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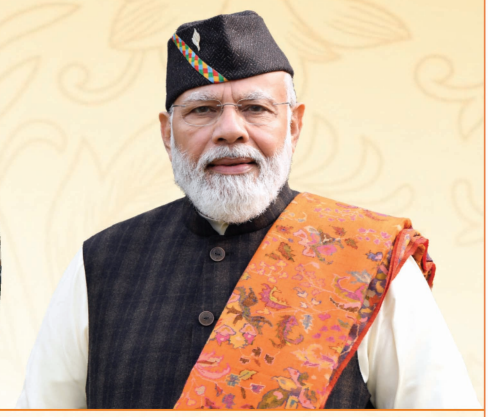
Judiciary Special

उत्तराखण्ड शासन

प्रधानमंत्री जी के मार्गदर्शन में

उत्तराखण्ड

विकास के नये अध्याय की ओर अग्रसर



"21वीं सदी के विकसित भारत के निर्माण के दो प्रमुख स्तंभ हैं। पहला, अपनी विरासत पर गर्व और दूसरा, विकास के लिए हरसंभव प्रयास।
आज उत्तराखण्ड, इन दोनों ही स्तंभों को मजबूत कर रहा है। ये दशक उत्तराखण्ड का दशक होगा।"

नरेन्द्र मोदी
प्रधानमंत्री

"प्रधानमत्री श्री नरेन्द्र मोदी जी के कुशल नेतृत्व में उत्तराखण्ड समय के साथ परिवर्तनकारी विकास का साक्षी बन रहा है। अत्याधुनिक रोपवे परियोजनाओं के साथ-साथ रेलवे, सड़क और हवाई संपर्क की दिशा में प्रगति हो रही है। इससे उत्तराखण्ड में यात्रा और पर्यटन के क्षेत्र में क्रांतिकारी बदलाव आ रहे हैं। ये बदलाव न केवल पर्यावरण अनुकूल हैं, बल्कि कुशल परिवहन भी सुनिश्चित करते हैं। ये राज्य की अर्थव्यवस्था को भी मजबूती देते हैं। आध्यात्मिक, रोमांचक और सांस्कृतिक पर्यटन के प्रभाव के चलते यह दुनिया भर के आगंतुकों के लिए एक पंसदीदा गंतव्य बन रहा है। हम सतत विकास के लिए दृढ़ संकल्पित हैं। अपनी प्राकृतिक और सांस्कृतिक विरासत को संरक्षित करते हुए एक समृद्ध कल की ओर देख रहे हैं।"

जय हिन्द-जय उत्तराखण्ड

पुष्कर सिंह धामी
मुख्यमंत्री, उत्तराखण्ड

विकसित भारत - सशक्त उत्तराखण्ड

- प्रधानमंत्री श्री नरेन्द्र मोदी के नेतृत्व में उत्तराखण्ड ग्लोबल इन्वेस्टर समिट - 2023 के दौरान राज्य सरकार के साथ कुल 3.5 लाख करोड़ रुपये के हुए निवेश समझौते। जिसमें 81 हजार करोड़ के समझौते की ग्राउण्डिंग।
- प्रधानमंत्री श्री नरेन्द्र मोदी के नेतृत्व में श्री केदारनाथ धाम का हुआ भव्य एवं दिव्य पुनर्निर्माण कार्य। बद्रीनाथ धाम में मास्टर प्लान के तहत विकास कार्य गतिमान।
- प्रधानमंत्री श्री नरेन्द्र मोदी के आदि कैलाश और जागेश्वर धाम के दर्शन के बाद मानसखंड यात्रा को मिली नई पहचान।
- चार धामों की कनेक्टिविटी के लिए ऑल वेदर रोड का हुआ निर्माण। ऋषिकेश कर्णप्रयाग रेललाइन का निर्माण कार्य तथा टनकपुर-बागेश्वर रेललाइन सर्वे का कार्य गतिमान।
- नैनीताल जिले की बहुद्देशीय जमरानी बांध परियोजना को प्रधानमंत्री कृषि सिंचाई योजना के अंतर्गत मिली मंजूरी।
- उत्तराखण्ड जल विद्युत निगम की लखवाड़ परियोजना को मिली मंजूरी।
- उत्तराखण्ड को दो वंदे भारत ट्रेन की मिली सौगात। देहरादून से दिल्ली एवं देहरादून से लखनऊ का सफ़र हुआ आसान।
- दिल्ली - देहरादून के बीच एलिवेटेड रोड के निर्माण कार्य तेजी से जारी, 2 से 2.5 घंटे में सफर होगा पूरा।
- पर्वतीय क्षेत्रों में रोपवे नेटवर्क निर्माण के लिये पर्वत माला परियोजना को मिली मंजूरी। केदारनाथ, हेमकुंड साहिब एवं पूर्णागिरी मंदिर तक रोपवे के निर्माण कार्य का हुआ शिलान्यास।
- उधमसिंहनगर के किच्छा क्षेत्र में एम्स के सैटेलाइट सेंटर का निर्माण कार्य गतिमान। वाइब्रेंट विलेज योजना के तहत उत्तराखण्ड के सीमांत गावों का हो रहा चहुँमुखी विकास।
- जौलीग्रांट एयरपोर्ट एवं पंतनगर एयरपोर्ट को अंतर्राष्ट्रीय एयरपोर्ट के रूप में विकसित करने हेतु कार्य गतिमान।
- प्रधानमंत्री ने दिया वेड - इन - उत्तराखण्ड का मंत्र। जिसके तहत राज्य सरकार नए वेडिंग डेस्टीनेशन का कर रही निर्माण।

नीति आयोग भारत सरकार की ओर से एसडीजी 2023-24 की रिपोर्ट जारी की गई है।
रिपोर्ट में उत्तराखण्ड ने सतत विकास लक्ष्यों की कसौटी पर खरा उतरते हुए पूरे देश में पहला स्थान हासिल किया है।

सूचना एवं लोक संपर्क विभाग, उत्तराखण्ड द्वारा जनहित में जारी।
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Judiciary Special

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Dr. Mahesh Chandra Sharma

A UGC Care Listed and Peer-Reviewed Journal

Manthan is a multidisciplinary, peer-reviewed, academic and theme oriented journal dedicated to the social and academic activism, published quarterly from Delhi. It is always oriented on a particular theme. It welcomes original research articles from authors doing research in different genres of Humanities.

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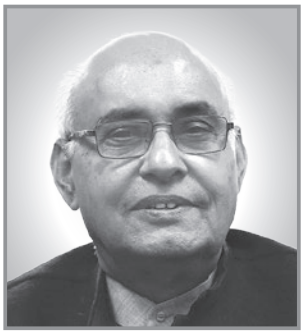
Editorial



Dr. Mahesh Chandra Sharma

This is the third issue of this year. You have already explored our special issues on Legislation and the Executive. Now, in your hands, is the special issue on the Judiciary. Each of these editions features research-based articles on the Indian political system. The fourth installment in this series will focus on 'Panchayat Raj.'

India boasts an ancient tradition of judicial philosophy. However, the term '*Nyāyapālikā*' is a mere Hindi translation of 'Judiciary', which however lacks the very essence of Indian judicial philosophy. This issue delves into the multifaceted nature of what we term as the 'Judiciary'.

As for the articles published in this issue, the erudite guest editor of the issue Dr. Seema Singh has provided an editorial that is a must-read. She has offered a comprehensive analysis on Dharma-based justice and judicial spirituality, presenting her insights compellingly. In Indian sociology, the family mirrors society's structure, with marriage being the foundation of the family. Dr. Singh's remarkable article has addressed the sanctity of marriage and the inconsistencies within our judicial system.

Additionally, the articles in this issue has examined various aspects of modern constitutionalism. Raising questions on many fundamental issues, Shri Ram Bahadur Rai has suggested the formation of a second National Judicial Commission.

Are the common citizens of India satisfied with the judicial system today? Do they believe they will get justice when needed? The treatment of witnesses in today's evidence-based decision-making system is disheartening. Mahatma Gandhi's 'Hind-Swaraj' offers valuable insights into the legal profession, and it is worth revisiting.

'Manthan' serves as a platform for dedicated academics. We invite scholars to contribute to this research-driven initiative. Look forward to our next special issue on 'Panchayat Raj'. Best wishes.

mahesh.chandra.sharma@live.com

Guest Editorial

Dr. Seema Singh

Judiciary: Rule of Dharma and Rule of Law

"Justice is paramount, a fundamental law of nature. Recognizing its significance, Manthan is proud to introduce its third thematic issue on the 'Judiciary', following the success of its issues on the 'Executive' and the 'Legislature'. The importance of justice is acknowledged across all civilizations, with various deities dedicated to its cause, such as Zeus and Themis in Greek mythology, Justitia in Roman culture, and Ma'at in Egyptian tradition." Shiva, known as "the Lord of Justice" in the Hindu *Tridev* (trinity), is primarily revered as the deity of destruction and transformation in Hinduism. While he is not typically characterized as the sole deity of justice, he embodies principles of cosmic order and balance, often depicted as both a destroyer and a regenerator. In Hindu mythology, the Tridev consists of Brahma (the creator), Vishnu (the preserver), and Shiva (the destroyer). Shiva's role extends beyond destruction to encompass purification and renewal, integral to the cyclical nature of existence in Hindu belief, and he holds a supreme position within this trinity.

The concept of the 'Tridev', which denotes the separation of power for the better functioning of cosmic order, is mirrored in Montesquieu's doctrine of Separation of Powers. In both frameworks, "Justice" is placed on a higher pedestal than the legislature and the executive, as its primary role is to establish 'Dharma' (Righteousness) against all odds. This fundamental responsibility makes the judiciary the foremost guardian of the Rule of Law.

Protecting the 'Rule of Law' is the ultimate goal of any civilized nation. But to achieve this, we need to understand "Law" in its true sense. Do we really understand it in its true sense? If so, why, despite the existence of thousands of legislations and international conventions, we are still unable to deliver justice to the majority of living beings on this earth? Why are conflicts rising globally? From the global to the local level, are laws truly able to fulfil the legitimate expectations of the people? Are they free from infirmities?

Let's first try to understand "law," not through a purely jurisprudential lens, but in a popular sense. 'Law' is something codified or made by a competent body. For example, in the United Nations (UN) system, all individuals,

institutions, and entities, both public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated.

The Rule of Law requires measures to ensure the supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. The origin of the Rule of Law traces back to the Magna Carta, while the concept of separation of powers dates to Aristotle. Modern developments are reflected in the writings of scholars like Lon Fuller, Joseph Raz, Jeffery Jowell, Jeremy Waldron, John Locke, and Thomas Paine. Today, the Rule of Law encompasses considerations of parliamentary sovereignty and guaranteed fundamental rights.

In Western philosophy, from the United Nations to individual nations, and from jurists to laypeople, 'Law' primarily refers to "Man-Made Law." This "Man" could be a king, a parliament, a dictator, a democratically elected government, a president, or another authority figure. A key question is how this powerful "Man" is created. The main creator of this socalled "Man" is the "Contractarian theory," which describes a contract between the sovereign and the individual, with mutual considerations. For the king, the consideration is the acceptance of his supremacy; for the citizen, it is the security provided by the sovereign. The provider is always powerful, and thus the sovereign holds significant power. In most countries, except for a few like Bhutan, the sovereign (be it the State, Government, King, dictator, army chief, etc.) is the provider of everything, and thus, his commands matter. In Austin's words, "The command of the sovereign is the law."

In contrast, the Bhartiya concept of sovereign and justice differs from that of the West. Here, the parties to the contract in the "Contractarian theory" are Nature (Divine) and the individual. The consideration is simple: you save nature, and nature will save you. Nature is duty-centric, the provider, and thus the sovereign. The king is merely a representative of Nature, bound by the command of Nature, which is popularly known as the Dharma of the King. The most fundamental law of Nature is to be non-destructive and fair to everything created by the supreme creator, including life, dignity, diversity, nature, and natural resources. The king, and by extension the state, is the trustee of natural resources. If you destroy nature, nature will destroy you. Therefore, the purpose of man-made law is to ensure the protection of the Law of Nature. This is why "*Yato Dharmastato Jayaḥ*" (Where there is Dharma, there is Victory) was chosen as the motto of the Supreme Court.

Recently, individuals ranging from Supreme Court judges to prominent academicians have questioned the relevance of the Supreme Court's motto, demanding its removal on the grounds that it is religious in nature. Such interpretations are deplorable and stem from a lack of understanding of our own Indic philosophy and an excessive reliance on Western philosophy.

To understand this conflict of law and dharma, we need to turn the pages of

European history, where the tension between church and king was evident and escalating, ultimately leading to the division of Christianity into Catholicism and Protestantism. When crimes were committed, disputes often arose over whether the perpetrator should be tried under the secular law of the state or under religious canon law. The thirst for power exacerbated the conflict. Eventually, roles were divided: In medieval Europe, laws made by secular authorities, such as kings or rulers, were considered secular law. These laws governed the affairs of the state and its subjects. Conversely, laws made by the church, particularly the Catholic Church, were known as canon law, dealing with matters concerning the church, clergy, and religious practices.

Canon law is still applicable within the Catholic Church and its institutions worldwide, including Vatican City, where it serves as the legal system for church governance and matters related to faith and doctrine.

This separation made the king the most powerful sovereign, and his words became the rule of law. In a democracy, the king was replaced by a democratically elected government, and laws passed by the legislature became the rule of law. However, this raises a crucial question: In a modern democratic system, where numbers matter for a particular party to form the government, and most political parties are involved in appeasement to consolidate their vote bank, does the elected government truly represent the collective will of the people? Perhaps this is what compelled Rawls to imagine a 'Veil of Ignorance,' behind which lawmakers create laws that are good for all. However, we all know this is a hypothetical situation and not actually possible. This is why many new legislations, instead of resolving conflicts, create more litigations. If laws themselves are not free from the infirmities of biasness, how can they establish a true rule of law? The crux of the matter is, if the Rule of Law if based absolutely on man-made laws, then actually it can never be truly achieved.

The prevailing judiciary, along with certain intellectuals and possibly even Dicey, often emphasizes the superiority of human intellect. However, human intellect has its limitations. In contrast, it is the intellect of nature that holds ultimate supremacy. This is why courts worldwide turn to natural law to address the shortcomings of man-made laws. Concepts such as natural law, due process, and the law of good conscience are essentially various forms of Dharma. The Supreme Court's motto, "*Yato Dharmastato Jayaḥ*," reflects this principle, and the powers granted under Articles 32, 136, and 142 are designed to uphold it. In essence, Dharma forms the foundation of the basic structure of any constitution.

In Bharatiya philosophy, Dharma extends the role of the sovereign beyond mere written laws, assigning duties to protect not only land, animals, birds, rivers, forests, and the environment but also the entire universe. Dharma plays a crucial role in shaping various branches of jurisprudence, including environmental jurisprudence, restorative jurisprudence, compensatory jurisprudence, and animal rights jurisprudence, among others. Therefore, Dharma represents the ultimate goal, with the judiciary serving as a mechanism

to realize it through the framework of laws.

Kautilya, a distinguished Bharatiya scholar and thinker, highlights the importance of Dharma and emphasizes the ethical foundations essential for establishing its rule. These ethical principles serve as the core mechanism to safeguard the true essence of the law.

This edition of Manthan is particularly noteworthy as it spans a wide array of justice-related topics, from the appointment of judges to the pursuit of sustainability. It explores various aspects of jurisprudence, covering everything from marriage to public interest litigations, thus providing a comprehensive view of the law.

The edition opens with an article by the esteemed journalist and author Shri Ram Bahadur Rai ji, who addresses the timely and relevant issue of "*Second Judicial Appointment Commission – A Necessity*." The role of a judge is crucial in upholding justice through their judicial interpretations, making their neutrality, competence, and the appointment process critically important. In recent decades, the judiciary has faced scrutiny over the process of appointing judges to the Supreme Court and High Courts. This article offers an in-depth analysis of judicial appointments, tracing the evolution from the constitutional mandate to the current collegium system. The article delves into the entire journey from the enactment of the National Judicial Appointments Commission (NJAC) by Parliament to its eventual nullification by the Supreme Court. It starts with the Constituent Assembly debates, explaining the rationale behind using the term "consultation" instead of "concurrence." The author examines the shortcomings of the collegium system, noting that it diverges from the constitutional spirit. Ultimately, the article advocates for the establishment of a Second Judicial Appointment Commission to ensure greater judicial impartiality and better align the appointment process with the principles of the Constitution.

Another article, authored by Dr. Seema Singh and Vinayak Sharma, is titled "*Marriage Jurisprudence & Challenges to Its Sacramental Nature*." At first glance, readers might question its relevance to the main theme. However, recent cases addressing issues such as bodily autonomy in marital relations, same-sex marriage, marital rape, and a married woman's right to make her own sexual choices have all been interpreted under Article 21 of the Indian Constitution. This article is pertinent in this context as it explores the definition and purpose of marriage within Bharatiya tradition. It underscores that, in Bharatiya tradition, the family is viewed as the fundamental unit of society, in contrast to Western perspectives that consider individuals as the basic unit. Since the inception of Bharatiya society, vivaha (marriage) has been one of the most significant saṃskāras (sacraments) outlined by the Dharmashastras that individuals were expected to perform. The union between husband and wife was viewed as a sacred bond with mutual obligations. However, modern legal discourse has created a dichotomy, debating whether Hindu marriage should be considered a sacrament or a civil contract. This paper seeks to address this dichotomy by examining primary sources such as the

Vedas, Dharmashastras, ancient Bharatiya texts, legislation, and judicial pronouncements. It also tackles the issues that have eroded the sanctity of marriage and offers recommendations to preserve the sacredness of marriage as an institution.

In his article, "*Judiciary and Secularisation of Polity: A Critical Review,*" Prof. Himanshu Roy explores the concept of the Dharma of the Constitution and examines the judiciary's role in safeguarding it. He argues that the core philosophy of the Indian Constitution is in harmony with Indian culture, where secularism is inherently integrated. The article highlights how the judiciary has worked to protect the Dharma of the Constitution through various rulings. Prof. Roy discusses how the judiciary has navigated the intersection of religion and politics, striving to maintain a clear separation between the two. Prof. Roy also discusses how the Supreme Court has categorized religious practices as either essential or non-essential to justify various rulings, such as the ban on cow slaughter, the acquisition of religious sites for development purposes, and the implementation of a Uniform Civil Code nationwide. His article also critically examines the judiciary's role in regulating religious conversions. Additionally, Prof. Roy addresses the issue of prioritizing religious minorities over majorities, particularly in the context of managing educational institutions. He argues that this approach is both logical and justified, given the debates of the Constituent Assembly and the true secular spirit of the Constitution.

In his article, "*Public Interest Litigation (PIL): Ad-hocism and Absence of Procedures in the Judiciary*," Anshu Kumar provides a critical analysis of how the judiciary interacts with democracy in India, with a focus on the role of Public Interest Litigation (PIL) in delivering justice. Kumar argues that while broad guidelines exist for handling PILs, the lack of precisely defined procedures for their filing and adjudication grants the judiciary significant discretion, leading to inconsistent rulings. By examining landmark cases and legal precedents, the article assesses PIL's impact on bolstering democratic principles and ensuring accountability. However, it also addresses how PILs have sometimes been misused by vested interests, affecting national security and evolving into what he terms "publicity interest litigation."

In their article, "*The Beginning of the End of Colonial Laws,*" Ramanand Sharma and Prof. Manoj Sinha discuss the introduction of three new criminal laws effective from July 1, 2024. The authors argue that these laws will lay the foundation for a modern, self-reliant India by replacing the Indian Penal Code (IPC) of 1860, the Criminal Procedure Code (CrPC) of 1973, and the Indian Evidence Act of 1872. The new laws aim to accelerate justice delivery and adapt to the digital era. The article explores the transition of these criminal laws from the colonial penal system to the contemporary Indian justice system.

In their article, "*Judicial Activism versus Separation of Powers,*" Dr. Kamal Kumar and Dr. Rehnamol Padmalanchana Raveendran explore the Doctrine of Separation of Powers and the judiciary's role in interpreting and adjudicating the Constitution and other laws. They argue that while judicial activism can be beneficial when it stays within constitutional boundaries and

aims, it can lead to conflict if it exceeds these limits. The article acknowledges that judicial activism is often seen as a crucial mechanism for ensuring justice and reinforcing public confidence that justice is accessible to all. Proponents of judicial activism argue that it is essential for upholding constitutional values and protecting citizens' rights and liberties. Conversely, opponents view it as a violation of the doctrine of separation of powers, suggesting that it undermines legislative and executive authority. This paper examines the concept of judicial activism and its relationship with the theory of separation of powers. It starts with a brief overview of both concepts and their historical development. The paper then explores the arguments and assumptions of both supporters and critics in the debate over judicial activism and the separation of powers.

In their article, "*Sustainable Development: The Role of Law, Judiciary, and Traditional Environmental Wisdom in India*," Dr. T.V. Muralivallabhan and Advaith M. Vedanth expand on Indian environmental jurisprudence. They argue that global efforts to protect the environment often fall short of achieving Sustainable Development Goals (SDGs), suggesting that these efforts are more symbolic than substantive. The authors demonstrate how 20thcentury environmental issues have evolved into 21st-century crises, despite ongoing global initiatives to address them. In this article, the authors further explore how India (Bharat) has a rich tradition of environmental protection, with its cultural practices serving as preventive measures against environmental degradation. This cultural backdrop has made the role of legal institutions in India more straightforward. The article effectively highlights the importance of environmental justice for human survival and examines the roles of law, the judiciary, and traditional environmental wisdom in India in fostering global environmental protection.

In his article, "*Appointment of Retired Judges to Constitutional Courts: Desirability and Challenges*," Rohan Kriti addresses the issues facing the judiciary, particularly the growing backlog of pending cases amidst a stagnant judicial strength. The paper examines both the benefits and challenges associated with appointing retired judges to constitutional courts. It explores the potential advantages of such appointments while also discussing the practical difficulties and obstacles involved.

I hope that readers will find themselves both satisfied and enriched after exploring this specialized edition of Manthan on the topic of "Judiciary."

Dr. Seema Singh

Ram Bahadur Rai

Second National Judicial Appointments Commission is Need of the Hour

Justice M.N. Venkatachalaiah Commission had recommended setting up of a National Judicial Appointments Commission in place of the present Collegium system. The government also constituted the Commission. But the Collegium system is still continuing. Here is a factual analysis of the reasons behind it

A serious controversy has been going on over the issue of appointment of judges in the Supreme Court and High Courts. As far as this issue is concerned, it is not necessary for someone to be an expert in the Indian Constitution. If he is an expert, then what can be better than this! But one who is not very familiar with the Constitution but remains in touch with the news of the world in general, too will understand the issue easily.

There are many sides to this controversy. The Collegium of the Supreme Court is one side. The Union government is another side. One more side is the leaders, lawyers, social workers, writers and the intellectuals. The Parliament is not less an important side, rather it is perhaps the most significant one. Sometimes this controversy remains calm while sometimes it creates a storm. It is a different matter that the speed of the storm has not been so terrible till now that the trees, plants and electricity poles of the Constitution break and fall on the ground. But in the changing atmosphere in the country, who can guarantee this to remain so!

Before going into the history of such a serious controversy, one should know about the guidelines given in the Constitution in this regard. Union Ministry of Law and Justice released an updated version of the 'Constitution of India' in 2021. It contains an article that gives a brief description of this appointment process.[1] No doubt this description contains the guidelines, but the serious controversy still persists. This is also the story of the journey of our Constitution, in which the history of appointment of judges is hidden. The story of the conflict between the Parliament and the judiciary is found in it. In this way, we should first look at the history and the story through the mirror of facts. Then it will be necessary to know what the members said on this subject in the Constituent Assembly. What were their views? What were their suggestions? Well, there was a point of view in their words and suggestions.

The debate in the Constituent Assembly explains it well.[2] Once a very heated debate was held on this subject in the Constituent Assembly. There were four things in it. One, the principle of separation of powers. Its meaning is clear that the areas of the government, the Parliament and the judiciary are different. Their

work is also different. Therefore, the judiciary should remain independent of the government and the Parliament. Two, the consent of the Chief Justice of the Supreme Court should be taken in the appointment of judges. Three, the Chief Justice of the Supreme Court should have veto power in the appointment of judges. Four, the President should appoint judges with the advice and recommendation of the Chief Justice of the Supreme Court. The records of the proceedings of the Constituent Assembly on the debate over these four types of suggestions and amendments, mention many big names like K.T. Shah and Jawaharlal Nehru, among others. B. Poker Saheb and Mehboob Ali Beg had put forward the same amendment that the appointment of judges should be done only with the consent of the Chief Justice of the Supreme Court. Dr. B.R. Ambedkar described this amendment as 'a dangerous proposal'. He said: "In my opinion, accepting the opinion of the Chief Justice regarding the appointment of judges will mean that he will get the right which we are not ready to give to either the President or the government of the day. Therefore, in my opinion, this is a dangerous proposal."[3]

The Constituent Assembly rejected all these four things. The Constituent Assembly made provisions for the appointment of judges in the Articles 124 and 217. There are three things in these provisions. One, the President will appoint the judges. Two, if he feels it necessary, he will consult in the appointments. The President will always consult the Chief Justice of India in the appointment of Supreme Court judges. Similarly, there is a provision for appointments in the High Court. But the Collegium system has come in place since 1993. This Collegium system has completely changed the constitutional system. Now the process has changed. The Chief Justice of the Supreme Court is the head of the Collegium. The Collegium itself starts the process. From there, the names are sent to the President. No consultation process is adopted before sending the names. In this process, the role of the Prime Minister and the President, which was decisive earlier, has become insignificant.

The result of this is that the President has been appointing judges on the recommendation of the Collegium since 1993. This has caused great damage to the constitutional system. There is a provision in the Constitution that "There will be a Council of Ministers to assist and advise the President. The Prime Minister will be the head of the Council and the President will work as per his advice."[4] This provision on the question of appointment of judges has disappeared in the Collegium system. Had the Constituent Assembly thought so? Similarly, Article 124 of the Constitution is also being violated by the Collegium. Apart from this, many constitutional distortions have arisen, like the Supreme Court has taken over the role of the Union government. The question now is: On what ground can the

Collegium be challenged?

The answer is there in this example. "The Supreme Court on Monday refused to consider the listing of a petition requesting the abolition of the Collegium system for the appointment of judges in the higher judiciary."[5] The matter is of April 29, 2024. The full news is as follows: "A Bench of Chief Justice D.Y. Chandrachud, Justice J.B. Pardiwala and Justice Manoj Mishra considered the argument of lawyer Mathews Nedumpara that his writ petition requesting abolition of the Collegium system should be listed for hearing. The lawyer said that 'I have mentioned it many times. The Registrar of the court has rejected it and is not listing my petition.' The Chief Justice said that the Registrar (related to listings of cases for hearing) has said 'Once the Constitution Bench gives its verdict on a matter, the petition under Article 32 (under this Article, a petition can be filed directly in the Supreme Court on the basis of violation of fundamental rights) is not maintainable'."

