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OVERSTEPPING BY JUDICIARY IN JUDICIAL ACTIVISM: REACTION BY OTHER ORGANS

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ABSTRACT

India practices constitutional democracy with emphasis on constitutionalism. Because of the misuse of political powers by political actors the judiciary is required to wear its active posture and interpret the constitution. The judicial activism is use of judicial power to articulate and enforce what is beneficial for the society in general and people at large. These are the cases where either there were no laws to deal with the situation or the interpretation of law was required. There are contentions in opposition that judiciary is violating the principle of separation of powers. Critics of judicial activism say that the courts usurp functions allotted to the other organs of government. On the other hand, defenders of judicial activism assert that the courts merely perform their legitimate function. The paper tries to discuss the activist tendencies of Judiciary, analyze the reasons, dimensions and growth of judicial activism in Indian perspective and the reaction to such judicial activism by executive and legislature. It contends that judicial activism has done positive justice but judiciary has to take care of sanctity of the Constitution. For this purpose, various constitutional provisions and judicial decisions are examined.

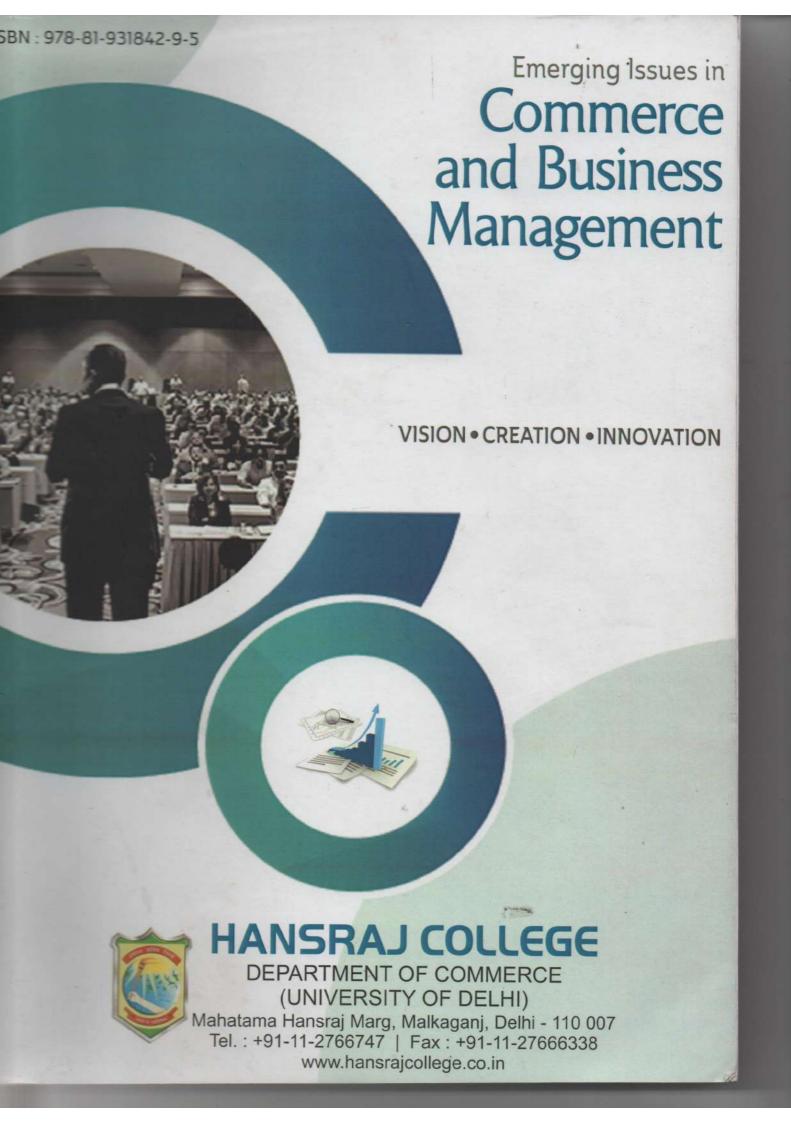
Keywords: Judicial activism, constitutional democracy, separation of powers, constitutional provisions, India

I. INTRODUCTION

"Judicial activism is a necessary adjunct of the judicial function because the protection of public interest, as opposed to private interest, is the main concern" [1]

One basic and fundamental question that confronts every democracy, run by a rule of law is what is the role or function of a judge. Is it the function of a judge merely to declare law as it exists-or to make law? And this question is very important, for on it depend the scope of judicial activism. The anglo-saxon tradition persists in the assertion that a judge does not make law; "he merely interprets[2]. Law is existing and eminent; the judge merely finds it. He merely reflects what the legislature has said". Lord Reid, a great English judge said, "There was a time when it was thought almost indecent to suggest that judges make law; they only declare it. Those with a taste for fairytales seem to think that in some Aladdin's cave there is hidden a common law in its splendor and that on a judge's appointment there descends on him knowledge of the magic words, 'Open Sesame'. But we do not believe in fairytales anymore." Lord Reid considered that in a democratic society the legitimacy of judicial law making had to be faced.

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International Investment and India's Regulatory Powers as a Host Nation

Mittiker"

ABSTRACT

The international investment arbitration has acquired the form of a more mainstream international law dispute settlement mechanism. It contain provisions designed to offer protection to foreign investors and thereby to attract foreign investment. A new generation of BITs, i.e., Free Trade Agreements have now come up with more innevative provisions. Although The Investment Arbitration Tribunals have gone further in interpreting the scope of various provisions of BITs but the number of disputes relating to the same are steadily increasing. Majority of disputes are referred to ICSID (International Convention for the Settlement of Investment Disputes) mainly relating to an allegation of host-state responsibility deviation. Although India is not a member to ICSID Convention but it can get dispute resolved through ICSID under these two circumstances. First, if India is an outbound investor, and the host state is a member to the Convention and a dispute arises between the two then that can be resolved through ICSID and Second, under the Additional Facility rules.

Keywords: Bilateral investment treaties, intellectual property, foreign capital.

Introduction

In the initial years after independence, India's attitude towards FDI was receptive, although India's policy was characterised by import substitution and focused on developing indigenous industries. India's first Prime Minister, Jawahar Lal Nehru, while speaking in the Parliament on 6 April 1949 recognised the importance of foreign investment in supplementing domestic savings and helping in economic and technological progress. FDI was sought in 1950s in mutually advantageous way with conditions like joint ventures with local industries, local content clauses and export obligation. However, FDI during this period was also subject to careful scrutiny due to India's fragile Balance of Payment (BoP) position. The BoP crisis of 1957-58 resulted in the Indian government encouraging foreign investments to bring in more foreign exchange to improve the BoP situation.

The Indian economic growth of 1980s (5.7% of annual GDP growth rate as mentioned above) was fuelled by built-up of an external debt that culminated into a severe Balance of Payment (BoP) crisis in 1990-91 with foreign exchange reserves worth only two weeks of imports. In order to overcome this BoP crisis India unleashed major structural adjustments and macro-economic reforms such as gradually dismantling quantitative restrictions on imports, bringing down tariff rates from a peak of 300 percent to a peak of 35 percent; liberalising FDI and Foreign Institutional Investment (FII) inflows to overcome the problem of over dependence on debt; and comprehensive reform of the exchange control regime. Many measures aimed at liberalising FDI inflows were adopted in early 1990s marking a change from the cautious receptive attitude to foreign investment of 1980s. These measures include automatic approval of FDI up to 51 percent in high priority industries; 100 percent foreign equity in

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CURRENT ISSUES AND CHALLENGES IN FOREIGN INVESTMENT LAW

Ritika**

ABSTRACT

There has been a rapid growth in International Investment agreements, signed by countries to protect foreign insulated processing international investors. These agreements provide broad standards of treatment to foreign in even give private investors the right to challenge treaty inconsistent regulatory actions of sovereign countries at investor the last decade or so, such investor state disputes have increased manifolds where all types of regulations of sovereign states, like health policy, monetary measures, taxation policy, environment policy, labour policy, actions of sovereign states, like health policy, monetary measures, taxation policy, environment policy, labour policy been challenged by private investors. These developments of International Investment Agreements have not only been challenged by private investors. These development also calls for a critical review of the substantive last timestor state dispute settlement system under the scanner but also calls for a critical review of the substantive last timestor state tribunals apply because of which the investor protection suffers.

KEYWORDS

Bilateral Investment Treaty, Standards Of Compensation, Investment Tribunals, International Investment Agreements etc.

