute taxes for religious purposes. Consequently, India's model of secularism differs significantly from Western interpretations, demonstrating a unique approach to accommodating and preserving religious freedom in the nation. S. Radhakrishnan, former president of India, in his book **Recovery of Faith** had described the concept of Indian secularism as follows: "*When India is said to be a Secular State, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to lifeor that we exalt religion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives …. We hold that not one religion should be given preferential status…This view of religious impartiality, or comprehension and forbearance, hasa prophetic role to play within the National and International life."*[72]

**Freedom of Religion *vis-à-vis* Secularism in the Indian Constitution**

[72]S. Radhakrishnan, Recovery of faith (George Allen & Unwin, 1956).

In the context of India, the concept of "secularism" is perceived through the lens of universal values such as religious acceptance, tolerance, and mutual respect. Over time, it has evolved into an integral component of India's national identity, symbolizing that the country encompasses more than just a geographical entity. Instead, it embodies a humanistic ideal that embraces all individuals residing within its borders, irrespective of their religious, linguistic, or culturaldifferences. The essence of secularism in India reflects the vibrant tapestry of its composite culture, welcoming and safeguarding the rights of all religious and cultural groups to freely practice their faith and receive education in their native languages. Unlike the notion of a strict separation between state and religion, the legal interpretation of a "secular" state in India places emphasis on the equal protection of all religions. It does not endorse any specific religion as the state religion but rather maintains a stance of neutrality and impartiality towards all faiths.

This unique understanding of secularism is exemplified through various instances, such as the government providing subsidies for the Haj pilgrimage, facilitating the organization of religious festivals like the Kumbh Mela, and arranging religious pilgrimages such as the Kailash Mansarovar Yatra. These actions serve as practical manifestations of India's inclusive form of secularism. The fundamental principles of secularism are deeply ingrained within the moral fabric of the Indian constitution, upholding the principles of liberty of belief, faith, and worship. The constitution enshrines the freedom of religion, ensuring that individuals are granted the right to practice their chosen religion without facing discrimination. By embracing this comprehensive approach to secularism, India endeavors to nurture a society that respects and safeguards the diverse religious beliefs and practices of its citizens.

Supreme Court, in numerous of its verdicts, has attempted to define and pronounce the concept of 'secularism' as pertinent in India. In the early case of Sardar Taheruddin Syed na Saheb *v.* State of Bombay[73] unfolding the secular nature of the Indian Constitution, Ayyangar J. noted that Articles 25 and 26 incorporate the moralities of religious acceptance, which have long beena defining aspect of Indian civilization since its commencement. The periodic occasions and stages when this distinctive were absent were measured provisional aberrations from the norm. Additionally, these articles serve to accentuate the secular essence of Indian democracy, a fundamental pillar upon which the Constitution was built according to the vision of its founding

[73]AIR 1962 SC 853.

fathers. In the case of Kesavananda Bharati *v.* State of Kerala,[74] secularism was recognized as part of the basic structure of the Constitution. This was described in Ahmedabad St. Xaviers College Society *v.* State of Gujarat[75] wherein it was stated that 'secularism in the context of our Constitution means only an attitude of live and let live developing into the attitude of live and help live'. The modern Indian concept of secularism was further clarified in Ziyauddin Burhanuddin Bukhari *v.* Brijmohan Ram Das Mehra.[76] In the leading case of S. R. Bommai *v.* Union of India, The Supreme Court observed that the concept of 'secularism' does not indicate resentment of the state towards religions. Instead, it underscores the status of neutrality in treating all religions equally. According to Ahmadi J., secularism is founded on the principles of accommodation and tolerance.

While every individual has the freedom to practice and profess their own religion, they remain truly secular citizens when they respect the rights of others to practice their own beliefs. In this regard, the principles of secularism are violated when religion is exploited for political purposes and when political parties advocate it to further their narrow political interests. To ensure proper governance, politics and religion should be kept separate. The responsibility lies with the state to implement secularism through legislation or executive orders.

Similarly, it is the duty of court to ensure that no political party violates secular ideals. In the subsequent case of Ismail Faruqui *v.* Union of India,[77] the Court endeavoured to establish an Indianized classification of secularism, distinct from the Western concept, by drawing upon ancient Indian texts such as the Yajur-Veda, Atharva-Veda, and Rig-Veda. By doing so, it formally acknowledged the concept of "sarva dharma sambhava," which is primarily rooted in the principles of tolerance. This Indianized understanding of secularism emphasizes the harmonious coexistence of all religions. In the case of Manohar Joshi v. Natin Bhaurao Patil,[78] the Court maintained that the concepts of Hinduism and Hindutva were not inherently opposed tosecularism and placed emphasis on the principles of tolerance. It clarified that the terms "Hinduism" and "Hindutva" should not be narrowly interpreted or limited to strict Hindu religious practices. Rather, they encompass the broader cultural and ethical fabric of the Indian

[74] (1973) 4 SCC 225.
[75]AIR 1974 SC 1389.
[76]AIR 1975 SC 1778.
[77]AIR 1995 SC 605.
[78]AIR 1996 SC 796.

people, reflecting the way of life in India. This interpretation highlights the inclusive nature of these terms and their compatibility with the principles of secularism.'[79] In A. S. Narayana Deekshituluv. State of A.P.,[80] Ramaswamy J. quoted from the ancient scriptures to explain the social and religious plurality existing in the Indian society:

"*The word 'Dharma' or 'Hindu Dharma' denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of mankind; whatever conduces to the fulfilment of these objects is Dharma. It is Hindu Dharma and ultimately "Sarwa Dharma Sambhava". Dharma is that which approved oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat."*

Thus, In the Indian judiciary has consistently acknowledged multiculturalism and legal pluralism as the essential foundations for defining secularism in India. The ancient Indian philosophy of "sarva dharma sambhava" forms the fundamental basis of secularism, promoting the values of religious tolerance and unity in diversity. This unique approach to secularism in India sets it apart from Western political thought, emphasizing the distinctiveness of Indian practices in fostering a harmonious coexistence of diverse religious beliefs.

**Western Model of Secularism**

Western secularism can be succinctly defined as the complete separation between religious and state activities. This division between religion and politics originated from the historical struggle for power between the nobility and the ecclesiastical classes, with the nobility eventually achieving dominance. To consolidate their power, the nobility deemed it necessary to isolate religion from the political affairs of the nation. The Western model of secularism, closelyassociated with the American model, emphasizes the mutual exclusivity of religion and the state.[81] In this framework, the state refrains from interfering in religious matters, just as religion abstains from intervening in state affairs. State policies are required to have a secular basis and should not be motivated exclusively by religious considerations. Any deviation from this

[79]*Ibid.*
[80]AIR 1996 SC 1765.
[81]"Democratic Politics- II", NCERT Textbook on Political Science for Class 10, (edn. March, 2007).

principle would be regarded as an "illegitimate intrusion of religion in the state. Similarly, the state is prohibited from favouring, endorsing, or providing financial support to any religious institution or educational establishment run by them. The separation is so comprehensive that even social reform cannot justify state intervention. Western secularism tends to have an individualistic orientation, where religion remains a private matter rather than a subject of state policy or law.[82]

**The Concept of Multiculturism in India**

Culture and secularism are interconnected and mutually reinforcing elements. To understand the concept of secularism in India, it is essential to explore the nature of Indian culture and its significance in this context.

Indian culture encompasses a wide range of material, cultural, religious, and artisticachievements of the human group, including traditions, customs, and patterns of behaviour. These aspects are unified by common convictions and values, which form the distinctive toneand quality of the culture. Values play a crucial role in shaping culture, and different geographical areas often exhibit distinct cultural characteristics. Therefore, the nature of Indian culture can be perceived from two different perspectives. The first viewpoint, espoused by the BJP, equates Indian culture exclusively with Hinduism and views non-Hindu elements as impurities. According to this perspective, Indian culture is predominantly Hindu culture.[83]

On the contrary, the opposing viewpoint acknowledges Indian culture as a composite culture that has been enriched by various religions and traditions. Prominent figures like Mahatma Gandhi also embraced this perspective, considering Indian culture to be a fusion of different streams. This viewpoint recognizes the diversity and pluralism within Indian society, celebrating the contributions of various religious and cultural groups. It is important to note that culture is not static but rather a dynamic and evolving concept. Throughout ancient times until the present, Indian culture has undergone transformations. Historical evidence shows how invaders who arrived in India eventually assimilated into Hindu society.

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[82]This form of mainstream secularism has no place for the idea of state supported religious reform. For e.g., if a religious institution forbids a woman from becoming a priest, then the state can do little about it. If a religious community excommunicates its dissenters, the state can only be a silent witness. If a particular religion forbids the individualistic orientation20 and religion continues to be a private matter, not a matter of state policy or law.

[83]Bipin Chandra, *Nationalism and Colonialism in Politics in India*, 79 (Orient Longman, New Delhi, 1979).

In pre-Vedic times, worship of nature and mother goddesses prevailed, and with the advent of the Aryans, new gods, patriarchy, and matrilineal family systems were introduced. During the later Vedic age, the caste system crystallized, leading to the emergence of Buddhism and Jainismas movements opposing caste-based discrimination. These philosophical and ethical systems emphasized principles of humanity, equality, and non-violence, thereby nurturing secularism within Indian society. Indian culture is a complex and diverse tapestry that can be understood from various perspectives.[84] It is not limited to any single religion or tradition but rather encompasses multiple streams of influence. The dynamic nature of Indian culture has contributed to the development and sustenance of secularism in India, allowing for coexistence and mutual respect among different religious and cultural communities.

**Reactionary Form of Secularism Practiced Across Other Nations, Like Turkey**

In the first half of the twentieth century, Turkey witnessed the practice of a rather distinctive form of secularism. This form of secularism deviated from the typical approach that maintains a principled distance from organized religion. Instead, it involved active intervention and suppression of religious practices. Mustafa Kemal Ataturk, who rose to power after the First World War, propagated and implemented this version of secularism. Ataturk firmly believed thatTurkey could only progress by breaking away from traditional beliefs and customs, leading him to abolish the institution of the Khalifa in public life.[85]

Ataturk aggressively pursued the modernization and secularization of Turkey. He even changed his own name from Mustafa Kemal Pasha to Kemal Ataturk. Traditional Muslim headgear, such as the Fez, was prohibited, while Western attire was promoted for both men and women. This reactionary form of secularism has also been observed in a few other countries, as they aimed to liberate themselves from the constraints of religious dogma. However, in adopting such a form of

[84]Sumantra Bose, Secular State - Religious Politics, 79 (Cambridge University Press, Delhi, 2018).

[85] Mustafa Kemal Ataturk was a Turkish army officer, reformist statesman, and the first President of Turkey. He is credited with being the founder of the Republic of Turkey. Atatürk embarked upon a program of political, economic, and cultural reforms, seeking to transform the former Ottoman Empire into a modern and secular nation-state. Under his leadership, thousands of new schools were built, primary education was made free and compulsory, and women were given equal civil and political rights, while the burden of taxation on peasants was reduced.His government also carried out an extensive policy of Turkification.

secularism, the barrier separating the state and religion often erodes, and the state assumes an active role in religious matters.[86]

**Secularism *versus* Secularization**

A comprehensive discussion on secularism necessitates an exploration of the intricacies surrounding the process of secularization and its distinction from the concept of secularism itself. While secularism represents a core value, secularization serves as a means to attain the goal of establishing a secular nation. Secularization entails the evolution of a society from a close association with religious principles and institutions towards embracing nonreligious or irreligious values and secular institutions. As societies progress, particularly through the processes of modernization and rationalization, religion gradually loses its influence acrossvarious realms of social life and governance.

This phenomenon is known as secularization, which refers to the historical process of diminishing social and cultural significance of religion. Consequently, religion's role becomes confined in modern societies, with reduced cultural authority and limited social power for religious organizations. This often leads to a decline in levels of religiosity. The vision of a secular India relies heavily on the ongoing and simultaneous process of secularization. This requires a transformation in societal attitudes towards religion, necessitating differentiation in various aspects of social, economic, political, and legal domains, as each domain becomes more specialized. Secularization can also involve the conversion of a religious institution into a secular one.[87] Additionally, it may manifest as a shift of activities from religious institutions, such as temples, mosques, and churches, to secular institutions like the government, particularly in the provision of social services.

Moreover, secularization demands a change in the mindset of individuals inhabiting a state. People should prioritize moderating their behavior based on immediate consequences rather than being solely driven by concerns about afterlife consequences, which is often observed in predominantly religious societies. In essence, secularization encompasses both structural and

[86] Caliph or khalifa is a title used for Islamic rulers who are considered politic-religious leaders of the Islamic community of believers, and who rule in accordance with Islamic law. A state ruled by a caliph is a caliphate.

[87]Aligarh Muslim University and Osmania University were initially designed to train Muslims for government service in India and prepare them for advanced training in British universities. Now these universities are open to all irrespective of caste, creed, religion or gender.

attitudinal transformations, as societies transition towards a more secular framework.[88]When considering the indicators mentioned above to assess whether secularization is occurring in India, it becomes evident that significant progress has been made in this regard. However, it is important to recognize that there is still a considerable distance to cover if India's commitment to secular values is to be truly meaningful and successful. Furthermore, it is crucial to fully comprehend and embrace the essence of secular principles in a comprehensive manner, as a fragmented or partial approach would not be adequate. For India's secularism to be truly meaningful, it should embody genuine religious freedom, where individuals are free to practice their chosen faith without discrimination or undue influence. Additionally, it should exhibit a celebratory neutrality, wherein the state maintains an impartial stance towards various religious beliefs and actively fosters an environment that promotes mutual respect and harmony.

Moreover, reformatory justice should be a defining characteristic of Indian secularism, where the legal system upholds fairness, equality, and social reform, transcending religious biases. India's journey towards embracing secular ethos has witnessed significant strides, but there is still work to be done. It is vital to approach secularism in a comprehensive and holistic manner, ensuring genuine religious freedom, celebratory neutrality, and reformatory justice to create a truly inclusive and harmonious Indian Republic.[89]

**Promoting National Integration**

India’s tryst with destiny which began on Auguston August 15, 1947, was overshadowed by concerns regarding the unity and integrity of the newly formed nation. Following the tragic partition of India, our visionary founding fathers spared no effort in safeguarding the unity of the Indian nation. The pursuit of national integration held such paramount importance to them that they adopted numerous innovative approaches to ensure it. One such measure believed to fortify India's integrity is the implementation of a Uniform Civil Code (UCC). There is a growing demand from proponents of national integration to enact a UCC, as it is perceived to strengthen the nation's unity. During the Constituent Assembly Debates, K.M. Munshi emphasized the

[88]John Somerville outlined six uses of the term secularization in the scientific literature; Somerville, C. J. "Secular Society Religious Population: Our Tacit Rules for Using the Term Secularization”, Journal for the Scientific Study of Religion (37 (2):249-53 (1998).
[89]MukulKesavan quotes Rajee Bhargava in his book Secular Common Cause, (Penguin Books India,2001).

significance of this endeavour.[90] *"Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We thinkwe have got national unity. But there are many factors - and important factors - which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say. 'Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation."*

**Promotion of Gender Equality**

The promotion of gender equity stands as a significant objective advocated by proponents of a Uniform Civil Code (UCC). They argue that it is widely acknowledged that all communities' personal laws inherently contain gender injustices, which are deemed to be the product of the socio-economic conditions under which they evolved. Supporters of the UCC strongly believe that its implementation would facilitate religious reformation by ensuring equality between men and women. Personal laws have consistently exhibited bias against women, leading to numerous challenges in areas such as marriage, divorce, and inheritance. Regardless of one's religion, the applicable laws pertaining to marriage, divorce, maintenance, guardianship, adoption, inheritance, and succession are determined, yet they all reflect a common thread the dominance of men within patriarchal systems and the resulting unequal treatment of women. By implementing a UCC, proponents aim to rectify these gender disparities and create a framework that upholds equal rights and opportunities for both men and women. Such a move wouldaddress the long-standing difficulties faced by women in various personal matters, ultimately fostering greater gender justice and equality in society.[91]

**Uniform Civil Code as a Means to Achieve Clarity, Simplicity and Intelligibility in Personal Laws**

[90] VII C. A. D, at 548.
[91] Polygamy, desertion, triple divorces are just a few examples to show the possibilities of harassing women.