"There are other remedies against the order of the Registrar. The lawyer said that the review petition against the decision on the National Judicial Appointments Commission was dismissed in the chamber. He said that 'it is a question of the credibility of the institution. The Collegium system will have to be abolished.' On this, the Chief Justice said that 'I apologise.' The Constitution Bench of five judges had declared the National Judicial Appointments Commission Act and the 99th Constitutional Amendment unconstitutional on October 16, 2015, and rejected it. It had a provision to give the final authority to the leaders and civil society in the process of appointment of judges of the High Courts and the Supreme Court. The Bench had said that 'An independent judiciary is part of the basic structure of the Constitution.' The NDA government had passed the National Judicial Appointments Commission Bill to remove the Collegium system, under which a group of judges would decide who would be the judges of the Supreme Court and the High Courts. The National Judicial Appointments Commission had proposed to form a six-member body for this purpose, which included the Chief Justice, two senior-most judges of the Supreme Court, the Union Minister of Law and Justice and two eminent persons."[6]

There are two elements in this recent decision of the Supreme Court. First, the Collegium does not have the status of a State. Therefore, under Article 12 of the Constitution, the Collegium cannot be challenged on the basis of violation of fundamental rights. This has made the Collegium a mountain which is inviolable, which no one can climb. If we say in the language of justice and injustice, then there is no way to get justice in front of it. Such a Collegium disregards the Articles 32 and 226 of the Constitution. Here it is worth knowing that the Constitution provides in Article 32 that a citizen can approach the Supreme Court for his rights and seek justice. Similarly, in Article 226, there is a provision to file a petition in the Supreme Court for some of the rights.

The second element is related to the interpretation of the Constitution. What does it mean? "An independent judiciary is a part of the basic structure of the Constitution," the Supreme Court said this while refusing to hear a petition challenging the Collegium system, the news of which has been quoted in the paragraph above. What is the basic structure of the Constitution? It is unclear, although the Supreme Court has defined it in different forms from time to time. The definition given by the Supreme Court at one time was changed at another time. It can also be said that it was expanded. One would recollect the Supreme Court verdict which it had delivered on April 24, 1973. It is very famous and much talked about. It is known as the Kesavananda Bharati verdict. That verdict of the Supreme Court is spread over 703 pages. It means the Supreme Court wrote almost a new book on the Constitution that day.

As many as 13 judges were involved in writing it. But they were divided. Why were there differences among them? This is the most important thing. Six judges had written in their verdict that the Parliament has unlimited

rights to make changes in the Constitution. They were led by Judge A.N. Ray. But Justice H.R. Khanna, while agreeing with this, added a condition. That is, the Parliament does not have the right to tamper with the basic structure of the Constitution. A new principle emerged from this one sentence, with which even the then Chief Justice S.M. Sikri agreed. Thus, that was the decision of one more judge than just six. The interesting thing in it is that the principle of the basic structure of the Constitution has not been defined in that judgement. By creating this principle, the Supreme Court started off such a debate which refuses to die down even after so many years.

Outrightly, two camps have been formed. There is a camp which never tires of calling the principle of basic structure derived from the Kesavananda Bharati verdict as the 'protector of democracy'. The articles written by senior advocate Arvind P. Datar represent this camp.[7] These articles were published on the occasion of the 50th anniversary of that decision. From this point of view, it has its own importance. On April 24, 2023, articles were published on this matter in English newspapers and that series continued for a few days. These articles have detailed descriptions of the circumstances and events of that time. In every article, while justifying the principle of basic structure, it is also mentioned that it is still unclear. The Indian Express published an interview of Fali S. Nariman on April 26 last year in which he considers it to be the foundation stone of the Constitution. Since the Supreme Court is the originator of this principle, from time to time in these 50 years, the apex court itself has identified various dimensions of the basic structure and stated it in its verdicts.

Outrightly, two camps have been formed. There is a camp which never tires of calling the principle of basic structure derived from the Kesavananda Bharati verdict as the 'protector of democracy'. The articles written by senior advocate Arvind P. Datar represent this camp. These articles were published on the occasion of the 50th anniversary of that decision. From this point of view, it has its own importance. On April 24, 2023, articles were published on this matter in English newspapers and that series continued for a few days

There is another camp which has been expressing the opinion from time to time that the principle of basic structure is still not clear. There are serious differences on this. This has led to arbitrary interpretation of the Constitution. Former Chief Justice Ranjan Gogoi raised the issue of differences in the Rajya Sabha, and the very next day Chief Justice D.Y. Chandrachud said that "this is his personal opinion." Upendra Baxi is of the opinion that although the principle of basic structure is highly controversial, yet the Parliament too has accepted it.[8] This means the principle of basic structure is evolving and is gaining acceptance.

The discussion is incomplete without knowing why and under what situation this theory came out. At that time, the Supreme Court was apprehensive of Indira Gandhi. She did not want to make S.M. Sikri the Chief Justice but she had to do so. However, Justice Sikri retired the very next day of the decision and A.N. Ray was appointed as the Chief Justice in his place ignoring three senior judges.

Solicitor General of India Tushar Mehta said in one of his speeches that the principle of the basic structure of the Constitution was first mentioned by Justice Madholkar in 1965. That was the time when the Supreme Court was hearing the Sajjan Singh case. The main reason for this was that the Union government was continuously making laws under the 9th Schedule. Tushar Mehta says in his speech that "We have to focus on constitutional history, not political history."[9] In the same sequence, he says that there was a change in leadership in 1966. Indira Gandhi became the Prime Minister. Then the debate intensified that if the Parliament continues to have

unlimited rights to amend the Constitution, what will happen to the interests of the citizens! This apprehension gained strength when the Parliament amended the Constitution to change the decision of the Supreme Court in the Golak Nath case. That was done in 1971, which is called the 24th Constitutional Amendment. “Section 4 was added to Article 13 of the Constitution. This provision was kept beyond amendments... Similarly, Article 368 was also amended. This amendment gave the Parliament the right to repeal or amend any part of the Constitution. In the same sequence, the 25th Constitutional Amendment was made. It brought the Land Reforms Act while some fundamental rights were restricted.”[10]

After that, the Kesavananda Bharati case came up, in which there were 13 judges. Before that, the Golak Nath case was heard by a Bench of 11 judges. The interesting story begins with the Kesavananda Bharati case, which is known in many forms. The debate that took place in the Supreme Court in that case was led by Nani Palkhivala. The Bench hearing the Kesavananda Bharati case asked him that “The Parliament has been formed by the Constitution. It has the right to amend the Constitution. The Parliament represents the people's aspirations. Therefore, why should its right to amend the Constitution not be kept as it is?” The argument put forward by Nani Palkhivala appealed to the Supreme Court. His argument was that if the Parliament is given unlimited rights, it can arbitrarily change the very nature of democracy. Tushar Mehta had found Nani Palkhivala's statement from various memoirs. As a conclusion to his argument, Nani Palkhivala appealed to the Supreme Court that "You should make it clear that the basis of the basic structure of the Indian Constitution is democracy. Therefore, India is a republic."[11] Tushar Mehta said that many judges of the Bench agreed with this. In this way, the principle of basic structure of the Constitution emerged from the Kesavananda Bharti case.

That period of history has an umbilical connection with the Collegium. The principle of the basic structure of the Constitution does two things. The Supreme Court keeps a watch on the Parliament. This is the first work. The second work is the eventual formation of the Collegium. It has a history which is related to the tension that lasted for about a decade between the Indira Gandhi government and the Supreme Court. It was an undeclared war. When Indira Gandhi appointed A.N. Ray as the Chief Justice, questions were raised in the Parliament. H.R. Gokhale was the Law Minister but Mohan Kumar Mangalam defended the government. He said in the Parliament that it needs to be seen in a context. That context is nationalisation of banks, abolition of Privy Purse and the Kesavananda Bharati case verdict. Citing this context, Mohan Kumar Mangalam, who had communist leanings, was calling the Supreme Court a supporter of regressive policies.

One can recollect, A.N. Ray was the Chief Justice during the Emergency. In 1977, Indira Gandhi again broke the seniority order and bypassed H.R. Khanna to make M.H. Beg the Chief Justice of the Supreme Court. In the Kesavananda Bharati case, A.N. Ray and M.H. Beg had given the verdicts in favour of the government. When Indira Gandhi came back to power in 1980 after the short-lived Janata rule, P. Shivshankar, a lawyer by profession, became the Law Minister. He got an order issued on March 18, 1981, under which a strange transfer of one-third of the judges of the High Courts was done. The judges challenged it. But the verdict came against them. “In that verdict, there was a constitutional comment on the Chief Justice of the Supreme Court. That is, the post of the Chief Justice does not have a prominent place in the Constitution.”[12]

From here began an undeclared war between the Supreme Court and the Union government. In legal language, it is called the first ‘Judges Case’. The second Judges Case came in 1993. In that case, through its verdict, the Supreme Court made the appointment of judges a matter of independence of the judiciary and the basic structure of the Constitution, from which the Collegium system

emerged. Consequently, whether it is in the Constitution or not, the Supreme Court sits on a throne higher than the Parliament. This was reaffirmed by the apex court itself in 1998. That is called the third Judges Case.

A new dimension of the Constitution emerged from these three Judges Cases. That is, the principle of basic structure of the Constitution. "In the history of legal development, the concept of basic structure is indicative of a new turn in the field of constitutionalism."[13] From this, when seen from the point of view of the mindset of the Supreme Court, the saying 'once bitten, twice shy' turns out to be completely true. There is a consensus that 2014 is the turning point in Indian politics from where the journey of Swaraj of the freedom struggle begins again. In this, it was necessary to make the Supreme Court secure, which was not the case for a long time for a reason. The solution to this is in the constitutional method of 'Yagya, Havan, Mantra and Upasana'. That is the process of reforming the Constitution. This was adopted. As a result of which, the government of Prime Minister Narendra Modi decided to amend the Constitution and form a National Judicial Appointment Commission. That amendment was made by the Parliament in 2014. It was the 99th amendment of the Constitution and it was unanimous. But it was struck down by the Supreme Court through an order issued on October 16, 2015,[14] which held the amendment unconstitutional. It came to be known as the fourth Judges Case.

But there is a difference and this difference is a big one. The National Judicial Appointments Commission has become a part of the Constitution but its formation is stopped by the order of the Supreme Court. It is not that the Narendra Modi government has brought the National Judicial Appointments Commission just like that or without any background. One can remember that Justice M.N. Venkatachalaiah Commission had recommended setting up of the National Judicial Appointments Commission in place of the Collegium and that this Commission had given its report on the Constitution in 2003 after five years of intensive investigation.

The decision of the Supreme Court was sharply criticised even by former Union Home minister and well-known lawyer P. Chidambaram. He reminded of this again in his article titled 'Tough Times, Hard Things'.[15] Ravi Shankar Prasad is of the opinion that "Such use of the principle of basic structure is worrying."[16] The question is, why is this attitude of the Supreme Court worrying? One answer to this is linked to the question of transparency. The second is related to the limits of Parliament's powers. Delving into the question of transparency, Apoorva Vishwanath has written, "Today, the basic structure doctrine is being criticised mostly because unelected judges have started dictating which part of the Constitution should be protected while they make their own appointments."[17] It is clear that the Supreme Court is far from transparency in the matter of appointments. It should choose the path of transparency, otherwise it will be criticised and people will remember a line from Ramcharit Manas, 'Mahima ghati samudra ki Ravan basa padosh', which means it is useless to sit in the bad company and wish for your well-being.

Another major and serious question is: Whose responsibility is it to amend the Constitution and bring socio-political-cultural-

A new dimension of the Constitution emerged from these three Judges Cases. That is, the principle of basic structure of the Constitution. "In the history of legal development, the concept of basic structure is indicative of a new turn in the field of constitutionalism." From this, when seen from the point of view of the mindset of the Supreme Court, the saying 'once bitten, twice shy' turns out to be completely true. There is a consensus that 2014 is the turning point in Indian politics from where the journey of Swaraj of the freedom struggle begins again

economic reforms? Is this the job of the Supreme Court? The answer is there in the minutes of the Parliament. Vice President Jagdeep Dhankhar explained this in the Rajya Sabha by drawing a big line. It was December 7, 2022. That time was very special. He had already been elected to the post of Vice President and was assuming the post of Chairman of the Rajya Sabha. In his first address to the House on the occasion, he pointed out that the National Judicial Appointments Commission was struck down by the Supreme Court. "Its scrapping is a serious compromise with parliamentary sovereignty."[18] This was his clear opinion. He also explained the reason for this. "How can a Bill passed with the unprecedented support of the Parliament and unanimous consent of the members be against the fundamental principles of the Constitution. The Parliament is supreme in a democracy. But it is surprising that even after seven years of this decision of the Supreme Court, no discussion was held within the Parliament."[19]

People had forgotten this important issue. Vice President Jagdeep Dhankhar reminded them about it. He mentioned it later in the Rajya Sabha. A few days before that too, he had raised it on another appropriate platform where Chief Justice D.Y. Chandrachud was also present. That platform was the Lakshmimal Singhvi Memorial Lecture.[20] In fact, even before that, then Union Law minister Kiren Rijiju had raised some serious questions on the system of appointment of judges on various platforms -- in Ahmedabad, Udaipur and Delhi. The points he raised are as follows -- one, the Collegium system is against the provisions of the Constitution because the appointment of judges is the work of the government, not the judges. There is no other place in the world where only a few judges appoint judges. Two, due to the Collegium system, there is always a conflict among the judges. This affects their decisions because they focus more on who should become the judge. Due to this, there is factionalism among the judges and appointments get delayed. Three, there is nepotism in this system because most of the judges recommend their relatives and acquaintances to become judges. Four, before introduction of the Collegium system, i.e. before 1993, better judges were being produced and there were fewer controversies.

It is not possible that there would not have been any reaction in the Supreme Court to the statements of Law Minister Kiran Rijiju. The Supreme Court expressed its displeasure as soon as it got the opportunity. It expressed its strong disagreement with the questions raised by the Law Minister.[21] There is a huge difference between Prime Minister Indira Gandhi and Prime Minister Narendra Modi on this question as well. Indira Gandhi intimidated the Supreme Court through P. Shivshankar. Prime Minister Narendra Modi made the Supreme Court safe. After the war of words, the responsibility of the Law Ministry was given to Arjun Ram Meghwal, and this is just one example.

The history of appointment of judges begins from 1919. Before the Collegium, the government used to appoint judges. So, what is the solution to the dispute that is going on today? Is there at all a solution to it? Well, there is no dispute that cannot be resolved but dialogue is necessary for this. The problem is hidden in the definition of two words -- consultation or consent. The guidelines of the Constitution are clear. It provides for consultation. The Supreme Court is in favour of consensus. Now consensus has taken the form of veto power of the Supreme Court. That is why it is adamant on the Collegium system. But this has created many constitutional distortions. Supreme Court advocate Nitin Meshram has mentioned six such distortions in one of his pamphlets. To remove these distortions, his paper 'How To Undo Collegium' suggests that "the Union government should restore the original arrangement in the Constitution. This will re-establish the process of the President consulting the Prime Minister. The Prime Minister has a constitutional right to aid and advise the President."[22]

It is a fact that the Collegium system has not emerged from the Constitution and the Parliament

did not make any law for this. It was created by the Supreme Court. It consists of the Chief Justice of the Supreme Court and four other senior judges. Thus, it is a five-member group. Senior advocate Ravindra Srivastava is of the opinion that "The model of the National Judicial Appointments Commission was good. There was diversity in it."[23] This has now become a thing of the past. A solution is possible in the future. There should be a dialogue between the government and the Supreme Court on the formation of the second National Judicial Appointments Commission and a consensus should be reached at, which should be repudiated by the Parliament.

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Marriage Jurisprudence and Challenges to its Sacramental Nature

Dr. Seema Singh

Vinayak Sharma

Marriage is the oldest social institution which constitutes the foundation on which the entire structure of civilization is built. A critical study

In Bharatiya tradition, the family is considered the basic unit of society, unlike in western societies, which consider individuals to be a basic unit. In Rukmini Bai Rathor v. CWT (1964), the court asserted that joint Hindu family status is ordinarily the result of blood relations by birth or affiliation by adoption or marriage. Hence, marriage is the reason for society's continuance on the one hand and its building block on the other. Since the beginning of Bharatiya society, vivaha (marriage) was one of the most important of the several saṃskāra (sacraments) prescribed by Dharmashastras that an individual had to perform. The marriage between husband and wife was considered a pious union to perform mutual obligations. Manu, in his smriti, laid down Chapter IX, Stripumdharmaha, which dealt with the duties of husband and wife to keep the sanctity of union intact. However, with the changing pattern of society, the modern legal discourse has created a dichotomy about whether Hindu marriage is a sacrament or a civil contract. Through primary sources like the Vedas, Dharmashastras, other ancient Bharatiya texts, legislation, and judicial pronouncements, this paper is an attempt to break the dichotomy. This paper also addresses the problems and issues that have diluted the sanctity of marriage and provides suggestions to maintain the piousness of marriage.

Keywords: Hindu Marriage, Sacrament, Saṃskāra, Dharma, Saptapadi, Husband and Wife

Introduction

Ihaiva staṃ mā vi yauṣṭaṃ
viśvamāyurvyaśnutam|
Krīḷantau
putrairnaptṛbhirmodamānau swe gṛhe||[1]

This Rig Vedic mantra talks about an ideal married life, or *Gṛhastha-āśrama*. It says, O Husband and Wife! Remain here only; do not separate. Attain your full age. While playing with your children and grandchildren, be happy in your own home.

Marriage is a fundamental and unavoidable institution of human existence. This is a fundamental aspect of constructing a society. Marital life is an essential component of society, as society is essentially a manifestation of individuals. It is

a continuation or expansion of our marriage ties. An individual grows and develops into a society. Marriage is a social institution that is found in every world. In every society in the world, be it primitive or modern, rural or urban, marriage is found in some form or another. Bhat, J., writing for the majority in *Supriya Chakraborty v. Union of India*,[2] asserted:

"Marriage existed and exists, historically and chronologically in all of the senses, because people married before the rise of the state as a concept. Therefore, marriage as an institution is prior to the state, i.e., it precedes it."

This implies that the institution of marriage is independent of the state, the oldest social institution, and constitutes the foundation on which the entire structure of civilization and success is built.

In the words of E. Westermarck, *''Marriage is a relation of one or more men to one or more women that is recognized by customs or laws and involves certain rights and duties both in the case of the parties entering the union and in the case of the children born of it."*[3] It is only through marriage that man fulfils the responsibilities of his social life and regulates the dynamic order of this universe. Marriage is a bond in which a man and a woman are accepted by society to live a family life for the rest of their lives. Marriage is an institution by which two people get legally bound to each other and lay the foundation of society in which a family is formed, and Hindu marriage is the gateway to *Gṛhasthāśrama*. Responsibilities are discharged. In this sequence, various bonds are born, and they are regulated according to the place. In this way, the result of keeping life civilised and dignified by performing one's duties and exercising one's rights in a series and establishing a controlled, regular, and cultural society is the beginning of the marriage ritual.

Through marriage, a person enters the *Gṛhasthāśrama* and tries to achieve the four pursuits of *Dharma, Artha, Kama*, and *Moksha*. In every society, there are some legitimate ways to get a life partner or husband or wife, and they also get social acceptance. Among Hindus, marriage is considered a *dhārmika* sacrament, and the purpose behind considering marriage as *dhārmika* is to attain *Moksha*. Apart from this, every person among Hindus is considered to have the burden of repaying the three debts: Pitra Debt, Dev Debt, and Rishi Debt. To get relief from ancestral debt, it is considered necessary to beget the children through marriage. According to Hindu belief, Manu has considered marriage necessary for proper control of sexual relations and happiness in this world and the next. The mention of Vyas Smriti is important in this context. In this regard, considering *Gṛhasthāśrama* as the best, it has been said that the person who follows *Gṛhasthāśrama* properly gets the virtue of pilgrimage places like Kurukshetra, Badrinath, Kedarnath, Haridwar, etc. even while living at home.

When marriage was considered a sacrament, there were eight different forms of marriage, as mentioned in the *Manusmriti*.[4] The approved forms included *Brahma, Daiva, Arsha*, and *Prajapatya*, while the unapproved forms were

Gandharva, Asura, Rakshasa, and *Pishacha* (the lowest). Each form represented a different way of entering into marriage, with religious ceremonies playing an important role in the validity of the marriage. Even today, the *Brahma* type of marriage is prevalent.

Hindu marriage is addressed by different names in Sanskrit, such as *Pāṇigrahana, Kalyāṇa, Udvāha, Vivāha, Pariṇaya* or *Pariṇayana*, and *Upayama*. Marriage is solemnised with *dhārmika* rites and Vedic mantras. Marriage has had an important place in the Hindu social system since the beginning because marriage has been considered a *dhārmika* activity since the Vedic era. It is said in the '*Rigveda*' that the purpose of marriage is to become a householder, perform *Yajna*, and beget children. While Western thinkers have considered the main purpose of marriage to be sexual gratification, the main purpose of Hindu marriage is to follow Dharma.

Until the introduction of positivism in Indian legal discourse, Hindu marriage was purely sacramental in nature, with the belief that the union between husband and wife was indissoluble and eternal. With the changing pattern in Bharatiya society owing to colonisation, urbanisation, individualism, right-legal discourse, increased divorce, etc., the concept of Hindu marriage as a sacrament changed.

The state created laws to regulate marriage, starting with the Kolhapur Divorce Act of 1919, the first state law on marriage dissolution. Later, the Hindu Marriage Act of 1955 became the first central law applicable to all Hindus. These statutes define Hindu marriage as both a sacrament and a contract. However, there remains no consensus among the High Courts and the Supreme Court on whether Hindu marriage is primarily a sacrament or a contract.

There is special recognition of traditions, customs, and values in Bharatiya society. This is evidenced by a systematic series of saṃskāra in Bharatiya culture, and as a result of it, Bharatiya culture has a special place in the world. In the Bharatiya scriptures, every aspect of human beings has been associated with certain saṃskāra in some form or another till death. Their form definitely changes according to the situation and time, but they continue to move with continuity. This forces us to think about what this saṃskāra is and why it developed mainly in Bharat

Hindu Marriage - A *Saṃskāra*

There is special recognition of traditions, customs, and values in Bharatiya society. This is evidenced by a systematic series of *saṃskāra* in Bharatiya culture, and as a result of it, Bharatiya culture has a special place in the world. In the Bharatiya scriptures, every aspect of human beings has been associated with certain *saṃskāra* in some form or another till death. Their form definitely changes according to the situation and time, but they continue to move with continuity. This forces us to think about what this *saṃskāra* is and why it developed mainly in Bharat.

The word *saṃskāra* means purification. *Saṃskāra* elevates a person's inner self to a divine state and prepares their outer self to engage fully in the *dhārmika* life of the Hindu community. These rites have a significant influence on a person's sanctity, affecting both their internal and external holiness. *Saṃskāra* are ceremonial practices that consecrate and purify a Hindu's life at different stages. The *saṃskāra* have the ability to cleanse the body, mind, and intellect, enabling a person to become a complete and integrated member of the community. In the words of R. N. Saxena, *"The word Sanskar means the rituals by which the capabilities of human life are revealed, which provide qualities that make humans capable of social life, and by which a person is given a special social status."*

The reason why *saṃskāra* flourished in Bharat and Hindu religion only is that every nation had its own definite rules,

systems, discipline, customs, and traditions. Sixteen major *saṃskāra* are considered in Hinduism, in which marriage rites have been given a central and special status.

Different types of *saṃskāra* in Vyas smriti 1.13.15:

Garbhādāna, Puṃsavana, Sīmantonnayan, Jātakarma, Nāmakaraṇa, Niṣkramaṇa, Annaprāśana, Chūḍākaraṇa, Karṇavedha, Upanayana, Vedārambha, Keśānta, Samāvartana, Vivāha, Vivāhāgni Parigraha, Tretāgni Saṃgraha.

P.H. Prabhu says, "*For a Hindu, marriage is a sacrament, and hence the relationship of the parties joined by marriage is of the nature of a sacrament and not of the nature of an agreement.*"[5] In this regard, K.M. Kapadia says, "*Hindu marriage is a sacrament. It is considered sacred because it is complete only when it is performed with sacred mantras*."[6]

According to Majumdar and Madan, Marriage is considered essential in the life of a Hindu, because without a wife, he cannot enter the *Gṛhasthāśrama*, the second stage of the Ashram Dharma prescribed by the scriptures. Marriage has a very special place in Hindu religion, which is why it is considered to be the most important *saṃskāra* of Bharatiya culture, and other *saṃskāra* revolve around it. Bharatiya culture is based on Dharma, and Dharma can be protected only through marriage. That is why so many *saṃskāra* have been systematically rendered in the commoditization of marriage so that people accept its importance and follow the Dharma. In Hinduism, marriage is the medium that connects the links of social bonds and provides the basis of love and harmony in society. Besides, Hinduism is also an exponent of the ideal form of marriage because family life is considered to begin with marriage. The reason for this is that in Hindu society, no *dhārmika* activity is possible without a wife; hence, she is called *Ardhāṅginī*, and an unmarried man is considered impure. Marriage is the root of household life, and all ashrams depend on *Gṛhasthāśrama*.

The statement that 'Hindu marriage is a sacrament' can be justified based on the following grounds:

(1) Objectives of Marriage: If Hindu marriage is evaluated on the basis of objectives, then it can definitely be called a sacrament. P.H. Prabhu[7] has given the three main objectives of Hindu marriage: (i) Dharma, (ii) Prajā (progeny), and (iii) Rāti (sexual enjoyment).

(i) Dharma: The most important purpose of marriage among Hindus is to fulfil their Dharma. Marriage is considered both inevitable and necessary. It is necessary for husband and wife to participate together in the performance of all *dhārmika* duties. It is mentioned in the Vedas that a man should follow his dharma along with his wife. According to the text 'Satapatha Brahmana', "*The wife is half of the husband.*" i.e. *Ardhāṅginī*. Therefore, the first goal of marriage is to make the person capable of completing various *Yajna* and *dhārmika* rituals related to them (Kanyadan, Homa, Panigrahan, and Saptapadi). It is absolutely necessary to perform the five Maha Yajna (*Brahmayajna, Devyajna, Bhootyajna, Pitriyajna*, and *Manushayajna*), and all the Yajna can be performed only when the person is married. In the absence of a wife, an unmarried person cannot perform Yajna. Marriage is the only medium with which a person can fulfil his responsibilities towards gods, sages, parents, guests, and all living beings. It is clear that to fulfil dhārmika duties, it is necessary to have a wife through marriage. K.M. Kapadia says that when Hindu thinkers considered Dharma as the first and highest goal of marriage and gave second place to procreation, then it is natural that Dharma dominates marriage. This purpose of marriage is of utmost importance to maintain order in society and protect morality.