INTRODUCTION

Although the law of foreign investment is one of the oldest branches of international law, as recently as the early 19% to International Court of Justice (ICJ) termed it as a relatively underdeveloped area of international law. Prior to 1987 when to fin BIT took place arbitrations were state- to-state rather than investor- state arbitrations as investment arbitration was traditional considered to be a private commercial matter between two disputants. Now there has been a steady increase in the number of International Investment Agreements (IIAs). IIA is a type of agreement or a treaty between countries to address the issue reason to cross- border investments for the purpose of protecting, promoting and liberalizing of such agreements. The number of IAs increased from 500 in 1990 to 3116 by the end of 2011.

As a result, this international investment arbitration has acquired the form of a more mainstream international has deputed settlement mechanism. These BITs contain provisions designed to offer protection to foreign investors and thereby a mechanism. A new generation of BITs, i.e., Free Trade Agreements have now come up with more innovative provision. Although The Investment Arbitration Tribunals have gone further in interpreting the scope of various provisions of BIIs has number of disputes relating to the same are steadily increasing. Majority of disputes are referred to ICSID (International Convention for the Settlement of Investment Disputes) mainly relating to an allegation of host-state responsibility down Although India is not a member to ICSID Convention but it can get dispute resolved through ICSID under the circumstances. First, if India is an outbound investor, and the host state is a member to the Convention and a disput are between the two then that can be resolved through ICSID and Second, under the Additional Facility rules.

However, there is a growing concern that changes in this area of law have not been managed well as some investment than have gone too far in limiting sovereign rights of host countries, on the other hand, standards of protection to the foreign are not clear as they are being applied the way they are interpreted by these arbitral tribunals like in case of experience are neither any guidelines for amount or limits of compensation, nor there is remedy other than monetary compensation, we result, most of the decisions by these tribunals have gone too far or become too creative in interpreting the rules of investment law. In fact, a number of decisions by the arbitral tribunals have sought to provide protection to foreign investment at the expense of national and international public policy of the consequently, this body of law is attracting the attention of not only legal scholars and practitioners but also a wide second national and International civil society organizations working in the areas of foreign investment protection, the entired sustainable development, human rights, international economic and social justice.

The purpose of this paper is to examine current issues within foreign investment law. It questions as to whether the charge the have taken place in development of foreign investment law have taken into account the obligations of host states under the principles of international law when adjudicating on investment matters.

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FOOD SECURITY IN HARYANA: A SPATIAL ANALYSIS OF SELECT DISTRICTS

Ritika Panwar's

ABSTRACT

Food security is a challenge confronted by the policy makers and planners across the globe. All countries whether developed Food security is a countries whether developed or underdeveloped have taken cognizance of the issue, which is evident from the fact that nutrition had appeared amongst the G-8 summit in 2012. India has always taken steps to eradicate human and appeared amongst the or underdeveloped nave under the G-8 summit in 2012. India has always taken steps to eradicate hunger and malnutrition had appeared amongst the core goals of the G-8 summit in 2012. India has always taken steps to eradicate hunger and malnutrition. The process has core goals of the G-8 status of National Food Security Mission under the National Food Security Act, 2013, which is a paradigm intensified with the vertex approach to a rights, based approach. In wake of the events taking place at national and shift from a societies of the events taking place at national and international level with respect to food security, the paper is a small attempt to analyse the spatial pattern of food security in international testing the study also examines the inter-relationship between the indicators and variables of food security in select districts of Haryana. This study also examines the inter-relationship between the indicators and variables of food security.

Food Security, Food Availability, Food Absorption, Food Accessibility, Haryana etc.

1. INTRODUCTION

Food security is an important factor that guarantees human security, and is one of the seven pillars of the United Nation's (UN) Development Programmes original concept of human security, along with economic, health, environmental, personal, community, and political security. The notion of food security is as old as humanity, as the establishment of human communities always depended on access to food. However, in order to incorporate different elements, this concept has continuously undergone significant changes through time. The roots of concern about food security can be traced back to the Universal Declaration of Human Rights by UN, which recognized that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food". Therefore, food security has existed in international development literature since the 1940s.

In the recent years, the concept of food security has been broadened by incorporating chronic food insecurity in the traditional temporal food insecurity. Further, the concept of food security has undergone major shifts in terms of focus across three phases between 1973 World Food Conference and 1994 World Food Summit (Hewitt de Alcantara (1993) cited in Maxwell, 1996). In 1970s, it was felt that, food security is not just a problem of making the food available or increasing the production but it is a problem of improving access, it is a problem of equitable distribution thus, another phenomena of 'accessibility' was incorporated into the concept of food security ((Bhalla, 1993; Sharma, 1992; Swaminathan, 2001). The focus was to understand food security at the aggregate level, which later shifted to the individual level following Sen's entitlement approach. Later the concept of social access was also included into the vast horizon of food security and it was said that the food which is available to the people should be culturally acceptable and it should be enough in terms of quantity and quality both as well (Mishra, 2008; Krishnaraj, 2005). In terms of food factors, the concept of food security stands on three pillars first is food availability; which deals with the domestic production of food grains in the area. Second is food absorption; which deals with the nutritional security or health status of country population at large. Third is accessibility; which depends on the physical and economic access to food, guided by the purchasing power and per capita income of the people and it is of utmost importance because availability of food will be of no use, until and unless people have money to buy the available food (Chaturvedi, Grish, Jain, 1997; Ghosh, 2000). Further, understanding the dimensions of food security at the regional level is crucial. Such an analysis should consider the various issues related to economic development of the State with a particular emphasis on the agricultural sector, as it is one of the major components of food supply. Haryana has not only been proclaimed as one of the economically developed States, but also has remained at the top among the States in terms of relevant economic indicators. The Net State Domestic Product (NSDP) and Per Capita Income (PCI) put the State among the top five economically forefront states. Given this, in the paper we endeavor to examine the issue of food security across regions in Haryana. In the following section, the methodology has been discussed based on state of food security across various districts based on conventional measures, while the major findings are concluded in the last section.

2. LITERATURE REVIEW

Review of literature will be done in two sub-sections. Section 2.1 discusses the where appropriate, attempt is made to highlight approaches that are in use to measure the status of food insecurity at individual/household levels. In section 2.2, much of the discussion will revolve around what the empirical literature has identified to be major causes of food insecurity.

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PROTECTION OF INVESTOR'S RIGHTS UNDER INTERNATIONAL INVESTMENT LAW

Ritika Panwar

ABSTRACT

been a rapid growth in International Investment agreements, signed by countries to protect foreign investments, the interests of foreign investments provide broad standards of treatment to foreign investments. hen a rapid growth.

These agreements provide broad standards of treatment to foreign investments, the interests of foreign investments investors the right to challenge treaty inconsistent regulatory actions of sovereign countries and treatment to foreign investors and the interests of foreign investments in the interests of foreign investments investors the right to challenge treaty inconsistent regulatory actions of sovereign countries and investors and over the last decade or so, such investor-state disputes have increased manifolds where all the health policy monetary measures. private investors the last decade or so, such investor-state disputes have increased manifolds where all types of regulatory sovereign states, like health policy, monetary measures, taxation policy, environment policy. These developments of later to sovereign states are sovereign states. by over the last decade of international investment policy, labour policy have increased manifolds where all types of regulatory sovereign states, like health policy, monetary measures, taxation policy, environment policy, labour policy have of sovereign state investors. These developments of International Investment Agreements have not only brought the the design the dispute settlement system under the scanner but also calls for a critical review of the substantive laws that the and tribunals apply because of which the investor protection suffers.

KEYWORDS

Involment, Foreign, Investor, Interest, Treaty, Agreements etc.

LINTRODUCTION

glarral Investment Treaties are the agreements that establish the terms and conditions for investments by nationals and generalies of one country in the jurisdiction of another.1 The purpose of a BIT, which is a treaty between two countries, is to nomote foreign investments between the two countries and to offer protection to investors from one country investing in the the? For that purpose, a BIT contains binding rules on the treatment of investments originating from one country and made in the other. The treaties are always reciprocal.

The scope of a BIT depends on the substantive provisions regarding:

- · The protection offered by the BIT,
- The criteria to be met to be eligible for protection and
- The enforcement of such protection.3

The purpose of multilateral investment treaties regime was to develop rules that would ensure a more systematic and consistent secure and uniform international investment law providing high standards for investor protection with an effective disputerion was to have settlement procedures. Although the agreement was to be negotiated between the member states, the intention was to have open-agreement, which non-OECD members could follow on a negotiated basis4.