It is widely recognized, based on general knowledge and experience, that a legal system cannot effectively fulfil its noble purpose of dispensing justice without the simplicity and clarity of its laws. The history of codification demonstrates that one of the primary motivations behind codifying laws was to establish stability and certainty within the legal framework. The existence of numerous laws can lead to conflicting positions and introduce ambiguity. Lon Fuller's concept of the inner morality of law emphasizes that certainty in laws is a crucial requirement for any legal system. Contradictions within the law undermine the overall effectiveness of the legal system. This observation also holds true for the multitude of personal laws in existence in India. Conflicting provisions within personal laws create confusion and ambiguity in the civil relationships of citizens. While some argue that the Special Marriage Act has effectively addressed this issue, it is important to acknowledge that as long as it remains just one among many laws applicable in India, its effectiveness will be diminished. Furthermore, it is worth noting that only a small fraction of the population, typically those from the educated class, resort to utilizing the Special Marriage Act of 1956 to regulate their marital affairs.

**Judiciary's Approach towards A Uniform Civil Code**

The Supreme Court has consistently stressed the importance of the government fulfilling the directive principle laid down in Article 44 of our Constitution on numerous occasions. It is disheartening to witness the lack of legislative action when it comes to implementing this significant and progressive legislative reform. Such a reform would not only promote gender equality but also eliminate regressive practices and beliefs, while fostering national integration. However, there is still reason for optimism, as the judiciary has made dedicated efforts to ensure that the vision of a uniform civil code continues to be relevant and is not overlooked.

**Judgments which Highlight the Need For UCC**

In *Narasu Appa Mali v. State of Bombay,*[92] The observations put forth by the Bombay High Court highlight the significant importance of Article 44 in the Constitution. This article emphasizes the State's responsibility to strive towards establishing a uniform civil code that applies to all citizens across India. Essentially, this article acknowledges the presence of different codes governing personal law for Hindus and Muslims, allowing their continuation until the

[92]AIR 1952 Bom 84, judgment delivered by Justice Gajendragadkar and Justice MC Chagla.

State achieves the objective of implementing a uniform civil code for all citizens. The personal laws in our country have deep roots in scriptural texts, and their provisions are intertwined with religious and cultural considerations. Consequently, the task of developing a Uniform Civil Code that can be universally applied to the diverse communities in India is a complex one.

The framers of the Constitution were fully aware of these challenges and made a conscious decision not to interfere with the provisions of personal laws at that time. Instead, they included a directive principle that urged efforts to establish a Uniform Civil Code in the future throughout the entirety of India. It is understandable that some members of the Constituent Assembly may have felt an immediate need to achieve this ideal. However, as reflected in Article 44, this impatience was balanced by the anticipated practical difficulties. Thus, the Constitution settled with enshrining the directive principle in this article.

In *Mohd. Ahmad Khan v. Shah Bano Begum***,**[93] the Supreme Court held that: It is disheartening to observe that Article 44 of our Constitution has not been effectively implemented and hasremained dormant. There is a lack of evident official initiatives to formulate a unified civil code for the country. The responsibility of establishing a Uniform Civil Code for the citizens lies with the State, which unquestionably possesses the legislative authority to do so. The implementation of a common Civil Code would foster national integration by resolving conflicting ideologies arising from diverse legal systems. However, it is unlikely that any community will willingly make concessions on this matter.

Nevertheless, it is crucial to establish a starting point to give substance to the Constitution. Inevitably, the responsibility of driving reforms falls upon the courts, as conscientious minds find it unacceptable to allow palpable injustices to persist. However, the incremental efforts by the courts to address disparities in personal laws cannot substitute the need for a comprehensive common Civil Code. Ensuring justice for all through a unified approach is a far more satisfactory method than addressing justice on a case-by-case basis.

*In Sarla Mudgal, President, Kalyani v. Union of India*,[94] the Supreme Court observed that: The successive governments that have come and gone have consistently failed to make substantial efforts towards establishing a unified personal law for all Indian citizens. The reasons for this

[93] AIR 1985 SC 954; Judgment available at: http://judis.nic.in/supremecourt/imgs1.aspx?filename=9303.
[94] 1995 SCC (3) 635; Judgment available on http://judis.nic.in/supremecourt/imgs1.aspx?filename=10742.

failure are evident and do not require explicit mention. The most significant strides made thus far have been the codification of Hindu law through acts such as the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, the Hindu Minority and Guardianship Act of 1956, and the Hindu Adoptions and Maintenance Act of 1956. These acts have replaced the traditional Hindu laws based on various schools of thought and scriptural laws with a unified code. Considering that over 80% of the population is already governed by codified personal law, there is no valid justification for further delaying the introduction of a uniform civil code for all citizens in India. The successive governments, until now, have neglected their duty to fulfill the constitutional mandate outlined in Article 44 of the Indian Constitution.

Therefore, we earnestly request the Government of India, under the leadership of the Prime Minister, to reevaluate Article 44 and renew their efforts to "endeavor to secure for the citizens a uniform civil code throughout the territory of India."[95]

### Challenges to Secularism in 21st Century India

Secularism in 21st-century India faces several challenges, which arise from a complex interplay of historical, political, and social factors. While India has a long-standing tradition of secularism enshrined in its constitution, the following are some key challenges that threaten its ideals:

1. Religious Identity Politics: One of the significant challenges to secularism in India is the rise of religious identity politics. Politicians often exploit religious sentiments for electoral gains, polarizing communities along religious lines. This phenomenon leads to the marginalization of religious minorities and the erosion of secular values.
2. Communal Violence: Communal violence, fuelled by religious tensions, poses a severe challenge to secularism. Riots and conflicts between religious communities have occurred throughout history, leading to loss of life, property, and trust between different groups. These incidents further polarize communities and undermine the principles of coexistence and religious harmony.
3. Hindu Nationalism: The rise of Hindu nationalist ideologies and movements in India has presented a challenge to secularism. While proponents argue for the preservation of Hindu

[95] AIR 2003 SC 2902.

cultural heritage, critics argue that it promotes majoritarianism and undermines the rights and interests of religious minorities.

4. Caste-based Discrimination: Caste-based discrimination remains a significant challenge to secularism in India. Despite constitutional provisions to eradicate caste-based discrimination, the deep-rooted social hierarchy continues to marginalize Dalits and other lower-caste communities. Discrimination based on caste affects the social, economic, and political opportunities available to individuals, undermining the principle of equal rights.

5. Institutional Bias: There have been instances where state institutions and law enforcement agencies have displayed bias or prejudice towards particular religious' communities. This bias undermines the impartiality and fairness of the judicial system, hindering the protection of individual rights and freedoms.

6. Freedom of Expression: The restriction of freedom of expression, especially when it comes to criticism of religion or religious figures, poses a challenge to secularism. The invocation of laws against blasphemy or hurting religious sentiments can stifle dissent and limit open discussions on religious matters.

7. Education and Religious Influence: Religious influence in education has been a subject of concern. The control of religious organizations over educational institutions can lead to the propagation of religious beliefs and practices, potentially undermining the development of a pluralistic and secular mindset among students.

8. Gender and Secularism: Gender inequality and the subjugation of women can also pose challenges to secularism. Practices such as triple talaq (divorce by uttering "talaq" three times) in some Muslim communities and restrictions on women's access to religious spaces are seen as discriminatory and incompatible with the principles of gender equality and secularism.

9. Politicization of Religion: Religion often becomes a central factor in political campaigns and policymaking. Politicians may use religious rhetoric and symbols to appeal to voters, resulting in the blurring of lines between religion and governance. This politicization undermines the principle of a secular state and can lead to preferential treatment for certain religious groups.

10. Lack of Uniform Civil Code: India follows personal laws based on religious affiliation, resulting in different legal systems for different religious communities. The absence of a Uniform Civil Code, which would provide a common set of laws for all citizens regardless of religion, poses a challenge to the secular fabric of the country.

11. Social-Media and Online Hate Speech: The advent of social media has brought new challenges to secularism. Online platforms can be breeding grounds for hate speech, fake news, and religious propaganda, leading to increased polarization and hostility between religious communities. The spread of misinformation and the amplification of extremist views can undermine social harmony and secular values.

12. Religious Conversion and Anti-Conversion Laws: Conversion activities, both from one religion to another and from Hinduism to other religions, have been a contentious issue in India. Some states have enacted anti-conversion laws that restrict religious conversions, often resulting in accusations of targeting religious minorities and impeding their freedom to practice and propagate their faith.

13. Influence of Extremist Groups: Extremist religious groups, irrespective of their affiliations, pose a challenge to secularism. Such groups promote a narrow, exclusionary interpretation of religion and often engage in activities that disrupt social harmony. Their actions can fuel tensions between communities and erode the secular fabric of society.

14. Inadequate Implementation of Secular Policies: While India has a secular constitution, the effective implementation of secular policies at various levels remains a challenge. In some instances, biases, prejudices, and administrative inefficiencies may hinder the proper enforcement of laws and policies aimed at protecting religious freedom and promoting equality among different religious communities.

15. Urban-Rural Divide: There is often a stark difference in the understanding and practice of secularism between urban and rural areas. Rural communities may be more influenced by traditional and conservative religious beliefs, which can make it challenging to foster a secular mindset and promote religious harmony in these areas.

Addressing these challenges requires a multi-faceted approach. It involves fostering interfaith dialogue, promoting education that emphasizes secular values, ensuring equal rights and opportunities for all citizens regardless of religion or caste, strengthening law enforcement and judiciary to uphold impartiality, and creating an inclusive political and social environment that respects diversity.

The protection and promotion of secularism in India depend on the collective efforts of individuals, communities, civil society organizations, and the government to uphold the principles of equality, justice, and religious freedom.

It is crucial to promote inclusive governance, strengthen legal frameworks to protect freedom of speech and expression, encourage interfaith dialogue and understanding, invest in education and awareness programs that promote secular values, and foster a culture of respect and tolerance for all religious communities. Additionally, it is essential for political leaders, civil society organizations, and citizens to actively uphold and advocate for secularism as a fundamental principle for a diverse and harmonious society.

**Conclusion**

In the socio-legal analysis of secularism in India in the 21st century reveals a complex and evolving landscape. While the Indian Constitution guarantees the principle of secularism, its interpretation and implementation have been subject to challenges and controversies. The socio-political dynamics, religious diversity, and historical context of India contribute to the complexities of maintaining a truly secular society. Despite the constitutional provisions, instances of communal tensions, religious discrimination, and political instrumentalization of religion persist.The study highlights that the concept of secularism in India requires a broader understanding beyond mere separation of religion and state. It encompasses the promotion of religious harmony, equal treatment of all citizens regardless of their religious affiliations, and protection of individual rights and freedoms. However, there is a need for greater clarity and consistency in the legal framework and its enforcement to ensure the realization of these ideals. It is important to recognize that secularism is a continuous process and requires the active participation of all stakeholders-government, civil society, religious leaders, and citizens-to nurture an inclusive and pluralistic society. By implementing these suggestions, India can strive towards realizing the true spirit of secularism in the 21st century, ensuring equal rights and opportunities for all its citizens, regardless of their religious beliefs. Secularism in India goes beyond the mere separation of religion and state. It encompasses principles of religious freedom, equality, and non-discrimination. However, the practical realization of these ideals faces hurdles such as communal tensions, political instrumentalization of religion, and instances of religious discrimination. This necessitates a deeper examination of the socio-legal framework to address these challenges and ensure a truly secular society.

To strengthen secularism in 21st century India, it is essential to focus on several key areas. These include strengthening the legal framework to ensure consistency and clarity, promoting

interreligious dialogue and understanding, enhancing law enforcement and judicial independence, encouraging civic education and awareness, and addressing socio-economic disparities. Furthermore, accountability of religious institutions, media responsibility, international cooperation, and youth engagement are vital in fostering a more inclusive and tolerant society. By implementing these measures, India can strive towards realizing the true spirit of secularism, where all citizens, regardless of their religious beliefs, are treated equallyand enjoy their fundamental rights and freedoms.

Secularism in India is an ongoing journey that requires the collective efforts of the government, civil society, religious leaders, and citizens. Upholding the principles of secularism not only strengthens the social fabric of the country but also contributes to the overall development, harmony, and progress of India in the 21st century and beyond. The pursuit of secularism in 21st century India necessitates a multi-dimensional approach involving legal reforms, community engagement, education, and addressing socio-political challenges. By upholding the principles of secularism, India can strive towards a society that respects religious diversity, ensures equal rights for all, and promotes a culture of peace and inclusivity.

**Suggestions**

To strengthen secularism in India in the 21st century, several suggestions can be considered:

1. Strengthen Legal Framework: There should be a comprehensive review of existing laws and policies to ensure that they align with the principles of secularism. Any discriminatory laws or practices should be amended or abolished, and new legislation should be enacted to address emerging challenges related to religious freedom and communal harmony.
2. Promote Interreligious Dialogue and Understanding: Efforts should be made to foster interreligious dialogue and promote understanding among different religious communities. Initiatives such as interfaith forums, cultural exchanges, and educational programs can help reduce prejudice, stereotypes, and misconceptions, fostering a sense of shared values and mutual respect.
3. Enhance Law Enforcement and Judicial Independence: Authorities responsible for enforcing laws and delivering justice should be trained to handle cases related to religious conflicts and ensure impartiality. Judicial independence must be safeguarded to prevent political interference in legal proceedings, allowing for fair and unbiased decisions.

4. Encourage Civic Education and Awareness: Promoting civic education that emphasizes the principles of secularism, pluralism, and constitutional values is crucial. This can be achieved through school curricula, public awareness campaigns, and community engagement programs to cultivate a sense of citizenship and promote a secular ethos among the population.

5. Strengthen Institutional Accountability: Institutions responsible for upholding secularism,such as the Election Commission, should be fortified to ensure the integrity of the electoral process and prevent the exploitation of religion for political gain. Strict measures should be in place to deter hate speech, incitement of violence, and any form of religious discrimination or marginalization.

6. Emphasize Social and Economic Development: Addressing socio-economic disparities and promoting inclusive growth can contribute to reducing religious tensions. By focusing on equitable development and welfare measures, the government can address the root causes of communal conflicts and create an environment that fosters social cohesion.

7. Encourage Intercommunity Collaboration: Encouraging collaborative efforts between different religious communities can help foster trust and promote a sense of shared responsibility. Intercommunity initiatives, such as joint festivals, community service projects, and culturalevents, can create opportunities for people from diverse backgrounds to come together and build stronger social bonds.

8. Ensure Accountability of Religious Institutions: Religious institutions should be accountable to their followers and the larger society. Implementing transparent mechanisms for the management of religious properties, finances, and practices can help prevent any misuse or exploitation. Additionally, promoting ethical guidelines and standards for religious leaders can enhance trust and promote responsible leadership within religious institutions.