(ii) Prajā (Progeny): The second purpose of marriage is to repay the debt to the ancestors. Among Hindus, every person has to repay three types of *Ṛṇa* (debts): (i) *Dev Ṛṇa,* (ii) *Rishi Ṛṇa,* and (iii) *Pitra Ṛṇa*. To repay the ancestral debt, it is mandatory to carry forward

the father's lineage; that is, it is mandatory to have a son. Because the reason for this is that salvation is attained only by the Son. Unless the son provides Tarpan and Pind Daan to his ancestors, they do not attain salvation. In this way, the birth of a son is considered necessary to complete the Pitra Yajna and to be free from ancestral debt. It is said in Manu Samhita that the father can get freedom from rebirth only if his son offers Pinda Daan. That is why emphasis has been laid on being successful and having sons in Hindu marriage. Because various rituals and dhārmika functions are performed by the son, Also, on the occasion of Panigrahan Sanskar, the groom says to the bride through mantras, '*I am establishing marital relations with you to get a good child.*' Special emphasis has been laid in marriage on the birth of successful and long-lived sons because only children with these qualities will bring happiness both on this earth and in the next world. Only after the birth of a child (son) does the lineage and society get established. The desire for sons has been expressed in many places in the Rigveda. Probably, keeping in mind the continuity of family and society, Hindu scriptures have given so much importance to this goal of marriage.

(iii) Rati (Sexual enjoyment): The last objective of marriage is to satisfy sexual desire, which the scriptures have considered less important than others. Rati means fulfilling one's sexual desires in a manner accepted by society. The attainment of sexual pleasure has been given an important place in the Upanishads as the greatest joy. In Hindu theology, where the satisfaction of sexual desires is considered necessary for a man, it is also prohibited that he can have sexual intercourse only with his wife, and that too for the birth of a good child. Therefore, the purpose of sexual relations in marriage is to obtain high-intelligent children; it comes third among these purposes.

(2) High Dhārmika Ideals: From the point of view of high dhārmika ideals, there are many such ideals among Hindus that people achieve in their lives and follow. Under Hindu marriage, the relationship between husband and wife is considered unbreakable and lasting from birth to birth.

Prajanārthaṃ striyaḥ sṛṣṭā
santānārthaṃ ca mānavaḥ|
Tasmāt sādhāraṇo dharmaḥ
śrutau patnyā sahoditaḥ||

"Women were created to be mothers and men to be fathers; hence, dhārmika rituals are prescribed in the Vedas to be carried out by the husband along with his wife."

Hindu marriage, being a dhārmika rite, is inviolable. Only death can separate those who are united in the sacred bond of marriage. Throughout history, from the Vedic age to the period of commentators and digest writers, the wife held significant importance, and the marital relationship was profound. Women are called Ardhāṅginī among Hindus, which means that they are considered complete with their husband only after marriage.

The verse in Rig Veda[8] indicates that a man accepted a woman as his wife for the purpose of maintaining household responsibilities, 'gārhapatya'.

Gṛbhṇāmi te saubhagatvāya
hastaṃ mayā patyā
jaradaṣṭiryathāsaḥ|
Bhago aryamā savitā
purṃdhirmahyaṃ
twādurgārhaptyāya devāḥ||

"I take your hand for good fortune so that you may grow old

The last objective of marriage is to satisfy sexual desire, which the scriptures have considered less important than others. Rāti means fulfilling one's sexual desires in a manner accepted by society. The attainment of sexual pleasure has been given an important place in the Upanishads as the greatest joy. In Hindu theology, where the satisfaction of sexual desires is considered necessary for a man, it is also prohibited that he can have sexual intercourse only with his wife, and that too for the birth of a good child

with me, your husband. The gods Bhaga, Aryaman, Savita, and Purandhi have given you to me for the duties of a householder."

This verse is traditionally recited during Hindu marriage ceremonies, symbolising the union and the responsibilities of married life as blessed by the gods.

Rig Veda[9] makes a strong statement, asserting that 'the wife herself is the home' (jyed-astam).

Jāyedastaṃ maghavantsedu
yonistadittvā yuktā harayo
vahantu|
Yadā kadā ca sunavāma
somamagniṣṭvā dūto
dhanvātyaccha||

"Just as two excellent horses, drawing a chariot comfortably, carry the master of the chariot from one place to another, similarly, two mutually pleased and competently learned individuals adorn household life."

Sāyaṇācārya, in his commentary on the relevant passage, references a sentence from Smṛti literature:

Na gṛhaṃ gṛhamityāhu gṛhaṇī
gṛhamucyate|
Gṛhaṃ hi gṛhiṇīhīnaṃ araṇyaṃ
sadṛśaṃ matam||

"A home is not truly a home without a wife; it is the wife who makes a home." This emphasizes that a wife is vital for making a home complete and auspicious. Understanding the specific meanings of the terms used to describe a wife helps us better appreciate her various roles in both the family and society. She was seen as the central figure of the household and was called the empress (*samrajni*) of her home.[10] She embodied the home itself[11] and was considered auspicious (*kalyani*)[12] and the most auspicious (*sivatama*).[13] She brought blessings and prosperity to all living beings, and this is what she brought into her marriage, making the unity and bond of marriage unquestionable. The wife was referred to as *jaya*, *sakhi*, *grihini*, and *sachive*. She was also known as *Grihalakshmi*, *Samrajini*, and *Ardhangini*. Since a man could not perform a yajna without his wife, she was called *dharmapatni*.

Furthermore, the verse from Manusmriti states:

Tathā nityaṃ yateyātāṃ
strīpunsau tu kṛtakriyau|
Yathā nābhicaretāṃ tau
viyuktāvitaretaram||[14]

"Spouses must constantly work towards staying together and maintaining their shared loyalty, ensuring that they do not drift away from each other."

Anyonyasyāvyabhicāro
bhavedāmaraṇāntikaḥ|
Eṣa dharmaḥ samāsena jneyaḥ
strīpunsayoḥ paraḥ||[15]

"The highest duty between husband and wife should be that their mutual fidelity should last till death."

The basic principles of the Hindu philosophy of marriage are concisely expressed in two verses from Manu, which have a profound influence on many couples in the present and are expected to do so for generations to come despite legal amendments. Justice Sarkaria[16] highlighted the importance of mutual trust as the fundamental basis for a good marital relationship. He said that the stability of marriage is maintained by three basic principles: mutual trust, mutual respect, and sympathetic understanding. Of all these factors, trust is the most essential, as emphasised in George MacDonald's statement that being trusted is a more important compliment than being liked. Belief gives rise to belief, while doubt gives rise to doubt.

(3) Paying of Ṛṇa (Debts): One enters the Gṛhasthāśrama through marriage and has to fulfil all the duties in the Gṛhasthāśrama. There is mention of five yajna among Hindus: (i) *Devayajna*, (ii) *Brahmayajna*, (iii) *Manushyayajna*, (iv) *Pitriyajna*, and (v) *Bhootyajna*, and through these yajna, the debts are repaid. Without marriage, there will be no legitimate children, and neither will the Pitriyajna be completed.

(4) Marriage Rituals and Ceremonies: There are many types of dhārmika rituals in marriage. P.V. Kane has stated the number of such rituals as thirty-nine. These religious rituals have been given so much importance in marriage that, in their absence, the marriage cannot be completed. For the marriage to be completed, it is mandatory that these rituals or acts be performed by a special

method.

As per the Paraskar Grihya Sutras, marriage involves the following rituals:
Pākayajñāḥ, Vivāhe Nakṣatravicāraḥ, Varṇānukrameṇa Vivāhaḥ, Vastraparidhānam, Kanyādāna Vidhānam, Parasparasamīkṣaṇam, Ādhāraṇavidhiḥ, Jayāhomavidhiḥ, Abhyātānahomavidhiḥ, Lājāhomavidhiḥ, Sāṅguṣṭhapāṇigrahaṇam, Śilarohaṇam, Gāthāgānam, Pradakṣiṇāvidhānam, Saptapadikramaḥ, Abhiṣecanam, Sūryadarśanam, Hṛdayālambhanam, Abhimantraṇam, Anuguptāgāra (Kohabara) Gamanaṁ, Grāmavacanam (Grāmavṛddhā-vacanānusāreṇa Lokācāraḥ), Dakṣiṇā, Dhruvadarśanam, Sindūradānam, Brahmacaryavidhānam, Nityahomavidhiḥ, Naimittikahomavidhiḥ, Vadhvābhartṛgṛhe Prathama Gamane Karma (Prāyaścittiḥ).

Kanyadaan (the father of the girl hands over the girl to the groom's side through Kanyadaan, which the groom accepts in front of the sacred fire with God as witness), Vivah Homa (divine witness and confirmation of the marriage ceremony through fire), *Panigrahan*[17] (the groom taking the bride's hand to live happily throughout the life), *Agni-parinayan*[18] (the bride and groom make parinayan Yajna Kund by tying a knot), *Ashmarohan* (the girl's brother lifts the girl's feet and places them on a stone, i.e. to follow the religious work firmly), and *Saptapadi*[19] (the bride and groom walking together for seven steps, putting one coin each as a symbol of walking each step at mandap). These are the main rituals without which marriage is incomplete. These rituals are duly performed with sacred mantras.

The *Saptapadi* ritual is of great importance in Hindu marriage. The Hindu Marriage Act of 1955 includes this ancient practice in Section 7, mandating that the bride and groom take seven steps together around the sacred fire. Completing this ritual is essential for the marriage to be considered legally binding, except when other customs apply.

1. Isha Ekapadi Bhava (Food)
2. Urje Dvipadi Bhava (Strength)
3. Rayasposhaya Tripadi Bhava (Wealth and Prosperity)
4. Mayo Bhagyaya Chatushpadi Bhava (comfort)
5. Prajabhya Pashchapadi Bhava (Progeny)
6. Rutubhya Shatpadi Bhava (Enjoyment of Seasons)
7. Sakha Saptapadi Bhava. Samamanuvrata Bhava. Putranvindavahai. Bahu Ste Santu Jaradastayaha. (Friendship)

The seventh step marks the transition of the bride into a wife and the groom into a husband, transferring the bride to her husband's gotra. This final step legally completes the marriage, signifying that the woman leaves her birth gotra and becomes part of her husband's gotra.

Why Marriage is not a Contract

As Bharatiya societies evolved, the legislature introduced new laws to meet the needs of society. In keeping with ancient Hindu law, the legislature enacted the Hindu Marriage Act, 1955, which specifically regulates marriages between Hindus. Section 5 of the Act sets out the conditions for the validity of marriage, which rules out monogamy and stipulates that neither party must be of an unsound mental state, they must be capable of giving valid consent, and they must not suffer from a mental disorder making them unfit for marriage and procreation. Furthermore, the groom must be at least twenty-one years of age and the bride at least eighteen years of age at the time of the marriage, and the parties must not be in a prohibited and sapinda degree of relationship unless permitted by their traditions. Section 29(2) ensures that traditional marriages remain valid. The Saptapadi ritual is of great importance in Hindu marriage. The Act includes this ancient practice in Section 7, mandating that the bride and groom take seven steps together around the sacred fire. Completing this ritual is essential for the marriage to be considered legally binding, except when other customs apply. The Act also introduced the concept of

divorce for the first time, with the aim of bringing about reform and uniformity in matrimonial law. However, elements such as void and voidable marriage, consent obtained through fraud, and divorce have led to Hindu marriage being viewed as a contract.

Mayne and Paras Diwan have stated that Hindu marriage has both a sacramental and contractual nature. It has been observed that the consent of the parties is not necessary for a marriage to be valid. Section 12(1)(c) of the Hindu Marriage Act declares a marriage void if it obtains consent through force or fraud. Furthermore, Sections 5, 11, and 12 exhibit the features that are typical of a contract; hence, Hindu marriage is also viewed as a contractual agreement alongside a sacrament.

Perhaps it is important to note that, in ancient Bharat, marriage as a sacrament was defined by several key parameters. These included selection of marriage partners, investigation of family background, eligibility and disqualification of the bride and groom, appropriate age for marriage, adherence to the caste system, and various prohibitions to make the marriage valid between a husband and a wife.

The Ashvalayana Grihya Sutra emphasises the importance of examining the family background from both the mother's and father's sides before marriage. Manu also suggested marrying into a reputable family, highlighting that relatives should be pure in their actions according to Shruti and Smriti, born in good families, maintain unbroken celibacy, and be content. One should possess qualities like humility, consent, purity, and impartiality. They should remain free from greed, attachment, jealousy, pride, and attachment, and remain calm.[20] As a result, families known for dishonesty, illegal activities, or not following Vedic traditions were considered unsuitable for marriage. Regarding the qualifications of the bride and groom, the Ashvalayana Grihya Sutra states that a bride should be of good character, free from disease, and intelligent. Similarly, the groom should come from a good family, have good character, auspicious traits, education, and good health.[21]

There were also strict prohibitions on Hindu marriages, especially regarding *Sapinda* and *Sagotra* or *Samana Pravara* relationships. These restrictions apply across all varnas and castes, although interpretations vary between legal texts. The Smritis specified that for a marriage to be valid, the man and the woman should not be related within the prohibited degrees of kinship. According to Manu[22]:

Asapiṇḍā ca yā māturasagotrā ca yā pituḥ|
Sā praśastā dwijātīnām dārakarmaṇi maithune||

"A girl who is not a sapinda on her mother's side and does not belong to the same gotra (lineage) on her father's side is considered suitable for marriage and conjugal union among the twice-born." This is similarly affirmed in Yajnavalkya Smriti I 52.

For example, Vashishtha restricted marriage to the fourth generation on the mother's side, while Narada extended it to the seventh generation on the father's side. Dharmashastra and Manusmriti banned these types of marriages, and Gautama prescribed punishment by declaring the couple outcasts. Other restrictions included not giving two daughters to the same family, not exchanging sons and daughters for marriage, and a ban on the payment of bride prices. The Aitareya Brahmana also refers to such transactional marriages as "animal marriages."[23]

Another rule of prohibition states that the bride and groom should not share the same *gotra* or *pravara*. Two individuals are considered to have the same gotra if they can trace their lineage through the male line to a common male ancestor. Traditionally, each family preserves the knowledge of their '*Gotra* and *Pravara*' to trace their shared ancestors.

The Saptapadi ritual, characterised by its seven steps, is an important ceremony that solidifies a traditional Hindu marriage as fixed and indissoluble. During this ritual, the groom guides the bride as they take seven steps, starting with her right foot in the west direction, onto seven small mounds of rice located to the north of the sacred

fire.

Furthermore, during the marriage ceremony, the groom must make a solemn promise. When the bride is given in marriage, the father, or in his absence, the guardian, addresses the groom with these words:

Dharme cārthe ca kāme
nāticaritavyā tva iyam

"You shall not infringe upon her rights in the pursuit of Dharma, Artha, and Kama."

The groom then accepts this condition by saying:

Nāticarāmi

"I shall not infringe upon her rights in the matters of Dharma, Artha, and Kama."

This promise signifies that the marriage aims to fulfil all aspects of life for both the husband and wife.

Furthermore, it is found that in various smritis, both husband and wife may supersede each other in extraordinary circumstances, but it was not common practice during that time as marriage was considered an eternal bond. According to Manu:

Madyapāˈsādhuvṛttā ca
pratikūlā ca yā bhavet|
Vyādhitā vāˈdhivettavyā
hiṃsrāˈrthaghnī ca sarvadā||[24]

Vadhyāṣṭameˈdhivedyābde
daśame tu mṛtaprajā|
Ekādaśe strījananī
sadyastvapriyavādinī||[25]

A wife who drinks alcohol, behaves poorly, is disobedient, unhealthy, troublesome, or extravagant may be replaced at any time by marrying another woman. A wife who is unable to conceive may be replaced after eight years. If all of her children die, she may be replaced after ten years. If she only bears daughters, she may be replaced after eleven years. A quarrelsome wife may be replaced without delay.

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Similarly, a wife had the right to take a second husband. Various texts clearly outline the provisions for this.

Paṇigrahe mṛte bālā kewalaṃ
mantrasaṃskṛtā|
Sā cedakṣatayoniḥ syāt punaḥ
samskāramarhati||[26]

"If a woman was married according to sacred texts but the marriage wasn't consummated, she can remarry if her husband dies."

Manu states that:

Proṣito dharmakāryarthaṃ
pratīkṣyoˈṣṭau naraḥ samāḥ|
Vidyārthaṃ ṣaḍ yaśoˈrthaṃ vā
kāmārthaṃ trīṃstu vatsarān||[27]

"If a husband travels abroad for religious duty, the wife must wait eight years before remarrying; for seeking knowledge or fame, she waits six years; for pleasure, she waits three years before considering remarriage."

In Narada Smriti, vide Dharmakosha:

Ajnānadoṣādūḍhā yā nirgatā
nānyamāśritā|
Bandhubhiḥ sā niyoktavyā
nirbandhuḥ swayamāśrayet||
Naṣṭe mṛte pravrajite klībe ca
patite patau|
Paścaswāpatsu narīṇāṃ
patiranyo vidhīyate||[28]

"If a husband has a previously unknown blemish discovered after marriage, the wife's relatives can give her to another man. If she has no relatives, she can choose to marry someone else."

Additionally, a wife can marry another man if her husband is lost, deceased, has become a religious ascetic, is impotent, or has been expelled from caste.[29]

Similarly, in present time, the Hindu Marriage Act, 1955, lays down most of the provisions as they used to exist in various smritis and other ancient Bharatiya texts. It is important to note that various smritis, such as Manu smriti, Narada smriti, Yajnavalkya smriti, Parashar smriti, etc., laid down their provisions according to the changing needs of society. Similarly, HMA 1955 incorporated various provisions according to the changing needs of society. For example, the provision of one smriti—that

both wife and husband had the right to supersede each other in exceptional cases—might not be available in another smriti. Earlier, a widow had no right to remarry but was subsequently given the right to another marriage. Despite all the different provisions laid down in various smritis, marriage was purely a sacrament and not considered an agreement between husband and wife. It is wrong to interpret terminologies like void, voidable, fraud, dissolution, mutual consent, valid conditions, etc. used in HMA, 1955 with the 'Contract' defined under the Indian Contract Act, 1872.

In *Kala Raman v. Ravi Ranganathan*,[30] Justice Harish Tandon made the observation that: In Hindu law, marriage is viewed as a sacrament rather than a contractual agreement. The Hindu Marriage Act has undeniably influenced the traditional Hindu perception of marriage as a sacred ritual, although this view has remained largely unchanged. The definition of fraud specified in Section 12(1)(c) of the Act should not be compared with the definition of fraud specified in Section 17 of the Contract Act. The Hindu Marriage Act and the Contract Act deal with different areas, the former of which deals exclusively with matters relating to marriage, while the latter deals mainly with contracts and commercial transactions. As a result, the legal concept of fraud mentioned in the Contract Act obviously cannot be extended to marriages, as they are considered sacred. Marriage, unlike a contract, cannot be terminated at the discretion of the parties unless there is mutual agreement to divorce, as specified in Section 13B of the Hindu Marriage Act.

It is argued that marriage gives legal status to parties, and consequently, rights and duties arise between them. This makes marriage a contract. But this is wrong to interpret, as in ancient Bharat, similar rights and duties were also assigned in the sacred matrimonial bond. It is important to note that marriage is regulated by judicial decisions over which the parties have no control. It is a one-way process; after entering into marriage, both parties themselves cannot exit except through the will of the court. Thus, both parties cannot themselves exit from the marriage contract at their own will, like other contracts. Authors like Mulla, B.K. Sharma, B.N. Sampath, and Derrett have stated that Hindu marriage is a sacrament and not a contract. Mulla has stated that Hindu marriage is a sacrament and divorce is a creation of law. B.K. Sharma has stated that "*in spite of the amendment made in 1976 to the Hindu Marriage Act, the Allahabad High Court has held that marriage under Hindu law is still a sacrament and endeavor should be made to restore the relation*."[31] B.N. Sampath has said that Hindu marriage, once performed, cannot be undone by the judiciary. Derrett has argued that once samskara is performed, it cannot end. But certain secular rights can be terminated as the rights and obligations that arise in marriage end after divorce.

Hindu marriage is not the creation of the state. It existed even before the state was created. It is a sacrament in itself and independent of any provisions regulating marriage. The provisions dealing with marriage are the creation of the state. Just because the provisions deal with the contract or agreement, it cannot make the marriage a contract or agreement.

Looking at the various important judicial pronouncements, it may be well said that 'Hindu marriage is purely a sacrament.'

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In the case of *Sivanandy v. Bhagavathy Amma*,[32] The Madras High Court observed that marriage was a lifelong commitment. It stated that a marriage performed through the ritual of saptapadi (seven steps) around a consecrated fire created a religious bond that could never be undone. The court identified three main characteristics of such a marriage: it is a permanent union, an eternal union, and a holy or sacrosanct union.

In *Tikait v. Basant*,[33] The court held that, under Hindu law, marriage was a sacrament and an indissoluble union, merging the couple's bodies and souls in a bond that continues even into the next life.

The Supreme Court in *Raghubar Singh & Ors v. Gulab Singh & Ors*[34] reiterated that, according to ancient Shastric Hindu law, marriage between Hindus is a sacrament. This religious ceremony creates a sacred and permanent union, with the wife becoming an integral part of the husband's life, symbolised by her being called *Ardhangini* (half of her husband).

In *Manorama Akkineni v. Janakiraman Govindarajan*,[35] The court noted that Hinduism views marriage as a lifelong commitment based on trust, mutual affection, and equal responsibilities. The Vedic rituals and prayers used in the wedding ceremony define the duties of both partners and grant them freedom within the marriage. The primary objectives of a Hindu marriage include performing religious duties (*Dharma*), procreation (*Praja*), and sexual satisfaction (*Rati*). Despite the influences of Westernization, which are changing women's expectations and affecting traditions, customs, morals, ethics, and relationships, Hindu marriage remains a sacred sacrament rather than a contract.

In the recent judgement of *Supriyo @ Supriya Chakraborty v. Union of India*,[36] The Supreme Court observed that different traditions, such as those of Hindus and Catholic Christians, view marriage as a sacrament and an indissoluble union.

As per the latest judicial pronouncement of the Supreme Court, in the case of *Dolly Rani v. Manish Kumar Chanchal*,[37] a bench of Justices B.V. Nagarathna and Augustine George Masih said: "A Hindu marriage is a 'samskara' and a sacrament that has to be accorded its status as an institution of great value in Indian society." The bench emphasised that registering a Hindu marriage serves only as proof of the marriage. However, the marriage is not considered legitimate unless the rites and ceremonies prescribed under Section 7 of the Hindu Marriage Act, such as the saptapadi (where the couple walks around a fire seven times), are performed.

The judges highlighted a concerning trend of couples reducing weddings to mere "song and dance" events, including "wining and dining," thereby undermining the sanctity of the institution. They emphasised that a wedding should not be an occasion for demanding and exchanging dowry or gifts under undue pressure, which could lead to criminal proceedings. The Court stressed that marriage is not a commercial transaction but a solemn foundational event that establishes a relationship between a man and a woman, conferring upon them the status of husband and wife and forming the basis of an evolving family, which is a fundamental unit of Bharatiya society. In the words of the bench of judges:

"*A Hindu marriage facilitates procreation, consolidates the unit of family, and solidifies the spirit of fraternity within various communities. After all, a marriage is sacred, for it provides a lifelong, dignity-affirming, equal, consensual, and healthy union of two individuals. It is considered to be an event that confers salvation upon the individual, especially when the rites and ceremonies are conducted. The customary ceremonies, with all their attendant geographical and cultural variations, are said to purify and transform the spiritual being of an individual.*"

Emerging Challenges to the Sanctity of Marriage

No written text or legal document provides concise definitions for the various relationships that resemble marriage. Commonly used terms for these relationships include marriage, de facto relationships, marriage-like

relationships, cohabitation, and couple relationships. These relationships are for unmarried individuals who are of legal age and capacity to marry and who recognize each other as husband and wife in society.[38] The increasing trend of live-in relationships in India has become a major threat to the sanctity of marriage, as courts have also started recognizing live-in relationships as equal to marriage. In the case of *Lalita Toppo v. State of Jharkhand*,[39] The Supreme Court said that if a couple lives together for a long time and enjoys social acceptance, society can consider them married. Furthermore, in the case of *D. Velusamy v. D. Patchaiammal*,[40] The Supreme Court established criteria to determine whether a relationship between two unmarried adults can be considered a 'relationship similar to marriage'. To meet these criteria, individuals must voluntarily live together and be publicly presented as a couple for a substantial period of time, such as married partners. Under the Protection of Women from Domestic Violence Act, 2005, these partnerships are legally recognized on par with marriage, provided specific requirements laid down by the court on various occasions are met. According to sections 2(f) and 2(s) of this Act, a man and a woman are required to live in a domestic partnership and share a household for their relationship to be considered a "marriage-like relationship" and for the woman to enjoy legal protection. However, she will not get all the benefits available to a legally married wife under the Hindu Marriage Act, 1955.[41] In the case of *Dhannulal v. Ganeshram*,[42] the Supreme Court ruled that a woman had legal rights over the property after the death of her unmarried partner with whom she lived.

Many factors contribute to the emergence of different types of marital relationships, such as desire for compatibility, lack of commitment to marriage, reluctancy to perform one's duties in marriage, individualistic behavior, special circumstances, sexual freedom, anonymity, disposable income, phone sex, engagement in pornography and sexual messages, long working hours, loss of innocence at an early age, workplace mobility, limited opportunities outside the workplace, sexual relations within the workplace, focus on pleasure and entertainment, presence of sex offenders, and delay in marriage.[43] The changing lifestyle of the present generation has given rise to a lack of responsibility, resulting in a decline in moral principles and different types of relationships. As a result, sexual activity has become more prevalent, leading to the emergence of multiple marriage institutions in India. Cohabitation between a man and a woman without marriage has become common, and individuals are feeling less concerned about legal and social consequences.[44]

Many factors contribute to the emergence of different types of marital relationships, such as desire for compatibility, lack of commitment to marriage, reluctancy to perform one's duties in marriage, individualistic behavior, special circumstances, sexual freedom, anonymity, disposable income, phone sex, engagement in pornography and sexual messages, long working hours, loss of innocence at an early age, workplace mobility, limited opportunities outside the workplace, sexual relations within the workplace, focus on pleasure and entertainment, presence of sex offenders, and delay in marriage

In the context of "emerging separate relationships similar to marriage," as long as both partners are satisfied with each other's behaviour, they will live together even without legal marriage. If a partnership ends, the parties involved in non-marital affairs do not feel the need to go to court for separation but instead enter into new relationships. This social change has occurred due to the failure of the traditional notion of sacred marriage. Marriage laws have reinterpreted the contractual concept of marriage, resulting in the emergence of various

marriage-like relationships. As a result, there has been a significant change in contemporary India, where the younger generation is avoiding the responsibilities of marriage and choosing different relationships similar to the institution of marriage. People are adopting the policy of unrestricted entry and exit in growing relationships like marriage. These relationships are short-term because there are no obligations. As long as there is no discomfort, these relationships function harmoniously. However, when there is a need for pain and tolerance, these break down, affecting not only the life of the individual but also society as there is a lack of commitment in these relationships.[45]

There are many drawbacks to the emergence of various relationships within the institution of marriage, including low-quality marriages, impact on marriage decisions, impact on the stability of married life, underdevelopment of relationships between married individuals, impact on children, and loss of married individuals to their families.[46] Ultimately, these relationships have created an imbalance in society and affected the importance and balance of the institution of marriage, which is more dedicated and beneficial to society.