This paper explores the investor protection provided under the international investment law. It deals with the concept investment treat investment treaties, further analyzing different standards of protection of investor investment treaties by the way of investment treaties. Investment treaties fall into two broad categories: Bilateral Investment Treaties (BIT) and Multilateral Investment Treaties (MITs), Although and Agreements (FTAs) contain provisions, where the contain provisions are contained to the contained treaties (BIT) and Multilateral Investment Treaties (BIT) and Multilateral Investm (MITs). Although not strictly an investment treaty by definition, some Free Trade Agreements (FTAs) contain provisions, w provide investors with similar protection to that found in investment treaties.

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UNCTAD, Supra note 105. ²Mary Hallward-Driemeier, Do Bilateral Investment Treaties Attract FDI? Only a bit and they could bite, World Bank, DI (June 2003) available. (June 2003) available to the could be supported by the c

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THE INTERNET AND INDIA'S IP LAW. INTERNET GOVERNANCE AND LEGAL EDUCATION: AN OVERVIEW

Ritika Panwar

ABSTRACT

The importance of IPR and their protection is acknowledged the world over as an important element. In tune with the world had too has recognized the value of IP, which recognition has been consistently uphald by The importance of II which recognized the value of IP, which recognition has been consistently upheld by legislators, courts and separatory in India is now a signatory to various IP treaties and conventions. This has helped India because III in the courts and in the convention of t scenario, India iso now a signatory to various IP treaties and conventions. This has helped India become more attuned to the indistry. India is now a signatory to various IP protection. India has already taken steps (and a become more attuned to the industry. India become more attuned to the world's approaches and attitudes towards IP protection. India has already taken steps to comply with its obligations to the world's approaches. The broad level contours of IP policy are now visible in the form of the notice of IP. world's approached by world's approached to comply with its obligations world's approached to comply with its obligations with the form of the national IP policy. However, recent agencies demonstrate that India is associated to the national IP policy. under TRIPS. In the latest states by various enforcement agencies demonstrate that India is gearing up for effective protection pudicial rulings of IPRs. This study outlines the state of Internet governance in India by briefly addressing issues such as and enforcement by all and regional Internet governance frameworks as well as domestic multi-stakeholder initiatives, if India's role in a domestic muti-stakeholder initiatives, if any. This study also considers the need for enabling Indian legal education to prepare law students to a legal profession, which is increasingly oriented by the Internet.

KEYWORDS

IPR. Copyrights, Internet, Governance, Trademark, Patent etc.

I. INTRODUCTION

The expeditious technological alterations over the previous decades have provided an extensive number of new and innovative goods and services. The new technology has enlarged the importance of intellectual property. This new technology may be in the grous and stream of patent, trademark, copyright etc. But the growth of new technology has given rise to new set of challenges to existing legal regimes around the world like computer programs, computer database, computer layouts, various works on web, etc. So it is very necessary to know more about copyright with regard to computer programs/software, computer databases and various work in cyber space. Intellectual property law is arguably among the legal regimes challenged by the rapid development of the Internet. In this context, the first three sections of this article examine the main challenges and loopholes of the major Indian intellectual property laws in the context of the Internet. The fourth section considers the need for enabling Indian legal education to prepare law students to a legal profession, which is increasingly oriented by the Internet.

2. COPYRIGHTS AND THE INTERNET

While the contours of copyright law has always been drawn by the developments in the technological world, the emergence of digital technologies in the last few years have raised a whole new set of challenges to copy right regime. As the digital works can be replicated at ease, it becomes difficult for the copyright owners to control the replication of their works. In addition, the ease of transmission over the internet has raised newer problems for the copyright owners. However, the Internet affects almost every aspect of copyright issues, this segment addresses on the significant and topical legal issues viz.: (i) legal safeguards to computer software's (ii) legal immunity of databases, and (iii) duty and accountabilities of online service providers.

2.1 The legal safeguards to computer software's

"Computer software" also referred to as computer programs are the instructions executed by a computer. Computer programme as defined in the amended Copyright Act means a set of instructions expressed in words, codes, schemes or in any other form, including a machine-readable medium capable of causing a computer to perform a particular task or to achieve a particular result. The words 'schemes or in any other form' would seem to indicate that the source code and object code of a computer programme are entitled to copyright protection.2

Dr. Priya Rai and Dr. R. K. Sharma, Transforming Dimension of IPR: Challenges for New Age Libraries, National Law University Delhi Press at p.134 2Ibid at 137

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WOMEN PARTICIPATION: IMPACT ON MANAGEMENT OF MICRO, SMALL AND MEDIUM ENTERPRISES

Ritika Panwar¹⁰

ABSTRACT

Role of women in business is on the increase from global as well as development perspective. Significant importance is given Role of women in business ventures to ensure women empowerment. No country can achieve its potential without to women's role in small business ventures to ensure women. Given the multiple roles that a woman is to women's role in small developing the capabilities of women. Given the multiple roles that a woman is expected to play in adequately investing in and Small Enterprises do provide a critical opportunity for women empered to play in adequately investing in and society. Micro and Small Enterprises do provide a critical opportunity for women empowerment, A larger family and society, women workforce belongs to the poor families or lower middle-income group. Our study comes her family and society. Micro belongs to the poor families or lower middle-income group. Our study comes up with the fact share of the women workford independence, women participation is just 10-13% in micro, small and medium enterprises. This that even after six decades of the paper aims to examine the recent developments in women participation / entrepreneurs in India. It focuses on women paper aims to examine the micro, small and medium enterprises. The objective of the paper is to a) estimate women could be a set in micro, small and medium enterprises. paper aims to examine the land medium enterprises. The objective of the paper is to a) estimate women participation and enterpreneurs in micro, small and medium enterprises. The objective of the paper is to a) estimate women participation and enterpreneurs in micro, small and unregistered MSMEs, b) to identify the socio-economic problems faced by women participation and entrepreneurs in micro, small unregistered MSMEs, b) to identify the socio-economic problems faced by women and their share in registered and unregistered by women and other Enterprises. It uses a large database of SSIs to analyze their share in registered and the sound by women and other Enterprises. It uses a large database of SSIs to evaluate the differences between enterprises owned by women and finally suggests the framework for its evaluate the the differences between emerprises owned by women and finally suggests the framework for the promotion of effectiveness and efficiency of the enterprises owned by women and finally suggests the framework for the promotion of women entrepreneurship in current scenario.

KEYWORDS

Women Entrepreneurship, Micro and Small Scale Industries, Socio-Economic Problems, Efficiency of Enterprises etc.

I. INTRODUCTION

From the year of early 1990s, the developing countries of the world have focused their attention on the development of women From the year of early 1976. This is huge potential to be utilized for socioeconomic development of the country. Due to the partnership in labor force. This is huge potential to be utilized for socioeconomic development of the country. Due to the partnership in labor lotte. This of the participation of women in the mainstream economy is crucial. It is also impossible to demographic structure, the issue of the participation of women in the mainstream economy is crucial. It is also impossible to demographic structure, the issue of and achieving the millennium goals without incorporation of women in the income achieve the target of poverty free society and achieving the millennium goals without incorporation of women in the income achieve the target of poscity from the issue, a special emphasis has been given by the Government, donor agencies, NGOs, generating activates. Considering the issue, a special emphasis has been given by the Government, donor agencies, NGOs, business community and all other relevant stakeholders through various initiatives to ensure women's participation in business and industry. As discussed in past reviews, the aim is to encourage economic and managerial empowerment of women with their new identity as owner-manager-employee of small enterprises along with sharing of profit through mutual help (Sen, 1990; Malhotra et. al., 2002; Basu and Srivastava, 2005; Bali, 2006 and Pitt, et. al., 2006). Similarly, few others define this enterprise as the useful tool to encourage vulnerable members in communities to do business through mutual help (Rao, 2002). Admitting the fact that this venture would be successful in India only if it functions on mutual trust (Lalitha, 2002), member participation is strongly recommended in these ventures not only to enhance women's role as owner-employee but also to encourage their political, economical and social empowerment (Ritu, 2003).