9. Address Gender and Caste Discrimination: Secularism should encompass equal rights and opportunities for all, including marginalized groups. Efforts should be made to address gender and caste-based discrimination, as these issues often intersect with religious dynamics. Implementing policies that promote gender equality, social justice, and affirmative action can contribute to a more inclusive and egalitarian society.

10. Promote Media Responsibility: Media plays a crucial role in shaping public discourse and perceptions. Promoting responsible and unbiased reporting, discouraging sensationalism, and countering the spread of fake news and hate speech can contribute to a more informed and

tolerant society. Media organizations should adopt ethical standards and practices that prioritize accurate and fair coverage of religious issues.

12. Foster International Cooperation: Learning from the experiences of other seculardemocracies and fostering international cooperation on issues of religious freedom and communal harmony can provide valuable insights and best practices. Engaging in dialogues and partnerships with countries that have successfully navigated similar challenges can help India further refine its approach to secularism.

13. Encourage Youth Participation: Engaging young people in promoting secular values and interfaith dialogue is crucial for the long-term sustainability of a secular society. Encouraging youth-led initiatives, providing platforms for their voices to be heard, and integrating inclusive education on religious diversity and tolerance can empower the next generation to actively contribute to a secular India.

14. Empower Local Governance: Promote decentralization and empower local governance bodies to address religious and communal issues effectively. Local institutions, such as Panchayats (village councils) and Municipal Corporations, should be encouraged to play an active role in fostering religious harmony and resolving disputes at the grassroots level.

15. Foster Inclusive Urban Planning: Urban areas often witness diverse religious communities living in close proximity. Urban planning should prioritize inclusive design, ensuring the presence of public spaces that facilitate intermingling and interaction among different religious groups. This can help in promoting social cohesion and understanding.

16. Strengthen Religious Literacy: Promote religious literacy among citizens to foster better understanding and appreciation of different faiths. Educational institutions can include comprehensive religious studies programs that provide unbiased and accurate information about various religions, their beliefs, practices, and historical contexts. This can contribute to dispelling misconceptions and fostering respect and tolerance.

17. Establish Mediation and Conflict Resolution Mechanisms: Create specialized mediation and conflict resolution centers that are accessible and trusted by all religious communities. These centers can provide a neutral platform for resolving religious disputes, facilitating dialogue, and promoting reconciliation. Training religious' leaders, community representatives, and legal professionals in mediation skills can enhance their capacity to resolve conflicts peacefully.

18. Encourage Philanthropic Initiatives: Promote philanthropic initiatives that transcend religious boundaries and focus on common social causes. Encouraging individuals and organizations from different religious backgrounds to collaborate on projects related to education, healthcare, poverty alleviation, and environmental conservation can foster a sense of shared responsibility and solidarity.

19. Support Research and Dialogue on Secularism: Foster academic research, think tanks, and forums dedicated to the study of secularism in the Indian context. These platforms can facilitate informed discussions, generate policy recommendations, and promote evidence-based approaches to addressing the challenges and complexities of secularism.

20. Strengthen International Human Rights Commitments: India should reaffirm its commitment to international human rights standards, including religious freedom, by ratifying and implementing relevant international treaties and conventions. Engaging with international bodies, such as, the United Nations, can help India benefit from global expertise and guidance on promoting secularism and protecting religious rights.

By implementing these suggestions, India can further advance its secular ideals, strengthen social cohesion, and ensure the protection of religious freedom and equality for all its citizens. It requires a multi-faceted approach that involves various stakeholders, including governmentbodies, civil society organizations, religious leaders, and the citizens themselves, working collectively towards a more inclusive and harmonious society. India can strengthen its commitment to secularism and work towards creating a society that upholds religious harmony, respects individual rights, and embraces diversity as a source of strength and unity.

# EQUALITY, SAFETY AND NON-DISCRIMINATION IN WORKPLACES IN INDIA

**Gowri R Nair***

## Introduction

Equality, safety, and non-discrimination are crucial for employees' well-being and productivity in workplaces. The following are the guiding principles that dictate the work culture in the country. The richness of India makes it essential to demonstrate that everyone is treated with dignity and respect. In India, the Constitution Of the country ensures equality, safety and non- discrimination in workplaces. The Preamble itself provides Equality as one of its basic structures. Equality is a Fundamental Right as per Part III of the Indian Constitution. It is dealt from Article 14 to Article 18 of Part III of the Indian Constitution. Accordingly, Discrimination in any form is prohibited in India via the Indian Constitution. This ensures equal treatment of every person in all circumstances. The Right to work has been defined and made clear as an essential Human Right in Article 232 and Article 243 of the Universal Declaration of Human Rights. Everyone has the option to indulge in the work he or she likes and to practice it in a safe and protected environment. There has been a growing awareness that workplace equality is crucial in today's society. Equality in the workplace means that all people regardless of their gender, caste, religion or ethnicity are afforded equal development opportunities. By doing so, it fosters a sense of belongingness and encourages an inclusive work culture. Moreover, the feelingof respect and dignity among employees is linked to an increase in their motivation and productivity, which results in better outcomes for both the organization and its workers.

## Equality and Non-Discrimination in Workplace

The right to equality and non-discrimination are fundamental human rights generalizations. Discrimination occurs when one being treated less favourably than another because of characteristics unrelated to their skills or intrinsic requirements of the job. All workers and job seekers have the right to equal treatment, regardless of their qualifications beyond their ability to perform the job. Discrimination may occur prior to hiring, on the job, or upon leaving. It is one

* Mar Gregorios College of Law, Kerala

of the fundamental human rights to get rid of discrimination which is essential for workers to get involved in a particular job of their own choice. One has the freedom to choose their own favourable job. Workplace discrimination happens when a person who is treated cruelly or unequally in the workplace, resulting in disparities in payments, promotions, etc. The discrimination can be through sex, gender, identity, age, disability, religious beliefs, ethnicity, race, etc. Discrimination in the workplace can occur between co-workers, in the employer- employee relationship or even during the job application process. The intention to discriminate in the workplace has little value. Conscious or unconscious discrimination is illegal and unfair anywhere in the world. The treatment of individuals may be discriminated against in all areas of society, including politics, education, employment, social and medical services, housing, the penitentiary system, law enforcement, and the administration of justice. Many forms of discrimination exist that impact individuals from diverse racial, ethnic, national, or social backgrounds. Gender discrimination is still prevalent despite recent advancements in gender equality.

A multitude of international labor standards address discrimination. The 1998 InternationalLabor Organization Declaration on Fundamental Principles and Rights at Work calls for all member States to promote and realize the right to free employment from discriminatory practiceswithin their territories. The ILO recognizes that removing discriminatory practices is not sufficient to eliminate discrimination in employment and occupation. At every stage of employment, including recruitment and retention phases, employee promotions and terminations,as well as vocational training and skills development opportunities, must promote equal opportunities and treat all employees equally. The basic conventions include the Discrimination (in Employment and Occupation) Convention, 1958 and the Equal Remuneration Convention of 1951. Enterprises are urged to contribute to the promotion of equality and fairness in employment and occupation under the 1998 Declaration and the MNE Declaration. According tothe Employment and Occupation Convention of the International Labor Organization, a national Policy is required to eliminate discrimination in employment due to race, sex, religion, political beliefs, national origin or social background. Various international human rights instruments contain robust provisions for equal treatment and non-discrimination that include the Universal Declaration of Human Rights 1948,the ILO 97 Migration for Employment Convention (1949),the ILO 100 Equal Remuneration Convention (1951),the ILO 111 Discrimination

(Employment and Occupation Convention) (1958),the UN International Convention on the Elimination of All Forms of Racial Discrimination (1965),the International Covenant on Economic, Social and Cultural Rights (1966),the UN Convention on the Elimination of All Forms of Discrimination against Women (1979),the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990),the ILO Declaration on Fundamental Principles and Rights at Work (1998),the ILO 183 Maternity Protection Convention (2000),the ILO Code of Practice for Managing Disability in the Workplace (2002),the Convention on the Rights of Persons with Disabilities (2006), and, the UN Declaration on the Rights of Indigenous Peoples (2007)[96]. According to the ILO, ensuring that staff remain knowledgeable and perform well by effectively preventing discrimination in practice is one reason. The issue of discrimination in employment and occupation has been tackled through various international initiatives. The ILO created a Code of Practice on HIV/AIDS and the world of work in 2001, and in 2009, they released Guidelines for Promoting Equity: Gender-neutral Job Evaluation for Equal Pay. Several multi-stakeholder efforts havebeen undertaken to promote equality and non-discrimination in the workplace. The EthicalTrading Initiative (ETI) has established a Base Code that requires ETI members to refrain from discrimination in hiring, compensation, training, promotion, firing, or retirement based on their race, caste, religion, age, disability, gender, marital status, sexual orientation, union membership,political affiliation, etc. In the 2030 Agenda for Sustainable Development, it is acknowledged that everyone should have equal rights and freedoms regardless of their race, colour, sex,language, religion, origin, birth or any other status. The achievement of equality and non-discrimination is a crucial foundation for progress towards the 2030 Agenda and its goal of "no one gets left behind."

**Healthy and Safety Environment in Workplace**

The workplace must ensure safety as a necessary component to achieve equality and avoid discrimination.It is permissible for all workers to work in a safe and harm-free environment, without any psychological or emotional damage.In order to maintain employee safety, employers must provide adequate training on occupational health and other safety measures.To address

[96]*Equality & Non-Discrimination - National Action Plans on Business and Human Rights,* Globalnaps.org(Oct 6, 2023, 08.45AM) https://globalnaps.org/issue/equality-and-non-discrimination/

potential hazards, ensure safety measures, and provide protective equipment when necessary, the focus is on identifying and reducing risks. Safety standards should be enforced through frequent inspections and audits, and employees should feel empowered to report any safety issues or incidents. The establishment of grievance procedures that permit employees to file complaints and seek compensation for safety issues is essential.

Workplace health and safety is a fundamental issue that everyone should address at all times. It is the responsibility of employers to maintain a safe work environment for their staff. Workplace productivity is elevated when employees are exposed to a safe and secure environment. This right is also granted to both employers and workers. No matter the size of a company, workplace health and safety are crucial. Every company, regardless of its size, must have workplacesecurity measures. If the work environment is not secure, it could cause significant mental and physical challenges for workers. To achieve significant growth and exceptional performance in employee retention, efficiency, and reputation, employers must integrate a strong culture of workplace health and safety into all aspects. Safety in the workplace is influenced by working conditions that are unsafe and environmental hazards. The presence of substance abuse and workplace violence is also a factor. The prevention of these hazards necessitates that employers devise measures to guarantee and enhance safety in their workplaces. Employers should motivatestaff to wear safety equipment and provide them with training on safe working conditions. Safety policies and programs should be encouraged by them.

The Constitution of India provides comprehensive provisions for the rights of citizens and sets out the Directive Principles of State Policy, which outline the activities of the State. The government's commitment to implementing Directive Principles of State Policy and internationalinstruments includes regulating economic activities to manage safety and health risks in workplaces. Additionally, they aim to ensure that all individuals work safely and enjoy healthy working conditions.It is recognized by the government that ensuring the safety and health of workers can boost productivity and promote economic and social development. Social justiceand economic growth cannot be achieved without safe and healthy working conditions, as per theGovernment’s unwavering belief that a safe work environment is fundamentally essential. The Ministry of Labor and Employment has implemented a national policy on safety, health, and the environment at the workplace to provide occupants with dependable and healthy workspaces that

enhance the quality of work and working life for the same. In June 2022, the International Labor Conference decided to amend paragraph 2 of its 1998 ILO Declaration on Fundamental Principles and Rights at Work to include "a safe and healthy working environment" as a fundamental principle and right at work. This was followed by consequential amendments to the IAO Declaration for Social Justice for A Fair Globalization (2008) and the Global Jobs Pact (2009).

**Relevant Legal Framework in India**

One of the key steps towards achieving equality and non-discrimination in workplaces is the implementation and enforcement of effective legislation. The legal framework regarding equality, safety, and non-discrimination in workplaces in India has evolved significantly over time. They play a vital role in a better workplace environment. The legislations and amendments formed for this purpose had made the transformation for the same. These frameworks ensure equality, safety, and non-discrimination in workplaces.

As mentioned before, the Preamble of the Indian Constitution ensures Equality to all its citizens. Through Article 15 of the Constitution of India, any form of discrimination is prohibited in the country by stating prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 16(1) of the Constitution of India provides equal opportunity in matters of public employment and Article 16(2) provides non-discrimination of citizens in any form of employment on the grounds of religion, race, caste, sex, place of birth, residence or descent. These two provisions are only applicable to State appointments and employment. These provisions in the Constitution ensure the prohibition of discrimination in all forms while acquiring employment in India. The Industrial Disputes Act, 1947 maintain a state of balance between labor and industry welfare by maintaining industrial peace and harmony. The Factories Act, 1948 lays down safety provisions in factories, ensuring the welfare of workers. The Maternity Benefit Act, 1961 controls the hours in which women are employed in certain establishments in certain periods before and after childbirth and provides maternity benefits and other benefits to them in the workplace. Equal pay for male and female employees is guaranteed under The Equal Remuneration Act, 1976, which also outlaws sex-based discrimination against women in employment and everything associated with or connected to it. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was intended to stop crimes against

vulnerable groups, such as discrimination in the workplace based on caste. The Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013 covers sexual harassment at work and requires that internal committees be established in organizationsto handle complaints. The Rights of Persons With Disabilities Act, 2016 safeguards the rights of people with disabilities by promoting equality and preventing discrimination in the workplace. The Wages Code 2019 oversees wage and bonus payments in all jobs that involve any type of industry, trade, business, or manufacture.

These laws play a crucial role in upholding the rights of workers and promoting equal opportunities for all. Even so, legislation alone is not enough to make it happen. Such laws require careful implementation and enforcement to ensure their impact. Adequate training and awareness campaigns for both employers and employees regarding the provisions of these acts are necessary. Employers must be made aware of their duties in ensuring safe and equitable workenvironments, while employees should be informed of the legal frameworks that can help them address any discriminatory actions they may have taken. Regular monitoring and evaluation of implementation should also be implemented to identify gaps or issues and take appropriate corrective action.

**Judicial Interpretation**

In *State of Punjab & Ors.* v. *Jagjit Singh &Ors*[97], the Hon'ble Supreme Court Of India held that employees who work in the same position cannot be paid less than any other co-worker who performs the identical or similar duties and is not compensated differently, as per the Supreme Court's ruling. An act of oppression, repressionist suppression, and coercive was the label given to the pay differential in this Act. The principle of fair compensation for equal labour is an unambiguous entitlement that every worker, regardless of their job title, must possess. This case points out that it is the employers' responsibility to ensure that all workers are treated fairly, that they comply with labor laws and regulations, and that their contracts are transparent and accountable. In doing so, the employers can create a good work environment that benefits both the employer and the employee. The same concept of Equal Pay For Equal Work was also dealt

[97]2017 (1) SCC 148

with by the Hon'ble Supreme Court Of India in the case of *S. Narkara v. Union of India*[98] where it was held that Article 38(d) under the Directive Principles Of State Policy of the Constitution Of India required the state to reduce unjustified disparities in pay status, offices or openings among people living across different regions and with diverse income. In *Markendeya v. State OfAndhra Pradesh*[99]where the differential in pay scale between graduates with degrees and those without diplomas or licenses in engineering has been upheld. It was determined that the variation in educational qualifications did not violate Articles 14 and 16 of the Constitution of India and therefore justified a difference in pay scales. It was noted by the Court that if two groups of workers perform the same or similar tasks, have identical job roles and perform equally as many functions while maintaining the relevant academic degrees each person must be entitled to equal payment for the same work done.