In the landmark case of *Joseph Shine v. Union of India*,[47] The Supreme Court of India struck down the criminalization of adultery described in Section 497 of the IPC, which was in force for 162 years. Legalising adultery is basically legalising extramarital affairs, which is not common in Bharat, and Bharatiya society considers adultery to be morally wrong and does not accept it. Hindu tradition has always condemned adultery morally and socially. Manu, in his smriti, condemned adultery as the most heinous act. Engaging in an extramarital affair by one spouse undoubtedly amounts to betraying the other partner's trust and is widely considered sinful. The criminalization of adultery had previously deterred individuals from adulterous behaviour, but the recent decriminalisation of adultery has eliminated this fear. Now, the trend of extramarital affairs within marriage is increasing, which may lead to an increase in divorce cases and reduce the sanctity of marriage.

Recently, a petition, *Supriyo @ Supriya Chakraborty v. Union of India*,[48] was filed in the Supreme Court to have a fundamental right to marry between a same-sex couple. It also tried to hit on the sanctity of marriage. Though the petition was not allowed with a 3:2 verdict, against giving constitutional validity to same-sex marriages.

But recently in the case of *Devu G. Nair v. State of Kerala*,[49] The hon'ble Supreme Court used the "*Doctrine of Colourable Judgement*" and tried to overrule five judges' bench judgement of same sex by three judge's bench. Here instead of limiting its intervention to the specific matter Supreme Court issued nationwide guidelines for the protection of intimate partners such as same sex, transgender couples etc, and also gave "Right to Choice" to minors to give preference to chosen family over the natal family. Here the Supreme Court entered into the domain of Legislature and undermined the principles of judicial restraints and separation of powers. Such judgements are posing a serious threat to our minor children and breaking our family system. Indirectly it is an encouragement for same sex relationships which creates hardship for the social institutions like marriage.

Conclusion

"Marriage", which is one of the oldest institutions and sacrament under Bharatiya Culture is facing challenges from different sides. Not only Globalization, Liberalisation, Advancement in Information Technology have impacted its nature severely but judicial approach towards matrimonial relationship also remained a key factor causing adverse impact to the sanctity of marriage. Judiciary has created more confusion by creating paradoxes between the existing laws and judicial pronouncements. Judicial pronouncements encourage same sex relationships, extramarital affairs and minor's sexual preferences which are both unethical and illegal.

From joint family to nuclear family and from nuclear family to no family, remaining unmarried or no kids after marriage are becoming the younger generation's preferential social norms. Rising numbers of divorce cases is a matter of serious concern. Promotion of individualism and individual choices over the collective conscience of the society is creating a new social threat for the oldest marriage and family institution of Bharat. Over interference of law and judiciary in matrimonial relationship and family system has caused more damage to these institutions. Adopting foreign jurisprudence in judicial interpretations and applying the same to our society and family is hitting the sanctity of marriage.

We need to keep our people aware about the ill impact of such practices in western world and encourage them to protect and promote our philosophical, cultural and spiritual angle about marriage and family institutions. These are our strengths and we should protect them at all costs.

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उत्तराखण्ड शासन

समान नागरिक-समान अधिकार

संकल्प
नये उत्तराखण्ड का

"समान नागरिक संहिता उत्तराखण्ड की देवतुल्य जनता की आकांक्षाओं के अनुरूप है, जो प्रदेश की मातृशक्ति के सशक्तिकरण के साथ एक बेहतर, सुरक्षित, संगठित, सशक्त और समृद्ध समाज के निर्माण में महत्वपूर्ण भूमिका निभाएगा। प्रदेश में अनुशासन व देशभक्ति की भावना बढ़ने से विकास की गति और तेज होगी। समान नागरिक संहिता माननीय प्रधानमंत्री, श्री नरेन्द्र मोदी के मूल मंत्र 'सबका साथ, सबका विकास और एक भारत-श्रेष्ठ भारत की दिशा में उठाया गया ऐतिहासिक कदम है।"

पुष्कर सिंह धामी
मुख्यमंत्री, उत्तराखण्ड

सबका साथ
सबका विकास
सबका विश्वास
सबका प्रयास...

"21वीं सदी के विकसित भारत के निर्माण के दो प्रमुख स्तंभ हैं। पहला, अपनी विरासत पर गर्व और दूसरा, विकास के लिए हरसंभव प्रयास।
आज उत्तराखण्ड, इन दोनों ही स्तंभों को मजबूत कर रहा है। ये दशक उत्तराखण्ड का दशक होगा।"

नरेन्द्र मोदी
प्रधानमंत्री

समान नागरिक संहिता का उद्देश्य

- समाज के प्रत्येक कमजोर, गरीब और संवेदनशील वर्ग को सुरक्षा प्रदान करना एवं सशक्त बनाना।
- प्रत्येक वर्ग की महिलाओं, बच्चों, युवाओं और वृद्धों को विकास की मुख्य-धारा से जोड़ना।
- एक समान कानून के जरिए प्रदेश में एकता, अखंडता और राष्ट्रवाद की भावना को बढ़ावा देना।
- विवाह की आयु बढ़ाकर प्रदेश की बेटियों और साथ ही बेटों को उच्च शिक्षा के लिए प्रोत्साहित करना।
- वर्षों से चली आ रही कुप्रथाओं को समाप्त करते हुए सशक्त और समृद्ध समाज का निर्माण करना।
- सभी समुदाय के लोगों को समानता का अधिकार देते हुए बेटा-बेटी और स्त्री-पुरुष के बीच का भेदभाव मिटाना।





सूचना एवं लोक सम्पर्क विभाग, उत्तराखण्ड द्वारा जनहित में जारी। www.uttarainformation.gov.in uttarakhandDIPR DIPR_UK uttarakhand DIPR

उत्तराखण्ड शासन

नयेपन की तलाश, अपनेपन का अहसास
उत्तराखण्ड

HAR MAUSAM UTTARAKHAND

देखिए भक्ति, संस्कृति और रोमांच का अद्भुत संगम

“ माननीय प्रधानमंत्री, श्री नरेन्द्र मोदी के मार्गदर्शन में हम राज्य के समग्र विकास, प्राकृतिक सुंदरता, समृद्ध सांस्कृतिक विरासत और अपार संभावनाओं को निखारने के लिए प्रतिबद्ध हैं। हमारा लक्ष्य उत्तराखण्ड को प्रगति का एक मॉडल बनाना है, जहां परंपरा व नवीनता का संगम होता है और हर व्यक्ति राज्य की समृद्धि एवं कल्याण की दिशा में योगदान देता है।

पुष्कर सिंह धामी
मुख्यमंत्री, उत्तराखण्ड

“ उत्तराखण्ड देवभूमि है। यह प्रदेश जिस तरह कानून-व्यवस्था को सर्वोपरि रखते हुए विकास पथ पर बढ़ रहा है, वह प्रशंसनीय है। यह प्रयास देवभूमि की पहचान बनाए रखने के लिए भी जरुरी है। इसलिए मुझे विश्वास है कि निकट भविष्य में देवभूमि उत्तराखण्ड पूरे विश्व की आध्यात्मिक चेतना का आकर्षण केंद्र बनेगी और हमें इसी क्षमता के अनुसार उत्तराखण्ड का विकास करना है।

नरेन्द्र मोदी
प्रधानमंत्री

उत्तराखण्ड पर्यटन क्षेत्र में निवेश के लिए सर्वोत्तम प्रोत्साहन प्रदान करता है।

वेडिंग के लिए बना नया डेस्टिनेशन

धार्मिक, आध्यात्मिक, हसीन वादियों, हरे-भरे और बर्फीले पर्वतों का गढ़ है देवभूमि उत्तराखण्ड जो बेहतर कनेक्टिविटी, शानदार इन्फ्रास्ट्रक्चर और सभी आवश्यक सुविधाओं से सुसज्जित है। धामी सरकार राज्य में तीर्थटन और पर्यटन के साथ-साथ डेस्टिनेशन वेडिंग की परंपरा को बढ़ावा देने पर विशेष जोर दे रही है और इससे संबंधित सुविधाएं लगातार विकसित की जा रही हैं। लोग उत्तराखण्ड के पवित्र धार्मिक, आध्यात्मिक और प्राकृतिक स्थलों पर डेस्टिनेशन वेडिंग आयोजित करने में दिलचस्पी ले रहे हैं। पर, प्रधानमंत्री नरेन्द्र मोदी की अपील के बाद, यह उम्मीद जताई जा रही है कि आने वाले समय में उत्तराखण्ड 'डेस्टिनेशन वेडिंग' के गंतव्य के रूप में अपनी जगह बना सकता है।

देवभूमि उत्तराखण्ड वह पवित्र स्थल है, जो अपने विवाह समारोह के लिए प्रसिद्ध है। उत्तराखण्ड के रुद्रप्रयाग जिले के त्रियुगी-नारायण गांव में स्थित श्री त्रियुगीनारायण मंदिर उनमें से एक है। ऐसी मान्यता है कि यही वह स्थान है, जहां भगवान शिव ने माता पार्वती के साथ सात फेरे लिए थे। यही कारण है कि यहां प्रत्येक वर्ष बड़ी संख्या में जोड़ियां शादी के पवित्र बंधन में बंधते हैं। यह स्थान डेस्टिनेशन वेडिंग के रूप में नई पहचान बना रहा है।

इसी प्रकार, धर्मनगरी हरिद्वार के शांतिकुंज में हर साल बड़ी संख्या में जोड़े विधि-विधान के साथ जन्म-जन्मांतर की डोर में बंधते हैं। तीर्थनगरी ऋषिकेश की बात की जाए तो मौजूदा समय में यह स्थल देश-विदेश के युवाओं के लिए प्रमुख वेडिंग डेस्टिनेशन के रूप में उभर रहा है। मसूरी, नैनीताल और रामनगर सभी आलीशान सुख-सुविधाओं से संपन्न स्थलों में एक है, जिसके वेडिंग डेस्टिनेशन का चलन देश-विदेश तक बढ़ रहा है। प्रकृति की गोद में विवाह करने के लिए उत्तराखण्ड में औली जैसे हिल स्टेशन यानी 'मिनी स्विट्जरलैंड' भी हैं।

उत्तराखण्ड में पर्यटन और तीर्थटन की विकसित सुविधाओं की वजह से यहां वेडिंग डेस्टिनेशन के प्रति आकर्षण बढ़ रहा है। प्रधानमंत्री के 'वेड इन इंडिया' के नारे के बाद अब यह उम्मीद जताई जा रही है कि धामी सरकार इस मुहिम की दिशा में तेज गति से काम करेगी। 'वेड इन इंडिया' आंदोलन आने वाले समय में उत्तराखण्ड को वेडिंग के लिए सबसे परफेक्ट डेस्टिनेशन के रूप में पहचान दिलाएगा। इससे स्थानीय कारोबार में वृद्धि के साथ आजीविका के नए अवसर सृजित होंगे।

तीर्थटन और पर्यटन का प्रदेश, हर उम्र के लिए कुछ विशेष

इन मनमोहक जगहों पर आप जरुर जाएं: प्रकृति की गोद में बसे ये सुरम्य स्थल आपके दिल को छू लेंगे

उत्तराखण्ड की मनमोहक प्राकृतिक संपदा में कई ऐसे स्थल हैं, जो किसी खजाने से कम नहीं हैं। आप देवभूमि आएं तो इन स्थलों पर जरुर जाएं। पर्यटकों की चहल-पहल भरी जगह से दूर, कम पहुचने जाने वाले ये डेस्टिनेशन आपकी यात्रा को और रोमांचक बना देते हैं। आप प्रकृति से सीधे जुड़ पाते हैं। सुरम्य कार्तिकेय स्वामी मंदिर से लेकर पेओरा के शांत गांव तक, खिरसू के लुभावने नजारे और मंडल की अनछुई सुंदरता जैसे स्थानों का अनूठा आकर्षण है। चौकोटी के हरे-भरे रमणीय पंगोट में पक्षियों के बीच बड़बौंच का आनंद लेना न भूलें। ग्वालदमख् एबट माउंट, शीतलाखेत और नागथात के शांतिपूर्ण माहौल मन को शीतलता प्रदान करने वाले स्थल हैं। उत्तराखण्ड के ये छिपे खजाने अनोखी यात्रा पर जाने के लिए आमंत्रित कर रहे हैं। निश्चित रूप से आप यहां की शांति और प्राकृतिक सुंदरता के कायल हो जाएंगे। सच मानिए आप ऐसे स्थल पर पहुंच सकेंगे, जिनके बारे में आपने पहले कल्पना तक नहीं की होगी। इन स्थलों की यात्रा आपको जीवनभर याद रहने वाला अनुभव देगी।

उत्तराखण्ड पर्यटन विकास बोर्ड के सीईओ सचिन कुर्वे कहते हैं कि उत्तराखण्ड के ये कम ज्ञात गंतव्य राज्य की समृद्ध सांस्कृतिक विरासत की झलक पेश करते हैं। उदाहरण के लिए कार्तिकेय स्वामी मंदिर, उत्तराखण्ड के सुंदर परिदृश्य में बसा हुआ है। यह पारंपरिक वास्तुकला और आध्यात्मिक महत्व को दर्शाता है। राज्य के कोने-कोने में हम लीक से हटकर ऐसे गंतव्यों को बढ़ावा दे रहे हैं और हमारा उद्देश्य पर्यटकों को अद्वितीय अनुभव प्रदान करना और स्थायी पर्यटन विकास को बढ़ावा देना है।

उत्तराखण्ड को 'देवताओं की भूमि कहा जाता है। प्रदेश अपने में न केवल लुभावनी प्राकृतिक सुंदरता को समेटे हुए है, बल्कि यात्रियों को होमस्टे के माध्यम से स्थानीय संस्कृति और परंपराओं का अनुभव करवाने का एक अनूठा अवसर भी प्रदान करता है। ऐसे में, 'दीनदयाल उपाध्याय गृह आवास योजना' के अंतर्गत चल रहे होमस्टे से न केवल स्थानीय लोगों को स्वरोजगार मिला है, बल्कि यह राज्य की अर्थव्यवस्था में भी महत्वपूर्ण योगदान दे रहा है। उत्तराखण्ड सरकार द्वारा शुरू की गई 'दीनदयाल उपाध्याय गृह आवास योजना' के अंतर्गत होमस्टे व्यवस्था को गति मिली है। इस योजना का उद्देश्य स्थानीय लोगों को आय का एक स्थायी स्रोत प्रदान करके उनकी आर्थिक स्थिति का उत्थान करना है। योजना के तहत स्थानीय लोगों को अपने ही घरों पर घरेलू और विदेशी पर्यटकों की मेहमानदारी का अवसर मिलता है। इस तरह से पर्यटकों को उत्तराखण्ड के देशी व्यंजनों, स्थानीय संस्कृति, ऐतिहासिक विरासत, पारंपरिक पहाड़ी जीवन शैली और कला को समझने का अवसर मिलता है। इसके माध्यम से वे ऐसे स्थलों तक पहुंच रहे हैं, जिनके बारे में उन्होंने पहले सुना नहीं था।

वर्तमान में उत्तराखण्ड पर्यटन विभाग के साथ लगभग 5000 पंजीकृत होमस्टे सूचीबद्ध हैं। इन होमस्टे में हिमालय की गोद में बसे आरामदायक कॉटेज से लेकर लकड़ी से बने पारंपरिक घर तक शामिल है, जो इस क्षेत्र के वास्तुशिल्प को दर्शाती है हर होमस्टे पर्यटकों को आरामदायक और सातिरदारी करने वाला माहौल प्रदान करता है, जिससे वे स्थानीय समुदाय के साथ जुड़ सकते हैं।

उत्तराखण्ड में होमस्टे के विकास से प्रदेश की अर्थव्यवस्था पर सकारात्मक प्रभाव पड़ा है। ये आवास पर्यटकों को न केवल अनूठा और व्यक्तिगत अनुभव प्रदान करते है, बल्कि रोजगार के अवसर पैदा करके स्थानीय व्यवसायों को बढ़ावा दे रहे हैं। इसके परिणाम स्वरूप उनके योगदान से स्थानीय अर्थव्यवस्था मजबूत हो रही है। होमस्टे मालिक अक्सर आसपास के कारीगरों, किसानों और सेवा प्रदाताओं के साथ सहयोग करते हैं। इससे स्थानीय आपूर्ति श्रृंखला और सतत विकास को बढ़ावा मिलता है।

होमस्टे ने राज्य से पलायन को रोकने में महत्वपूर्ण भूमिका निभाई है। कहना होगा कि इस योजना ने आमदनी को बढ़ाने के साथ ही स्थानीय लोगों को पलायन न करने व अपने समुदायों को बढ़ावा देने व विकास करने का ठोस आधार प्रदान किया है। इससे राज्य की सांस्कृतिक विरासत और परंपराओं को संरक्षित करने में मदद मिली है। इससे आने वाली पीढ़ियां अपनी जड़ों से जुड़ी रहेंगी।

उत्तराखण्ड में होमस्टे की लोकप्रियता अपने आप में इस बात का प्रमाण हैं कि यह योजना यात्रियों के दिल को छू रही है। पर्यटक केवल आरामदायक आवास की तलाश नहीं कर रहे होते हैं, बल्कि वे नए गंतव्य और लोगों के साथ आपसी संबंध को भी मजबूती देना पसंद कर रहे हैं। होमस्टे योजना दरअसल में प्रदेश के स्थानीय तौर-तरीकों से जुड़ने के साथ ही पर्यटकों के मन में राज्य की एक नई छवि प्रस्तुत कर रही है। वे यहां रहकर खुशनुमा यादें लेकर वापस जा रहे हैं।

प्रधानमंत्री नरेन्द्र मोदी का कहना है कि ग्रामीण इलाके पर्यटन के केंद्र बन रहे हैं। साथ ही हर पर्यटन स्थल अपना खुद का राजस्व मॉडल भी विकसित कर सकता है। हमें ग्रामीण अर्थव्यवस्था को आगे बढ़ाने के लिए होमस्टे और छोटे होटलों जैसे व्यवसायों को बढ़ावा देने की आवश्यकता है

उत्तराखण्ड होमस्टे योजना के साथ ग्रामीण पर्यटन का निरंतर विकास

सरकार के प्रयास से उत्तराखंड में पर्यटन योजनाओं के माध्यम से स्थानीय आबादी को रोजगार मिले हैं। साथ ही, इस पहल से राज्य की अर्थव्यवस्था में भी मजबूती आई है।

अनदेखे रोमांच का अद्वितीय संगम

उत्तराखण्ड दुनियाभर के रोमांच खेल प्रेमियों को अनूठा अनुभव प्रदान करता है

देश में जब रोमांच पर्यटन की बात आती है, तो उत्तराखण्ड अपने विविध परिदृश्यों और रोमांच प्रेमियों का पसंदीदा स्थान बन जाता है। यहां रोमांचक गतिविधियों की कोई कमी नहीं है। आपको यहां जोश से भर देने वाले कई खेल खेलने को मिल जाते हैं और यही कारण है कि दुनियाभर के रोमांच प्रेमियों के लिए यह राज्य असाधारण अनुभव प्रदान करता है। कई सैलानी तो केवल इन गतिविधियों में शामिल होने के लिए ही उत्तराखण्ड आते हैं। एडवेंचर के दीवानों के लिए यहां रिवर राफ्टिंग, ट्रेकिंग, हाइकिंग और बंजी जंपिंग समेत कई तरह के रोमांचक खेल और गतिविधियां मौजूद हैं।

ट्रैकिंग और हाईकिंग

ट्रैकिंग और हाइकिंग के माध्यम से आप उत्तराखण्ड के सुदूर जगहों की यात्रा कर सकते हैं। यहां पारंपरिक रुपकुंड ट्रैक पर ट्रैकिंग का आनंद लिया जा सकता है, जहां हरे-भरे जंगल और घास के मैदानों के बीच या फूलों की घाटी के बीच से होकर गुजरना सुखद अहसास दे सकता है। लंबी सैर करने वालों के लिए केदारकांठा और गोमुख-तपोवन ट्रैक जीवन भर के लिए यादगार अनुभव दे जाते हैं।

बंजी जंपिंग

विश्व की योग राजधानी के रूप में भी पहचाना जाने वाला ऋषिकेश अपने जोशीले रोमांच के लिए भी जाना जाता है, क्योंकि यहां पूरे देश में सबसे ऊंची बंजी जंपिंग में साइट है। गुरुत्वाकर्षण को चुनौती देने की इच्छा रखने वाले रोमांच प्रेमी शानदार हिमालय पहाड़ियों के बीच बंजी जंपिंग करने के लिए यहां आते हैं।

स्कीइंग

चमोली जिले में स्थित औली को स्कीइंग प्रेमियों के केंद्र के रूप में जाना जाता है। दूर तक बर्फ से ढकी पहाड़ी ढलानों के साथ रोमांच प्रेमी इसके शीतकालीन वंडरलैंड से रास्ता तय करते हुए औली की यात्रा करते हैं। यह शानदार स्थल राष्ट्रीय शीतकालीन खेलों की मेजबानी के लिए भी प्रसिद्ध है, जहां एथलीटों को अपनी ताकत दिखाने का पूरा मौका मिलता है।

रिवर राफ्टिंग

उत्तराखण्ड की नदियां केवल राज्य की सुंदरता को ही नहीं बढ़ाती हैं, बल्कि व्हाइट वॉटर राफ्टिंग के प्रेमियों में जोश भर देती हैं, जो यहां रोमांच के लिए आते हैं। नब पर्यटक सफेद पानी में राफ्टिंग के माध्यम से रैपिड्स पर विजय प्राप्त करते हैं या गंगा, टोंस और अलकनंदा नदियों में एक शांत कैनोइंग या कयाकिंग के दौरान पानी पर नौका चलाते हैं, तो निश्चित रूप से उन्हें अलग रोमांच का अनुभव मिलता है।

पैराग्लाइडिंग

रोमांच प्रेमी यहां आसमान की सैर भी कर सकते हैं और पैराग्लाइडिंग से उत्तराखण्ड की भव्यता का आनंद ले सकते हैं। नैनीताल, मुक्तेश्वर, या पिथौरागढ़ के मनोरम स्थानों से वह आसमानी उड़ान भरकर शानदार हिमालयी इलाकों का नजारा भी ले सकते है। रोमांच के अलावा, उत्तराखण्ड के पर्यटन क्षेत्र ने स्थानीय निवासियों के लिए समृद्धि भी लाई है और यहां रोजगार की संभावनाएं सृजित की हैं। इससे रोमांच पर्यटन बुनियादी ढांचे के विकास को भी बढ़ावा मिला है।

#ExploreUttarkhand

Prof. Himanshu Roy

Judiciary and Secularisation of Polity: A Critical Review

Judiciary played a defining role in the secularisation of our polity. An analytical study

Judiciary has played a defining role in the secularisation of the polity in independent India. The interpretation of the constitution, of the constitutional amendment acts or of the laws of the election commission, and of other institutions have propelled the separation of politics and religion; it has defined the essentiality of religion and has restrained it to private domain. If the judicial decisions of the past seven decades are analyzed, one may tend to agree with this conclusion. To substantiate it, few notable judgments of the Supreme Court may be discussed here.

Religion and Rituals: A Partial Break

To begin with, the Supreme Court had declared in 1975, while interpretating the issue of religious conversion in Stainislaus Rev. V. State of M.P. [AIR 1975 MP 163(166)] under the Right to Freedom of Religion of the fundamental rights that "since freedom belongs to every person the freedom of one cannot encroach upon a similar freedom belonging to other persons. Hence, punishing forceable or fraudulent conversion could not be violative of this article" (Art. 25)[1]. It, however, also interpreted this article as the right of a person to get converted into another religion or the right of the state to prohibit deleterious religious practices. The state can direct the police to guard shrines or exhume the graves to check crimes. The basic premise was to separate secular domain from religious rituals and faith. It reduced the religion to precepts of the community and stopped their ritualistic observances as it's an integral part. The problem, however, was that the Court did not break away from the inherited concept of treating religion as communitarian. It did not treat religion as a case of individualistic belief. Following the Constituent Assembly, it continued with the perception of the religion as bunch of idealized precepts of the community. The focus was on the community and their ideal precepts rather than on the individuals and their practices or on their freedom and on their perception of the religion. It continued with the practice of 'deciding the question as to whether a given religious practice is integral part of a religion or not by the community following the religion or not'.[2] In other words, it

decided the religious issue on the premise that a particular aspect of it is being followed by its religious community or not. The court treated the citizens as a separate religious community rather than as secular citizens of varying individual faiths. It was a half way house between the feudal tradition of the past and the avant garde secular stances in the contemporary times.

Separating the Secular and Religion

Another interesting role of the judiciary has been to stop many deleterious practices of the society, which were, earlier, performed as an integral part of the religious rituals. This has helped in reforming the religion and the society. For instance, in Qureshi Mohd. Hanif V. State of Bihar [(1975) SCR 629 (CB): AIR 1958 SC 731] the Court pronounced that 'the sacrifice of a cow (Qurbani) is not an obligatory… act…(of) the Muslim religion'[3] as part of Id Ul Adha. It is not an essential part of the religion which was obligatorily being enacted till then. In Ismail Faruqui V. Union of India, the Court had to direct them not to squat at every place for namaz. In 1988, it declared that 'there is nothing in the Muslim religion prohibiting photographs of women to be taken for electoral purposes.' In other cases, like prohibiting sati, devdasi, etc., it empowered the state to interfere and regulate the religious practices which were contrary to public health and morality as enjoined by the spirit of the Constituent Assembly. It delineated the essential religious practices from those which were not, and empowered the state to interfere only in nonessential religious practices particularly in those affairs which were related with the administration of religious matters classified by the courts as secular activities. The courts adopted a novel doctrine of dividing the religious practices into two parts, the essential and the non-essential, and treated the essential as part of religious practices, and the non-essential as deleterious. Hence, it was debunked from being part of an idealized religion. It declared that the legal rights of a person exist independent of religion and the rights related with the religion depend on their being the essential parts of the religion. The non-essential part cannot be considered as the religious rights. While the legal rights are individualistic, the religious rights are collective. The court argued that the religious rights of an individual was derived from the religious communities. It reinstated the legal, secular right of the individuals free from the religious encroachments, and segregated and determined the religious rights of the community. It deleted their nonreligious, non-essential parts. It recognized the religious freedom of religious communities but asserted the rights of the individual. The Shah Bano judgment of 1985 was one such case which overruled the Muslim Personnel Law to upheld her right to maintenance.

In another category of issues related with the development of infrastructure the Courts have partially removed the hurdles raised under the banner of religion. In Azzez Basha, S. V. Union of India [AIR SC 662 (674): 1968 (1) SCR 833] and in such kind of cases, it provided the government the right to acquire property owned by religious communities or the right to get the property administered as per the law.