Effective participation in management of owned business enhances owners' confidence, bringing in better leadership and growth. Experience reveals that effect of participation on the performance of business varies according to level of involvement. However, employee-ownership has been advocated with an aim to enhance worker motivation through organizational democracy and thereby to increase productivity. In this context, majority of small business enterprise build up by female owner-employees with an aim to ensure women empowerment in management, unfortunately, face a host of issues. While women of India share many of their disabilities with women in the undeveloped countries (Vernon, 2001) their absence from managerial responsibilities is more extensively evident in certain regions due to the level of education and gender-segregated characteristics possessed by certain communities in India. Hence, conceptualizing the significance of women participation in small business and acknowledging the limitations that restrict their role unreservedly at the stage of formation and functioning of small business enterprises, this paper aims to identify the recent developments in women participation / entrepreneurs in micro, small and medium enterprises and also to identify the socio-economic problems faced by women while participating in micro, small and medium enterprises.

2 LITERATURE REVIEW

Participation has different meanings to different people. While some consider it as a matter of principle, few others define it as practice. Regardless of the notion it holds, for the owner of a small business unit, it is a means to success. Studies reveal that

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Art. 12 of The Constitution of India

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ARTICLE DETAILS

Article History

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Keywords

Constitution, fundamental rights, Article 12, Authority, Other authorities, local authorities

ABSTRACT

Fathers of our constitution demonstrated that they had the will and were prepared to give legitimately enforceable crucial rights and furthermore gave solution for the infringement of same. Therefore, fundamental rights became enforceable also against local or other authorities. To prevent the State from violating fundamental rights, the constitution makers created a new fundamental right by enacting Art. 32. And the availability of article 32 gave rise to Article 12, the concept of state against whom these were available. And further laid the concept of "authority", which signifies authority who has the ability to make laws, orders, guidelines, bye-laws, warnings and so on which have the power of law and capacity to authorize those laws.

The chronicled and political improvement in India made by the constitution makers of India feel constitution is basic bill of Fundamental Rights. Our constitution sought after the United States Precedent and Enacted basic rights in the constitution itself. In ordering and inserting basic rights in Part III of our Constitution (Art. 12 to 35) the establishing fathers of our constitution demonstrated that they had the will and were prepared to give legitimately enforceable crucial rights and furthermore gave solution for the infringement of same.

Article 12: In this part, except if the setting generally requires, "the state" incorporates the Govt. what's more, Parliament of India and the Govt. what's more, the Legislature of every one of the states and all neighborhood or different specialists inside the region of India or under the influence of Govt. of India.¹¹

Therefore, fundamental rights became enforceable also against local or other authorities. Secondly, fundamental rights became enforceable against laws and executive actions which violated fundamental rights. To prevent the State from violating fundamental rights, the constitution makers created a new fundamental right by enacting Art. 32.

The Background

¹ The Constitution of India .1950.

The State has been defined by different political thinkers. In Political theory for state to exist the Territory, Population, Sovereignty and Capacity to maintain international relation is important but this definition could not fill the need of implementation of Fundamental Rights. Key Rights establish constraint on the intensity of the State and are an assurance against State activity. The Fundamental Rights are an assurance against intrusion of the rights by the State.

Authority implies an individual or body practicing capacity to order. With regards to Article 12, "authority" signifies authority who has the ability to make laws, orders, guidelines, bye-laws, warnings and so on which have the power of law and capacity to authorize those laws.

Other authorities: In article 12 "other authorities" is utilized in the wake of referencing a couple of them, for example, the administration, parliament of India, the legislature and governing body of every one of the states and every neighborhood authority. For example, protection partnerships, nationalized banks, aircraft enterprises, power sheets, instructive establishments and social orders whose arrangement and organization are transcendently constrained by the legislature.

The compass and degree of security of central rights has been extended and more prominent insurance has been managed particularly in the region of work against unfair practices. "Institutions engaged in matters of high public interest or performing public functions are, by virtue of the nature of the functions performed, government agencies.".²

Interpretation of "Local Authority"

The distinctive attributes and characteristics of an authority to be a "local authorities were noticed by Supreme Court in *Union of India v R.C. Jain*³. These are that specialists must have separate lawful presence as collaborate bodies, not be simple government organizations however should be legitimately free offices. Next they should appreciate a level of self-sufficiency with opportunity to choose for themselves the inquiries of approach influencing the region managed by them. They should be depended by rule with such legislative capacities and obligations.

At last they should have the ability to raise assets for the advancement of their. In *Union of India v R.C.Jain*, ⁸ it was said "what is essential is that control and management of the fund must vest in the authority."

Local Authority also includes Town Area Committee¹¹, the Gram Panchayat, ¹²a Notified Area Committee¹³, Improvement Trust, a Mining Settlement Board, A Municipal Corporation, and a Port Trust. ¹⁴ In *P. Srivastava v Union of*

² AIR 1975 SC 1331, 1355.

³ AIR 1981 SC 951



Police Firing & Concept of Sovereign Responsibility

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ARTICLE DETAILS

Article History

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Keywords

Police, Global World, Human Rights, Government Actions, state machinery, oppressed, Judicial Inquiry, sovereign duty, Democratic administration, fundamental rights.

ABSTRACT

The emergence of Indian autonomy changed the political system, but its pilgrim underpinnings like the Police remained retained by the government. Policing actions today urgently require paradigm shift from current method of policing to law-based policing, conform to standards of accountability, and the global standards of the shifting globalized world. UN Code of Conduct for Enforcement Officers requires that 'In performing of their duties, law enforcement authorities shall honor and uphold human poise and preserve the human rights of all persons. The need for reform is especially strong because, following large changes in government, the age-old Police Act of 1861 continues to regulate the police. Given the severity of the issue and the utter uncertainty with regard to when police reforms should be made, it is high-time that light be thrown on the issue by academic writings.

Police working is a significant marker of the state of government, and their actions may shape nations 'social prosperity altogether. What recognizes and differentiates, great from terrible policing, is that it is the duty to protect common individuals', not just the popular and political, while helping to build a place that will improve their personal, social and socioeconomic happiness, along with the force as a whole.

Generally speaking, human and national security is compromised in varied variety of ways and the global world is always prone to fear of outside and rebellion inside. The emergence of Indian autonomy changed the political system, but its pilgrim underpinnings remained retained by the government. The 1861 Police Act was not superseded. Political influence has remained unblemished over the police force all these years. Embedding mechanisms to ensure police accountability to the public in open has not been a requirement, but it should have been a top priority. Police's organizational thought, confidence and ethic remained structurally ready for war, and in reality suppressive. The police structure in India can be defined as a machine power in hands of the mighty right up to the present time, which places lawmakers 'or powerful people's needs over the demands of the quality of law and common residents' requirements. Many state legislatures took steps at some point in the 1960s to set up committees to examine police issues and recommend improvements. Be that as it could, without delay, be influenced by the strength exchange of British hands at 12 p.m. on the advice of the stargazers, it was not yet conceivable to locate a suitable time to replace the 1861 Police Act.2

Policing actions today urgently require paradigm shift from current method of policing to law-based policing, conform to standards of accountability, and the global standards of the shifting globalized world. The manner in which state machinery

uses the entity called police to stifle people's hardening toward choosing power approaches needs to be checked. Ending the police atrocities is a challenge in today's political landscape in particular. It is difficult to figure out that, as a rule, police shooting reports are often directed towards particularly marginalized sections of the population. Examples will include the Nandigram ranchers, Meghalaya students or the uprooted Kalinga Nagar ranchers. The Naxalite rebellions are closely linked to some or other class of casualties.

The Commonwealth Civil Rights Initiative Study on Police Transparency reestablishes the comparison in a context that is very global. Minorities anywhere-whether racial or strictand defenseless crowds, as an example, marginalized people and ladies, experience a policing weight that is all the more The Study provides concrete evidence demonstrating how a one-sided police department is doubly plagued by the oppressed and weak races and gatherings. The most 'popular' remedy provided for securing wellbeing of victim and towards ending police firings/killings, is the inquiry commission under the Commissions of Inquiry Act, 1952. Application pursuant to the Commission of Inquiry Act, 1952 cannot be designated as a Judicial Inquiry Commission on the grounds that, by chance, one sitting or retired judge is assigned as such commission's chief. Regardless of whether such commissions are headed by a serving or a retired judge, they do not have the power to arrange or deny a kind of trial. Such 'private' commissions 'report and recommendation are not official on the legislature, in comparison to a court's appeal. Before any such tribunal, somebody's testimony cannot be used as evidence against themselves under the steady eye of any official courtroom.