In the case of *Consumer Education & Research Centre & Ors. v. Union of India & Ors.,*[100]the right of workers to health and medical care was considered as one of the Fundamental Rights under the Constitution of India by the Hon'ble Apex Court. It was determined that the necessity for workers to work in hazardous fields should not be exploited to deprive them of their health and safety. In Occupational Health & Safety Association v. Union of India & Ors. the petitioner was a non-profit organization that focused on the safety and health of workers and represented around 130 Coal Fired Thermal Power Plants (CFTPP), where the major concern was the lack of occupational safety or health risk protection in certain industries. It was held in the case that Article 21 conferred upon individuals the right to a clean environment that would promote healthy mind and body health. The Court acknowledged that the unsafe and unsanitary working conditions were a result of financial necessity for workers. Articles 39(e), 39 (f), 41 & 42 of the Directive Principles of State Policy in the Constitution of India were used by the Division Bench to assert that the right to live with dignity under Article 21 was their life's breath. According to Article 39(e), a state must ensure that workers do not perform work that is unsuitable for their economic interests while also safeguarding their health and strength. The right to work and public assistance that is based on economic capacity are addressed in Article 41, while Article 42ensures fairness and humanity for workers. Such Articles conferred on people the minimum

[98] 1983 SCR (2) 165
[99] (1989) 3 SCC 191
[100](1995) 3 SCC 42

criteria for dignity. The Division Bench recognized that India was one of the top coal-producing nations globally, meeting 54 production standards. Thermal discharges, dust, air, and coal emissions were a common issue among workers in CFTPPs and other industries due to their exposure to these pollutants. These particles were contaminated with coal dust, in addition to silica, which is known to cause cancer. This would be a very important duty to the State to provide minimum conditions, and when industry was dangerous, this duty would be double- handed.

In the case of *Vishaka & Ors. v. State of Rajasthan & Ors.*[101] which is concerned with the immoral act of sexually assaulting a female employee at her workplace. The Hon'ble Supreme Court of India has made a historic ruling on sexual harassment making it a significant landmark case. The case mainly deals with the safety of women in the workplace without sexual harassment. Sexual Harassment is when one sex is offered an unwanted or unwanted sexual favor, or gesture of sexual interest in another gender which makes the person feel humiliated, insulted and belittled for doing so. The Hon'ble Supreme Court of India held that women have a fundamental right to freedom from sexual harassment in the workplace. Furthermore, it provided a range of crucial guidelines for employees to adhere to and to avoid sexual harassment ofwomen in the workplace. Furthermore, the court recommended implementing corrective measures in cases of sexual harassment at work. The Apex Court's primary objective was to ensure gender equality and eliminate discrimination against women in the workplace. The Hon'ble Supreme Court of India clarified the definition of Sexual harassment in this case, which means that any form of sexual behaviour such as physical touch or conduct, pornography displayand other misbehaviour, or even sexual desire towards women will be considered a form.

**Conclusion**

The pursuit of equality, workplace- safety and non-discrimination in India necessitates a multi-faceted approach that includes working with all stakeholders. The employers are required to promote fairness among their staff and not to discriminate against those they hire. To ensure safety, equality, and non-discrimination in Indian workplaces, it is imperative to emphasize education and awareness. The task involves educating both employers and employees on their

[101] AIR 1997 SC 3011

rights and responsibilities, as well as raising awareness of the value of a positive work environment. The promotion of a culture of respect, empathy, and inclusivity in India can contribute to the country's efforts towards workplace equality, safety and non-discrimination. By putting all efforts into it, India can transform its workplaces into places where everyone's well-being is valued.

# LEVERAGING ADR TO FORTIFY CORPORATE GOVERNANCE

**Grace Bhadauria***
**Mayank Parashar****

## 1. Introduction

"In the realm of modern business, where intricacies abound and corporate dynamics evolve, the integration of Alternative Dispute Resolution (ADR) methods into corporate governance practices has emerged as a strategic imperative," aptly capturing the growing significance of this synergy. Corporate governance, a cornerstone of organizational management, is tasked with orchestrating the delicate balance between stakeholder interests, compliance with regulations, and the pursuit of sustainable growth. Within this intricate tapestry, disputes and conflicts are inevitable, underscoring the need for effective resolution mechanisms that ensure transparency, uphold accountability, and foster stability. The symbiotic relationship between ADR and corporate governance becomes evident when considering the multifaceted nature of the corporatelandscape. As conflict resolution assumes a central role in maintaining operational continuity, ADR methods offer a compelling pathway towards achieving swift and amicable solutions. Negotiation, mediation, and arbitration, the pillars of ADR, bring forth characteristics inherently aligned with the demands of contemporary corporations – expediency, confidentiality, and tailored resolutions. According to some professionals “The integration of ADR methods into corporate governance is akin to infusing the sinews of conflict resolution into the backbone of organizational structure."[102] In the following exploration, we delve into the intricate interplay between ADR and corporate governance, unraveling the potential of ADR to fortify the essential framework.

By investigating the contractual foundations that underpin corporate governance, we navigate the avenue of embedding ADR clauses within corporate contracts, a practice that streamlines the course of dispute resolution. Real-world instances, tangible case studies, illuminate the efficacy of this approach, showcasing its tangible impact on resolving corporate disputes with efficiency and tact. While the legal dimensions remain paramount, the pragmatic significance of ADR

* Jagran Lakecity University, Bhopal.
[102] The Legal State, Corporate Alternative Dispute Resolution (2021), Available at: https://lawsuperior.com/corporate-alternative-dispute-resolution/ (Accessed: 31 August 2023).

extends further, encompassing the safeguarding of corporate reputation and image. The adage that "public battles erode public trust" finds resonance in the context of the business world, where high-profile legal confrontations can precipitate a downward spiral. The incorporation of ADR into corporate governance strategies acts as a bulwark, mitigating the escalation of conflicts into the public arena and fostering an environment conducive to business continuity. With statistics painting a picture of increasing ADR adoption, we delve into the advantages and challenges that accompany this trajectory. A panoramic view of the corporate landscape reveals both the allure of expedient conflict resolution and the complexities that warrant careful consideration. As we navigate the advantages of ADR, ranging from flexibility to the preservation of relationships, we also acknowledge the challenges posed by the lack of precedentand potential power imbalances. The necessity of a unified approach to corporate governance, one fortified by ADR mechanisms, becomes evident as we reflect upon the insights gleaned fromexperienced professionals in the field. A chorus of voices underscores the imperative of weaving conflict resolution into the very fabric of corporate decision-making, a sentiment that resonatesas a clarion call for sustainable collaboration between ADR experts and corporate governance practitioners. This exploration amalgamates rigorous analysis, illustrative case studies, and forward-looking insights to make a compelling case for ADR's role as a cornerstone in fortifying the legal foundations of corporate governance. As the corporate landscape continues to evolve, characterized by its nuances and intricacies, the symbiosis between ADR and corporate governance holds the promise of a resilient and adaptive future.

## 2. Corporate Governance

Corporate governance holds a significant role within the intricate structure of modern organizations. It involves a set of principles, practices, and mechanisms that direct and control a company's operations. This framework governs the distribution of responsibilities and rights among various stakeholders, including shareholders, management, suppliers, customers, government bodies, and the wider community. At its core, corporate governance aims to strike a harmonious balance between these diverse interests while ensuring accountability, transparency, ethical behavior, and sustainable development.

*Definition and Importance of Corporate Governance*

Corporate governance can be defined as the system through which organizations manage and oversee their affairs, encompassing both internal and external processes. Internally, it concerns the relationships among a company's management, its board of directors, shareholders, and other stakeholders.[103] Externally, corporate governance extends to interactions with regulatory authorities, industry standards, and societal expectations. The significance of effective corporate governance cannot be overstated. It forms the foundation upon which an organization's credibility and reliability are built. Sound corporate governance practices create an environment where decisions are made in the best interests of the company, promoting long-term viability. Byaligning the interests of various stakeholders, corporate governance acts as a shield against mismanagement, unethical conduct, and corruption. Additionally, robust governance enhances access to capital, as investors and lenders are more inclined to support well-governed entities.

*Relevance in Today's Business Landscape*

In today's intricate and rapidly changing business environment, the importance of strong corporate governance is amplified. Globalization, rapid technological progress, and heightened public scrutiny have created a demanding context that necessitates adaptable and responsible governance structures. Instances of corporate scandals and financial crises have underscored the widespread repercussions of inadequate governance. These events have prompted regulatory changes and highlighted the need for organizations to cultivate a culture of integrity and adherence to regulations. Beyond regulatory compliance, contemporary corporate governance includes environmental, social, and ethical considerations, recognizing the broader impact that companies have on society.

In an era marked by heightened shareholder engagement, corporate governance serves as a bridge between the interests of owners and management. Transparent reporting, fair executive compensation practices, and independent boards are key elements that enhance accountability and minimize conflicts of interest. Furthermore, corporate governance shapes a company's reputation and attractiveness to both investors and customers. Ethical conduct, environmental

[103]Chen, J. (no date) Corporate governance definition: How it works, principles, and examples, Investopedia. Available at: https://www.investopedia.com/terms/c/corporategovernance.asp (Accessed: 31 August 2023).

stewardship, and social responsibility resonate with stakeholders who seek to associate with organizations that share their values.

Corporate governance is not just an administrative procedure but a pivotal factor that shapes the identity, direction, and success of organizations. In today's multifaceted business landscape, corporate governance principles guide companies towards ethical behavior, responsible decision-making, and sustainable growth.

## 3. The Role of Dispute Resolution in Corporate Stability

In the dynamic realm of corporate operations, the role of effective dispute resolution cannot be underestimated. Disputes and conflicts are inherent in any organization due to diverse interests, differing perspectives, and varying priorities among stakeholders. The ability to manage and resolve these conflicts efficiently plays a pivotal role in maintaining the stability and continuity of a corporation.

*Significance of Efficient Conflict Resolution*

Efficient conflict resolution serves as a linchpin for corporate stability. In an interconnected business landscape, disruptions caused by unresolved conflicts can have far-reaching consequences. They can impede decision-making processes, hinder collaboration, damage relationships, and result in resource wastage. A conflict left unaddressed can escalate, leading to potential legal battles, reputational harm, and financial losses. By promptly addressing and resolving conflicts, an organization not only safeguards its operations but also preserves its reputation and sustains productive relationships.

*Impact of Disputes on Organizational Operations*

Disputes have a profound impact on various aspects of organizational operations. They divert time and resources away from core activities, as personnel become preoccupied with resolving conflicts rather than focusing on strategic initiatives. Internal cohesion can deteriorate as conflicts create divisions among teams or departments. Such discord can hinder communication, collaboration, and the sharing of ideas, ultimately impairing overall efficiency and innovation. Externally, disputes can tarnish a company's image and standing in the market. News of legal disputes or internal conflicts can erode customer trust and investor confidence. This erosion of

reputation can lead to decreased customer loyalty, a drop in market value, and reduced investor interest. The negative publicity generated by publicized conflicts can take years to overcome, potentially affecting long-term growth prospects. Moreover, disputes can strain relationships with external stakeholders such as suppliers, partners, and regulatory bodies. Prolonged conflicts can result in supply chain disruptions, compromised partnerships, and regulatory scrutiny. These consequences can have ripple effects throughout the organization, causing delays, operational inefficiencies, and even regulatory penalties. This efficient dispute resolution is integral to the stability and success of any corporation. The ability to address conflicts promptly and effectively not only prevents disruptions to operations but also maintains positive relationships with stakeholders and upholds the organization's reputation. By recognizing the significance of conflict resolution in corporate stability, organizations can proactively foster an environment that prioritizes collaboration, open communication, and timely resolution of disputes.

## 4. Exploring Alternative Dispute Resolution (ADR)

In the complex landscape of conflict management, Alternative Dispute Resolution (ADR) has emerged as a constructive approach that holds promise for organizations seeking efficient and amicable solutions. ADR offers an alternative to the traditional court-based litigation process, emphasizing collaboration, flexibility, and tailored solutions. This section delves into the fundamentals of ADR, its various methodologies, and how its characteristics align with the needs of modern corporations.

### *Understanding ADR and Its Methodologies*

Alternative Dispute Resolution (ADR) encompasses a range of methods designed to facilitate the resolution of disputes outside of formal court proceedings. Unlike the adversarial nature of litigation, ADR methods emphasize cooperation and consensus-building. Three primary methodologies within ADR stand out: negotiation, mediation, and arbitration.

**Negotiation:** Negotiation is a foundational ADR method where parties engage in discussions to reach a mutually agreeable resolution[104]. It places decision-making power in the hands of the

[104]Government of Canada, D. of J. (2022) Dispute resolution reference guide, Negotiation - Dispute Prevention and Resolution Services. Available at: https://www.justice.gc.ca/eng/rp-pr/csj-sjc/dprs-sprd/res/drrg-mrrc/03.html (Accessed: 31 August 2023).

disputing parties, allowing them to craft solutions that best suit their interests. This process can be informal or formal, depending on the complexity of the issue and the willingness of parties to collaborate.

Mediation involves the presence of a neutral third party, the mediator, who facilitates communication between disputing parties. The mediator does not impose decisions but guides the parties in exploring potential solutions. Mediation encourages open dialogue, creative problem-solving, and maintains a focus on preserving relationships. This approach is particularly suitable for conflicts where ongoing relationships are crucial.

Arbitration is a more structured ADR method, resembling a simplified version of a court trial. The disputing parties present their cases to an arbitrator or panel of arbitrators who make a binding decision. While arbitration is more formal than negotiation or mediation, it is often fasterand less costly than traditional litigation. It is commonly used in contractual disputes.

## 5. Characteristics of ADR That Align with Corporate Needs[105]

The attributes of Alternative Dispute Resolution (ADR) fit seamlessly with the demands of contemporary corporations, making a persuasive case for its adoption as a favored approach to conflict resolution:

*1. Speed and Efficiency*

In the rapid pace of the business world, time is a valuable asset. ADR methods are recognized for their streamlined procedures, offering a quicker path to resolving conflicts compared to the often-lengthy court litigation. This expeditiousness allows corporations to minimize disruptions, resume normal operations, and uphold their competitive edge.

*2. Confidentiality*

Safeguarding corporate confidentiality is paramount. ADR provides a private setting for resolving disputes, shielding sensitive business information from public exposure. This

[105]common features of ADR (no date) Justice, fairness and mediation. Available at: https://www.open.edu/openlearn/money-business/leadership-management/justice-fairness-and-mediation/content-section-4.1 (Accessed: 31 August 2023).

confidentiality encourages open discussions and negotiations, enabling companies to protect their trade secrets, proprietary data, and internal strategies.

*3. Tailored Solutions and Flexibility*

Every corporate dispute is distinct, shaped by the intricate dynamics of the business environment. ADR methods allow for customized solutions that address the specific needs and concerns of the parties involved. This adaptability ensures that resolutions are pragmatic, pertinent, and in line with the complex nuances of the corporate world.

*4. Nurturing Relationships*

Successful corporations thrive on a network of relationships with clients, suppliers, partners, and other stakeholders. ADR's collaborative approach fosters open dialogue, innovative problem-solving, and consensus-building. This focus on communication helps prevent relationships from souring due to adversarial litigation, safeguarding vital connections that contribute to sustained success.

*5. Cost-Effectiveness*

Prudent financial management is a cornerstone of corporate strategy. ADR methods typically involve lower costs than traditional litigation, thanks to their streamlined processes and reduced formalities. Corporations can allocate financial resources more judiciously, optimizing budgets for core business functions.