In other words, the Court has allowed the state to interfere in the acquisition and management of property in case of dispute, or for the developmental projects, or in the cases of their inefficient, corrupt functioning. But it could not transcend the Constitutional Amendment [44th Amendment Act 1978, Art.30 CI (1a)] which is discriminatory in favour of minorities. The new proviso state that "a religious denomination has no fundamental right to compensation, if it belongs to majority community but such right is guaranteed to it as a fundamental right if it belongs to an educational institution established and administered by a minority religious denomination".[4] This proviso should have been declared null and void as it was against the spirt of Constituent Assembly. It was against the spirit of the constitution which did not bear such discriminatory provision in its original form in 1949. The courts during hearings in numerous cases have spoken in favour of such spirit of secularisation, and against the divisive trend of minority-majority politics. But here, in this specific case (44th Amendment) and in many such cases like, for examples, as in the St. Stephan's College V. University of Delhi [(1992) 1 SCC 558(para 59): AIR 1992 SC 1630: 1991 supp (3) SCR 121], they (Courts) had pronounced judgements which were discriminatory in favour of minorities. There is no doubt that the Courts have rejected the growing tendencies among different sects petitioning them to be recognized as minority religions particularly, among the Hindus; yet, biased judgements in favour of minority religions have been pronounced on many occasions. In the St. Stephan's case, the Supreme Court, by majority judgement "held that preference given to minority candidates in their own institutions is violation of Art. 29 (2). Such preference is an institutional discrimination on the forbidden ground of religion". However, the Court proceeded to say that "minority educational institutions are free to adopt their own selection procedure for admission of students and permitted them to admit 50 percent of their own community".[5] They were also exempted from seeking mandatory approval of the universities for the appointments and dismissals of members of governing bodies. The universities were further directed not to interfere in the appointments of their governing bodies or in their functioning. The universities could only interfere in the matters of qualifications of students in their admissions, in the qualification of teachers in their appointments or in their service conditions. Except for these issues, the power of the universities was restricted. The Court, thus, kept this one area open for perpetuation of minorityism. Such judgements have strayed away from the constitutional objective which had reasoned that minority institutions should not be discriminated against in the backdrop of being harassed in the past. Now, the opposite has happened. The court judgements have opened up the flood gates for perpetuation of minorityism, and one of the eminent medium is the minority educational institutions. The judgement has reversed the earlier discriminatory practices of one kind by another. It has aggravated the discriminatory practices conducted by the minority institutions. It was inevitable because an

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educational institution founded on the premise of religious minority has the inbuilt tendency to discriminate against others as it is not based on the philosophy of universal law and citizenship. It perpetuates the religious division against the majority community. It differentiates, rather than integrates itself, with the majority. It perpetuates the religious difference which have evolved over centuries with a different world outlook. No doubt, an individual, and a community has the freedom to pursue their own religious beliefs in private but a public law that discriminates on religious grounds is regressive. It has differentiated under the principle of protective- compensatory discrimination to favour 'disadvantaged groups' including minority religious groups.

Politics and Religion

In the political domain, it separated the religion from the politics which was an entangled part of polity in postcolonial India. The religion, earlier, was treated as a moral precept to cleanse politics. The court was against such kind of politics which mixed up the two that subsequently degenerated into lumpenised acts during elections. In the Bommai case, for example, the Supreme Court held that an individual or "a political party will forfeit its right to run a government if it mixes up religion with politics… Any political party which sought to capture or share State power should not espouse a particular religion; for, if that party came to power the religion espoused by it could become the official religion and all other religions could come to acquire a secondary or less favorable position".[6] It reinforced the argument that the basic objective of the candidates or parties in politics is to essentially administer the people rather than to administer the religious beliefs of the individuals and communities. For, a party or an individual in politics under a secular state, the public duty is 'to secure the good of all citizens irrespective of their religious beliefs or practices'. The use of religion for political purposes means disturbing the equality of a status bestowed to religions under the framework of constitution. In another words, it initiates preferences for and discrimination against religions, and breaks the secular paradigm. It is, therefore, communal and illegal. The Court, hence, asked every political party to abide by the constitutional principles of secularism and applied it by disqualifying numerous elected people's representatives who did not pay heed to the judgement, who had won the elections seeking mandates on religious plank, resulting into instilling fear among political parties and candidates who tempt to use religion for electoral, political purposes. At least, the Court's judgments have minimized the rampant use of religion for political gains and have played catalytic role in the separation of religion from politics. The separation, whatsoever, was limited in nature. The Court was only against a phenomenon in which a party favoured a particular religion. It was not against a process in which parties are linked with religion or favour reforms It could have been far better if the Court could have ruptured their linkages. Nonetheless, even the limited break was a welcomed step.

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It may be stated here that the constitution has not defined the term minority; it only referred language and religion as being minority. The Supreme Court, subsequently, specified

the term as "any community which is numerically less than 50 percent of the population of the state concerned"[7] if it is a state law; it may not constitute a minority in relation to whole of India. Under the central law, it must be a minority in whole of India. In nutshell, education is one area where the court judgements have aggravated the biased administrative and admission policies of minority institutions. It has emboldened the perpetuation of minorityism, instead of secularisation of their acts. Their acts, such, for example, as their curriculum are yet to be completely secularised. In most government recognized institutions, it has been secularised. But in Madrasas, which are partly aided and recognised by the governments in many states, such for example, as in Bihar, Uttar Pradesh, it has not yet been secularised. Legally, it falls under religious education. The government's aid and recognition, as per Gandhi's suggestion,[8] should have been stopped or the Court could have declared it null and void. But none of it has been completely achieved till date.

The religious communities seek to perpetuate their inscriptive identities; and for it, they demand related public laws under the garb of democratic rights and freedom of choice, similar to the laws of medieval society. In the medieval society, when the unequal differential laws were operational for subjects of different social ranks, there was democratic movements for the uniformity of laws. When the demand for application of Uniform Civil Code is made, there is opposition against it under different pretext. It has been internalised in our beliefs and deeds that minority rights are integral part of secularism which were constitutionalised by the colonial administration in 1909, and which were accepted by the Congress in 1916. The Constituent Assembly, dominated by the Congress, did not purge this idea; it only reduced the scale of its operation. It knew that minority rights lead to 'a certain degree of separation' and are contrary 'to the conception of a secular democratic state' yet it persisted with these rights in the post-partition period.[9] The fear of unknown, in case, if the UCC is applied, and the focus on the integration of principalities as the primary agenda kept the Congress leadership engaged.

The deepening of democracy, the electoral politics, and the market economy in post- partition India has created two contradictory paradigms: one, there is a political demand for larger number of minority rights and the perpetuation of the existing ones; then, there is opposition to the UCC; these are considered as sacred corner stones of secularism; however, it has created the minority- majority binary and social fissures; second paradigm, but the opposite of the first, is that the market economy has secularised the society over the decades. While the politics has widened the religious fault lines, the economy has worked on the different binary of business and labour

Impact

The deepening of democracy, the electoral politics, and the market economy in post- partition India has created two contradictory paradigms: one, there is a political demand for larger number of minority rights and the perpetuation of the existing ones; then, there is opposition to the UCC; these are considered as sacred corner stones of secularism; however, it has created the minority- majority binary and social fissures; second paradigm, but the opposite of the first, is that the market economy has secularised the society over the decades. While the politics has widened the religious fault lines, the economy has worked on the different binary of business and labour. The impact of first and second paradigms, on each other leaves a mixed imprint on society and politics. What has resulted out of it are, again, two contradictory trends: first, there is demand for the end of the minority status to

Jamia Milia Islamia, Aligarh Muslim University, etc., and the abrogation of Art. 30CI (1A) and other such kinds of discriminatory laws; the second is the demand for application of Sachar Committee Report. While in the first case, the issue is the abolition of religious laws which are discriminatory; in the second case, it is just the opposite, the demand for expansion of differential laws. The objective, as claimed, is to alleviate the economic lives of the minorities, largely identified with the Muslims, to instill a sense of security in them for the 'holistic national development'. This has boomeranged. The success of the BJP over the decades reflect it. Nonetheless, the political process which was initiated by Sayed Ahmed Khan demanding political parity with the Hindus,[10] after 1885 when the Indian National Congress was formed, continues to haunt us till date.

Conclusion

It may be reiterated here that in modern democracies, its the universal laws which are the standard operative principle of governance. For, the modern democracies have emerged against the medieval monarchies operating with the differential laws. There were unequal laws, both civil and criminal, for the subjects which were applicable as per the social- economic status of the subjects.

Secularism, thus, in India continues to be partially a legacy of colonial rule. Its basic tenets were non-theocratic state, uniform criminal laws, constitutional recognition of religious minorities and uniform civil laws (excluding marriage and succession). In 1946, when the Constituent Assembly was convened under the process of transfer of power, it was commonly agreed upon that such tenets will be the mode of governance. It was also agreed upon that the state in India shall not be anti-religion; rather it shall treat every religion equally while recognizing religious minorities. This tenet differentiated Indian Secularism from that of the West. In the objective resolution, it was stated that 'adequate safeguards should be provided for minorities' which sanctified the existence of religious communities. The idea of religious community continues to haunt the polity. Ambedkar was in favour of a secular, uniform civil code. He had argued that Penal Code, Criminal Procedure Code, Law of Transfer of Property, Registration Act, Limitation Act, Evidence Act, Sarda Act and various other acts had already secularised the polity and the economy. Only the educational right and family rights were left over, which are the "little corners", which need to be secularised. The partition of the country forced the Congress leadership to leave these "little corners" unsecularised, in the form as it was existing then.[11] It left it for the future legislature to secularize the related laws (Uniform Civil Code). The affirmative observation of the Supreme Court in the past on the UCC, hopefully, will facilitate the secularisation of this 'little corner' once the forthcoming legislative measure, the UCC, will be enacted and notified.

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1. For details, see D.D. Basu, *Shorter Constitution of India*, 13th ed., Wadhwa and Company, Nagpur, 2001, p. 328.
2. *Ibid.*
3. *Ibid.* 331.
4. *Ibid.* 341.
5. *Ibid.* 346-347.
6. *Ibid.* pp. 6, 336.
7. *Ibid.* 349.
8. See M.K. Gandhi *Collected Works*, Vol. 85, p. 328; D.G. Tendulkar, *Mahatma*, Vol. 7, 1953, p. 451. Gandhi was replying to questions and suggestions of Christian Missionary in Sep. 1946, and to Zakir Husain in 1947.
9. *Constituent Assembly Debate*, Vol. 8, p.311.
10. *Documents of the Communist Movement in India*, Vol. 5, National Book Agency, Calcutta, 1997, p. 190.
11. For details, see Himanshu Roy, *Secularism and its Colonial Legacy in India*, Manak, New Delhi, 2009, Chapter 4.

Anshu Kumar

Public Interest Litigation
Ad-hocism and Absence of Procedures in the Judiciary

Public Interest Litigations, with the flow of time, changed into Publicity Interest Litigations. An analytical study of the circumstances, how and why it happened

This research paper provides a critical analysis of the intersection between the judiciary and democracy in India, focusing on the pivotal role of Public Interest Litigation (PIL). It has argued that there are broad guidelines to be followed for entertaining PIL received but there is an absence of precise defined procedures to be followed for filing and adjudicating it which gives judiciary considerable discretions resulting in inconsistent rulings. Through an examination of landmark cases and legal precedents, it evaluates the impact of PIL on strengthening democratic principles, ensuring accountability but at the same time how it has been misused to give respite to the vested interests and thus impact our national security and therefore it has metamorphosed into publicity interest litigation. It has used the doctrinal legal method to study the various judgements and neo-institutional approach to study the institutions of the judiciary. Although the concept of PIL emerged in United States but this paper tries to situate the concept of PIL in Indic or Bhartiya Context. It will show through different case studies that how it has impacted the separation of power which is the basic structure of the constitution. In the vibrant tapestry of Indian democracy, PIL has emerged as a potent instrument for social justice and reform but at the same time the expansive scope of PILs in the name of 'legislative vacuum' sometimes results in judicial overreach, with judiciary assuming roles more suited to the executive or legislative branches. This can lead to policy paralysis and undermine the democratic mandate of elected representative and therefore deviating from the pristine principle of separation of power. Furthermore, the ad-hoc nature of PIL proceedings may bypass procedural safeguards and undermine natural justice, raising concerns about due process and the rule of law. Additionally, the reliance on PILs to address systemic issues may deflect attention from broader structural reforms needed within the legal and political systems.

Keywords: Judiciary, Democracy, Judicial Populism, PIL, Separation of Power.

Introduction

In recent decades, the Indian higher judiciary has assumed a significantly

prominent position in India's public debate. Following the Internal Emergency of 1975-77, both the Supreme Court and the state High Courts have gained significant influence as judicial institutions. The primary mechanism by which these judicial powers have been implemented is the jurisdiction of Public Interest Litigation (PIL). The many instances will demonstrate how PIL provides the appellate courts with significant freedom in procedural matters, enabling them to assume positions of excessive power. There is increasing worry among people about the excessive influence of the court in a democracy, particularly about the lack of accountability in Public Interest Litigation (PIL). This situation poses a significant threat to democracy. V. R. Krishan Iyer coined the phrase 'judgocracy' (Iyer, 2003), while Ran Hirschl introduced the term 'juristocracy' (Hirschl, 2004).

One possible rationale for judicial activism is that courts have a duty to guarantee that justice is served. During this procedure, the boundaries between the legislative, the executive, and the judiciary are crossed, resulting in a violation of the theory of separation of powers. The Convention of 1787 created the theory of the separation of powers with the intention of preventing the exercise of arbitrary authority, rather than to enhance efficiency. The purpose of this separation arrangement was not to prevent friction, but rather to use friction as a method of protecting people against dictatorship. An unwaveringly autonomous court is an essential need for a democratic society. The topic at hand is whether the dominant influence of a single institution is beneficial for a democratic system.

Judicial Populism: Power Game or Making Justice Accessible?

The conflict between several branches of government does not arise from either clarity or ambiguity. It is a manifestation of the quest for power, where one faction oppresses another when it has strength. The court does not have the responsibility to fill in any missing parts of statutes, since the act of creating laws is solely within the jurisdiction of the legislature. Although 142 of the Constitution empowers the Supreme Court to pass any decree or order necessary for doing complete justice in any case or matter pending before it. It provides them significant tools for judicial intervention. However, in *Supreme Court Bar Association vs Union of India* (1998), the apex court emphasized that the powers under Article 142 are supplementary and shouldn't be used to override substantive laws. The court stated that these powers are curative in nature and should not be used to bypass statutory provisions. The occurrence of conflict between the legislature and the judiciary is neither uncommon or recent. The introduction of Public Interest Litigation (PIL) has provided new opportunities for the underprivileged. However, it has also been said that PIL has allowed the court to expand its authority or jurisdiction in the name of the 'people'. It is a trend that discussions of populism generally focus on politics but this article identifies a related phenomenon in law with respect to PIL.

Following the period of Emergency, the judiciary,

which was in a state of peril, became aware of the potential threat it faced. As a result, it considered obtaining authority directly from the people via Public Interest Litigation (PIL). The judges acknowledged their powerlessness in the face of the government's ability to interfere in the appointments in the courts. Consequently, they opted to contact individuals who had the potential to challenge and overthrow the autocratic government. The court initiated efforts to provide assistance to individuals from various backgrounds, including as construction workers, pavement dwellers, and agriculturists, in an attempt to establish a positive perception of its commitment to helping those in need. Previously, the judiciary often made decisions that were not in favour of the common people and instead favoured the interests of a specific social class. However, now they have decided to present a different image. This was achieved through the use of Public Interest Litigation (PIL), which Justice Hidayatullah preferred to refer to as Social Action Litigation (SAL).

Nevertheless, once the court had the necessary authority, it regressed, severely compromising the interests of the general public. Currently, it shows no hesitation in replacing industries and dismissing workers, seeing education as a business, and depriving labourers, street vendors, and rickshaw pullers of their right to make a livelihood. In the case of *Lingegowda Detective and Security Chamber Pvt. Ltd v. Mysore Kirloskar Ltd*, the Supreme Court affirmed the decision to refuse minimum pay to workers based on the argument that this particular field of labour was not officially recognised under the Minimum pay Act. This stands in stark contrast to its ruling in the *Asiad Workers' case*, when it determined that the failure to pay construction workers minimum wages constituted a breach of Article 23 of the Constitution, which prohibits human trafficking and forced labour.

Public Interest Litigations (PILs) were first introduced in the United States (US) as a means to reduce the strict requirements for locus standi and facilitate the pursuit of justice. In early 1962, Clarence Earl Gideon wrote a letter to the US Supreme Court. The message was written in pencil on ruled pages. It was seen as a petition that introduced new opportunities for legal action regarding public complaints. It significantly closed the gap between the country's highest court and the poor, underprivileged citizenry

Genesis of Public Interest Litigation

Public Interest Litigations (PILs) were first introduced in the United States (US) as a means to reduce the strict requirements for *locus standi* and facilitate the pursuit of justice. In early 1962, Clarence Earl Gideon wrote a letter to the US Supreme Court. The message was written in pencil on ruled pages. It was seen as a petition that introduced new opportunities for legal action regarding public complaints. It significantly closed the gap between the country's highest court and the poor, underprivileged citizenry.

The Inception of PIL in India

Justice V. R. Krishna Iyer developed the idea of Public Interest Litigation (PIL) in the *Mumbai Kamgar v. Abdulbhai* case in India. Today, Public Interest Litigation (PIL) is recognised in India as a significant aspect of poverty jurisprudence. It serves as a powerful tool to prevent the executive from acting arbitrarily and to motivate an inactive government. The Supreme Court has unequivocally established that any person who is motivated by a genuine concern for the public good has the right to seek legal remedy on behalf of those who have experienced a legal harm but are unable to access the courts due to poverty or other limitations. Therefore, the conventional notion that only an individual who has experienced a violation of their rights may

initiate legal proceedings is no longer applicable. Although there is compilation of guidelines to be followed for entertaining letters/petitions received still if on scrutiny of a letter petition, it is found that the same is not covered under the PIL guidelines and no public interest is involved, then the same may be lodged only after the approval from the Registrar nominated by the Hon'ble the Chief Justice of India. Here the scope of judicial populism opens up.

Upendra Baxi argued that in the United States, Public Interest Litigation (PIL) was financially supported by both the government and private foundations. PIL primarily emphasised public involvement in government decision-making rather than focusing on governmental repression or abuses. However, PIL was the most significant legal entitlement that the people of India received after gaining independence. It was widely recognised as a transformative and impactful movement. (Mukhoty, 1985) Justice Bhagwati contends that it is important to remember that process is subordinate to justice, and the pursuit of justice should never be hindered by procedural formalities. The court would readily and without any moral doubts disregard the technical norms of process in order to use its authority to dispense justice and consider the letter from the public-minded citizen as a formal petition and take action accordingly. The court's newly adopted proactive strategy caused a division within the legal community and perplexed several attorneys and justices who believed it contradicted the constitutional framework. PIL is sometimes referred to be lawsuit driven by private, political, publicity, or twisted interests.

There has been a significant increase in the number of ideological litigants who have become advocates for the marginalised, and the courts have intervened to help them. In the instance of *Vishakha*, the court went so far as to issue directions to the Union government to establish a legislation to prevent sexual harassment of women at the workplace. It clearly breached the principle of the separation of powers. In the matter of *Bandhua Mukti Morcha*, it was declared that the right to life as stated in Article 21 included the right to live with dignity and without being subjected to exploitation. But it has been seen after 1991 post- liberalization that in the case of *Hemraj v Commissioner of police*, the PIL was filed to curtail goods traffic around Chattarpur in South Delhi but it was expanded to deal with proper handling of traffic and related problems in the entire city of Delhi. What this article tries to show that how through the regime of PIL judiciary tries to aggrandize its power. On May 17, 2006 there was massive crackdown on cycle-rickshaws in Delhi in the Hemraj case as well. It has been inferred from the jugdements that the nature of PIL changed from pro-poor to pro-capital after the structural adjustment of economy in 1991.

Supreme Court: A People's Court?

The Supreme Court saw itself as a last recourse for the marginalised and confused. The Court's deliberate focus on addressing poverty-related issues is particularly obvious in its public interest jurisprudence. This involves the establishment of a public interest jurisdiction, which effectively eliminated many procedural obstacles that hindered people from approaching the Court. PILs enable activists to directly present claims about basic rights to the Court on behalf of persons who lack the means to do so themselves. Throughout the last several decades, the Court has had extensive power to provide remedies for various socio-economic injustices under its PIL domains.

However, critics of the Court argue that starting from the 1990s, the Court has deviated from its dedication to safeguarding the rights of marginalised groups. On the contrary, several lawyers and legal experts see the Court as favouring the concerns of large corporations, while neglecting to prioritise the needs of marginalised communities. According to Usha Ramanathan, a researcher, the poor and helpless no longer get support from the Court. (Ramanathan,

2014) What evidence supports the notion that the Court has become disinterested in safeguarding the welfare of the general public? Critics have highlighted the varying success percentages of various party types in litigation before the Supreme Court, specifically referring to which party tends to prevail more often when the Court renders a decision in a case. The decline in success rates among individuals filing specific claims based on their rights might be seen as an indication that the Court is becoming less accessible to the general public. This statement may have validity in some circumstances, particularly when examining the aforementioned studies that focus on instances such as Public Interest Litigations brought directly before the Supreme Court. However, information on a distinct category of cases known as special leave petitions (SLP), which constitute the bulk of the Court's workload, may provide a contrasting narrative about the Supreme Court.

This study suggests that the Supreme Court continues to serve as a court that represents the interests and concerns of the general public, at least in one interpretation of the word. Based on my examination of Supreme Court rulings, it is evident that the Court has a bias towards granting preferential treatment to the less influential parties involved in legal disputes, such as people rather than companies. My contention is that the Supreme Court's approach of functioning as a court for the general public by prioritising the common person's access to the court at the admission stage ultimately undermines their ability to seek justice.

There is a debate over whether the Court, although being referred to as a 'people's court', is really representative of the people it serves. Currently, the court functions as a platform for the public, granting tens of thousands of petitioners access each year and conducting tens of thousands of hearings annually. This remarkable accomplishment contributes to the Court's popularity and admiration both inside India and on a global scale. However, the Court's unwavering emphasis on maximising access may be causing more negative consequences than positive ones. Enhancing access to justice might be achieved by the court issuing explicit legal guidelines that inform the underprivileged about their rights in the subordinate courts.

There is a contention that the Court has the ability to exercise control over the number and kind of petitions it accepts. It should be emphasised that the Court has complete power to decide whether to accept or reject a petition. The absence of rules and procedures to regulate the Public Interest Litigation (PIL) is what contributes to the court's populist nature. Although there is compilation of guidelines to be followed for entertaining letters/ petitions received still if on scrutiny of a letter petition, it is found that the same is not covered under the PIL guidelines and no public interest is involved, then the same may be lodged only after the approval from the Registrar nominated by the Hon'ble the Chief Justice of India. The use of the 'pick and choose' paradigm, which allows some cases to bypass the normal queue and be scheduled for early hearing, also raises concerns over the Court's institutional objectives.

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An Unaccountable Power

The court has always recognised

the Chief Justice as *primus inter pares*, meaning they hold a position of first among equals on the judicial side. He is in the first position just because he is the most senior. Nevertheless, in terms of administration, the Chief Justice has several authorities as the leader of the institution, including the authority to choose the roster of cases. The use of the Master of the Roster power is not subject to any institutional or philosophical limitations. This power gives the Chief Justice significant authority to shape court results by allocating cases to certain judges. The judge's identity, personal beliefs, history, and training all have an impact on court results. Without any specific instructions on how the Chief Justice wields this authority, there is little transparency and oversight about the assignment of cases to judges. The petitions challenging the Master of the Roster authority expressed this issue. The four justices expressed their worry about the potential abuse of authority by the Chief Justice to accomplish desired results at the 2018 press conference.

The authority of the Master of the Roster poses a structural challenge for the court in at least two respects. Initially, the power is unrestrained and lacks clarity on the principles guiding its usage. Due to this factor, there is less responsibility for the utilisation of authority, which allows for the potential of abuse in specific instances, and for deliberate deployment to align with the Chief Justice's chosen results in a broader sense.

Trust in a democratic system is established via the principles of openness and accountability in the use of power, rather than blind belief in influential people. In the case of *Shanti Bhusan v. Supreme Court of India*, the petitioners argued for the establishment of institutional procedures to limit the authority of the Chief Justice. They contended that the authority to create a roster should rest with the collegium rather than only with the Chief Justice. In the case of *Asok Pande v. Supreme Court of India*, the petitioner advocated for the establishment of explicit standards and protocols to govern the allocation of cases. Setting guidelines for the use of discretion may both limit its scope and provide criteria for evaluating its use.

A concentration of authority within a single institution may lead to tyranny. Hence, it is essential to restrain and regulate power via its segregation. Aristotle posited that an effective government must be characterised by limitations. In his work "Spirit of Laws," the political philosopher Montesquieu advocated for the principle of the separation of powers as a means to ensure the existence of checks and balances. He originated the concept 'separation of powers', which subsequently became the fundamental ideas underlying the constitutions of contemporary democratic nations

The need for Balancing and Reigning in Power

A concentration of authority within a single institution may lead to tyranny. Hence, it is essential to restrain and regulate power via its segregation. Aristotle posited that an effective government must be characterised by limitations. In his work "Spirit of Laws," the political philosopher Montesquieu advocated for the principle of the separation of powers as a means to ensure the existence of checks and balances. He originated the concept 'separation of powers', which subsequently became the fundamental ideas underlying the constitutions of contemporary democratic nations. John Locke, in his work "Civil Government," divided the powers into two branches: the executive and the legislative. Montesquieu enhanced Locke's ideas by introducing the concept of a judiciary. Advocates of this ideology contend that it safeguards democracy by averting the emergence of tyranny inside the system. Thomas Hobbes was a critic of the dividing of sovereignty and opposed it. He believed that it was harmful to the well-being of the country if, at times of crisis, there was no

one capable of making a decisive choice. Concentrating power in a single individual or organisation is strongly opposed to democracy, which is a fundamental belief of the people in today's globe.

Nevertheless, the court's authority to conduct judicial review and its ability to entertain PIL have consistently sparked intense debates. The judiciary believes that it is obligated, as an impartial mediator, to invalidate any government or legislative action that is unfair or unlawful. However, the executive and legislature see this as interference in their jurisdiction. Overstepping might be unintentional, however it is not always the case. Over the last several decades, there have been numerous accusations that the judiciary has been encroaching on the domains of other branches of government, and expanding its authority and scope by interpreting laws in a certain manner. The distinction between judicial activism and judicial overreach is tenuous. It is essential for all branches of government, including the court, to uphold the boundaries that separate them. This contributes to a cohesive and efficient operation. Judicial review is the process of assessing the legality of laws and reviewing decisions made by the executive and legislative branches. This may occasionally lead to friction between the judiciary and the other branches of government.