The outcome of these inquiry commissions, in a best case scenario can be used as a discovering fact for study by the legislature or in transparent case, a justification for initiating

¹MajaDaruwala and Clare DoubePolice(Ed), Police Accountability: Too Important to Neglect, Too Urgent to Delay, Commonwealth Human Rights Initiative, New Delhi, 2005

²K S Subramanian, Reforms For Indian Police, Economic and Political

³ KirpalDhillon, Police and Politics in India, Colonial Concepts and Democratic Compulsions, (Manohar, 2002) cited from A G Noorani, Police and the Constitution, Economic and Political Weekly March 25,



Uniform Civil Code: Future of Personal Law

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ARTICLE DETAILS

Article History

Published Online: 20 February 2019

Kenywords

Personal laws, Uniform Civil Code, marriage, dustom, heterogonous people, international conventions, discriminatory practices, Civil Code, Religious rights, Reforms.

ABSTRACT

In India, different religions are governed by their different personal. Where the process of reforming Hindu law has been a consistent effort of the legislature and the Courts, in form of the Hindu Code Bill, the Muslim law has largely remained outside the purview of legal or judicial reforms. The Muslim personal laws are essentially governed by custom in its substance and methodology. In effect to address the same issue, the Constitution of India provides for UCC as a goal of DPSP under article 44 as, "The state shall endeavor to secure fur the diszens uniform civil code throughout the territory of India." So, this has been a long due issue that whether we should incorporate the Uniform Civil Code in India or not, and if we have to do it what would be the process and modelity.

In India, different religions are governed by their different personal laws like Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and Maintenance Act for Hindus. However, the Muslims, the Parsis and the Christians are still governed by their own set of personal laws in some conditions. In effect to address the same issue, the Constitution of India provides that, "The state shall endeavor to secure for the citizens uniform owl code throughout the territory of India."

The issue arose that whether we should incorporate the Uniform Civil Code in India. Most notably, in the case of Mohd. Ahmed Khan v. Shah Bano Begum², the Supreme Court observed that, "A common civil codewil help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies." In the recently decided case of ShayaraBano v. Union of India, the Supreme Court by a majority of 3:2 held that the practice of instant unitateral divorce by way of "Triple Talaq" is unconstitutional. Justices Kurian Joseph, UU Lalit and RF Nariman delivered the majority Judgment. Chief Justice Khehar and Justice Abdul Nazeer disserted.³

Earlier also, in December 2016, the Aliahabad High Court termed the Islamic practice of divorcing a woman by saying the word talaq thrice i.e. 'Triple Talaq' as unconstitutional. The court observed that, "the Triple Talaq practice sanctioned under Muslim Personal Law that governs merriage, property and divorce of a Muslim couple, violates the rights of Muslim women"."

However, Syed Mohammed WaliFahmani, General Secretary of All India Muslim Personal Law Board (AIMPLS) and Maulana Syed Arshad Madani, President of Jamiett/ferne-e-Hind has defended the practice of 'Triple Talaq' basing their arguments on the point that, 'It is better to divorce a woman than All her'. They also contended that the rights secured by religion cannot be questioned in a Court of law.

Article 44, Constitution of India

Mohd, Ahmed Khan V. Shah Bano Begum, AJR 1985 SC 945.

ShayaraBanoV. Union of India, (2017) 9 SCC 1

Available at: http://indiatoday.intoday.intotary/uniform-civil-code-law-commission-chairman-religion-personal-laws-gender-austros/1/810271.html. last accessed on March 22 2020.

Why Uniform Civil Code

India has maintained separate taws for the Hindu (Hindus, Buddhists, Jains and Sikhs), Muslim, Parsi and Christian communities, and also has a set of secular laws for inter-religious marriages ⁶ and others who register their marriage under the same. There have been constant demands to reform and uniformly interpret and apply personal laws. Where the process of reforming Hindu law has been a consistent effort of the legislature and the Courts, in form of the Hindu Code Bill, the Muslim law has largely remained outside the purview of legal or judicial reforms. The Muslim personal laws are essentially governed by custom in its substance and methodology.

Even in light of criticism on grounds of being a primitive and archaic practice of the fislamic community, the governments have abstained from initiating legal reforms on the issues for they would risk being viewed in a negative light, since the community constitutes a large vote bank. The submission of the government was that these islamic practices of polygamy had a social utility at the time they were introduced, but in the modern context, the same are not inconsonance with the ideals of gender justice, when the same social utility is ensured by other facets of law.

Where Problem Lies

India boasts of a large voter base and huge population of heterogenous people on language, culture, belief and religion separated by geography and economic status. India's assurance of making a welfare and secular state is evident in its commitments in the Constitution and the international conventions India subscribes to. People of the country have enroneously understood that discriminatory practices and a separate chili code retaining to family and personal life is a facet

Available At http://www.hindustantimes.com/inde-news/gost-imposing-ningle-ideology-in-uniform-chill-code-issue-muslim-law-board/story-yis/TGpmXIEbTPeQvP6m6FNJhtml, last accessed on Merch 20 2020.

Available at http://www.hindustantimes.com/inda-news/govtimposing-single-ideology-in-uniform-civil-code-issue-muslim-lawboard/story-yik/Tigpm0GEbTPeQvPtim6FN.html, last accessed on March 21 2020.

of their religious freedom. This has made implementation and snactment of a uniform family law difficult.

The UCC is something very much above the communal line, much above the Hindu-Mustim or majority-minority issue. The problem is that the orthodox bosses of the Muslim Personal Law board who claim to be the care taker and wall-wisher of the whole Muslim community oppose the Uniform Civil Code on the ground of being communal and providing with means of oppression of the minority by the majority. The bitter truth is that they only want to continue the male dominated Muslim culture and do not want to eliminate the women discriminatory personal laws.

History of UCC

The issue of implantation of the UCC emerged way back during the British days. The East India Company (1757-1868) made substantial efforts to reform local, social and religious practices observed by different communities, It was later observed that the personal laws of Hindus and Muslims must be exempted from the codifications. Also, the power to apply personal laws was vested with the local courts and Panchayats so as to deal with the disputes between people regarding their religious rights and practices. The Britishers were of the view that India should to be governed by the customery practices and scriptures followed by communities in those matters. Britishers were of the view that state intervention was only required in exceptional cases.

The Britishers were of the view that the domestic matters of Indians should be dealt by way of Self Governance and the Queen's proclamation 1859 guaranteed the least interference of state in the religious matters like:

 The Personal laws contained the practices pertaining to marriages, religious rites, succession and law of inheritance. However, the British and Anglo-Indian law regulated the matters of Public importance related to law of crimes, land disputes, contractual obligations and evidence.

Hindu Laws were enforced in the strict sense white enforcement of Muslim Personal laws which was largely based on the Sharia Law was not so strict when compared to the former one. As there was a rigorous religious procedure involved in it so there was no uniformity in applying the laws in lower courts. Ultimately, it was seen as a set of the customery laws, which was considered to be more discriminatory in nature against women. As provided by the Sharla law, women were not entitled to inherit the property and also they are not allowed. for making settlements for the downy related issues. It was mainly prevalent in Western and Northern part of the country. Continuous pressure from the Muslim Peer groups, led to the enactment of the Muslim Personal Law (Shariat) Application: Act, 1937wherein it is contemplated that, "all Indian Muslims" would be governed by Islamic laws governing and regulating marriage, divorce, maintenance, adoption, succession and inhacitance".

Legislative Reforms

The then Prime Minister Jawaharlal Nehru in the year 1955 considered codifying Personal laws. However, he faced immense opposition from communities that were opposed to this very idea of codifying the personal laws. Thereafter, Nehru and other concerned personalities determined to get the personal laws codified summed up the situation by stating that, "the Muslims were not prepared for changes". *

Kripalarii criticized the entire political situation and said that: "It is not the Hindus who alone are communal; it is the government also that is communal, whatever it may imply. It is passing a specific legal reform in the form not passing a Uniform Civil Code. I label the government with communalism because the government is bringing forward a law about monogomy only for Hindu community. The Muslim community is prepared to have a Uniform Civil Code but you are not determined and brave enough to do it. If you (government) want to have (provision of divorce) for Hindu community, have it; but have it for the other communities also."

initially, the Hindu Law also discriminated against, women by not providing them with a say in inheritance, remarriage and divorce. One of the prominent social reformers, Ishwar Chand Vidyasagar was of the view that such discriminatory customs should be done away from the society by means of legal reforms. 10

The demand for equal rights for women has been raised from the ancient times in India. But due to ignorance bythe Britishers, it led to an unwanted and prolonged delay in passing of laws as to ensure women of an equal status. A complete uproar and disappoint was shown against the male dominated legislature by the All India Women's Conference (AIWC) and Lakshmi Menon in 1933 articulated that "if we are to seek divorce in court, we are to state that we are not Hindus, and are not guided by Hindu law. The members in the Legislative assembly who are men will not help us in bringing any drastic changes which will be at benefit to us."