*6. Expertise and Neutrality*

Numerous ADR methods engage neutral third parties, like mediators or arbitrators. These experts bring specialized knowledge to the table, assisting parties in navigating complex legal, technical, or industry-specific issues. This impartiality ensures that decisions are made based on merit, fostering fair and equitable outcomes.

*7. Sustaining Business Operations*

Disruptions arising from conflicts can jeopardize business operations. ADR methods present a resolution path that minimizes disruptions, enabling corporations to maintain their focus on fundamental activities, innovation, and growth strategies. This continuity is pivotal for upholding investor confidence and market stability.

*8. Safeguarding Reputation*

In the era of instant communication, a corporation's reputation is a fragile asset. High-profile legal battles can tarnish a company's image. ADR's confidential and non-adversarial nature enables corporations to resolve disputes discreetly, averting negative publicity that might impact stakeholder perceptions.

This means that the attributes of Alternative Dispute Resolution (ADR) harmonize seamlessly with the intricate demands of modern corporations. ADR's emphasis on speed, confidentiality, tailored solutions, relationship nurturing, cost-effectiveness, expertise, business continuity, and reputation safeguarding render it a compelling choice for resolving conflicts in a manner that aligns with the strategic and ethical goals of contemporary businesses.

## 6. Integrating ADR into Corporate Contracts

a) ***Contractual Basis of Corporate Governance*:** Within the framework of corporate governance, contractual agreements serve as the backbone of relationships between stakeholders. The efficacy of these agreements rests on their ability to delineate rights, obligations, and dispute resolution mechanisms comprehensively and unambiguously. In this context, the inclusion of Alternative Dispute Resolution (ADR) clauses within corporate contracts assumes significance as a strategic approach to fostering efficient conflict resolution.[106]

b) ***Embedding ADR Clauses for Streamlined Resolutions:*** Embedding ADR clauses within corporate contracts represents a proactive step toward achieving expedient and tailored conflict resolution. These clauses outline the process by which disputes will be addressed should they arise. By specifying the ADR methods, such as negotiation, mediation, orarbitration, parties set forth their commitment to exploring non-litigious avenues for resolving disagreements. ADR clauses are meticulously crafted to encompass the procedural rules, selection of arbitrators or mediators, venue, governing law, and enforceability of the resolution. The clauses delineate a roadmap, guiding the parties through a structured process that aligns with their contractual commitments and mitigates potential conflicts over interpretation. The integration of ADR clauses acknowledges the essence of consensual

[106]Drafting efficient dispute resolution clauses (no date) WIPO. Available at: https://www.wipo.int/amc/en/clauses/clause_drafting.html (Accessed: 31 August 2023).

agreement, a cornerstone of contract law. It reflects the parties' mutual intent to exhaust non-judicial remedies before pursuing litigation. This approach resonates with the principle of party autonomy, wherein the parties retain control over the resolution process and are empowered to tailor solutions that best align with their interests.

Moreover, the inclusion of ADR clauses embodies the contractual duty of good faith and fair dealing. It underscores the parties' obligation to engage earnestly in ADR proceedings and collaborate in reaching a resolution. This duty of cooperation resonates with the broader legal doctrine that seeks to preserve commercial relationships and maintain the integrity of the contract. By embedding ADR clauses, corporations bolster the contractual foundation of their governance structure. They exemplify a commitment to principled conflict resolution and signal an intent to navigate disputes in a manner that upholds contractual obligations, minimizesdisruptions, and promotes equitable solutions.

This integration aligns with the overarching objectives of corporate governance, emphasizing transparency, accountability, and the pursuit of sustainable relationships and the integration of ADR clauses into corporate contracts embodies a legal strategy that harmonizes with the principles of corporate governance. By establishing a structured framework for resolving conflicts, parties demonstrate their commitment to adhering to contractually defined resolution mechanisms. This approach not only streamlines dispute resolution but also reinforces the foundational principles that underpin corporate contractual relationships.

## 7. Real-world Case Studies Demonstrating ADR's Effectiveness

*a) Chevron's Cost-Efficient Mediation*

Chevron, a prominent energy company, harnessed the power of ADR by opting for mediation to resolve a contentious issue. Unlike the conventional litigation route, Chevron's ADR-based mediation incurred a fraction of the costs. The company spent $25,000 on ADR-based mediation compared to the substantial $700,000 for mediation through external legal counsel or an astonishing $2.5 million for a court battle that could stretch over three to five years. This case

underscores how ADR can significantly reduce financial burdens while achieving successful conflict resolution.[107]

*b) Toyota's Innovative Arbitration Board*

Toyota's U.S. division established a groundbreaking Reversal Arbitration Board to navigate disputes between the corporation and its dealers. Through this unique approach, Toyota effectively curtailed conflicts related to automobile allocation and sales credits. This forward- thinking strategy resulted in a remarkable decline in the frequency of such cases, dropping from 178 disputes in 1985 to a mere 3 cases in 1992. By demonstrating commitment to ADR principles, Toyota illustrates how corporations can successfully manage conflicts, thereby fostering smoother business relationships.

*c) NCR's ADR Commitment*

NCR, now renamed AT&T Global Information Solutions, serves as an exemplary case of a company that embraced ADR with dedicated commitment. NCR's leadership adopted ADR as a core strategy, leading to transformative results. The company's filed lawsuits in the United States dramatically plummeted from 263 in March 1984 to only 28 in November 1993. This resounding success is attributed to NCR's resolute ADR commitment, resulting in significantly lower outside legal fees and a remarkable decrease in the cost of in-house counsel. By leveraging ADR, NCR not only achieved financial savings but also cultivated a culture of efficient dispute resolution[108].

*d) Google's Skillful Negotiation with Regulators*

In 2014, Google adeptly utilized negotiation as a dispute resolution tool to address antitrust concerns raised by the Federal Trade Commission (FTC) and European Commission regulators. Google opted for cooperation rather than confrontation, making small changes to its search practices to address regulatory worries. This strategic approach allowed Google to sidestep the potential consequences of formal charges and hefty fines. In contrast, Microsoft's prolonged court battle over European antitrust charges ended up costing the company over $2.5 billion in

[107]Carver, T.B. and Vondra, A.A. (2014) Alternative dispute resolution: Why it doesn't work and why it does, Harvard Business Review. Available at: https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does (Accessed: 31 August 2023).

[108]Centre, V.M. (no date) Latest News, An Analysis of NCR's Alternate Dispute Resolution Policy: How the Company Makes it Work | VIA Mediation Centre. Available at: https://viamediationcentre.org/readnews/MTU1/An-Analysis-of-NCRs-Alternate-Dispute-Resolution-Policy-How-the-Company-Makes-it-Work (Accessed: 31 August 2023).

fines. Google's case showcases how skillful negotiation can save both financial resources and reputation while addressing regulatory challenges effectively.

These real-world case studies exemplify the tangible benefits of integrating ADR into corporate strategies. From substantial cost savings and improved business relationships to efficient conflict resolution and regulatory compliance, ADR proves to be a valuable tool for modern corporations seeking prudent solutions to complex disputes. These cases further underscore that success in ADR is grounded in the commitment to principled resolution, creativity, and an unwaveringfocus on maintaining positive business outcomes.

## 8. ADR Adoption: Current Landscape and Statistics

***Percentage of Corporates Using ADR*:** In the contemporary business environment, the adoption of Alternative Dispute Resolution (ADR) methods is gaining prominence as a pragmatic approach to conflict resolution. Recent statistics indicate a notable increase in the number of corporations embracing ADR. According to the American Arbitration Association (AAA), approximately 80% of Fortune 1000 companies incorporate ADR clauses in their contracts. This substantial percentage underscores the growing recognition of ADR's effectiveness in mitigating conflicts and maintaining business stability.

## 9. Advantages and Challenges of ADR Adoption

The advantages of ADR adoption resonate strongly with corporations seeking efficient dispute resolution. ADR offers expedient solutions, enabling companies to avoid the time-consuming nature of court litigation. Additionally, the confidential nature of ADR safeguards sensitive business information, preserving corporate reputation. ADR's customizable approach aligns with the diverse needs of corporations, fostering tailored resolutions that meet the parties' interests. Furthermore, ADR's cost-effectiveness minimizes financial strain, allowing corporations to allocate resources judiciously. However, challenges do exist in the path to ADR adoption.

Corporations must navigate potential complexities in selecting suitable mediators or arbitrators with the necessary expertise. Ensuring enforceability of ADR decisions and managing situations where parties may not fully engage in the process can also pose challenges. Moreover, some corporations may face resistance from counterparts who are accustomed to traditional litigation

methods. Addressing these challenges necessitates a strategic approach that prioritizes understanding, communication, and collaboration.

## 10. The Imperative of Embracing ADR in Corporate Governance

*Strengthening Legal Foundations through ADR***:** The imperative of integrating ADR into corporate governance is underscored by its potential to fortify the legal underpinnings of business operations. ADR methods offer corporations a distinct advantage by providing efficient mechanisms for resolving conflicts without the adversarial nature of courtroom battles. By incorporating ADR into their governance structures, corporations demonstrate their commitment to principled conflict resolution and uphold the values of transparency, fairness, and ethical conduct.

*ADR Experts and Governance Practitioners*: The synergy between ADR experts and corporate governance practitioners is vital for successful ADR integration. ADR experts bring specialized knowledge in conflict resolution techniques and procedural nuances, ensuring that ADR clauses are well-crafted and effectively implemented in corporate contracts. Collaboration between ADR experts and governance practitioners enhances the credibility of ADR mechanisms and ensures their alignment with legal requirements and corporate objectives. This collaboration extends beyond the drafting of ADR clauses. Governance practitioners benefit from the insights of ADR experts in developing comprehensive conflict resolution strategies. Regular consultations and training sessions can empower governance practitioners to navigate potential disputes effectively and make informed decisions when engaging in ADR processes. The adoption of ADR in corporate governance is a strategic imperative supported by current statistics and demonstrated advantages. Corporations can capitalize on ADR's expedient, confidential, and cost-effective nature to mitigate conflicts while preserving business relationships. Embracing ADR requires a collaborative approach, with governance practitioners and ADR experts working hand in hand to ensure that ADR mechanisms are seamlessly integrated into corporate contracts and conflict resolution strategies.

## 11. Building a Compelling Case for ADR in Indian Corporate Governance

Constructing a compelling case for ADR integration into Indian corporate governance necessitates rigorous analysis and forward-looking insights. By delving into empirical data,industry trends, and practical outcomes, corporations can discern the tangible benefits of ADR adoption within the framework of Indian laws. Forward-looking insights provide a strategicperspective that envisions the future impact of ADR on Indian corporate governance. By projecting potential time and cost savings, alongside the preservation of business relationships, corporations can make informed decisions that align with Indian regulatory requirements and ethical business practices. In the context of Indian laws, the Arbitration and Conciliation Act, 1996[109] (hereafter referred to as "the Act"), serves as a cornerstone for ADR mechanisms, including arbitration and conciliation. Sections 2(1)(e), 7, and 34 of the Act provide the legal foundation for the enforceability of arbitral awards and the facilitation of amicable dispute resolution. By integrating ADR methods into corporate governance, corporations align with the objectives of Indian law, promoting timely and efficient resolution of disputes.

Furthermore, the Companies Act, 2013[110], underscores the significance of corporate governance in India. Sections 178, 177, and 178(9) mandate the establishment of internal dispute resolution mechanisms, emphasizing the importance of addressing conflicts within corporations through non-adversarial means. Moreover, section 89 and section 20 of The Legal Services Authorities Act of 1987[111], deals with the settlement of disputes outside the courts as they are not limited to individual cases; corporate entities can avail themselves of this method for dispute resolution.

Furthermore, Section 89, 30 and 31 of Code of Civil Procedure 1908[112] deals with powers of the court to direct the parties to explore ADR methods and appointment of arbitrators. Also, section 48A of Information Technology Act 2000 provides for the establishment of an Online Dispute Resolution mechanism. This aligns seamlessly with the ethos of ADR, which seeks to foster amicable resolutions and maintain harmonious business environments Insights garnered from interactions with industry professionals and rigorous analysis synergize to build a persuasive case for ADR in Indian corporate governance.

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[109]The Arbitration and Conciliation Act, Act no. 26, Act of Parliament, (1996).
[110]The Companies Act, 2013, Act no. 18, Act of Parliament, (India).
[111]The Legal Services Authorities Act of 1987, Act no. 39, Act of Parliament, (India).
[112]The Code of Civil Procedure 1908, Act no. 5, Act of Parliament, (India).

By embracing ADR methods, corporations can navigate disputes in a manner that adheres to Indian legal principles, preserves resources, and fosters positive business relationships. The legal underpinnings of ADR within Indian laws, underscore the legitimacy and effectiveness of ADR mechanisms. As corporations look ahead, ADR's role in shaping a robust and compliant business landscape in India becomes increasingly prominent, guided by its alignment with legal statutes, corporate aspirations, and the evolving dynamics of the Indian business ecosystem.

## 12. Conclusion

In a dynamic business landscape where effective conflict resolution and sound corporate governance are imperative, the integration of Alternative Dispute Resolution (ADR) emerges as a strategic imperative. This discourse has meticulously explored the symbiotic relationship between ADR and corporate governance, underscoring how ADR fortifies the modern corporations. Corporate governance, a cornerstone of organizational success, hinges on transparency, accountability, and efficient conflict resolution.

The role of ADR in this context becomes evident as it offers a structured, expedient, and tailored approach to resolving disputes. The discourse has traversed various dimensions, highlighting how ADR's characteristics align seamlessly with corporate needs. Its speed, confidentiality, tailored solutions, and cost-effectiveness contribute to maintaining operational stability, safeguarding reputation, and nurturing business relationships. The integration of ADR within corporate contracts has been emphasized as a pivotal step towards streamlined resolutions.

ADR clauses embody party autonomy, aligning with the contractual basis of corporate governance and fostering a commitment to principled conflict resolution. Real-world case studiesshowcased how ADR's adoption has led to successful resolutions, preserving business partnerships, and minimizing financial burdens. Moreover, the statistics presented underscore thegrowing adoption of ADR across industries, showcasing its advantages in terms of time, cost,and relationship preservation. While challenges exist, corporations can navigate them through collaborative efforts between ADR experts and governance practitioners.

This discourse accentuates the necessity of embracing ADR to fortify the legal underpinnings of corporate governance. By integrating ADR's principles and practices, corporations can navigate complex corporate environments with prudence and ethical integrity. The reference to real-world

case studies, legal acts, and Indian laws further solidifies the significance of ADR in ensuring transparent and harmonious corporate governance.

In last we can say as the business landscape evolves; the strategic adoption of ADR becomes indispensable. Its potential to expedite resolutions, protect reputation, and align with legal foundations ensures that ADR remains an indispensable tool in the arsenal of corporate governance. Through rigorous analysis, insightful case studies, and forward-looking perspectives, this discourse has built a compelling case for the integration of ADR, empowering corporations to thrive in a challenging and dynamic environment.

# DECIPHERING THE INTERPRETIVE DILEMMA OF ARTICLE 15(2) OF THE CONSTITUTION

**Satyarth Kuhad**[*]

## I. Introduction

Anything discriminatory is anathema to the constitutional philosophy. The Constitution of India hits out at discrimination in the most vociferous manner. Articles 14 to 18 in Part III of the Constitution provide with fundamental rights grouped under the title "Right to Equality". These articles focus on different issues and place considerable emphasis on people's underlying unityby offering equal opportunity and dignity to everyone.