Furthermore, although the authority of judicial review should be used to ensure responsibility, it should never be utilised to undermine the rightful function allocated to the other parts of government. Preserving the integrity and purity of the constitutional structure, which is based on the dispersal of sovereign authority, is of utmost importance. Nevertheless, many rulings of the court infringe upon the designated responsibilities of others, therefore exceeding the limits and disregarding the principles of the rule of law and judicial independence

Furthermore, although the authority of judicial review should be used to ensure responsibility, it should never be utilised to undermine the rightful function allocated to the other parts of government. Preserving the integrity and purity of the constitutional structure, which is based on the dispersal of sovereign authority, is of utmost importance. Nevertheless, many rulings of the court infringe upon the designated responsibilities of others, therefore exceeding the limits and disregarding the principles of the rule of law and judicial independence. The top court issued binding directives based on this rationale, which have the weight of law. Similarly, it renders legislative statutes null and unlawful on the same basis. The National Judicial Appointment Commission (NJAC) 99th Constitutional Amendment Act, 2014 was ruled null and void because it was found to be unconstitutional, despite having been enacted via the proper constitutional processes. The modification was declared to have significantly undermined the fundamental framework of the Constitution, which included the crucial aspect of judicial independence in the appointment of higher court justices.

The case of *Vishakha & others v. State of Rajasthan* issued directions to halt the occurrence of sexual harassment against women in the workplace. Additionally, it established its own set of regulations in the form of legislation, which would stay effective until a formal Act was enacted by the Parliament. While the action was a positive one, it infringed against the principle of separation of powers, since the authority to create laws lies within the jurisdiction of the Parliament. Although 142 of the Constitution empowers the Supreme Court to pass any decree or order necessary for doing complete justice in any case or matter pending before it. It provides them significant tools for judicial intervention. However, in *Supreme Court Bar Association vs Union of India* (1998), the apex court emphasized that the powers under Article 142 are supplementary and shouldn't be used to override

substantive laws. The court stated that these powers are curative in nature and should not be used to bypass statutory provisions. On several occasions, the Supreme Court not only infringed upon the authority of others, but effectively modified the Constitution itself. In the *Second Judges'* case, a constitutional bench consisting of nine judges, with two judges expressing dissent, assumed the authority to modify the constitution by taking away the executive's power to appoint judges to the higher judiciary. The rationale behind this action was the belief that in order to maintain the independence of the judiciary, the Supreme Court should have the ultimate authority in making these appointments. The message sent was that the Supreme Court was more focused on expanding its authority, akin to an autocrat, rather than preserving the principles of the legal system. To address the absence of legislation or legislation vacuum, the court assumes a duty that is not explicitly designated by the Constitution or which should be used sparingly.

The directions provided in the *Vishakha* and *Vineet Narain* cases are equivalent to issuing ordinances of indefinite duration, an authority that is typically reserved for the Governor or President under the constitution, but only at times when the House is not in session. In the *Wadhwa* case, the Supreme Court criticised the executive branch for taking on the responsibilities of the legislative. However, the Supreme Court itself has now taken on a similar role, even though its jurisdiction does not align completely with that of the legislature. Courts are not authorised to engage in change when it comes to interpreting the law.

In the *Second Judges*' case, the authority of appointing judges of the High Court and the Supreme Court was taken away from the executive. Similarly, the NJAC case was rendered null and invalid in a similar manner. Therefore, it is clear how the Supreme Court has disrupted the equilibrium of powers in its own benefit. The executive's authority was usurped in the guise of judicial independence. Therefore, the Supreme Court has disrupted the fundamental framework of the Constitution known as the separation of powers. Furthermore, it brings up the question of the validity of appointed judges, who lack democratic approval, nullifying legislation passed by democratically elected popular legislatures. The court has invalidated the NJAC, which was established by a legislature elected by the popular mandate and headed by Prime Minister Narendra Modi, on the basis that it violates the judiciary's independence. The Supreme Court disrupted the equilibrium of powers by seizing the authority to nominate justices.

Every institution must be restrained by the process of separation, which ensures a balance of powers. When there is an imbalance, individuals experience significant suffering since the more dominant institution tends to exhibit authoritarian tendencies. Although benign or benevolent despotism may provide some comfort, it is not preferable to actively encourage or support it. Constitutionalism, in its contemporary understanding, requires that the government operates rigorously in conformity with the provisions outlined in the constitution. Constitutionalism prevents arbitrariness by imposing restrictions on the authority of each branch.

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Critical analysis of PIL in India

The absence of institutional foundation and intimate connection with particular judges has made PIL susceptible to erratic shifts in ideology. The shift in emphasis from poverty in the early 1980s to environmentalism from the mid-1990s has been widely seen as the most notable development. The intrinsic volatility of populism in both cases allowed a significant change in priorities. The shift in priority regarding PIL lawsuits has not gone unnoticed. There is a substantial body of scholarship that has criticised it, particularly for displacing the poor from being the primary focus of PIL's discourse.

The two primary streams of criticism about PIL are the consequentialist critique and the institutional critique. The main point of the first perspective may be succinctly described by Upendra Baxi, who aptly refers to post-liberalization PIL as the 'Structural Adjustment of Judicial Activism' (Baxi, 1999). According to him, the transformations in the political economy during the 1990s resulted in alterations in the characteristics of PIL. Usha Ramanathan presents a more nuanced perspective on the same issue, highlighting that by the late 1990s, the marginalised and disadvantaged individuals for whose constitutional and legal rights were intended, did not get support from the court. (Ramanathan, 2002) Similarly, Varun Gauri offers a quantitative study of the beneficiaries of PIL. She said that the likelihood of success in legal cases involving basic rights is much greater when the person making the claim belongs to a privileged social group compared to when they belong to a marginalised group. This represents a significant shift in social dynamics, deviating from the initial purpose of PIL and the comparative success rates seen in the 1980s. (Gauri, 2011)

The precedent-setting PIL cases of the early 1980s deviated from the procedural restrictions of common law adjudication, such as standing, adversarial process, fact-finding, and court remedies. Most literature on PIL has mostly focused on the results, resulting in this formulation. The issue with PIL is twofold. Firstly, it is prone to generating unfair results due to the shifting ideological landscape

This line of reasoning often fails to acknowledge the significant consistency between these two stages of PIL in terms of the inherent procedural instability. The analysis repeatedly highlights the disruptions in PIL's trajectory, emphasising the significant shifts in its concentration on political economy. However, it fails to answer the essential inquiry: what makes the PIL courts so successful in promoting 'neo-liberalism' in India?

The precedent-setting PIL cases of the early 1980s deviated from the procedural restrictions of common law adjudication, such as standing, adversarial process, fact-finding, and court remedies. Most literature on PIL has mostly focused on the results, resulting in this formulation. The issue with PIL is twofold. Firstly, it is prone to generating unfair results due to the shifting ideological landscape. Secondly, it facilitates this process by undermining the judicial procedure. According to Weber, the consequence was a deliberate deviation from the essential foundations of contemporary law, which are characterised by logical and formal rationality. Rationality, in this context, refers to the act of making decisions based on criteria that can be applied universally to similar circumstances. Formality, on the other hand, involves using criteria for decision-making that are inherent to the legal system.

There are further strands of thought referred to as the institutional criticism of PIL. These strands identify issues with PIL not just in terms of its ideological changes, but also in its judicial procedures. This critique of PIL from inside the Supreme Court itself is an example of institutional criticism. The rationale for

the repeated unwillingness to formalise the jurisdiction of Public Interest Litigation (PIL) may be best elucidated by Pratap Bhanu Mehta's assertion that the legitimacy and authority of India's courts arise primarily from a lack of a well-defined and consistent constitutional framework. (Mehta, 2007)

Conclusion

PIL has played a significant role in strengthening democracy and the judiciary in India. It has empowered citizens to seek justice and accountability from the government and other institutions. However, there are also concerns about PILs being misused for personal, publicity, or political agendas leading to judicial overreach. Through PIL, judiciary has also aggrandized its own power and turning autocrat foraying into the domains of other institutions and thus breaching the separation of power which is enshrined in the Constitution. Weilding power through the means of PIL has turned the judiciary into a populist entities. It has been argued that there is no fixed procedures to admit or reject the PILs although there is guidelines related to it. It depends on the wisdom of the judges and thereby moving towards Platonic Philosopher King. It has been argued that there should be procedural limitation to admit or reject PILs, which will prevent the judiciary to overreach its jurisdiction and therefore uphold constitutionalism. It has also been suggested that there should be use of technology for computerised allocation of cases.

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The Beginning of the End of Colonial Laws

Ramanand Sharma

Prof. Manoj Sinha

We have still many laws having foundations alien to our land. It's a must to get rid of those. New criminal laws are just a good start

Laws reflect the essence of society, encapsulating its moral compass and cultural values. As Bhartiya society progresses, legal frameworks must also adapt, evolving in response to technological advancements while remaining anchored in the core identity of the populace. However, what happens when the foundations of these laws are alien to the land they govern? This question looms over our country, which, despite gaining independence in 1947 and adopting its constitution in 1950, continues to be bound by laws designed by a colonial power over 150 years ago. These enactments, originally crafted for the British Raj, prioritized control and punishment over justice[1], leaving a legacy that still haunts the present. Despite recently celebrating the 77th Independence Day, the specter of these outdated laws remains. The draconian nature of the criminal laws instills a subconscious fear of the police in the average citizen, undermining the sense of safety and trust that should characterize the relationship between law enforcements and the public. In rural Indian communities, the enduring prevalence of the babu culture and the bureaucratic hegemony persist, manifesting in a societal landscape where the arrival of a police officer evokes apprehension rather than a sentiment of security. This fear, deeply rooted in the colonial past, deters many from approaching the police, visiting police stations, or engaging with the legal process.

When we embraced the Constitution, drawing upon the finest principles from diverse legal systems worldwide—ranging from America and the UK to Canada—we also paid homage to our own heritage. The incorporation of images depicting Lord Rama on the pages of fundamental rights symbolizes the ethos of "Ram Rajya," underscoring our commitment to blending global ideals with our rich cultural legacy. Even Indian Supreme Court's motto, *Yato Dharmatstao Jayah* originates from Hindu epic the *Mahabharata* with the meaning that "Where there is Dharma, there will be Victory". It's interesting that India's criminal justice system hasn't been reformed more extensively on the similar lines, considering its roots lie in ancient Hindu Vedic texts and Hindu rulers. Although the nation's foundational law has been amended 106 times since its inception, the criminal laws have remained relatively unchanged.

Despite the formation of numerous committees tasked with proposing changes and recommending modifications to the criminal law, substantive reforms have yet to be realized, resulting in a modern criminal justice system heavily reliant on the English legal framework. Notably, these laws retain over 475 historical references in esteemed institutions such as the UK Parliament, London Gazette, Privy Council, and under the British Crown, highlighting the enduring imprint of colonial influence on our legal system.

Enactment of the new Trinity Acts

Finally, in December 2023, following four years of extensive discussions with various levels of government, legal experts, and academic institutions, our parliament passed a trinity of criminal bills. The impetus for this comprehensive reform stems from a critical recognition of the existing criminal law's colonial legacy and these substantial revisions mark a significant step towards the "decolonization" of our legal framework. While tabling it in the Parliament, the home minister Amit Shah said that "..the Soul, body, and idea of the new three criminal laws are pure Bharatiya.[2]" The recent enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and Bharatiya Sakshya Adhiniyam (BSA), 2023 represents a significant transformation of India's criminal justice system. These new laws built for the modern *aatmnirbhar Bharat*, supersede the Indian Penal Code (IPC), 1860, the Criminal Procedure Code (CrPC), 1973, and the Indian Evidence Act, 1872, and aim to expedite justice delivery while acknowledging the digital era. The new trinity of acts aims to consolidate legal provisions, streamlining enforcement mechanisms and enhancing clarity concerning the application of criminal offenses. Simultaneously, these acts strive to create a more citizen-friendly legal framework, fostering trust in the system while ensuring accountability for law enforcement agencies.

In striving for the efficient operation of a criminal justice system, numerous indispensable institutional foundations extend beyond the purview of the accused and the victim, encompassing law enforcement officials tasked with initiating the First Information Report (FIR), investigative personnel, and the Judiciary. Through these enactments, policymakers have endeavored to eliminate systemic loopholes, thereby streamlining procedures to empower victims while imposing upon each institutional pillar a degree of accountability for expeditiously dispensing justice

Changes in the Criminal Justice System for the Commons to Report Effectively

In striving for the efficient operation of a criminal justice system, numerous indispensable institutional foundations extend beyond the purview of the accused and the victim, encompassing law enforcement officials tasked with initiating the First Information Report (FIR), investigative personnel, and the Judiciary. Through these enactments, policymakers have endeavored to eliminate systemic loopholes, thereby streamlining procedures to empower victims while imposing upon each institutional pillar a degree of accountability for expeditiously dispensing justice. The initial stages of crime reporting have historically presented a significant challenge for citizens. Difficulties often arose due to authorities' reluctance to register First Information Reports (FIRs). The introduction of the Zero FIR mechanism mandated by Section 173 of the BNSS 2023 addresses it and empowers individuals to initiate FIR filings seamlessly at any police station. Furthermore, the BNSS incorporates provisions for Electronic FIR (E-FIR), facilitating FIR submissions through electronic channels. Such advancements represent a pivotal advancement, notably easing the burden on victims, particularly women,

by streamlining the registration process and sparing them from the distress of recounting traumatic incidents during the reporting procedure.

For the Investigators to Act Accountably

The provisions in the new acts further mandate the police to digitally document every step of the entire criminal process from FIR registration to judgement through maintaining case diary and preparing chargesheet. The mandatory inclusion of videography during search and seizure procedures under new acts, which becomes an integral part of the case record, serves to safeguard innocent citizens and. Without such recorded evidence by law enforcement, any subsequent charge sheet would be deemed invalid. For proper collection and handling of evidences, the acts mandates presences of a forensic team at crime scenes associated with offenses carrying a potential sentence of seven years or greater. The proposed reforms introduce stricter timeframes for various stages of the criminal justice process. Notably, a statutory obligation would be imposed on police forces to furnish complainants with regular updates regarding the status of their complaint, with an initial report due within ninety days and subsequent updates provided at fortnightly intervals thereafter.

Additionally, a presumptive time limit of ninety days for the filing of charge sheets has been proposed, with the potential for judicial extension under specific circumstances. Finally, the new legislation aims to ensure the completion of investigations within a maximum timeframe of one hundred and eighty days, thereby facilitating the prompt commencement of a fair trial. The implementation of these measures entails a heightened sense of accountability for investigative authorities, prioritizing preventative measures to safeguard against wrongful convictions of innocent individuals. This, in turn, also potentially expedite the conviction of real culprits, thereby promoting a more efficient and streamlined criminal justice system. Additionally, these reforms will have the collateral effect of mitigating the risk of corruption within the legal system.

For the Judiciary to Deliver Timely

For the third and concluding pillar of the criminal justice system: Judiciary, BNSS mandates that criminal trials be concluded within a stipulated timeframe of three years, with judgments pronounced within 45 days of their reservation to operate with heightened efficacy. Emphasized by the incumbent Chief Justice of India, D.Y. Chandrachud, this provision is envisioned to alleviate the substantial backlog of cases and expedite the dispensation of justice. Some other notable features of the legislation include the introduction of summary proceedings for minor offenses alongside options for community service, and the facilitation of victim statements digitally, particularly those concerning instances of sexual violence, to be recorded within the confines of their residence by a female magistrate. New provisions include the prompt notification of charges to the accused within a 60-day timeframe, the imperative for judges to render verdicts within 30 days post-argumentation, thereby precluding prolonged case durations, and the subsequent online publication of orders within seven days.

Concurrent with the ongoing digitization efforts within record-keeping practices, the BSB, 2023 expands the purview of 'documents' to encompass a spectrum of electronic and digital records, spanning from emails and server logs to locational evidence, thereby modernizing the evidentiary landscape. Moreover, the proposed legislation endeavors to fortify the rights of citizens by mandating victim testimony prior to the reversal of any sentence exceeding a duration of seven years. This would prevent prosecution's untimely withdrawal without giving the victim a chance to hear, which the Indian courts have already observed in a wide range of judgments[3]. Justice Krishna Iyer

even called upon the legislature to rectify this vanishing point in criminal law where the victim did not attract the attention of law because of withdrawal from prosecution[4]. Notably, Section 356 of the envisaged BNSS introduces a stringent protocol for trial in absentia, aimed at expediting proceedings against economic offenders who elude court jurisdiction to evade prosecution, emblematic figures of such evasion include notables like Dawood Ibrahim, Vijay Mallya, and Nirav Modi, among others.

Removal of Section 377 and Gender-neutral Laws

During the colonial era, the imposition of British legislation entailed the formal regulation and prosecution of various aspects of the social and sexual conduct of colonial subjects[5]. Notably, Section 377 exemplified this trend by categorizing homosexuality as deviant and inferior behavior, criminalizing acts deemed as 'carnal intercourse against the order of nature.[6]' This legal interpretation has left a lasting imprint on the perception of homosexuality within contemporary Indian society, where it often remains stigmatized as 'unnatural,' with judicial discourse historically employing disparaging epithets such as 'despicable' or 'abhorred' to characterize homosexuals[7]. Contrastingly, precolonial Indian narratives, including indigenous literature, art, and religious traditions, suggest a more nuanced acceptance of homosexual practices across various social strata, devoid of legal censure[8]. However, the introduction of anti-sodomy statutes by the British colonial administration fundamentally altered the regulatory landscape surrounding Indian homosexuality. The culmination of this legal evolution transpired in 2018 when a five-judge bench of the Supreme Court adjudged Section 377 to be unconstitutional[9], and the enactment of BNSS, 2023 effectuated its complete repeal. This legislative reform not only signifies a milestone in the journey towards LGBTQ+ inclusivity but also reflects a broader acknowledgment of transgender individuals as integral members of society by recognizing gender in neutral terms, affirming the equal standing of individuals irrespective of their gender identity, a principle deeply rooted in ancient Indian literature and cultural traditions[10].

The sedition provisions within Section 124A of the Indian Penal Code, initially instituted by the British Empire, served as a mechanism to suppress political dissent and counteract the burgeoning movements advocating for independence from colonial governance. Criticisms abound regarding the persistence of sedition within the reconstituted legislative framework, epitomized by the enactment of a revised provision in a purportedly updated form

Sedition in new form?

The sedition provisions within Section 124A of the Indian Penal Code, initially instituted by the British Empire, served as a mechanism to suppress political dissent and counteract the burgeoning movements advocating for independence from colonial governance. Criticisms abound regarding the persistence of sedition within the reconstituted legislative framework, epitomized by the enactment of a revised provision in a purportedly updated form. However, a meticulous examination of Section 150 of the contemporary legislation reveals a substantive departure from its antecedent. Whereas Section 124A targeted acts inimical to "*the Government established by law in India,*" Section 150 (BNSS, 2023), now criminalizes endeavors to foment secession, armed rebellion, or subversive activities, or to propagate sentiments conducive to separatist endeavors deemed injurious to the *sovereignty or unity and integrity of India*. This legislative provision signifies a shift in focus from actions directed solely against the incumbent government to those

perceived as undermining the fundamental fabric of the Indian polity. Moreover, it imposes a more stringent standard of liability upon the accused, mandating the demonstration of *mens* rea through the deliberate commission of proscribed acts. Consequently, this legislative evolution signifies a definitive departure from the punitive paradigm governing sedition under British rule, instead prioritizing the preservation of foundational and constitutional principles of India. This transition underscores a progressive trajectory from the erstwhile conception of "Raj Droha" to the contemporary notion of "Rashtra Droha." Through this transformation, the Rashtra (Bharat) is elevated to a position of paramount importance above the government and its functionaries, a departure from the priorities established under British laws. This realignment is consonant with the ancient principle that Dharma supersedes all, including the sovereign. As elucidated by Shukra, the king is a servant to the populace and the state, with statehood Dharma, or the rule of law (Bhartiya Constitutional Principles) in present context, taking precedence over all other considerations.

Tougher Laws for Crimes against Women, Children, and Organized Crime

The recently enacted legislation represents a comprehensive overhaul aimed at bolstering the protection of women and children, while concurrently addressing issues of organized criminality. By imposing stringent penalties, the legal framework seeks to deter perpetrators and mitigate instances of abuse, while also serving to curtail potential abuses of police authority. Notable among the amendments is the extension of maximum sentences for crimes perpetrated in the presence of minors, elevating the punitive threshold from seven to ten years of incarceration. Additionally, provisions have been introduced to escalate fines for a spectrum of transgressions. A significant departure from precedent lies in the criminalization of sexual intercourse under false pretenses, encompassing scenarios such as deception regarding marriage, employment, promotion, or false identity, with penalties stipulating up to 20 years of imprisonment, and life sentencing for gang rape occurrences.

Moreover, petty offenses targeting women, including chain or mobile snatching, now incur specific punitive measures delineated within the newly established legal statutes. Of paramount importance is the inclusion of provisions mandating capital punishment for crimes perpetrated against girls below the age of 18, alongside the imposition of severe penalties for mob lynching, ranging from death sentences to seven years' imprisonment or life incarceration, contingent upon the gravity of the offense. The legislative reforms further extend to combatting transnational criminal syndicates and organized crime, introducing mechanisms for the confiscation of assets belonging to individuals declared as criminals by judicial decree.

Progressive Terminologies

The legislative measure signifies a pivotal shift away from antiquated and stigmatizing terminology prevalent within legal discourse. Striving for inclusivity and sensitivity, the enactment substitutes derogatory terms such as ‘lunatic person’ or ‘person of unsound mind’ with more respectful designations like ‘having intellectual disability’

The legislative measure signifies a pivotal shift away from antiquated and stigmatizing terminology prevalent within legal discourse. Striving for inclusivity and sensitivity, the enactment substitutes derogatory terms such as ‘lunatic person’ or ‘person of unsound mind’ with more respectful designations like ‘having intellectual disability’ or ‘person with mental illness”. This revision underscores a concerted effort to foster a more equitable and compassionate legal framework

or 'person with mental illness". This revision underscores a concerted effort to foster a more equitable and compassionate legal framework. Moreover, the repeal of punitive measures targeting individuals who attempt suicide, as encapsulated in Section 309 of the Indian Penal Code, and the outdated provisions within Section 497 pertaining to adultery, reflects a long-overdue recognition of the inherent dignity and autonomy of individuals.

Notably, the amendment to Section 195(1) of BNSS, 2023 introduces a crucial safeguard for individuals belonging to vulnerable demographics. By stipulating that summonses need not compel attendance at locations beyond one's place of residence, the legislation demonstrates a nuanced understanding of the challenges faced by marginalized communities, affording them a measure of protection and autonomy within the legal process. Such reforms alleviate the burden of criminalization disproportionately borne by marginalized and vulnerable populations, ushering in a palpable sense of relief and vindication for those historically oppressed.

Decolonization: Parallels from Ancient Indian Jurisprudence

Decolonization presents itself as a nuanced and intricate progression, unfolding gradually rather than as a singular event of expulsion. Its realization hinges upon the collective consciousness of the colonized populace, as they emancipate themselves from dependencies on their colonizers. This process extends beyond symbolic gestures or legislative reforms; it necessitates comprehensive transformations at both physical and psychological levels, expunging remnants of colonial influence from institutional frameworks, including law enforcement and incarceration systems. In the context of criminal law, decolonization requires a substantive reevaluation to ensure it no longer serves as a tool of repression against marginalized communities such as subalterns, Dalits, women, Muslims, queer and transgender individuals, and political dissenters[11]. The implementation of new legislative measures represents a significant stride towards decolonization, epitomized by the recognition of the third gender, the adoption of gender-neutral statutes, and the abolition of archaic laws such as those pertaining to sedition and consensual non-normative sexual activities. By streamlining procedures for citizens and imposing greater obligations and accountabilities on governmental entities, the administration seeks to recalibrate the locus of authority within the realm of criminal jurisprudence, transitioning from a model centered solely on governance to one that prioritizes the empowerment and participation of the populace. This shift underscores a broader endeavor to democratize legal processes and foster a more equitable and responsive framework of justice, aligned with the principles of inclusivity, accountability, and citizen-centric Indianized governance.

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The recent legislative reforms exhibit discernible affinities with ancient Indian legal paradigms, particularly in the resonance of the concept of Prāyaścitta, signifying atonement and penance, within contemporary legal frameworks such as plea bargaining and community service. These measures are enacted

with revised nomenclature, acknowledging the idea of Bharat and incorporating the profound ethos of 'nyay' (justice) in place of the erstwhile colonial 'dand' (punishment) paradigm[12]. Rooted in the Yajnavalkya Dharmasastra, Prāyaścitta entails a process wherein transgressors voluntarily undertake acts of penitence, thereby acknowledging their breach of ethical norms[13]. This ancient jurisprudential principle finds contemporary expression in modern legal practices such as plea bargaining and community service for at least six crimes, wherein offenders acknowledge culpability and endeavor to make amends through constructive engagement with the community or negotiation of reduced penalties. Furthermore, the new legislative measures exhibit leniency towards first-time offenders in minor offenses, while concurrently addressing concerns regarding the burgeoning population of under-trial prisoners. For instance, Section 293 (BNSS, 293) pertaining to the disposal of cases in plea bargaining procedures, entails significantly reduced penalties for first-time offenders.

Criticisms and the Way Forward

However, while these legislative initiatives represent a concerted effort towards criminal justice reform, they are not without their shortcomings and have attracted criticism reminiscent of previous reform endeavors. For instance, parallels can be drawn with past initiatives when the government previously put efforts to align criminal laws with contemporary societal needs on the recommendations of the Malimath Committee[14]. Despite long consultations of about four years, the legislative acts have been marred by a multitude of drafting errors. Furthermore, the failure to adequately incorporate the extensive body of criminal jurisprudence delineated by the Honorable Supreme Court and the recommendations of the Law Commission is notable. Issues of paramount concern, including the recognition of marital rape and the implementation of gender-neutral adultery laws, have regrettably been overlooked. The decriminalization of non-consensual homosexual intercourse under Section 377 leaves no provisions for justice to the victims in these new acts. The absence of robust parliamentary debates and meaningful public consultation further exacerbates these deficiencies.

Particularly concerning is the significant extension of the period during which law enforcement agencies may detain an accused individual prior to their remand to judicial custody, with the duration now extended from 15 days to a period of up to 60 days. The decision to increase this temporal threshold, contingent upon the severity of the alleged offense, raises fundamental questions regarding the delicate balance between imperatives of law enforcement and the protection of civil liberties. Furthermore, the wholesale adoption of verbatim textual provisions from existing statutes has drawn sharp rebuke from legal scholars and practitioners alike, highlighting a lack of originality which could easily be achieved through some amendments. Despite the extensive reforms proposed by these legislative acts, a significant need for comprehensive training of police officers, forensic departments, universities, and scientific laboratories has been largely overlooked which need positive implementations. Moreover, the parliament failed to seize a crucial opportunity to institutionalize Nyay Panchayats

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to decentralize the Indian justice system. Nyay Panchayats have a constitutional basis under Article 40 and are essential to Indian jurisprudence which comprises a board of five or more members to dispense justice in villages. Notably, a committee led by Upendra Baxi in 2004 was established to draft legislation on this matter, and several Law Commission reports have since recommended its adoption[15].