There was increasing demand for Uniform Civil Code by the women's organisation based on the resolution passed by the women's organisation in the Karachi Congress, thereby guaranteeing women of the gender equality.

The passing that the property guaranteeing women of the gender equality.

Later, B.N. Rau committee was constituted and assigned the task to come up with reform of laws for Hindus. It was because of the passing of Hindu Woman's Right to Property Act, 1937. The committee had recommended that it is the appropriate time for enacting Uniform Civil Code. According to the committee it would ensure women equal rights in the

** Available #*
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Legal Aspects of Recovery

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Reduction of NPA in Banking Industries Legal Aspects of Recovery

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Reduction of NPA in Banking Industries

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PREFACE

India is facing a growing problem of non-performing assets (NPA) which is dangerous as it is a symptom of an ailing banking sector which in-turn affects the economy of India as well.

Assets which generate income are called performing assets and but those do not generate income are called non-performing assets. The Non-performing assets better known as NPA's are broadly defined as a classification for loans or advances that are in default or in arrears. To further understand this definition, it is pertinent to understand what is meant by a loan in arrears and a loan in default. A loan is in

Data Preservation Framework for E-Healthcare: A Requirement of consumers of IoMT Devices

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Abstract: Health is wealth, everyone knows this fact but only few people follow. In today's technological modern world, every person has become so busy that he does not have time for himself, he cannot take care of his health even if he wished. Today's human is compelled that he will have to grow step by step with technology. So nowadays people have also given the responsibility of taking care of their health to the technology. In today's time, humans have a lot of digital health care devices and their use is increasing due to lack of time. On the other hand, the use of these devices accumulates the patient's own sensitive personal details, which can cause a great harm to the person due to misuse. In such a situation, only a strong law can help. Here, it is the responsibility of Indian law and order to prepare such a framework by which the sensitive personal data of the citizen is protected. Through this paper, it has been analyse how active the Indian Legislature is in this area and what it is trying to do

Keywords: IoMT, Health care, data privacy, data protection, sensitive data, preservation, legal, judiciary

1. Introduction

A healthy mind lives in a healthy body only or a healthy body has a healthy mind and a healthy mind is a tool for success. Most people having these above thoughts. Indeed, an individual can survive with a healthy mind and body only

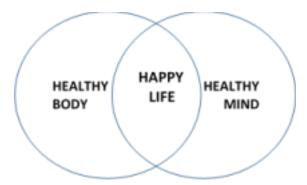


Figure 1: shows definition of health

Health can be defined as a state of both emotional and physical happiness but they do not have much time to self-care they do not have much time to spend for their regular check-ups, examine and consultancy. People have a lack of timings so they are not able to maintain the self-care record like Blood pressure, Diabetes, Heart Beat, Weight, Temperature, etc. even they don't consult with doctors regularly. The facility facilitates as to care our health called healthcare



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IMPLEMENTATION OF ACCESS AND BENEFIT SHARING THROUGH THE BIOLOGICAL DIVERSITY ACT 2002: AN ANALYSIS

Dr. Komal Audichya*

INDIA has wide range of diversified biological resources and is one of the mega-bio-diverse countries. It has enormous and unexploited treasure hidden in its forests, wetlands and mountains consisting of India's Biodiversity. Everyone wants a share in it by filing patents on local spices and plants² and to push slack procedures. So it is essential to find the

^{*} Professor, Dean and HoD, Faculty of Law,. SRM University, Sonepat, Haryana.

^{1.} S. Kannaiyan, Presidential Address delivered during National Consultation Workshop held at Annamalai University in 2007. "A large number of cereals, millets, oilseeds and vegetable varieties have originated and are cultivated in India, making it one of the richest Centres of Origin of crop and plant diversity in the world. Out of the 4,200 endemic species of higher plants reviewed, 2532 species was found to be located in Himalayan region followed by peninsular region(1,788 species) and Andaman and Nicobar Islands(185 species). Equally magnificent is the richness of livestock, poultry and fish diversity".

^{2.} K. Venkataraman., S. Latha Swarna, Intellectual Property Rights, Traditional Knowledge and Biodiversity of India. Journal of Intellectual Property Rights, 2008, pp 326-335. "US Patent No. 5,401,504 on turmeric is an example of biopiracy. Turmeric is used in India for many centuries to treat wounds and inflammatory conditions. The patent was granted by US in 1995 to scientists from University of Mississippi on the use of turmeric for treating wounds, as a novel treatment. It was challenged by Government of India, which provided research papers, predating the patent proving that turmeric has an ancient usage in India for healing wounds. The patent was thus, denied".

measures for the Conservation of Biodiversity and protecting interests of indigenous communities.

LEGISLATIVE MEASURES TO CONSERVE BIODIVERSITY

India has environment and habitat protection laws for significant period of time. The Constitution of India expressly mandates the protection and improvement of environment and safeguarding of forests and wild life in Articles 48A and Article 51A (g).³ Apart from this, the other legal provisions dealing with biodiversity are: the Indian Forest Act (1927), the Wild life(Protection) Act (1972), and the Forest Conservation Act (1980). The National Tribal Policy(2006) has set a new legal context for tribal communities.

The legislative methods to protect biological diversity in India stems from international guidelines under UN Convention on Biological Diversity (CBD)⁴ and the Nagoya Protocol on Access and Benefit Sharing in 2014. The latter provides for the protection of the resources and rights of indigenous peoples and local communities (ILCs) in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁵

- 3. Constitution of India, Article 48A: 'The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51A(g): provides that it shall be the duty of every citizen of India To protect the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.'
- 4. The CBD is a milestone in its comprehensive approach to conservation of Earth's Biodiversity and sustainable use of Biological Resources. Under it the Access and benefit-sharing (ABS) refers to the way in which genetic resources may be accessed, and how users and providers reach agreement on the fair and equitable sharing of the benefits that might result from their use. As per CBD rules, it is mandatory: a)to put in place systems that facilitates access to genetic resources for environmentally sound purposes.b)to ensure that the benefits resulting from their use are shared fairly and equitably between users and providers. Available at http://www.cbd.int/abs/infokit/revised/print/factsheet-abs-en.pdf (accessed on 5.1.20).
- 5. The Nagoya Protocol comprises of provisions pertaining to ILCs' involvement in issuing prior informed consent (PIC) and mutually agreed terms (MAT), free access to biological resources and unrestricted exchange of genetic resources. It constrains the States Parties to formulate, enact and implement the domestic legislation, policies, administrative measures and governance systems to according to the intent of the legal provisions in international law. It also refers to the domestic or national Access and

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An Empirical Analysis of Overconfidence and Dispositional Effect Behaviour in the Indian Equity Market

Dr. Rashi Malik Assistant Professor SRM UNIVERSITY

Abstract

The purpose of this research is to determine whether Indian investors exhibit any Behavioural biases, such as overconfidence and the disposition effect. It then goes on to look at how psychology and investor intelligence affect biases. Finally, it shows that in the Indian stock market, there is a relationship between overconfidence and disposition effect biases. A survey of investors in the Delhi/NCR area was done for this purpose. The information was gathered using a standardised questionnaire, which was then evaluated using appropriate statistical tools. Overconfidence rises as a result of a deviation from an investor's optimal option, and investors who demonstrate the disposition effect are more prone to overconfidence since they evaluate the situation more thoroughly than others.

Practical implications This research is very useful for financial advisors since it helps them better understand their clients' psyche. It can help them create behaviorally modified portfolios that are tailored to their clients' preferences. The present survey's potential limitations can be attributed to socially desired replies and their differences from actual market behaviour. Due to time and resource constraints, the data set is confined to mainly Delhi/NCR investors, and secondary data has been excluded due to the Covid 19. lock down. The research provides a fresh perspective on investor behaviour as it relates to overconfidence and the disposition effect. It not only updates the research on overconfidence and the disposition effect, but it also underlines the relationship between the two in the context of India.

keywords: overconfidence, behaviour biases, Disposition- effect, investment decision making

Introduction

India's stock markets have played a larger part in the country's economic growth and development, and are ranked among the top 20 stock markets in the world. People in India view it as one of the best and most suited investment possibilities because it is one of the largest Asian stock markets. These markets serve their purpose by channelling the public's savings into equity investments, so assisting the economy's growth. The recent economic crisis in the United States shows a situation marked by both unpredictability



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Mr. Navnnet Sangwan, Assistant Professor, SRM University

BASIC STRUCTURE OF THE CONSTITUTION

Introduction

"octrine of basic structure is no place communicated or referenced in the constitution of India). Khanna gave that the power in Article 3r an't of nature of discretionary yet constrained. Verbatim of Article 368 is that "Intensity of parliament to change the constitution", here 'revise' brings forth the tener of essential structure. The word correct itself communicates that the perliament can alter the constitution change its goals and logic or quickly state the structure.