This paper aims to analyze Article15(2) of the Constitution of India in the light of private discrimination. Article 15(2) guarantees right to non-discrimination to all the citizens on the grounds mentioned therein. It has been a subject of interpretation by the Supreme Court as well as academic scholarship discussing 'horizontal or private discrimination'. The author initiates with exploring the relationship of Article 15 with other articles of this group. Following that, the author makes analytical and literal interpretations of sub clauses of Article 15(2) taking the Constituent Assembly debates into consideration. Although the Article is reflective of its anti- discriminatory character, it seems to the author that the Article does not sufficiently prohibit discrimination in the society by restricting the scope of expanding the grounds with the prefix 'only' in Article 15(2). The author argues that the Article does not provide a blanket protection from all kinds of discrimination, specifically from private discrimination. In addition to this Article 15(2) lacks potential to tackle discrimination in the present-day scenario where instances of private discrimination on various grounds affect the society negatively. In view of the author, the design and language of Article 15 manifest dubiety. And the language of the article leaves much to be desired.[113] Finally, to make the article inclusive, in conclusion the author suggests to amend Article 15 of discrimination.

## II. Relationship of Article 15(2) with Article 14

[*] Campus Law Center, Faculty of Law, University of Delhi

[113]See, H.M. Seervai, *Constitutional Law of India* 682 (Universal Law Publishing Co. Ltd., New Delhi, 5th edn., 2011); the author writes that drafting of Article 15(3) leaves much to be desired. But, the author of this paper perceives that drafting of entire Article 15 leaves much to be desired.

In the group of fundamental rights granting "Right to Equality", Article 14 seems to act like a protagonist for all the specified rights. It declares the Rule of Law in our country and provides the broadest protection of equality to all persons including citizens and non-citizens. Hence, it would be reasonable to view Article 14 as declaratory of Rule of Law and other articles as lawsor basis of laws. It has to be examined whether other articles in this group are independent of Article 14 or come under its scope. Article 16 provides for equality of opportunity in public employment which deals with 'appointment' or 'employment' under the *state*. Since the article only deals with employment under the state, it is very well covered by the scope of Article 14. Article 17 abolishes untouchability in all forms and mandates the *state* to frame a law for enforcing this right.

This article again places the onus of obligation on state. Hence, this article is also under the scope of Article 14. Similarly, Article 18 prohibits the state to confer any titles as well individuals from accepting any titles[114]. The general trend observed here is that all the articles are under the scope of Article 14 and do not surpass it. Now, let's discuss the position of Article 15 in this regard. If it is considered that Article 15 only obligates the state, then Article 15 also settles under the scope of Article 14 and goes with the general trend. But, if it is presumed that Article 15(2) applies to private entities too, then it doesn't remain within the scope of Article 14 and surpasses it. Would it be permissible for Article 15 to expand the scope of Article 14? In contrast, Article 15(2) curtails Article 14 at some places. For instance, Article 25 grants a fundamental right to freedom of religion, which must include access to public religious institutions. But, Article 15(2) does not protect equal 'access' to public religious institutions. Denial to a public religiousinstitution would violate the fundamental right under Article 25 and for the state not being able toprotect that right by the virtue of Article 15(2) would ultimately leave Article 14 infructuous.

A classification of these articles can also be done on the basis of obligation. Article 14 clearly casts an obligation on *state* for treating all persons equal before laws. Article 15 along with obligating the *state* to not discriminate among the citizens, *protects citizens from discrimination with regards to access to public services and public infrastructure*. Article 16 mandates the *state* to not discriminate in the matters of public employment. Article 17 mandates the *state* to lay

[114]Although Article 18 prohibits individual from accepting any title, it is a personal obligation and not against any other individual.

down a law declaring untouchability as a punishable offence. It must be noted that untouchability can be practiced both by the state and private individuals but the Constitution does not specify these details and leave it to the *state* to make an appropriate law. Article 18 clearly prohibits the *state* and persons individually to confer titles and accept respectively. The purpose of thisclassification is to realize that where any obligation was to be set out against private entities, the Constitution makers mandated the *state* to carve out a law.[115]

Done with this, let's classify these articles on a different basis. In this group we can observe three kinds of articles; article which is general in nature (Art. 14), articles which deal with specific issues (Arts. 16, 17, and18), article which is general in nature and seems to targets a specific issue(Art. 15). Now, let us view this classification with an understanding developed in the previous paragraph, and spell out the issues these articles deal with. Article 15 broadly deals with public services and public infrastructure. Article 16 deals with public employment. Article 17 deals with physical equality prohibiting untouchability. And Article 18 deals with equality of status. This classification is done to realize the purpose of Article 15, which as per the understanding of the author limits to equality of access to public services and infrastructure.

## III. Grounds of discrimination

Article 15 recognizes discrimination on the basis of five grounds. Let us examine the Article with regards to these grounds. Article 15(2) of the constitution of India states: "No citizen shall, on grounds *only* of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to…"

A close examination of Article 15 manifests that the Constitution prohibits discrimination 'only' on the grounds mentioned in the Article i.e., race, religion, place of birth, caste, and sex. The constitution makers have outrightly imposed a restriction by prefixing the grounds with the term 'only'. It would be too naive to presume any term in the Constitution of India to be superfluous. Explicitly adding a restrictive term before the grounds mentioned in this provision must mean something. This limitation becomes stronger when we observe that clause 3 of Article 15 allows the state to make special provisions for women and children. Another reason which makes this

[115]See, The Constitution of India, art. 17; The article declares untouchability an offence punishable in *accordance with law*.

discussion significant is that Article 16(2) contains other grounds in addition to the grounds mentioned in Article 15(2). The scope of Article 16 is narrower since it provides protection only for public employment whereas the scope of Article 15 is broader, even then the number of grounds is more in Article 16.[116]

Giving this clause a literal reading, it can be interpreted that individuals/organizations/state are free to discriminate among citizens on the grounds not mentioned in the article. Whether discriminating on other grounds and place is justified or not, is not the subject of this paper.

**Limitations**

This article has a very miniscule and limited scope as compared to the issue it intends to deal with. Discrimination is a multi-faced menace which since its inception is mutating and changing its forms. The bases of discrimination a hundred years ago are not the same today and would not be the same a hundred years after. Prof. Saksena, a member of the Constituent Assembly felt that the clause about the use of 'wells' and 'tanks' etc. was not worthy of finding a place in the constitution because existence of such disabilities is merely transitory which would vanish with time.[117] The grounds mentioned in the article are not the only grounds based on which people face discrimination, which is morally and socially wrong. Some of the very common and possible grounds are, disability, age, sexual orientation, transgender, attire, political ideology, education, place of residence, family status and background, marital status, and civil partnership, ethnic origin, victim of a crime, former offender, health conditions like HIV, depression etc., reverse discrimination, physique, employment status, wealth status, socio economic status, organisation membership, credentialism.

A detailed study of the constituent assembly debates does not furnish any discussion about the restriction placed in the article by the term 'only'. But, it clearly shows that the members were concerned about the other non-mentioned grounds where discrimination in the mentioned places happens. Shri Raj Bahadur proposed to delete 'place of' from the ground 'place of birth' and keep only 'birth' so that it could cover descent also. It should be noted that descent has been mentioned as a ground of discrimination in Article 16. He expressed concerns over the class

[116] See, Jagdish Swarup and Dr. L.M. Singhvi, *Jagdish Swarup Constitution of India* 601 (Thomson Reuters, 3rd edn., 2013)

[117]Constituent Assembly Debates, Draft Art. 9, dt. 29th Nov 1948, 659.

system which existed in the country stating that people not born with a silver spoon in their mouth face discrimination.[118] Unfortunately, the suggestion was not accepted and it is not uncommon to experience that even after 75 years this ground remains prevalent in the country. This deficiency of the article can even be fatal to the potent anti-discriminatory laws of the country and states as well. Since the article imposes a limitation on the grounds, any anti- discriminatory law framed on the basis on some ground can be challenged. Along with this, any anti-discriminatory law based on other grounds can be framed by the state. The Supreme Court in*Air India v. Nergesh Meerza & Ors.*[119], upheld the provision of Air India Employee Service Regulations, which discriminated between male and female employees on the ground of age observing that, "Even otherwise, what Articles I5 (l) and 16 (2) prohibit is that discrimination should not be made only and only on the ground of sex. These Articles of the Constitution do not prohibit the state from making discrimination on the ground of sex coupled with other considerations."

There is another issue of coupling of grounds of discrimination and interpretation of the phrase "or any of them" which has not been covered in this paper.

## IV. Locale of discrimination

The sub-clauses (a) and (b) of clause 2 of Article 15 provide with places where discrimination on the mentioned grounds is prohibited. There can be some anomalies observed in these clauses. Let us examine the sub clauses of clause 2.

### Sub-clause 15(2)(a)

For conveniently reading sub clause (a) we can read it along with the last part of clause (2) which can be read as follows:

> (a) be subject to any disability, liability, restriction or condition with regard to access to *shops, public restaurants, hotels and places of public entertainment*

Sub clause (a) of the Article 15(2) provides with a list of places where 'access' to certain places is protected by the Constitution. Complete protection is granted against any disability, liability,

[118]*Id.* At 656.
[119]*Air India* v. *Nergesh Meerza & Ors.*, 1981 AIR 1829; available at: https://indiankanoon.org/doc/1903603/

restriction or condition with regards to access to these places. The most obvious interpretation which comes to one's mind when they read this would be that discrimination is only prohibited in 'public places' There is no word in this sub clause which could hint that protection is granted against discrimination practiced by private people. But, many of these mentioned places are owned by private individuals or organisations in the Indian market, hence it is presumed that this clause applies to private entities too. Also, because the first clause of Article 15 deals with the state, it sounds reasonable and logical to scholars to presume that the second clause applies to private entities.[120]

Let us analyze this sub clause literally. It can be observed that the term 'public' has not been used as a condition with all the places, nor has it been used only once as a general condition for all the places. It has just been used with 'restaurants' and 'places of entertainment'. Hotels can be reasonably presumed to be public hotels by the rule of ejusdem generis, but clarity lacks regarding the interpretation of the nature of shops. There can be two possibilities; either shopscan also be considered as public shops by the rule of ejusdem generis or it covers all the shops (public and non-public). In this situation it is required to examine the intent of the Constitution makers. Dr. Ambedkar affirmatively replied[121] (pg. 661) to the amendments moved by Sh. S Nagappa[122] (pg. 657) and Sh. BG Kher[123] (pg. 661) by clarifying that a shop defined in a generic sense is a place where the owner is prepared to offer the services to anyone who is prepared to go there willing to avail the services. Viewed simply, the term 'shop' is as simple to interpret as it sounds. But, the definition of a shop is not the matter of discussion here, instead,the nature of accessibility has to be examined, about which there can be found no discussion in the debates.

Other places to be included which were suggested by different members were, 'roads', 'hospitals', 'educational institutions', 'musafir khanas', 'dharamshalas', 'temples', 'places of

[120] See, H.M. Seervai, *Constitutional Law of India* 552 (Universal Law Publishing Co. Ltd., New Delhi, 5th edn., 2011), the author without citing any authority writes, "although Art. 15(1) is directed to the State, Art. 15(2) is directed also to private individuals."; DD Basu, *Shorter Constitution of India* 189 (Lexis Nexis Butterworths Wadhwa, Nagpur, 14th edn., 2011), the author without citing any authority writes that, "Sub-clause (a) offers equal access to shops, restaurants, hotels and places of public entertainment, owned by *private* persons. State aid to such institutions is not a condition requisite for availability of this right in respect of such places."

[121] *Supra* note 5 at 657.

[122] *Id.* at 651.

[123] *Id.* at 661.

worship'.[124] It is interesting to note that the country has already come across a dispute about one of the grounds suggested here but not included in the article. The Supreme Court in *Indian Medical Association* v. *Union of India,*[125]included private educational institutes in the premises of this anti discriminatory article by deriving it under the definition of 'shop'.

**Sub-clause 15(2)(b)**

Sub clause (2)(b) of Article 15 reads as follows:

(b) be subject to any disability, liability, restriction or condition with regard to the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public

The sub clause explicitly provides with two conditions to be fulfilled for availing protection and the protection can be claimed if any one of these conditions is met. The conditions are:

1. The place must be maintained wholly or partially out of state funds; or
2. The place must be dedicated to the use of general public.

The first condition does not make the state to necessarily own the place, even if the place is maintained by the state, the condition gets fulfilled. But the place might not be for the use of general public. If the state designates and maintains a place only for a certain group of people in accordance with the law, this sub clause would be rendered superfluous and contradict the clause (1) of the article. Although the article provides with exceptions, it is not something uncommon to witness such places which are maintained by the state and not open to the general public and do not fall into those exceptions.

Interpreting the second condition seems more complicated. According to the second condition, either the place may be owned but not maintained by the state and dedicated to the use of general public. It is not that this interpretation itself is superfluous because such places do not exist. Examples of such places can be Airports and state-owned markets where shops are leased to private entities. Another possible interpretation can be that all the places dedicated for the use of general public regardless of the ownership (private and state) and maintenance, come under the

[124]*Supra* note 5 at 658.
[125]*Indian Medical Association* v. *Union of India*; available at: https://indiankanoon.org/doc/1627898/#:~:text=Inamdar%20has%20found%20that%20a,SCC%20645%20to%20choose%20students

scope of this sub clause. This interpretation supports the cause of private discrimination. But interpretation of any part of a sub clause cannot be done in isolation with other parts.

**'Public'**

The most challenging task seems to interpret the term 'public'. It could have been but, it has not been defined in the Constitution itself. R.K. Sidhwa strongly opined to define the term 'public' in the Constitution itself. [126]Neither has it been defined in any legislation yet.
The interpretation that the article protects against private discrimination also, is based on the nature of the places mentioned in clause (2). Sub-clauses (a) and (b) mention places where such discrimination cannot be done, which are, 'Shops', 'public restaurants', 'hotels' and 'places of public entertainment'. It can be interpreted that these places are essentially public. But what is a public place? As mentioned above, there is no specific definition regarding this in law.

Let us consider the two very obvious interpretations of 'public'. The first one relates to its literal meaning that means something which is open to *all* or can ordinarily be used by the *general public*. This includes all the facilities and places available publicly. This means that according to Article 15(2), the sellers or service providers (both private and state) offering their products and services publicly cannot discriminate on the basis of the grounds mentioned therein. The Supreme Court in *Indian Medial Association* v. *Union of India*[127] holds that 'publicly provided services' come within the ambit of Article 15(2) of the Constitution and any practice which perpetuates the effects of discrimination in provision of such service is also prohibited. This interpretation sounds fair and makes the article cover private discrimination.

Another interpretation is narrower and under the scope of the first one. Second meaning which can be given to the term 'public' is 'state-owned'. 'state- owned' is a very popular meaning of the 'public'. The services and infrastructure are popularly classified into 'public' and 'private' only. This interpretation can be supported by the description of a neighboring article i.e., Article 16. Title of Article 16 – Equality of opportunity in matters of *public* employment. It specifies the nature of employment as public and in the body of the article it provides for equality in appointment to offices under the *state*. This could very well mean that for the purpose of these

[126]*Supra* note 5 at 660.
[127]*Ibid.*

article public connotes to state. Interpreting it other way might be fallacious since the Constitution itself describes it. This interpretation can be strongly supported by Dr. Ambedkar's clarification provided in the Constituent assembly stating that, "A place is a place of public resortprovided it is maintained wholly or partly out of State funds."[128]

If we harmonize these interpretations, it can be concluded that something 'public' can be both state-owned and private-owned but dedicated to the use of general public indiscriminately. This opens up a possibility of places which can be state-owned and private-owned but not be 'public'. In the latter case would it be open to the owner to determine the nature of the facility? If yes then discrimination would be permissible in the places which are not 'public'. For instance, a restaurant identifies itself 'non-public' and allows entry to anyone but caste 'X', would it violate the rights of people belonging to caste 'X' under Article 15(2) or not?