Conclusion

The recent legislative endeavors undertaken by the Indian Parliament signify more than mere amendments; they mark a pivotal moment in Bharat's legal landscape. In the words of our esteemed Chief Justice of India, the journey of law and its implementation is perpetual, devoid of finality but abundant in evolution. It is incumbent upon us to embrace positive change, to harness the dynamism of our legal framework, and to align it with the imperatives of the times. The advent of these new laws heralds a significant stride towards decolonization, heralding the ascendancy of indigenous legal paradigms. They stand as beacons, guiding us towards a future where the "Made in India" tag not only signifies craftsmanship but also legal prowess. Moreover, these legislative advancements align harmoniously with the trajectory of technological progress, echoing our nation's aspiration to embrace innovation and modernity. Yet, the true measure of their impact lies not merely in their enactment but in their execution. As they unfold in the crucible of reality, India's criminal justice system stands poised to undergo a psychological shift adapting to the exigencies of the contemporary Amrit-kaal.

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Judicial Activism versus Separation of Powers

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The proactive role of the judiciary has triggered a debate among political activists and public representatives. An estimation of how it affects the theory of separation of powers

India, being the largest parliamentary democratic country, is guarded and supported by three major institutions of the government: the legislature to make laws, the executive to enforce them, and the judiciary to adjudicate the laws. The framers of the constitution of India have, thus, clearly defined and separated the functions of the three branches of the state in tandem with the doctrine of the 'separation of powers'. However, in the last few decades, the judiciary has acquired an activist role to check the constitutional validity of the legislative and executive actions. More specifically, it does not only interprets the law of the land but also gives ways to form new rules and policies if required, and replacing the existing ones through a process called 'judicial activism'. Judicial activism is popularly considered instrumental in creating a safety valve and instilling confidence that justice is accessible to everyone. In fact, it has acted as a hope for the poorest and weakest to fight against injustices, unfairness and corruption. However, in recent times, the proactive role of the judiciary—in terms of judicial activism—has triggered the debate among social scientists, political activists, public representatives and civil society activists. The proponents highlight the inevitability of 'judicial activism' to uphold constitutional values and protect the people's rights and liberties, while the opponents identify it as a violation of the doctrine of the 'separation of powers' as well as erosion of the legislative and executive powers. The present study analyses the concept of 'judicial activism' and its interaction with the theory of 'separation of powers'. It begins with a brief description of the both the concepts and their evolution over the time. This is followed by a discussion of the assumptions and arguments of the proponents as well as opponents of the debate the 'judicial activism' and the 'theory of separation of powers'.

Judicial Activism in India: The Concept and Evolution

The term 'judicial activism' primarily indicates the prerogative of the judges to find remedies to the problems of the resentful and underprivileged by making new rules in order to offer solution to the intricate questions arising in the wake of lawlessness. It is worth noting here that it is not about performing the traditional "function of settling the disputes in accordance

with Constitution or the law of the land. It is the adoption of a pro-active approach by the judiciary".[1] More specifically, judicial activism refers to a modern nature of judiciary where it does not only hold the spirits of the constitution but also plays an active role in framing the policies and programmes that accelerate social engineering, which often intrudes into the domain of executive and legislative measures. Furthermore, judicial activism, as different from judicial restraint, implies judicial ruling suspected premised upon political or personal considerations instead of prevailing laws. It is closely interconnected with the separation of powers, statutes and constitutional interpretations.

Its origin—in the form of 'judicial review'—can be traced back to the famous case of "Marbury vs Madison" (1803) of the United States. In its judgement, Justice J. Marshall upheld the power of the Supreme Court to rule against the decisions of the state and annul the act of the parliament.[2] This case highlighted the supremacy of the judiciary over the parliament and stimulated the growth of judicial review in both developed and developing parts of the world. In the context of India, judicial activism is intimately intertwined with the process of judicial review, judicial interpretations, public interest litigations (PIL), legislative amending powers and Fundamental Rights.[3] In general, it derives its formal validity from the provisions of review by the judiciary as enshrined in "Article 32 and Article 226 of the Constitution" of India.[4] In other words, judicial review is a special power exercised by the judiciary to uphold the supremacy of the Constitution. Besides the review power, the judiciary has the constitutional obligation to protect fundamental rights in the event of a violation.

The first landmark case underlining the constitutional inherent power of the judiciary to review the legislative actions was '*AK Gopalan v. State of Madras* (1950)', which provided impetus later for the evolution of judicial activism. In this case, the Supreme Court noted that the incorporation of "Articles 13(1) and 13(2) in the Constitution appears to be a matter of abundant caution. Even in their absence, if any of the Fundamental Rights are infringed by any legislative enactment, the Court always has the power to declare the enactment to the extent that it transgresses the limits, invalid".[5] Nonetheless, in the first few decades of its functioning, the Indian judiciary acquired a technocratic character and kept its activities to a minimum in the legislative sphere as envisaged by the Constituent Assembly. In other words, the Indian judiciary, in its initial years, indulged little in judicial activism. Upendra Baxi characterized the nature of judiciary activism during the Nehruvian period as "reactionary", while S P Sathe termed it as "technocratic".[6] Therefore, in the initial decades of independence, the legislature was more dominant and the judiciary simply responded to the initiatives of the parliament. However, things changed in the later years in terms of the nature of the function of the Indian judiciary.

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Some of the amendments made by the parliament eventually led to the breaking out of debates on the amending powers of the legislature, which, in turn, has transformed the nature of the judiciary from a "positivist" to an "activist".[7] For instance, in the case of '*Golak Nath v. State*

of Punjab (1967)', the Supreme Court questioned the amending power of the legislature and held that the parliament could not amend the Constitution as per its whims and fancies.[8] This pronouncement was considered a significant turn in the history of the judiciary in terms of transforming itself into a super-active court.

In another watershed development, in its four of the most important judgements came in the cases of the '*Kesavananda Bharati v. the State of Kerala* (1973)', the '*Indira Nehru Gandhi v. Raj Narain* (1975)', the '*Minerva Mills v. State of Kerala* (1980)' and the '*SR Bommai v. Union of India* (1994)', the Supreme Court defined the elements of the 'basic structure of the Constitution' to limit the unbridled power exercised by the parliament in amending the Constitution that was considered imperative to protect the life and personal liberty of citizens against state encroachment. In fact, it was pronounced that the "parliament cannot amend the basic structure or framework of the Constitution by its amending powers".[9] In this way, if the parliament makes laws contravening the constitutional basic framework, it can be annulled by the judiciary. It has now become more apparent that the courts have become more active in taking steps against the legislative actions for the common good of the society at large.

In the post-emergency period, judicial activism gained momentum through public interest litigation (PIL), broadly considered an instrument to bring justice to the poor and marginalised from a humanist standpoint. Considering its social significance, Upendra Baxi defines PIL as "social action litigation" (SAL).[10] Justice Bhagwati and V. R. K. Iyer are popularly credited as the pioneers of PIL who identified it as a device to ensure social justice and equity.[11] The Indian judiciary is no longer the mere mute spectator when fundamental laws and rights are violated.

Judicial activism in India has taken several forms, including expanding the scope of fundamental rights, reinterpreting the directive principles, protecting press freedom, laying the discourse of basic structure, expanding the horizon of the right to life and privacy, instituting prison reforms, and introducing environmental and human rights jurisprudence among others.[12] Hence, the nature of the judiciary has undergone a radical shift from being the guardian and interpreter of the Constitution to an active agent of social change and nation-building by issuing guidelines and policies. The courts today have emboldened its image as a custodian and guardian of fundamental rights through judicial activism. In a nutshell, judicial activism has given new wings to those who could not fly towards the abode of justice, equality, freedom and rights.

Doctrine of the Separation of Powers

Scholars found the initial theoretical formulation of the theory of the "separation of powers" in the pioneering work of Montesquieu. In general, the term indicates a constitutional arrangement where the key organs of the state work independently and do not encroach into the other's domain. For Montesquieu, the doctrine of the separation of powers is a prerequisite for shielding the democratic system against tyranny as well as protecting human liberties. He believed that the concentration of legislative, executive and judicial powers in an individual or institution could lead towards autocratic rule where individual liberty would be jeopardized. While defining the key features of the separation of powers in his seminal work "*The Spirit of the Laws*" (1748), he stated that "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty… there is no liberty if the powers of judging are not separated from the legislative and executive… there would be an end to everything if the same man or the body were to exercise those three powers".[13] In other words, it suggests the division of executive, legislative and judiciary powers among the different persons and institutions, as well as advocates the functional independence of these three key institutions of the government in order to preserve

liberty and democracy.

The American Constitution incorporates the doctrine of the 'separation of powers' in its rigid form. Article 1 "illustrates the powers of the legislature; Article 2 grants executive powers to the President, and Article 3 establishes an independent judiciary".[14] Given the presidential character of the government in the US, the notion of separation of powers as envisaged by Montesquieu is realised without facing many legal difficulties. On the other side, the Indian "constitution does not entail the doctrine of the separation of power in its rigid form" as it is the case with US Constitution.[15] In other words, a strict separation of powers is not possible to attain in India, given its the federal-parliamentary character.

The word 'separation of powers' is not mentioned in the Indian Constitution, but there is a provision incorporated in the 'Directive Principles of State Policies' under Article 50 that suggests the "separation of judiciary from the executive."[16] Furthermore, the constitution explicitly outlines the powers and functions of "the executive (Chapter I of Part V and Chapter II of Part VI), legislature (Chapters II and III of Part V and Chapters III and IV of Part VI), judiciary (Chapter IV of Part V and Chapter V of Part VI)" under the different sections.[17] Besides the constitutional provisions, the Supreme Court listed the 'separation of powers' as one of the key elements of the 'basic structure' while pronouncing its judgment in the *Kesavananda Bharti* case (1973).[18] In recent times, some scholars define the theory of separation of powers as one of the key ingredients for efficient and good democratic governance as it not only limits the authoritarian tendencies of the three key institutions of state but also strengthens the systems of checks and balances.[19]

Since 1970s, judicial activism and PIL have emerged as new trends, especially in the context of perceived failures of other organs, including the executive and legislature, to perform their functions. However, this 'newness' in judiciary's orientation and approach has sparked debates among the different sections of society. The proponents of 'judicial activism' state that the proactive judiciary does not dilute the doctrine of the 'separation of powers' but it strengthens the other two pillars of the democratic government by helping them in performing their constitutional duties and strengthening the democracy

Judicial Activism versus Separation of Powers: Correlation and Contestation

Since 1970s, judicial activism and PIL have emerged as new trends, especially in the context of perceived failures of other organs, including the executive and legislature, to perform their functions. However, this 'newness' in judiciary's orientation and approach has sparked debates among the different sections of society. The proponents of 'judicial activism' state that the proactive judiciary does not dilute the doctrine of the 'separation of powers' but it strengthens the other two pillars of the democratic government by helping them in performing their constitutional duties and strengthening the democracy. They offer several arguments for that; first, the proponents opine that the failure of the legislature and executive to perform their functions competently paved the way for judicial activism. The overlapping administrative powers between the two further complicated the situation. Legislatures often become ineffective in adapting to the changing circumstances and making laws catering to the changing societal demands and interests. The administrative mechanism of the state also becomes inactive in rendering services that directly affect the democratic set of the country.[20] Hence, given the inefficiency of the executive and legislative mechanisms, judicial activism has caught a fast pace to grow its influence.

Second, the legislative vacuum created by its disinterest, inactivity and incompetence paved the way for the growth of

judicial activism. In this context, while responding to the critics of the judiciary interference in the legislative domain to protect the rights and liberties of citizens, Justice A. S. Anand states that "judicial activism in India encompasses an area of legislative vacuum in the field of human rights. Judicial activism reinforces the strength of democracy and reaffirms the faith of the common man in the 'rule of law".[21] In a similar vein, Shailja Chander argues that "judicial activism plays a vital role in bringing in the societal transformation. It is the judicial wing of the state that injects life into law and supplies the missing links in the legislation".[22] In other words, on several occasions, the judicial proactive role has not only upheld the ideals of human rights but also laid down the guidelines on important contemporary issues which significantly contributed to the social transformation and progress of the society.

Another important argument is that people's trust in the judicial system has contributed to the growth of judicial activism. People often take solace in the judiciary for the protection of their freedom and fundamental rights. In case of its violation, the first place they look up to for redressal is the judiciary. There is a widespread belief among the people that the judiciary cannot act as a silent spectator if something wrong happens to them. Judges are considered to be the guardians of justice and responsible figures who would provide relief to their problems. Judicial activism is widely accepted as a proper remedy in the context of rising expectations of people from the judiciary to ensure justice.[23] Fourth, the proactive nature of the judiciary, in terms of judicial activism and PIL, has become an indispensable part of ensuring justice and protecting the rights of the downtrodden and marginalised strata of the society. Moreover, it seeks to accommodate changes in society and demands arising from the needs of the time. While emphasising the significance of both modern judicial mechanisms, Justice V. R. K. Iyer stated that the "PIL and judicial activism is a people-oriented dimension to protect fundamental rights and necessary to keep the democratic process on track".[24]

On the other side, many scholars are of the opinion that judicial activism is a practice which is completely uncalled for and against the constitutional scheme of the separation of powers. There are several reasons cited against the use of judicial activism. First, critics claim that the judicial interference has diluted the principle of the separation of powers. While delivering a lecture at National Judicial Academy in Bhopal in 2016, the then President of India, Pranab Mukherjee stated that "judicial activism should not lead to dilution of the separation of powers, which is a constitutional scheme… each organ of our democracy must function within its own sphere… the exercise of powers by the executive and the legislature is subject to judicial review, however only check for the exercising of power by the judiciary is self-imposed discipline and self-restraint".[25] In other words, there is no constitutional provision to review the judgments and functions of courts, probably this is why, it is imperative for judiciary to constantly check its actions and define its limits.

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Another significant criticism of judicial activism is that it has also often subjected to "judicial overreach" that indicates unnecessary and unreasonable judicial intervene in the affairs related to the legislature and executive. The Supreme Court itself cautioned against the

judicial overreach in the case of the '*Divisional Manager, Aravalli Golf Course v. Chander Hass* (2007)', and pronounced that "judges must refrain from exceeding their authority or attempting to usurp the functions of the government. It emphasised that each branch of government, including the legislature, executive, and judiciary, must adhere to the principles of the separation of powers and avoid undue interference in the affairs of others".[26] In other words, the proactive role of judiciary should not transcend the boundaries set by the principle of the 'separation of powers'.

Third, the opponents argue that judicial activism is antithetical to a democratic order as it undermines the credibility of other organs of the government and also encroaches upon the constitutional mechanism of checks and balances by intruding into matters primarily fall in the domains of the legislative and executive without any restraint. In this way, it has adversely affected the functioning of democracy as the people are losing trust in state institutions and political leaders. For instance, the then Lok Sabha Speaker, Somnath Chatterjee argued that the frequent intervention of the judiciary into legislature may lead to the erosion of the authority of the parliament.[27] Forth, some studies in recent years have attracted our attention towards the growing misuse of PIL and demand for a proper utilisation of it. Probably that is why, Justice A. S. Anand cautioned that a "care has to be taken to see that PIL essentially remains Public Interest Litigation and does not become either Political Interest Litigation or Personal Interest Litigation or Publicity Interest Litigation or used for persecution".[28] In other words, the courts are advised to entertain the litigations in line with the constitutional ethics, including the separation of powers.

Furthermore, there are also arguments discrediting the judiciary, highlighting the shortcomings in the judicial system as like in executive and legislative structures. In fact, there are criticisms against judges being autocratic and being worse than corrupt politicians. Justice Parshuram Babaram Sawant asserted that tyrannical behaviour of judges is considered "to be more dreaded than that of the politicians, for there is no recourse against it. The healer becomes the killer, the saviour the captor".[29] Sixth and last, judicial activism has also often been subjected to criticism with the explanation of "judicial restraint". It lays emphasis on respecting the "elected branches of government and adhering to the doctrine of separation of powers", thereby advising judiciary not to intrude into the domain of the parliament.[30] In other words, judicial restraint is a semiquinone while judiciary exercises its power and fulfil the constitutional obligations. Hence, judicial activism should be utilised as a means to keep judiciary invariably in the limelight and justifying the judicial interventions in the legislative and executive domains.

Since 1970s, the phenomenon of judicial activism has extensively credited to ensure the well-being and common good of the society. It has also instilled a level of confidence in the people that in case of failure of the other two branches of the state, the judiciary may come to their rescue in case of a collapse of the system by ensuring justice for everyone

Conclusion

Since 1970s, the phenomenon of judicial activism has extensively credited to ensure the well-being and common good of the society. It has also instilled a level of confidence in the people that in case of failure of the other two branches of the state, the judiciary may come to their rescue in case of a collapse of the system by ensuring justice for everyone. In recent times, it is observed as one the main pillars for the good governance and inclusive democracy. However, judicial activism is a double-edged sword as it has evident in its criticism offered by the jurists, legal experts and social scientists. The courts are to act with a sense of limitations and adhere to the

principle of the separation of powers. At the same time, the concepts like 'judicial restraint' and 'judicial overreach' have emerged to caution the judicial system against the unreasonable and excessive intervention in the working of the legislature and executive. The dilution of separation of powers is dangerous for a democratic nation as it does not only disrupt people's trust on the elected political institutions, but also undermines the credibility of legislature and executive. It is, therefore, imperative for a strong and healthy democracy that all its institutions work independently and autonomously without unnecessarily interfering in other's domains.

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Sustainable Development: The Role of Law, Judiciary and Traditional Environmental Wisdom in India

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Modern sustainable development can be attained easily through the traditional environmental wisdom of India. Environmental laws and judiciary can play crucial role in it. An analysis

20th century environmental problems have become 21st century environmental crises. For a problem, it is rather easy to find solutions, but for a crisis, which is an aggravated problem, it is very difficult to find solutions. Pollution of air, water and soil has reached abnormal levels. Each year is breaking the past year's record in global temperature rise and as a result 2024 has broken all the past records. Dry summer and widespread forest fires in one part of the world is challenged by cloud bursts and heavy floods in other parts, thus putting the human life in utter chaos. Middle East, known for the hot and dry climate has experienced the worst flood in recent years. The erratic behavior of global climate has adversely affected the agriculture, industries and even stock market performance. All the global, national and local development efforts are being hampered by this nature's fury. The physical and mental health of human beings also pay a high price due to the environmental catastrophe. Environmental imbalance has become the major hurdle in the long march of development of humanity in the 21st century.

At this critical juncture, the whole developmental and environmental experts are seeking alternate methods to attain the protection of environment and promotion of development simultaneously. Their efforts had begun in the 1980s and still continuing. Sustainable Development is the modern buzz word echoing from the nook and corner of the world in the modern period.

As sustainable Development is a holistic and multidisciplinary concept, science and technology, political policies, economic programs, legal system, social fabric, religious beliefs and spiritual culture do influence it. Laws and regulations play an important role in keeping the environmental balance for attaining

sustainable development. Bharat, that is India has a long tradition in the protection of environment and her culture has acted as a preventive measure against the destruction of environment, making the role of legal institutions relatively easy in India.

This article analyses the importance of environmental laws and Judiciary and the traditional environmental wisdom of India in attaining modern sustainable development. As a general and introductory paper, equal importance is given to the concepts of Environment, Development, Sustainable Development, Environmental Wisdom of India and Law and Judiciary and this paper brings the importance of and inter links between the concepts noted above.

Part 1
Environment, Development and Sustainable Development

"The term environment includes water, air, land and the interrelationship that exists among and between water air , land, human beings and other living creatures, plants, micro - organisms and property."[1]

The above definition makes clear that environment is a broader term which includes the aggregate of surrounding things, which consist of the living beings, non- living things, their conditions and influences. A blending of the qualitative and quantitative studies of both is essential in understanding nature and environment. This is known as the Holistic Vision of nature traditionally realized by the ancient Rishis of India and the Multidisciplinary studies evolved in the past few decades through modern researches in the Western world.

Importance of Environment

Life on earth is dominated by plants which constitute 82.5% of biomass. Animals form only just 0.4% and human share is a meagre 0.01% of the biomass.[2] It is the animal and plant kingdom that support the survival of human beings, and the abiotic factors like air, water and soil enable both the animal and human survival. Thus, in the world of physical existence, human beings are not of that much importance on this planet and even if they are exterminated, nothing is going to happen to this world. But humans feel that they are the masters of this planet and hold full right over nature.

"…. the right holder being mostly individual, the right to a healthy environment has drawn criticism for its anthropocentric character. It is certain that the idea that humans have a right to a healthy environment is strongly influenced by the western influenced conception of human rights that places humans at the center of the world. This conception ought to be balanced with an eco- centric perspective which puts nature at its core."[3]

After the application of Science and Technology in the development processes, the nature and trend of production, distribution and consumption changed. Since technology recognizes no self -limiting principle, "….in the subtle system of nature, technology and in particular super technology of the modern world act like a foreign body and there are now numerous signs of rejection."[4]

Depletion of Resources and Degradation of Environment

Fritjof Capra says that "obsession with growth has become the opium of the people…..From excessive production and consumption, growth will have to be channeled into public service areas such as transportation, education and health care. And this change will have to be accompanied by a fundamental shift of emphasis from material acquisition to inner growth and development."[5]

As a result of this obsession with growth, "The world witnessed unexpected events such as the heat dome in Canada, flash floods in Germany, unprecedented snow fall in Spain, extra ordinary spell of rain in China, and flooding in New York. These apart, forest fires in Australia have destroyed flora and fauna in large areas."[6]

Thus, Climate Change, Global warming, Deforestation, Ozone Depletion, Pollution, Acid Rain and Toxic Wastes, which

are the side effects of modern development threaten the very existence of life on this planet.

Towards Sustainable Development

Sustainable Development is the "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs."[7]

Sustainable development is a holistic concept. It is multidimensional in the sense that it encompasses interrelations of the abiotic things and living beings including humans. All branches of knowledge are now considered as contributors to Sustainable Development through the multi-disciplinary links of environment. Eco/ Environmental Spirituality, Eco/Environmental Theology, Eco sophy, Eco/ Green Literature, Eco/Green Politics, Eco/Green Technology, Eco/ Green Laws and Green Benches in courts are examples of the multidisciplinary dimensions of Sustainable development. Laws and Judiciary have direct connection with attaining Sustainable Development. The social dimension of sustainable development recognizes the right to improve, develop and enjoy the status and dignity of life. The economic dimension of sustainable development demands a basic level of income and employment along with eradication of poverty, for a decent standard of living.

The 2030 Agenda for Sustainable Development Goals, lists the efforts of global agencies like UN, world nations and development experts to protect environment and promote development simultaneously. As a result, Sustainable Development Goals (SDGs) have been globally accepted as the development agenda for 2030, by 193 member states of UN.[8] The policies of Sustainable development at the national and global levels intend to mitigate the problems of depletion of resources and degradation of environment.

India also gives much importance to sustainability in its development policies. "You know that India is one sixth of the global community. Our development needs are enormous. Our poverty or prosperity will have direct impact on the global poverty or prosperity. People in India have waited too long for access to modern amenities and means of development. We have committed to complete this task sooner than anticipated. However, we have also said that we will do all this in a cleaner and greener way" - Prime Minister Narendra Modi (2018).[9]

Political policies, economic programs along with the science and technology are paying important contributions to sustainable development. Along with the legislature and executive, the legal institutions of the country also play an important role in realizing the objectives of Sustainable Development through implementing the laws for the protection of the environment. Air, water, soil and forests are the four fundamental environmental factors that sustain human life

Part 2
Environmental Laws and Judicial Interventions for Sustainable Development[10]

https://www.lloydlawcollege.edu.in/blog/environmental-law.html#

Political policies, economic programs along with the science and technology are paying important contributions to sustainable development. Along with the legislature and executive, the legal institutions of the country also play an important role in realizing the objectives of Sustainable Development through implementing the laws for the protection of the environment. Air, water, soil and forests are the four fundamental environmental factors that sustain human life. Hence the protection of these four factors are very necessary for Sustainable development and to realize the Right to life. All legal institutions and their mechanism ultimately are, for helping the society sustain the resources of nature for the progress of the society.

'Environmental Law can be explained as a legal framework comprising principles, directives,

policies, and regulations founded by different local, national, or international units. Its purpose is to safeguard and maintain the environment, verifying its appropriateness for both present and future generations.'[11]

"Environmental rule of law is central to sustainable development. It integrates environmental needs with the essential elements of the rule of law, and provides the basis for improving environmental governance. It highlights environmental sustainability by connecting it with fundamental rights and obligations. It reflects universal moral values and ethical norms of behavior, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable."[12]

According to modern 'Rights of Nature' doctrine, an ecosystem is entitled to legal personhood status and as such has the right to defend itself in a court of Law against harms of any form. It is also known as 'Environment Person hood'.

"We also need a stronger push on environmental law and enforcement – through courts and global backing for the right to a healthy environment. If polluters will not stop or clean up, the law must make them. This is increasingly happening, as we saw when a Dutch court ordered a major oil company to slash its emissions by 2030."[13]

Environmental Laws everywhere in the world are generally framed based on the above international standards and criteria evolved through different conferences and conventions.

Development of Environmental Law in India

The 1972 Stockholm Conference and the global environmental awareness generated by it were also instrumental in the framing of environmental laws in India. During this period, India mainly depended on an amalgamation of tort laws, criminal laws, regulations related to water and forests, and specialized legislation to look into environmental protection matters. The Indian judiciary has repeated this opinion in many cases, stressing the crucial role of environmental economics in the journey of balanced progression and the protection of human rights.

In the 1980s, the Supreme Court of India began issuing a number of directives, conducted crucial analyses, and imposed restrictions, all with the goal of ensuring that every person could appreciate a clean environment as a fundamental and life-sustaining right.

The 1972 Stockholm Conference and the global environmental awareness generated by it were also instrumental in the framing of environmental laws in India. During this period, India mainly depended on an amalgamation of tort laws, criminal laws, regulations related to water and forests, and specialized legislation to look into environmental protection matters. The Indian judiciary has repeated this opinion in many cases, stressing the crucial role of environmental economics in the journey of balanced progression and the protection of human rights

Constitutional Provisions

Indian constitution is the guardian of nature and human beings. Article 51 – A (g) which deals with the Fundamental Duties of the Citizens states: "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". This article is also called as the 'Magna Carta' of Animal Rights.

Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and

water, sanitation without which life cannot be enjoyed. This article also includes the rights of animals for life as an extended version.