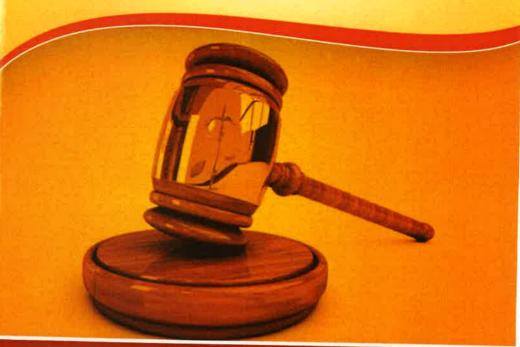
Therefore, the understanding of the basic structure is:

- The parliament's boundless capacity to amend the constitution is liable to just a single limitation Le it ought not weaken or abuse the structure of the constitution.
- 2. The impacts of the alteration ought not be repealing or aggravating in nature towards the fundamental structure.

The tenet of basic structure however isn't actually characterized yet through its substance which have been given by the judicature clears characterizing the casing or the structure of the constitution. Every now and then essential structure is upgraded with some new substan subsequently the Supreme Court is yet to characterize the careful fundamental structure of the constitution.

- Supremacy of the constitution
- Rule of law
- Sovereignty, freedom and republic nature of Indian country.
- Judicial review
- · Harmony and Balance between basic rights and mandate standards.
- Separation of intensity.
- Federal character.
- Parliamentary framework.
- Rule of equity.
- Unity and respectability of the country.
- Free and reasonable decisions.
- Powers of Supreme Court under Article 32[1], 136[2], 143[3], 147[2]
- Power of High Court under Article 226[5] and 227[6].