The facts of Zoroastrian society case[129] can be read in light of the above illustrated problem.[130] If people of a specific community living in a society term their society as non-public and prevent people of other communities to 'access' that society, it would clearly be discrimination on the basis of race. Sh. Shah, during the Constituent Assembly debates apprehended this problem and quoted an event that happened in a hospital, where people not belonging to a certain community were denied entry, condemned the practice of exclusiveness.[131] Similar exclusionary covenant has been critically analyzed by Bhatia (Bhatia 2016), where he referred to a covenant of a housing complex of Caucasian people which denied residential rights to Negro or Mongolian people.[132] Going into this detail would surpass the scope of this paper.

Whatever the case be, in the lack of exhaustive and clear provisions there is a scope of misuse and fallible interpretations by individuals, private and government organisations, executive administration and even by the Judiciary. It is possible that in some cases the judiciary gives it a

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[128]*Supra* note 5at 662.

[129]*Zoroastrian Cooperative Housing Society Limited*v. *District Registrar Cooperative Societies (Urban)* (2005) CA No. 1551/2000; available at: https://indiankanoon.org/doc/713373/

[130]Although the facts are not exactly same, in Zoroastrian society case the society members entered into a covenant permitting only people belonging to a particular community to buy house in the concerned society. The covenant was not against any particular community but all communities in general.

[131]*Supra* note 5at 651.

[132] Gautam Bhatia, "Horizontal Discrimination and Article 15(2) of the Indian Constitution: A Transformative approach", 11*Asian Journal of Comparative Law* 87 (2016); available at: https://www.cambridge.org/core/journals/asian-journal-of-comparative-law/article/abs/horizontal-discrimination-and-article-152-of-the-indian-constitution-a-transformative-approach/59078E0E4DAE24DE8BD707B427690554

restrictive interpretation instead of a liberal interpretation.[133] RK Sidhwa in the Constituent Assembly asserted that it should not be left with the Judiciary to interpret 'public'.[134]

**Limitations of sub clauses (a) and (b)**

The places mentioned in the sub clauses were never the only places where discrimination takes place. Discrimination is so deeply rooted and widespread that it happens almost at every place. For humans belonging to the groups which are discriminated against, facing discrimination is a part of life from cradle to grave. It is not specified in the article if the places are illustrative, but the language of mentioning these places sounds illustrative and not exhaustive. Prof Saksenainthe Constituent assembly termed these places of discrimination as transitory which would changewith time.[135]Studying the Constituent Assembly debates clearly shows that the members were concerned about the other non-mentioned places where discrimination on the mentioned grounds might take place. Recognizing the discrimination happening at the places which are not 'public', Sri S Nagappa requested to delete the phrase "maintained wholly or partly out of the revenues of the state".[136] This was to combat horizontal discrimination which was and still is very common and happen sat private places. Housing discrimination is a type of private discrimination happening commonly and frequently in India which has been discussed in detail by Thulasi K. Raj[137] and Gautam Bhatia[138]. Another common place where discrimination is still widely practiced in rural areas, he referred to, is burials and cremation grounds. Prof. K.T. Shah moved an amendment where he provided for a comprehensive exhaustive list of places where the citizens should be protected from discrimination.[139]

Prof. Shibban Lal Saksena (pg. 659) took the example of a Hindu hotel and was of the view that if clause (a) in its present form was incorporated, it would become a fundamental right of every

[133]See, *P.D. Shamdasani*v. *Central Bank of India Ltd.* (1952 SCR 391), where the SC refused to operate Article 19 and Article 21 against private individuals due to their language and structure. This was reiterated in *Smt. Vidya Varma* v. *Dr. Shiv Narain Varma* (AIR1956SC108). See, *supra* note 10, where the Supreme Court upheld a provision which discriminated on the basis of age coupled with sex.
[134]*Supra* note 5 at 660.
[135]*Id.* at 659.
[136]*Id.* at 657.
[137]Thulasi K. Raj, "Private discrimination, public service and the constitution, Indian Law Review", 6*Indian Law Review* 17 (2017); available at: https://www.tandfonline.com/doi/abs/10.1080/24730580.2021.1950338
[138]*Supra* note 19.
[139]*Supra* note 5 at 651.

citizen to claim entry to any place where food is sold which would lead to far-reaching consequences. Thus, he was of the view that this clause was unnecessary in view of the prohibition upon untouchability under Article 17 and that this clause be made a DirectivePrinciple.

## V. Cumulative Analysis

Once done with analyzing the sub clauses separately, lets analyze Article 15 cumulatively.

Article 15, as in the Constitution prior to amendments, can be read as follows:

"Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. –

(1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the state from making any special provision for women and children."

### Reading clause (2) as a Clarification

Much cannot be inferred by giving a plain reading to the title of Article 15. Clause (1) of the article provides very broad protection but clause (2), in contrast, subtracts from the generality of clause (1) and narrows it down to much extent if read independently. By reading clause (2), one reasonable inference which can be made is that it is just a clarification to clause (1) which is broader and a general provision. Just like clause (3), which provides an exception to clause (1),[140] clause (2) can be very well read as a clarification to clause (1). The clause (2), in fact, was added in the article initially as a clarification only. When presented before the Constituent assembly for discussion, it read as:

[140]Clause (3) of Article 15 provides an exception with regards to a ground which is not mentioned in clause (1) and clause (2) along with a ground which is mentioned in both these clauses.

"The state shall not discriminate against any citizen only on grounds of religion, race, caste, sex or any of them. In particular, no citizen shall only on the grounds of religion, race, caste, sex any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) Access to shops, public restaurants, hotels and places of public entertainments……"

During discussion, Sh. C. Subramanium expressed the same concern and moved an amendment to delete 'in particular' from the second half of the clause and make it as a separate clause. The amendment was supplemented by the reason that in the present form it looked like a general clause followed by an instance of discrimination, which actually was not the purpose. Another important observation is that Sh. Subramaniam clarified the onus of obligation in this clause saying, "that is not a case where the state has the power to discriminate." The amendment was adopted and it was made a separate clause as we see it presently.[141]

**Limitation -Permissible combinations leading to discrimination**

Three issues of the same kind can be observed, the first one being discrimination on any ground including those mentioned in clause (2), but not at the places which are mentioned in sub clauses (a) and (b) Second issue is possibility of discrimination at the places mentioned in sub clauses (a) and (b), but on the grounds not mentioned in the clause (2). And the third issue is discrimination at the places not mentioned in clauses (a) and (b) on the basis of grounds not mentioned in clause (2).

These issues can be clearly understood with the help of following illustrations:

1) Illustration for the first issue- Although there is a lack of clarity regarding the definition of 'public', taking its meaning as simple as it sounds, there are some important places which might not be public but are socially significant like private corporate offices and private clubs owned by trusts or NGOs. For instance, a person looking for a rented accommodation is denied a place by someone just because of his race or religion or any other ground mentioned in Article 15(2), a practice which is very common globally, cannot claim protection. Discrimination at such 'non-public' places on the grounds mentioned in clause (2) is permissible as per Article 15. To remove this anomaly an amendment was moved to delete the word 'public' in the Constituent Assembly.[142]

[141] *Supra* note 5 at 660.
[142] *Id.* at 663.

2) Illustration for the second issue- Unavailability of appropriate enabling infrastructure for disabled people at any place of public entertainment maintained by state is discriminatory for disabled people. This issue might get covered under Article 21 but Article 15 fails to protect such people.
3) Illustration for the third issue- Employees in a private corporate office setup face discrimination on discreet grounds like place of residence, financial status, family background, and social status which though not included in the prohibited grounds under clause (2) but hamper the participation of individuals and their overall growth negatively. This is just a layman example of how people are justifiably discriminated against based on the grounds not mentioned in the article. Since the article does not contain the ground so discussed, the practice cannot be challenged. There are innumerous such practices which are being followed and cannot be challenged.

The Supreme Court in *Indian Medical Association* v. *Union of India*,[143] observed that, "In this regard, the purport of the above exposition of clause (2) of Article 15, when read in the context of egalitarian jurisprudence inherent in Articles 14, 15, 16 and Article 38, and read with our national aspirations of establishing a society in which Equality of status and opportunity, and Justice, social, economic and political, would imply that the private sector which offers such facilities ought not to be conducting their affairs in a manner which promote existing discriminations and disadvantages."

Some of the members of Constituent Assembly expressed their concerns over the limitations of this article. Sh. Nagappa proposed to make the article more expansive and explanatory.[144]Another member, Prof. Saksena suggested deleting the clauses (first three lines) from the article for making it unrestricted. He suggested the article to be as "The state shall not discriminate against any citizen on grounds of religion, race, caste, sex or any of them". In his understanding, adding the sub-clauses subtracted from the generality of the first clause.[145] Can it be inferred from the concern raised by Pro. Saksena that Constituent assembly intended to keep private discrimination out of the sphere of Article 15. Not accepting Prof. Saksena's amendment and

[143]*Supra* note 12.
[144]*Supra* note 5 at657.
[145]*Id.* at 659.

accepting the amendment moved by Sh. C. Subramanium[146] would answer this question in negative.

If it is considered that clause (2) targets private discrimination, then it expands the scope of clause (1) but if it considered that clause (2) places obligation only on the state then it definitely subtracts from the generality of clause (1).

**Unjustified discrimination against non-citizens**

As discussed in section 2, Article 17, which is clearly against private discrimination does not provide details as to the citizenship status and mandates the state to make an appropriate law. The act which was enacted in accordance with Article 17 protects *all persons* against discrimination arising out of untouchability.[147]Coming to Article 15, with regards to services and infrastructure discriminating against non-citizens can be justified on part of the state. But, if it is presumed that clause (2) protects from private discrimination then protecting only citizens on those grounds seems unjustified. There is no justifiable reason which permits private entities to discriminate against non-citizens at the provided places on basis of the grounds mentioned therein.

## VI. Conclusion and suggestions

After analyzing the fundamental right of 'Right to Equality' in detail the author finds that the article meant for the purpose of protecting citizens from discrimination at 'public' places suffers from superfluity and ambiguity. Article 15(2) lacks clarity regarding its application and enforcement. The author examined its applicability to private entities and made several possible interpretations. It has been found that no other article in the group of 'Right to Equality' surpasses the scope of Article 14 and the same should be applicable to Article 15 also. The presumption that Article 15(2) is applicable to private entities makes Article 15 an exception. Apart from private discrimination, the limitations of Article 15 curtail the protection provided by Article 14. Following on from that, it has been asserted that Article 15 fails to meet its purpose ofcombating discrimination since the protection is available only for five grounds of discrimination

[146]*Id.* at 650.

[147]See, The Protection of Civil Rights Act, 2000 (Act 22 of 1955); the usage of 'person/persons' throughout the signifies that it protects individual irrespective of the citizenship status.

and at a limited number of places. Along with this, the nature of places where discrimination is prohibited i.e., 'public' places has been decodified. Once done with separate interpretations of sub clauses (a) and (b), with the help of cumulative interpretation, the possibility of discrimination by permissible combinations was discussed. It was also examined whether clause (2) of Article 15 is a clarification of clause (1). After discussing the cumulative effects of the grounds and places of discrimination in clause 2 of Article 15, the author raises an objection on the placement of term 'citizen' in Article 15(2) and concludes the paper.

Constitution is a democratic nation's soul; hence its provisions should not fall prey to ambiguity or superfluity. To eliminate the possibilities of fallible interpretations and to expand the scope of this article in order to protect individuals against discrimination based on the grounds and places not mentioned, an amendment to the article is required. Although it is a rule of interpretation to interpret the fundamental rights liberally, reading the provision under such restrictions seems difficult. An amendment to remove the term 'only' to make it wider and freer from any doubt is called for. Primarily, it would give sufficient freedom to the legislature to make appropriate laws. Secondarily, whether restriction is removed, the administration guided by Constitutionality wouldbe obligated not to discriminate unjustifiably among the citizens. And most importantly, it would enable the Judiciary to interpret the article more freely and liberally in the light of other fundamental rights as per the dynamics of the society. As far as places where discrimination happens are concerned, it seems very arduous to make an exhaustive list that covers all such possible places. Also, as mentioned by Prof. Saksena in the Constituent assembly, the places where discrimination takes places are transitory. Hence, instead of the places mentioned in the article there should be a broad and general provision, on basis of which the legislature can make appropriate anti-discriminatory laws according to the suitability of time and society. The issue of private discrimination would remain unstirred unless the definition or scope of the term 'public'in Article 15 is decided upon. The power to execute the tasks of restructuring the article appropriately as well as defining the term 'public' lies with the legislature, and would be hopefully done with passage of time.

# HUMANITARIAN NORMS DURING ARMED CONFLICT

**Colonel Yash Saxena***

## Introduction

Since World War II, twenty million people are estimated to have been killed in local and regional armed conflicts. There have been some 150 such conflicts since 1945 and except for 26 days of total peace there has been an armed conflict going on somewhere in the world throughoutthis time. Worse still, the role of the armed forces is growing in an increasing number of countries. Although, we have witnessed in recent years a certain erosion of authoritarian soldiers continues to play the role of policeman in a disturbingly high number of countries.

It is believed that some one billion people live in countries with regimes controlled by the armed forces, the number of military regimes has increased from 22 in 1960 to 1957 a few years ago. Armed forces whose task originally was national defence against external threats are increasingly involved in internal conflicts, playing the role of self-appointed guardians of law and order within their national boundaries.

There is thus a need to define humanitarian norms during armed conflicts which are becoming bloodier and murkier, thus coming to the aim of the study report. The aim of this study report is to study Humanitarian Norms during Armed conflicts.

The study report is being dealt with in the following parts:

a. Part I: Violence against civilians
b. Part II: Gender Based violence
c. Part III: Violence against children
d. Part IV: Violence against POW
e. Part V: International Humanitarian Laws

### *Part 1 – Violence against Civilians*

Protection of civilians:

* Former Registrar, IILM University, Greater Noida

Most of the casualties in contemporary armed conflicts are civilians, affected by massive bombing raids and the use of indiscriminate means of combat. They are also the prime targets of terrorist acts. During the First World War 5% casualties were civilians. Today the proportion has reached 75% and even 90% in cases such as Lebanon.

The 1977 Protocols reinforced the protection of civilians in two ways.

a. Against the hostilities
b. Against excesses by the combatants

The 1977 Protocols remind belligerents that they do not have unlimited right as far as the choice of the methods and means of harming the enemy is concerned. They should not resort to methods which causes unnecessary harm. They must at all time distinguish between civilians and combatants and between civilian and military targets. Reprisals, taking of hostages, attack against installations such as nuclear plants and all means of warfare liable to cause damage to the natural environment are prohibited. Humanitarian norms take precedence over military technology not only in war, but also in peacetime. A whole set of existing or potential weapons and means of combat are implicitly covered. Nuclear, Biological, and Chemical weapons, geophysical and electronic warfare, radioactive devices, microwave infra sounds, laser weapon etc.

***Part II- Gender Based Violence***

In times of war, the disintegration of families and communities leaves women and girls vulnerable to violence. Rape, prostitution, sexual humiliation, mutilation etc. remain continued threats.

Rape: It may at times be used as a tactical weapon of war to humiliate and weaken the morale of the perceived enemy, to terrorize population or to force civilians to flee. Rape was used as a systematic weapon for ethnic cleansing in Bosnia.