Access to Justice: Right to Legal Aid and Legal Services in India



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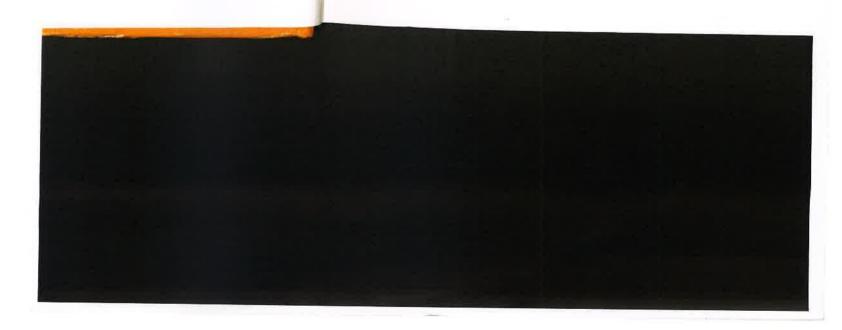
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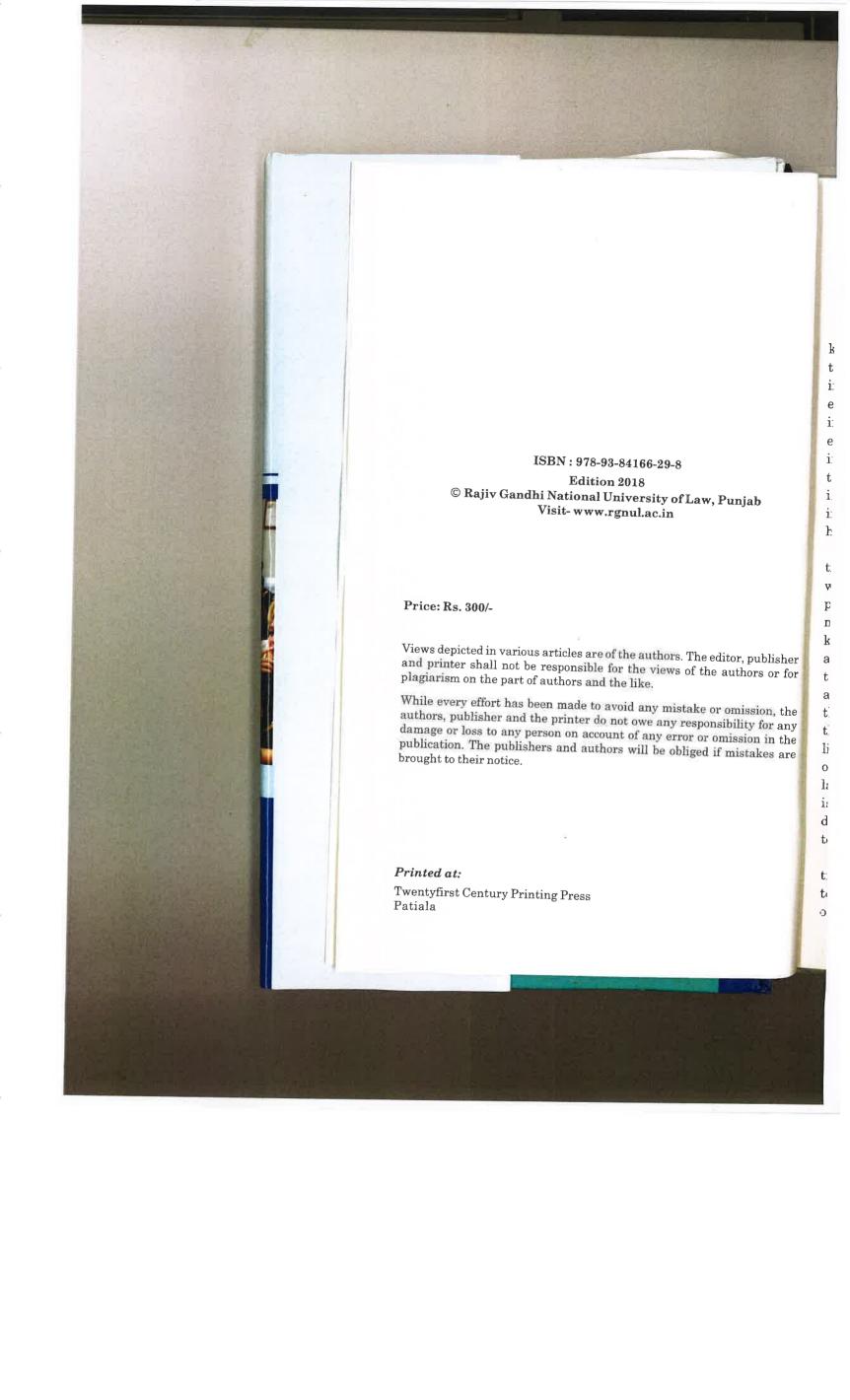
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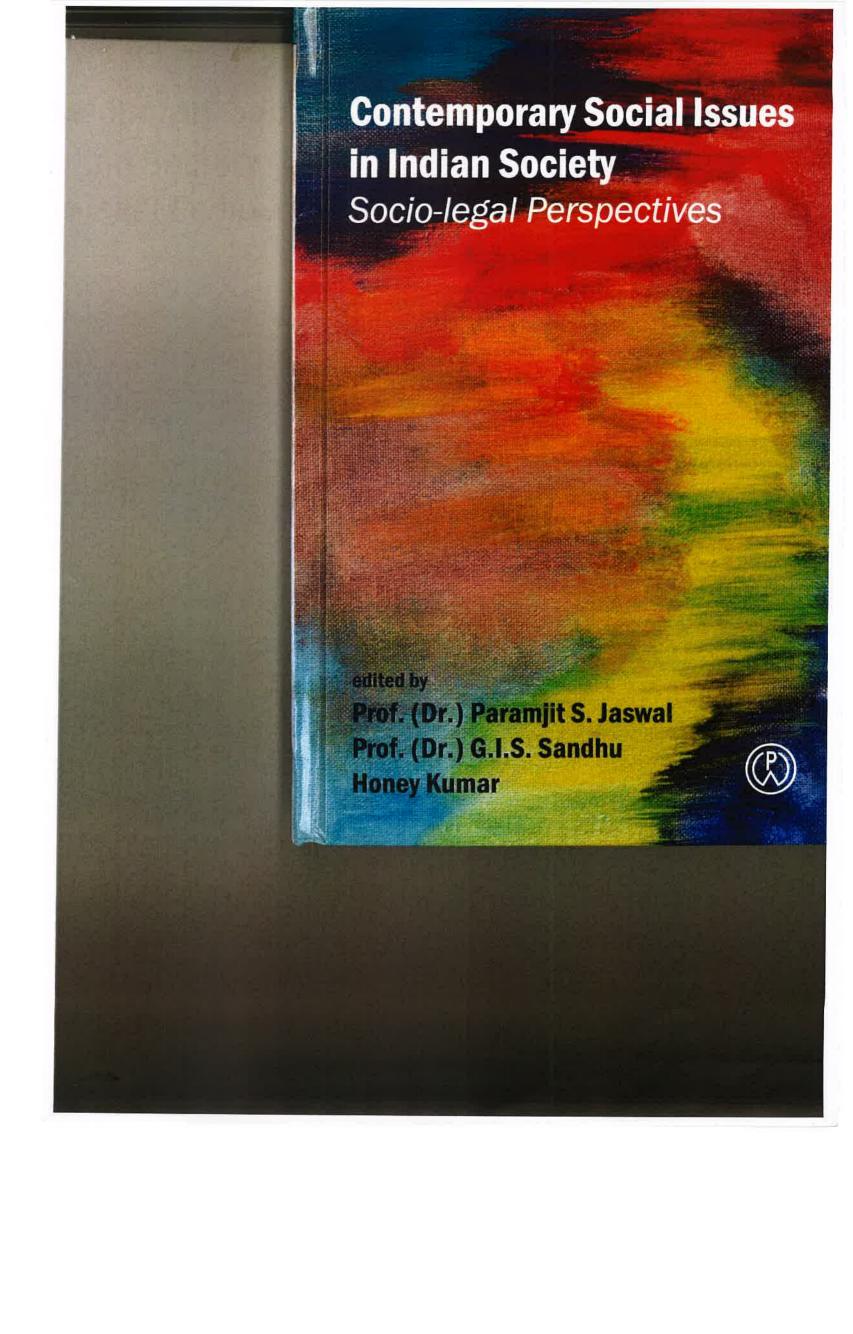
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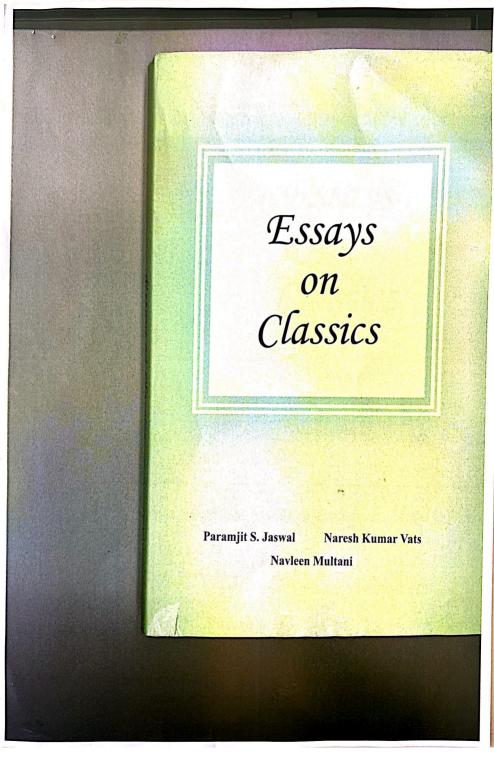
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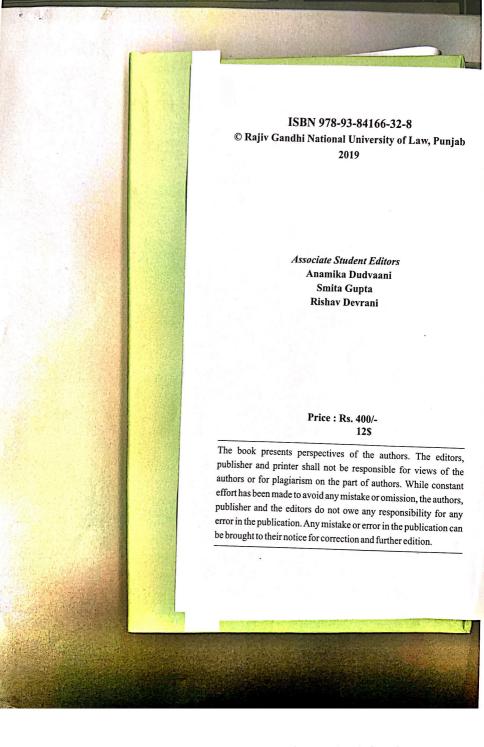
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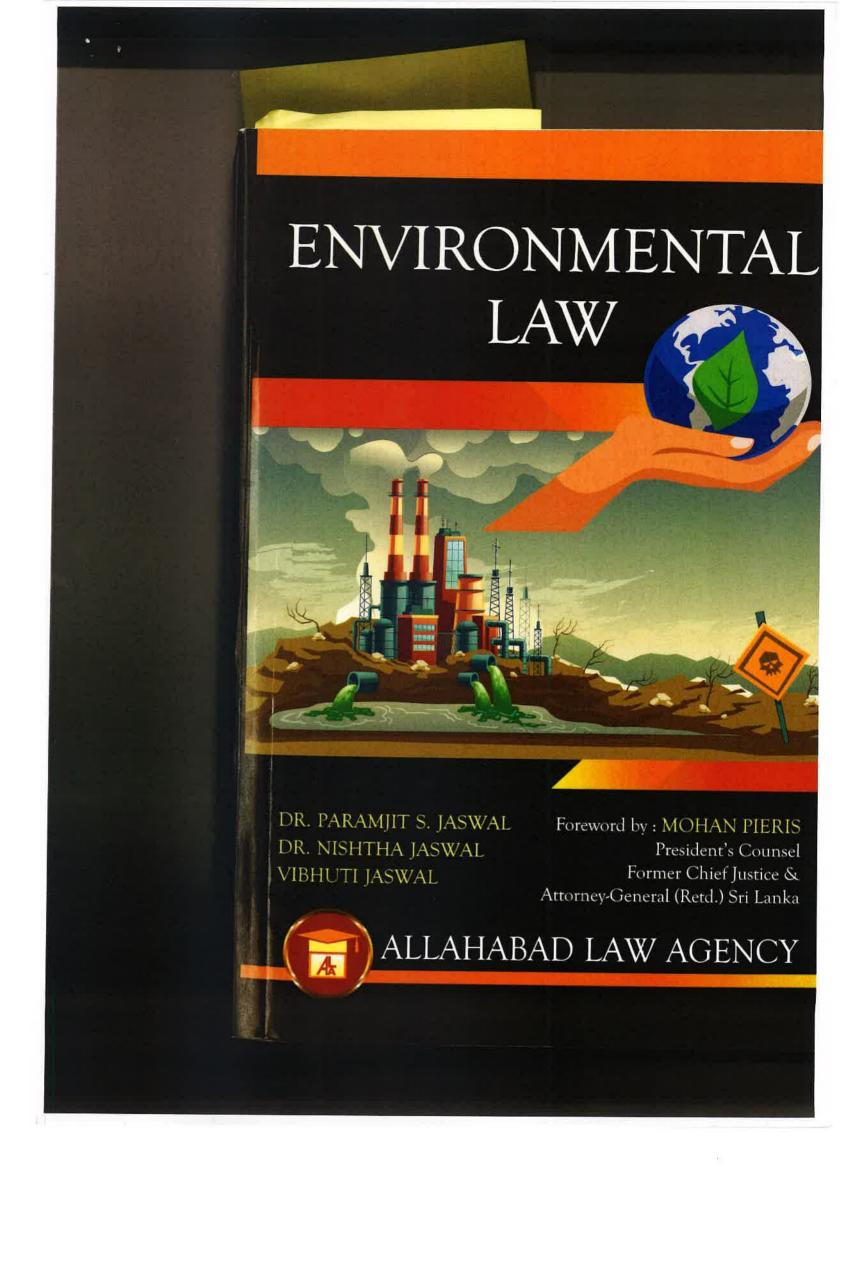
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