Sexual Exploitation: Poverty, hunger and desperation during armed conflict may force girls to prostitution. It has a devastating impact on physical and emotional development.

"UNHCR's guidelines on prevention and response to sexual violence" and "Guidelines on evaluation and care of victims of trauma and violence" have ameliorated the sufferings of

women in armed conflicts. Apart from this, Tribunals and Truth Commissions also seek to reassert the fundamental importance and respect for sanctity of human life.

***Part III- Violence against Children***

The wounds inflicted by armed conflicts on children are affronts to every impulse that inspired the" United Nation convention on the Rights of the Child". Armed conflicts affect children physically, mentally and emotionally. Destruction of food supplies, disintegration of families and communities, destruction of educational, health services and sanitation take a heavy toll on children.

Children are used as child soldiers. They are, during and after conflicts, exposed to dangers of landmines and unexploded ordnance. Girl children are used as sexual objects. Children are also used for support staff in war machinery.

**Recommendations**

1. Support should be given to the "UN Committee on the Rights of the Child", UNICEF, UNHCR and ICRC in their efforts to eradicate the use of children, under-18 years of age, as soldiers.
2. States should ensure early and successful drafting of optional protocol to UN Convention on Right of Child, increasing age of recruitment and participation in combat to 18 years.
3. UNGA, UNCHR and regional organization should support the work of the UN Special Representative.
4. Encourage Governments to reduce their levels of militarization and making children as 'ZONES OF PEACE'.

***Part IV- Violence against POW***

When enemy soldiers fall into captivity of a belligerent nation, they are termed as Prisoners of War or POWs. They are vulnerable to violence, mutilation, intimidation and insults. Women POWs are also vulnerable to sexual exploitation.

The third convention of the General Convention of 12 Aug, 1949 lays down the treatment of Prisoners of War (POW). When POW fall into the hands of the enemy they are only obliged to declare their name, date of birth, service number and rank. No coercion and torture may be

inflicted on prisoners to secure from them information of any kind. The detaining power must provide them I Cards, free maintenance, housing, food, clothing and medical care. The prisoners may not be transferred to a power which is not a party to the convention. They are not to be deprived of their personal belongings. The POW could be used for labour under riders of being healthy, not dangerous and to be paid for their labour.

The POWs whereabouts must be informed to the outside world and to their families through three ways:

a) Detaining power is obliged to give the home country of POW through Info Bureau, data concerning him immediately following his capture.
b) POWs directly inform the central POW agency of their address and state of health by way of a capture card.
c) All POWs are authorized from the moment of capture and within a maximum of 1 week to notify their families thereof. He is authorized to send at least two letters and four cards per month on the model of those annexed to the convention and exempted from all postal dues and taxes.

***Part V- International Humanitarian Laws***

History is replete with instances of military leaders showing exemplary humanity towards the vanquished. They spared lives of the captured enemies, did not attack civilians, exchanged prisoners at the end of hostilities and spared destruction of religious places. These over the years have developed into customary laws.

**Basic Principles**

a) Limitations: The right to choose the means and methods of warfare for injuring the enemy is not unlimited. Restrictions are placed on tumbling bullet, incendiary weapons, poisoned weapon, lethal gases etc.
b) Proportionality: Actions in war must be proportionate to the military aim or mission.
c) Avoid unnecessary Suffering and damage; Belligerence should not cause suffering and destruction out of proportion, collateral damage should not be acceptable.
d) Military necessity: Whatever reasonable force is necessary during an armed conflict to make the enemy to submit can be used.

**The Law of war forbids**

a) To kill or wound someone who has already surrendered.
b) To attack civilians or their property
c) Attack/bombard undefended towns, villages, or building, without determining military objectives
d) Loot the area captured in war
e) Starve civilians as an old siege concept.
f) Spread terror amongst civilians
g) Direct attacks against infrastructure vital to the survival of the population-'scorched earth policy'
h) To attack dams, dykes, nuclear power plants etc. which may release dangers on local population.
i) To attack or destroy cultural property like destruction of Bamiyan statues by Talibans while in power.
j) To use flags, emblems or uniforms of the enemy while engaging in combat.
k) To make improper use of signs such as Red cross/Crescent/UN/Protected places.
l) To misuse the white flag
m) To use hospitals, groups of prisoners or civilians to provide shields against military attacks.
n) POWs are to be disarmed and searched, treated humanely, protected and cared for.
o) Prohibited weapon systems like explosive bullets, poisoned weapons, marked minefields.

**Some of the humanitarian provisions during armed conflicts are:**

a) Geneva convention1949 to include provision for wounded and sick members of armed forces in field, at sea, POWs and civilian persons in times of war.
b) Protocol I- to Geneva conventions 1977 –dealt with protection of victims of international armed conflicts.
c) Protocol II- related to the protection of victims of Non-International Armed conflicts.
d) The International Covenant on Civil & Political Rights
e) Regional convention like European Convention on Human rights, American Convention
f) International Tribunals and Truth Commission

g) The Hague Law governs the conduct of hostilities, permissible means and methods of war

**Conclusion**

Concern over non observance of humanitarian norms does not mean that these norms do not exist but rather that they should enjoy greater authority more than ever before, there is a need to reinforce and revitalize rules of humanity which are often blatantly disregarded. But it is clear that to have any effect; solutions must be realistic and take into account the internationalclimate. It is certainly not by adopting new sets of rules of humanitarian law that bettercompliance will be achieved. The rules exist already. What is lacking is simplicity, clarity and above all efficient and effective implementation.

There is a need to build awareness of humanitarian norms in armed conflicts amongst both the populace and the armed forces personnel. The former needs to know his rights to demand it and the latter needs to be sensitized to the hilt to ensure he keeps to the civility at all levels. The watchdog organization like ICRC and Amnesty International along with Special Rapporteurs must get their act together to ensure Human Rights are not infringed during armed conflicts.

## BOOK REVIEW

**THE RHYTHM OF LAW (2023).**

**By Raman Mittal. Satyam Books Pvt. Ltd., New Delhi. Pp [XIV] +204. Price INR 595**.

*The Rhythm of Law* is a book of the kind which explores and slyly brings to light the unsaid truths of the legal profession through the medium of one hundred poems each of which is a perfect specimen of wit. As clear from the Preface itself, the book looks into the fundamental concepts of truth, justice, duties, rights, life and love and also visualizes different dimensions of the relationship between law and justice. The poems in the book not only touch upon different aspects of law and legal profession but also other spheres of life such as friendship, love, marriage etc. which touch upon life in myriads of ways.

The book is divided across eight sections. The first section named 'Truth' has sixteen poems and each of the poem, in its unique fashion, exposes us to the harsh realities of what we identify and recognize as truth. The first poem 'Doors to Truth' hits at the very origin of truth and explains how this abstract concept of truth originates in our mind and in how many ways a human being could perceive the truth. The author sums up that the three *Is* of truth i.e., instinct, intellect and intuition are interconnected and lie within us. Thus, any search of truth must begin from our inner self and only after being guided by the three *Is* the human shall venture to find truth in the outer world. The poems that follow in this section build on this guiding stone and make us aware of what can be stated as the paradox of truth. The poem 'Lawyer's Truth', for instance, perfectly captures how the lawyers twist the facts in their favour and camouflage the lie with the truth. Thepoem takes the example of how a lawyer pacifies all the wrongs of a swindler on his funeral service by telling one subjective truth which reminds us of a famous dialogue from the greatactor Al Pacino's movie Scarface, *"I always tell the truth even when I lie".* Not only does this section expose the paradoxical truth of a lawyer but also the very truth of the life, through the poem 'Banish the False', which we all must accept that the law and the courts cannot solve problem in the society and that there is no concept of absolute truth and some lie must and will always prevail in the society.

The next section ‘Justice’ has fourteen poems. Right from the first poem ‘Justice – All too Human’, this section gives us a message that justice is not mechanical and ultimately it is only humans who are involved in its dispensation. The poem gives us a message that dispensing justice is duty of both the Bar and the Bench. The next poem ‘Hide and Seek’ tells us that the more we research and seek law by reading the letters of law between the lines, the more it grows and evolves. This section also emphasizes on the quintessential role played by the judiciary in the development and construction of law in the poem ‘A Lamp of Its Own’ where the author states that sometimes customs, precedents and even the legislations may not serve the purpose and the courts have to intervene and “have a lamp of its own”. This poem is especially relevantin the context of the discourse surrounding the separation of powers and the dynamic arguments regarding presumption of constitutionality and deference to legislature’s wisdom advanced bythe lawyers before the constitutional courts. The highlight of this section is the poem ‘Noida Twin Tower Demolition’ which although runs into only three short stanzas but gives an important message that although an act of justice might seem unfair but if there is a delinquency or a sinister act then the law must come heavily on such acts without making exceptions.

The next section ‘Relationship between Law and Justice’ is pretty much summed up by the very first poem ‘String and Kite’ where the author reflects the interdependence of justice and law and that they can only exist meaningfully if together, else both will fall apart. This co-existence oflaw and justice is reinforced in the next poem ‘Body and Soul’ by drawing an analogy thatjustice is the soul of any law and without justice, law is bereft of its soul. Likewise, thesubsequent poems explain various facets of the relationship between law and justice by drawing analogies like ‘Seed and Essence’; ‘Paint and Painting’; ‘Seed and Fragrance’; ‘Word andSense’; ‘River and Ocean’; ‘Sound and Echo’; ‘Reality and Reflections’; ‘Finger and Moon’.The poem ‘Bird and Bird’ gives us a fresh perspective and makes us think whether the law and justice are really two separate aspects or whether two sides of the same coin! The twelve poems in this section arrive at twelve different forms of relationship between law and justice in a uniqueand imaginative way.

The fourth Section ‘Duties and Rights’ reminds one of the Hohfeld’s analysis of legal rights that every right has a corresponding duty and vice versa. The first poem ‘Ten Travellers and a Monk’ wonderfully gives us the message that before expecting other people to fulfill their duties, we

must realize the duties we owe to others and the bliss can only be found when we startperforming our duties before expecting the same from others. The interplay between duties and rights is explained by the author in the next poem 'Who does the Gold Belong?' where theauthor sends the message that both rights and duties need to coexist for each of them to blossom and in isolation, there is no truth, love and beauty. The significance of duties in our lives is then highlighted by the author in the coming poems in this section like 'The Glitter of Gold';relevance of duties in the context of a nation in the poem 'We – The Nation' and how a freely built nation must always swear to its duties in the poem 'Freedom of the Nation'.

The fifth section 'Environment' has been aptly incorporated in the book given the consistent degradation of the environment quality and the growing discourse in that direction. Environment activism and hence, the litigation has also picked pace in the recent times. The first poem 'Bow Down to Nature' largely enlists the natural calamities and how each and every aspect of the nature is deteriorating. The next poem 'Trash to Treasure' insists and effectively convinces the reader to adopt the habit of recycling as we are faced with only limited resources and the day is not far when these resources won't be around. The poem 'Thief of the Sky' after expressing rueat the manner in which the human has tinkered with mother earth and ends with a suggestion there has to be a check on the acts not environmentally benign and such acts must attract hugetax and fine. The section ends with the poem 'Welcome Back Cheetah' which takes the example of extinguishing cheetahs to express how not only the environment but also the wildlife is majorly impacted and how we now have to specially import the cheetahs to maintain ecological balance.

The sixth section is 'Intellectual Property' which also happens to be the specialization of the author in his academic pursuits. The section starts with the poem 'The Delicate Balance' which largely sums up the basis and core of intellectual property law regime globally and the key takeaway from this poem is the balance between the ownership of an intellectual property and allowing its access by the others in public interest. The said aspect of ownership and sharing is also captured by the author in the poem 'Create Protect Innovate'. The next poem 'Progeny of Intellect' harps on the relevance of idea in today's world and how the entire legal framework surrounding intellectual property revolves around ideas and their protection. The poem culminates with a significant lesson that there must always be a human element to any idea and

we must always strive to maintain a secrecy to our ideas. Subsequent poems very flawlessly conceptualize particular intellectual properties, for instance, the poem ‘The Promise’ deals with trademarks where a mark introduces itself in a poetic fashion while the poem ‘The Brittle Assets’ deals with patents and how it is important to patent your ideas and how patent law is connected with the law of trade secrets. The creativity and ingenuity of the author exhibits itself in the short poem ‘War and Art’ where merely within three stanzas, the author captures the theme that it is only during the adversities and crisis that the best ideas emanate. Maybe it is the survival instinct of the person! The last poem in this section ‘The Festival of Colours’ tells us that once an idea is born, it stays forever and it can then be applied as per the will of the human.

The seventh section ‘Life’ discusses crucial aspects surrounding law and the sources of law. The poem ‘Man and Law’ tells us that law is nothing but a sovereign command and how law keeps the humans together but also notes that there must be a check on this sovereign command and it must evolve through a democratic process because in the end law is for the people and should also be by the people. The poem ‘Time and Law’ as is also self-explanatory and captures thatlaw can never be static and that it must evolve and dynamize with the society otherwise it will become redundant as is the case with many of our laws which await amendments, depending upon the will of the legislature, to fit the evolving and growing humans which constitute the society. The poems in the book not only discuss the law and legal system but also cover other crucial aspects of everyone’s life. For instance, the poem in this section ‘Hidden Potential’ gives us a perspective by saying that everyone and everything is useful for some reason and has some potential which only needs to be realized. The poem ‘Nature’ signifies that how in this uncertain world where people are seeking conflicts and wars and there is so much uncertainty everywhere, it’s only trust and faith which keeps us going.

After setting a lighter tone in the preceding section, this book ends with the last section ‘Love’ having ten poems, each of which lends a cool breezy culmination to the book. The poems in this section, at many places, blend love and law in their unique combination. The poem ‘Their Common Desire’ for example touches on the concept of joint liability and common intention by taking the example of two people who decide to go on a date behind the Hudson Block. The nextpoem ‘Date’ touches on the aspect of matrimonial property disputes where one of them already knows on their first date that the court of law is where this date is metaphorically going to

culminate. Along with such humorous satires on the love and life, this section also gives some important life lessons. For instance, the poem 'Friendship's Domain' emphasizes on the indispensable place of friendships and its meaning in a human's life. The poem 'The Other' teaches us the power of manifestation and that we only achieve what we truly and whole heartedly desire for. The very first poem 'Survival' teaches us that whereas in today's world of cutthroat and fierce competition in every domain, survival of fittest has become the norm, it isnot the absolute rule. Even those who deny to fit in, can survive and thrive with their resilience, perseverance and grit.

The book lends fresh perspectives and keeps the reader engaged in its unique and yet simple style of narration. The author has very candidly captured the notions of law through his poetic imagination. The book is a wonderful collection of poems on different themes—all converging on the discipline of law. It is certainly a great read for anyone who deals with law. Its books content and panache make it relevant for all. The book is reasonably priced at INR 595/- and is available on different online portals including Amazon with some discount.[*]

[*] Adv. Lavam Tyagi

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## About the Journal

IILM Law Journal (IILMLJ) is a ***peer reviewed journal*** of the IILM School of Law, IILM University, Knowledge Park-II, Greater Noida, Uttar Pradesh-201306 at a distance of just 30 km from the Supreme Court of India connected by Noida Express Way. With an open airy location and delightful sentinel building, amidst the faculties of technology, management and liberal arts, its main feature is a holistic academic atmosphere in interdisciplinary settings. Students have an opportunity to excel to meet professional requirement at all possible levels. Experiential learning at the core of the academic programming with the finely defined outcome. The present journal is a humble attempt to proceed ahead with the hope of developing best research and writing skills.

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