Chapter 14 of the Indian Penal Code, Article 48 and 48 A, Article 253 etc. are the provisions for the Indian Constitution for the protection of the environment. Many of these provisions are indirect approaches in Indian Constitution towards environmental protection. "The absence of a specific provision in the constitution recognizing the Fundamental Right to clean and wholesome environment has been set off by Judicial Activism in recent times."[14]

Environmental Legislation in India

India prides a complete presentation of environmental laws, which include the protection of Air, Water, and soil from pollution. Also, the forests and wild life are protected through legislation. The Biomedical Waste (Management and Handling) Rules of 1998, The Municipal Solid Wastes (Management and Handling) Rules, 2000 and The Batteries (Management and Handling) Rules 2001 etc are aimed at managing the solid wastes of the country. The Wildlife Protection Act, 1972, The Water (Prevention and Control of Pollution) Act, 1974, The Forest (Conservation) Act, 1980, The National Environmental Tribunal Act of 1995, furthermore its 2010 Amendment, The National Environment Appellate Authority Act of 1997, The Environment (Siting for Industrial Projects) Rules, 1999, The Ozone-Depleting Substances (Regulation and Control) Rules, 2000, The Energy Conservation Act, 2001, The Biological Diversity Act, 2002, The Noise Pollution (Regulation and Control) (Amendment) Rules, 2010, The National Green Tribunal Act of 2010, Coastal Regulation Zone Notification, 2018 and the Wildlife (Protection) Amendment Bill of 2021 are the different legislations that are framed for the protection of environment and attainment of Sustainable Development in India.

Landmark Environmental Cases in India

C. Galstaun v. Dunia Lal Seal (1905): This case signified the first documented incident of environmental pollution in India, where a factory's discharge of waste into a municipal drain resulted in legal action.

Rural Litigation and Entitlement Kendra, Dehradun State of U.P. & Others. (1985): This case rotated around illegal limestone mining in the Mussoorie-Dehradun area, leading to environmental harm. The Supreme Court's involvement resulted in directives for responsible mining activities and the security of the vulnerable environment.

C. Mehta & Another vs. Union of India & Others & Shriram Foods & Fertilizer Industries & Another v. Union of India & Others (1987): In this case, the leakage of oleum gas from a factory caused a high number of casualties. It enforced the need to hold industries accountable for environmental harm and established legal standards for environmental protection.

In Sachidanand Pandey and Others vs. the State of West Bengal & Others. (1987), the Supreme Court held that Article 48 A must be cared whenever a matter regarding maintenance of the ecology is brought before the court.

Subhash Kumar State of Bihar (1991): This case addressed the dumping of industrial waste into the Bokaro River. The court enforced the importance of preventing water pollution and the accountability of industries to manage waste cautiously.

C. Mehta v. Kamal Nath & Others. (1996): This case is associated with the unauthorized construction of the Span Club in an ecologically vulnerable region. The Supreme Court ordered against private organizations converting susceptible lands into private property, evoking the public trust doctrine.

C. Mehta v. Union of India (1997): This case addressed the discharge of sewage into the Ganga River by leather tanneries. The Supreme Court decided that polluters must bear the accountability for proper waste management and introduced knowledge of environmental problems.

Samir Mehta Union of India

(2017): The sinking of M.V. Rak, carrying coal and oil, led to substantial ecological harm. The court ordered considerable reimbursement from the responsible parties, highlighting responsibility for environmental harm.

All these cases were fought in the Courts of Law to protect various factors of environment. Constitutional provisions, various Acts enacted and the different cases conducted in India for environmental protection help the country attain Sustainable development.

Ancient Indians viewed the environment as the Rhythm of nature, which demands a Vratam (specially disciplined life with a purpose) from the people. That Vratam in India is to live in harmony with nature. All modern laws and regulations are a sort of mandatory vratam, that help the protection of environment and promotion of sustainable Development.

Part 3
Environmental Wisdom in India for Sustainable Development

Ancient Indians viewed the environment as the Rhythm of nature, which demands a *Vratam* (specially disciplined life with a purpose) from the people. That *Vratam* in India is to live in harmony with nature. **All modern laws and regulations are a sort of mandatory *vratam*, that help the protection of environment and promotion of sustainable Development.**

As part of maintaining this *Vratam*, Indians consider themselves as part of nature and worship human form of God's incarnations like Lord Ram, Vishnu, Shiv, Saraswathi, Lakshmi along with animals like monkeys, elephants, birds as vehicles of these Gods. Also, things like the air, water, rivers and mountains are also considered as Gods. The basis of this worship is *Īśāvāsyopaniṣad's* great philosophy: *Īśāvāsyamidam sarvam….* Everything everywhere is divinely related and hence treated as ONE in spite of the manifested physical differences.

Indians considered *Vayu* as *Deva* and regarded it with reverence. It is a sin to pollute the divine air as air is our GOD (*Vayu Deva*). The balance and harmony of air is a pre-condition to the peaceful and harmonious life of the living beings and this shows the interrelationship between air and life forms on this planet. They are different parts of an integrated whole.

One prayer in Rig Veda says, "Let the air flow with medicinal properties and let it forever bring peace and happiness. ("*vātā ā̃vatu bheṣajam śambhu mayobhu no hṛde*". (*Rig Veda*, 10.186.1) Let air flow with medicinal properties and let it bring in my heart happiness and peace. In *Atharva Veda*, the verse '*Yūvam vāyo savitā̃ ca bhuvanāni rakṣataḥ*' " (*Atharva Veda*, 4.28.3) indicates that air and sun are the protectors. But, how far the modern world is able to keep air un polluted?

Water (*varuna/Jalam*) is the next inevitable element (*Bhūta*) necessary for the survival of life on this planet. Human beings cannot live for more than a week without water. *Parjanya* (clouds) caused rains. The *Brihadāraṇyaka* Upanishad (5.5.1) says that 'there was only water in the beginning'. Think of the Indian wisdom where water is our Mother Goddess - *Jal Devatha, Samudra Devatha, Ganga Matha*. These Indian cultural concepts should prevent us from polluting our water streams in order to assure Right to Life and Sustainable Development.

Matter/soil/ (*Prithvi*) is also treated with respect in India. The theme of World Environment Day 2024 is 'Land Restoration, Desertification and Drought Resilience'. The slogan of this event will be "Our Land, Our Future." We are the "Generation for Restoration" of land. "Kiss the Ground" is a groundbreaking documentary film that explores soil as the missing piece of the climate puzzle.

The above theme and slogan for protecting the soil may be new to the UN and the Western world. But the traditional wisdom of Bharat had centuries ago designed a life style that protected not only the soil, but the earth as a whole.

Indians considered the planet as 'Mother Earth' (*Bhūmātā*). In the early morning when a real Hindu gets up, he used to touch the Mother Earth, seeking pardon for placing the feet on her.

"…….*Pādasparśam kṣamasvame*"

Hindus used to perform Bhumi pooja before any construction, seeking permission from Mother Earth. *Prithvī* is the least subtle and most sophisticated primordial element according to the *Pancabhūtas* theory.

There is an Indian wisdom of the protection of forests. There were three types of forests in ancient India- *Mahāvana* or dense forests –impenetrable place for the mystical manifestation of natural and supernatural forces. *Mahāvana* is the abode of Lord Shiva who is the God of fearlessness. *Tapovana*: One can enter this forest with ease. Sadhus, Sanyasins and sages (Rishis) are occupying the frest due to its easy accessibility and serenity. *Tapovana* is the citadel of wisdom in India. Naimisharanya in UP is an example of *Tapovana*. Tapovanas are '*Abhayāraṇyas*' – the places of resort to animals-(sanctuaries)- due to the presence of Rishis. *Srivanas* were forests of wealth and prosperity. *Vanasri* concept guided people for the milking (*Dohanam*) of major and minor forest products for economic prosperity.

Sacred groves represent the ancient Indian way of conservation of genetic and biological diversity and perennial water source and hence formed the vital life support system of many villages The presiding deities are believed to look after the wellbeing of the people and also protect the groves by administering punishment (mostly death) to the offenders. *Devāraṇyas* and *Nakṣatravanas* also are the examples of Indian wisdom of environmental protection and sustainable development.

Conclusion

Since Sustainable Development has become an inevitable holistic and multi-disciplinary world order of development, no nation can find an exception to this practice. As India has a very strong foundation of environmental wisdom, the quantum of infliction made on environment is comparatively less. A very dynamic set of environmental laws and the implementation of the same on the foundation of environmental wisdom in India, assure a bright sustainable future for India, thus making this great nation the '*The Vishwa Guru*' of sustainable Development.

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Appointment of Retired Judges to Constitutional Courts: Desirability and Challenges

Rohan Kriti

Appointment of retired judges can be a good solution to the problem of pendency of cases in the courts. An analysis of the scope and the challenges

Constitutional courts play an important role in maintaining the rule of law and to assure that fundamental rights of the people are guaranteed and protected. It not only interprets and applies the law but also safeguards the supremacy of the Constitution. To ensure that courts can effectively perform their multifaceted functions, it is crucial to maintain the judicial strength in courts. With cases piling up each day, it is necessary that the strength of the judiciary is requisite to deal with the caseload. With fresh appointments in Constitutional courts being delayed, proper functioning of the courts is being compromised. Thus, need of the hour is to reduce this pendency and one of the mechanisms for doing this can be through appointment of retired Judges who can deal with the crisis situation. This article, thus examines the desirability of appointment of retired judges in Constitutional courts and the challenges in their appointment.

Keywords: Retired judges, Constitutional courts, Lok Prahari, Pendency.

Introduction

In India, judges retire but not into activity.[1] Judges in India have wide range of options available to them post retirement. Few chose appointment in tribunals, others pursue lucrative careers in arbitration while few go for academia. One class of judges, post retirement are appointed as retired judges in Constitutional courts. The Constitution of India provides appointment of retired judges at both Supreme Court and High Courts. Given the current status of vacancies in courts, it cannot be gainsaid that adequate judge strength needs to be maintained. Across High Courts in India, the pendency stands at 6179770 cases, while in apex court the pendency is around 80,000 cases.[2] Further the High Courts are not functioning at its full strength. The vacancy across High Courts stands at 327 out of 840 vacancies, roughly amounting to 39 percent.[3] In Supreme Court too, four judges are about to retire in 2024.[4] With cases piling up each day, it is necessary that the strength of the judiciary is requisite to deal with the caseload. With the regular appointments to Constitutional courts being delayed, there is a dire need to maintain the

judicial strength. Sustainable Development Goal 16 promotes access to justice and building institutions which are effective and accountable.[5] The right to speedy trial constitutes an important component of Article 21.[6] The imperative for appointment of retired judges in constitutional courts is more in a current scenario wherein the burgeoning pendency is thwarting justice for the common citizenry and undermining the principles of rule of law. Thus, to maintain court efficiency and ensure justice for all, judicial strength of constitutional courts needs to be maintained and given the delay in appointments, an alternate mechanism to deal with the crisis situation is appointment of retired judges.

Retired Judges in Supreme Court

The Constitution of India provides for provision for appointment of retired judges at Supreme Court. Article 128 of the Indian Constitution grants authority to the Chief Justice of India (CJI), with the President's approval, the authority to appoint retired Judges from both the Supreme Court and High Courts to serve as Judges in the apex court of India.[7] Additionally, the consent of the Judge being appointed is necessary for their appointment under this provision.

In its early years, the court utilized this provision by recalling retired judges. The instances are- Syed Fazl Ali, N. Chandrasekhara Iyer, Vivian Bose, Reghubar Dayal, V. Bhargava, G.K Mitter and C.A Vaidialingam responded to the request and acted as Judges. Further, two retired Supreme Court Judges, Justice I.D. Dua and Justice C.A. Vaidialingam were appointed as retired Judges under Article 128 to deal with the court business while majority of the Judges were hearing the Keshavananda case.[8] In recent times, Article 128 has become obsolete as the Supreme Court has not utilized this provision.

Retired Judges in High Courts

Article 217 provides for regular appointment of a Judge of High Court.[9] The provision for appointment of retired Judges in High Courts is provided under Article 224A.[10] The provision commences with a "non-obstante" clause and lays down that Chief Justice of the concerned High Court with the prior approval of President, may request any person who has already served as a Judge of that particular court or any other court to sit as a retired Judge for that High Court. The stipulation requires the retired Judge's approval before their appointment under the provision. There have been only three instances of invocation of this Article- J. Suraj Bhan, who had retired from his position in 1971, was appointed in the Madhya Pradesh High Court, J. P. Venugopal- Madras High Court- appointed to a committee to inquire into incident of communal riots in Coimbatore. J. O.P. Srivastava was designated ad hoc Judge in the Allahabad High Court recently in 2007.

Inclusion of Article 224A in Constitution

Article 224 originally provided only for the appointment of ad hoc judges. The provision was removed by the 7th Constitutional amendment in 1956.[11] The objective behind the removal of the provision was that the said provision for appointment of retired judges neither found to be adequate nor satisfactory. Rather it was envisioned to be replaced by the current present Article

224 regarding the appointment of additional judges so that they can clear off the arrears and also acting judges can be appointed. The provision regarding appointment of retired judges was re-introduced in Constitution by Article 224A through 15th Amendment Act, 1963.[12]

Time and again there have been consistent recommendations for the appointment of retired Judges to deal with the pending cases and backlogs. Initially Malimath Committee recommended using retired judges for Arrears Eradication Scheme.[13] Law Commission in its 124th report it acknowledged that retired judges possess extensive experience in adjudication, making their skills valuable for resolving the growing backlog.[14] Further in its 125th Report, the commission suggested a recourse to Article 128 and proposed a solution wherein the retirement of a Judge in the Supreme Court, which is known well in advance, should not result in their immediate departure. Instead, they should continue to serve until their successor assumes office, thus functioning in accordance with the provisions of Article 128.[15]

The Lok Prahari Judgement and a Re-birth of Dormant Provision

The Constitutional provision regarding appointment of retired judges in India at Constitutional courts had remained dormant with very few instances of its invocation. With nation being burdened with the burgeoning pendency, there ought to be some kind of judicial innovation so as to tackle this docket of pendency explosion.

To tackle this, the apex court in its infamous Judgement of *Lok Prahari v. Union of India* also known as *The Lok Prahari* judgment, came up with a solution tackle this burgeoning pendency especially in High Courts.[16] Through the judgement, it gave birth to the dormant provision of Article 224-A of Indian Constitution and laid down slew of guidelines to be followed for its attainment. The judgement activated the dormant provision of Article 224A which for a long remained a dead letter. The judgement laid down slew of guidelines for the process to be followed in appointment of retired judges. These guidelines are in form of "continuing mandamus" and it open for the court to modify these guidelines in future.[17]

The judgement provides for a two-fold requirement before invoking 224A. First, the High Court which seeks to appoint Judges under the provision should have already recommended regular appointment of more than 20% of its vacancies, without which Article 224A cannot be invoked. The second condition encompasses the criteria or trigger points for activating Article 224A, which are as follows:

i. The number of vacancies in a High Court exceeds 20% of its sanctioned strength.
ii. Cases within a specific category have been pending for more than five years.
iii. Over 10% of the backlog of pending cases are older than five years.
iv. The rate of case disposals is lower than the rate of case filings, either generally or in a specific subject matter.
v. Rate of case disposals consistently remains lower than the rate of case filings over a period of one year or more.

Thus, Supreme Court by laying down two-fold requirements meant to emphasize that retired judges' appointments don't become an alternative for regular appointments. The apex court objective of appointing retired Judges is only for clearing off the arrears and not devising a new methodology of appointing Judges to High Courts.

One peculiar thing about the Lok Prahari case is that the judgment specified the process for appointing retired Judges. It held that when exercising authority under 224A, the Chief Justice of High Court should obtain the approval of the retired Judge and then forward the name to the collegium of the Supreme Court. The collegium, in this context, consists of the three most senior Judges of the Supreme Court, including the CJI.

Procedure for Appointment of Retired Judges: A Critique

Article 224A of Indian Constitution which provides for appointment of retired Judges to the High Court lays down that the Chief Justice of a High Court can appoint retired Judges with the prior approval of the President. However, the procedure for appointing retired Judges, similar to active Judges, has been mired in controversy. The controversy arises from the different approaches of the executive and the judiciary regarding the appointment process. The central government desires a collaborative process involving both the executive and the judiciary, while the judiciary has chosen to route the appointment through the collegium system.[18]

The Judgement in Lok Prahari laid down that while using power under Article 224A, the Chief Justice of High Court after obtaining the consent of retired Judge shall route the recommendation to the collegium of apex court. Interestingly, apex court in the Lok Prahari judgment has added a pre-requisite in appointment process laid down in Article 224A by including a mandatory consultation with the apex courts collegium. However, this introduction of collegium approval goes against the intent of the framers of the Constitution and also negates the basic principles of Constitutional law.

Against the Intent of Framers

The additional requirement of routing the recommendation through the apex courts collegium goes against the intent of the framers.[19] Textually Article 224A only required the prior approval of President after which the Chief Justice of High Court could appoint a retired Judge and it nowhere involved the role of CJI as opposed to Article 217, Article 222 and Article 224 which mandates that President has to consult Chief Justice of India. The assembly debate around Draft article 200 (now 224A) mentions discussions about the involvement of prior approval of president and nowhere the role of CJI was deliberated and discussed. One of the members Jaspat Roy Kapoor argued that recalling a retired Judge virtually amounts to new appointment and therefore the previous approval of the President is must in these cases and concluded that no retired Judge should be recalled without the prior approval of president.[20] It seems that founding fathers of the Constitution were clear so as to not include the involvement of Chief Justice of India in the appointment process as compared to other Articles in Chapter V i.e., Article 217 and Article 224. Thus, this expansion in requirement of collegium approval goes against the intent of the framers.

Against Textual Requirement

As previously mentioned, Article 224A does not explicitly require consultation with either the CJI or the collegium of the Supreme Court, unlike the provisions for regular appointments. The only requirement was prior approval of President and then Chief Justice of High Court could appoint a retired Judge. The NJAC however brought an amendment to the provision and allowed the National Judicial Appointments Commission to appoint the retired Judges with the previous consent of the President. The NJAC amendment was eventually struck down and held unconstitutional in the *Supreme Court Advocates-on-Record Association v. Union of India*.[21]

Secondly, Article 224A possesses a non-obstante clause, meaning that it is applicable irrespective of anything stated in Chapter V of the Constitution. Both Article 217 and Article 224

Article 224A of Indian Constitution which provides for appointment of retired Judges to the High Court lays down that the Chief Justice of a High Court can appoint retired Judges with the prior approval of the President. However, the procedure for appointing retired Judges, similar to active Judges, has been mired in controversy. The controversy arises from the different approaches of the executive and the judiciary regarding the appointment process

necessitate consultation with the Chief Justice of India while this requirement is absent in Article 224A. Further, Article 128 which provides for appointment of retired judges at Supreme Court, explicitly mandates consultation with the Chief Justice of India. Consequently, involving the collegium in retired Judges appointment contradicts the textual requirement and purpose of Article 224A.

The judicial precedents too don't favour the appointment process of retired judges to be routed through the collegium. In *Anna Mathew v. N Kannadasan*,[22] although the appointment of retired judges was not in issue but the Madras court while relying on the Constitution bench judgement of *Ashok Tanwar's case*[23] observed that in cases if appointment of retired judges, a consultation with the collegium is not necessary.

In *Indian Society of Lawyers v. President of India* wherein Article 224-A was directly in issue, the Allahabad High Court observed that retired judges under this article form a separate and distinct category and they do not fall within the purview of Article 216 and thus the process of appointment under Clause (1) of Article 217 does not apply to them.[24]

Against the Object Sought to be Achieved

Routing the process of appointment through collegium of judges defeats the very purpose for which they are appointed. Arvind Datar's article states that these retired judges have once already been appointed through the collegium during their initial appointment and their merit to work as High Court judge is not a question of doubt.[25] Referring again the recommendations to the Supreme Court collegium would be unnecessary and cause significant delays, defeating the very intent and objective of Article 224A. The process of appointment through collegium thus has to be relaxed for achieving the bigger purpose of reducing pendency.

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To summarize, although after the Second Judges case,[26] the primacy in appointment of judges including the retired judges' rests with the judiciary, the strict separation of powers has to be relaxed when appointment of retired judges is in picture. The cumbersome appointment process not only goes against the intent of framers or textual requirement of Constitution but also negates the purpose sought to be achieved. Even the apex court too recognizes this. In its observation on 8th December 2023 requested the Attorney General to think of and devise and come up with an easier process to appoint retired Judges in the High Court.[27] The retired judge to be appointed to Constitutional courts is not being appointed for the first time and he has already served before and been appointed through the collegium, thus the procedure for their appointment ought to be simpler than regular appointments. Given the fact, that Lok Prahari Judgement is in form of continuing mandamus, the apex court should lay down guidelines which is in consonance with the object sought to be achieved by appointment of retired judges.

Cross-Jurisdictional Analysis

Globally, there are not many countries where the constitution provides express provision for retired judges. For the purpose of this analysis mainly two countries have been opted for where the

constitution clearly mandates the provision. These countries are United Kingdom and United States.

1. United Kingdom

In the United Kingdom, there has been a recent initiative to address the backlog of cases in courts by bringing retired judges back into service. Numerous retired Judges have been enlisted to alleviate the significant court backlogs that are undermining the effectiveness of the justice system.[28] The select committee on Constitution in its 22nd Report of Session 2019–21 recommended greater use of retired judges to deal with the pendency and maintain the judge's strength in courts.[29] It inter alia recommended increasing of retired judges too.

Sitting in Retirement Policy

The existing policy of sitting in retirement allows salaried judges to retire from their salaried position, receive a pension related to that role, and still have the option to serve as fee-paid judges if there is a demand for their services. UK recently passed The Judicial Offices (Sitting in Retirement -Prescribed Offices and Descriptions) Regulations 2022[30] which has brought certain changes in sitting in retirement policies.

Most recently in UK, judges have been brought out of retirement to clear courts backlog. A plethora of retired judges have been recruited to reduce huge court backlogs that are undermining justice dispensation system. Lord chief justice recalled 65 retired judges, half of whom are in their 70's in order to speed up justice. These retired judges will be utilised in disposing off 63,000 pending cases. It is one of the measures to tackle the shortage of judges in United Kingdom. It is therefore thought unprecedented to have so many retired judges to combat shortages among the judicial strength and reduce the pendency.

2. United States

In the United States, the federal judiciary comprises three main entities: the U.S. Supreme Court, the U.S. Courts of Appeals, and the U.S. District Courts.[31] In addition, there exist several other smaller federal tribunals. There are 13 appellate courts below the U.S Supreme Court known as U.S Courts of Appeals. These 94 federal judicial districts are divided into 12 regional circuits, each with its own court of appeals.

Role of Senior Judges

In United States federal courts, senior judges play a vital role in addressing the issue of pending cases. Their service addresses the challenges of continuing caseloads and persistent judicial vacancies in courts.[32] Wilfred Feinberg in his seminal work has discussed about senior judges and describes Senior Judge as a judge who remains on the federal bench but is no longer expected to work full time.[33] A senior judge has neither resigned from the bench nor, in the words of the applicable statute, retired from the office. Senior judges are merely retired from regular, active service.[34] The provision regarding senior judges mainly stems from Article III of the US Constitution.[35] In United States, Justices may take up senior status as like lower court judges and sit as Chief Justice in a circuit or district courts. They usually do so in court of appeals. For instance, Justice Lewis Powell, in his native Virginia assumed the position of retired justice on Fourth Circuit of appeals.

In United States federal courts, senior judges play a vital role in addressing the issue of pending cases. Their service addresses the challenges of continuing caseloads and persistent judicial vacancies in courts. Wilfred Feinberg in his seminal work has discussed about senior judges and describes Senior Judge as a judge who remains on the federal bench but is no longer expected to work full time. A senior judge has neither resigned from the bench nor, in the words of the applicable statute, retired from the office

Two features of the senior judge system are important:

i. When any judge assumes senior status, there lies an

immediate vacancy even though the judge continues to work which means that a younger judge will be appointed in that place.

ii. Since most senior judges continue to work at least half-time, the court has a young and vigorous fresh judge and the aid of experienced senior judge working half-time.

Adequate judge strength is thus vital in ensuring the strength of Indian Judiciary. The mounting pendency in India is increasing day by day and the docket explosion of cases needs to be addressed. The vacancies are not filled resulting in more backlogs. The saying "Justice Delayed is Justice Denied" is haunting the Indian judicial process for real. Further, retirement age of Judges in India is one of the lowest in the world. While increasing retirement age of judges in India seems a distant dream, the only provision which complements the utilisation of these experienced judges is appointment of them as retired judges

The provision for appointment of retired justices of Judges has been dealt with in 28 US Code § 294.[36] To assume senior status, a justice who is at least sixty-five years old can do so by meeting the "Rule of Eighty", which requires the combined total of their age and years of federal service to equal eighty. Federal judges become eligible for retirement benefits upon meeting the Rule of Eighty, which occurs when their age and years of service on the federal bench total eighty. At this point, they have two retirement options of either outright retirement, i.e., 'resignation,' or semiretirement by obtaining "senior status".

After achieving the requirement, the Justice may retain the office but retire from regular active service.[37] They can choose to continue performing certain judicial duties at a workload of their preference and may still receive a salary, even though their successors have been nominated by the President. A retired justice may be appointed and assigned by the Chief Justice to perform certain judicial duties in a circuit which he is willing to undertake. However, a senior justice cannot perform judicial duties without being such assigned by the Chief Justice. He then has all the powers of a judge of a court or district to which he is assigned.

Conclusion and Suggestions

Adequate judge strength is thus vital in ensuring the strength of Indian Judiciary. The mounting pendency in India is increasing day by day and the docket explosion of cases needs to be addressed. The vacancies are not filled resulting in more backlogs. The saying "*Justice Delayed is Justice Denied*" is haunting the Indian judicial process for real. Further, retirement age of Judges in India is one of the lowest in the world. While increasing retirement age of judges in India seems a distant dream, the only provision which complements the utilisation of these experienced judges is appointment of them as retired judges. It is suggested that the appointment procedure of retired judges ought to be simplified. Unlike regular appointments, herein, the appointment procedure has to be expedited so as to satisfy the purpose sought to be achieved. Further, the practice of Senior Judges or Sitting in Retirement of US and UK should be adopted so as to maintain a continuity in appointment rather re-calling them back to the bench. Also, the guideline in Lok Prahari which has restricted the number of retired judges in any court from 2 to 5 has to increased to serve the purpose of reducing backlogs.It is a welcome step by the judiciary in activating a dormant provision and recall retired judges to deal with the ongoing pendency in country.

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''पंडित दीनदयाल उपाध्याय के विषय में जानकारियाँ बहुत ही सीमित हैं। डॉ. महेशचंद्र शर्मा ने इस विषय पर गवेषणात्मक अध्ययन किया है। इस शोध-ग्रंथ का प्रकाशन न केवल जनसंघ की राजनीति व विचारधारा के प्रति लोगों को लाभदायक जानकारियाँ देगा वरन् राजनीति शास्त्र की वैचारिक बहस को भी आगे बढ़ाएगा। दीनदयाल उपाध्याय व भारतीय जनसंघ को समझने के लिए यह शोध-ग्रंथ प्रामाणिक आधारभूमि प्रदान करता है।''

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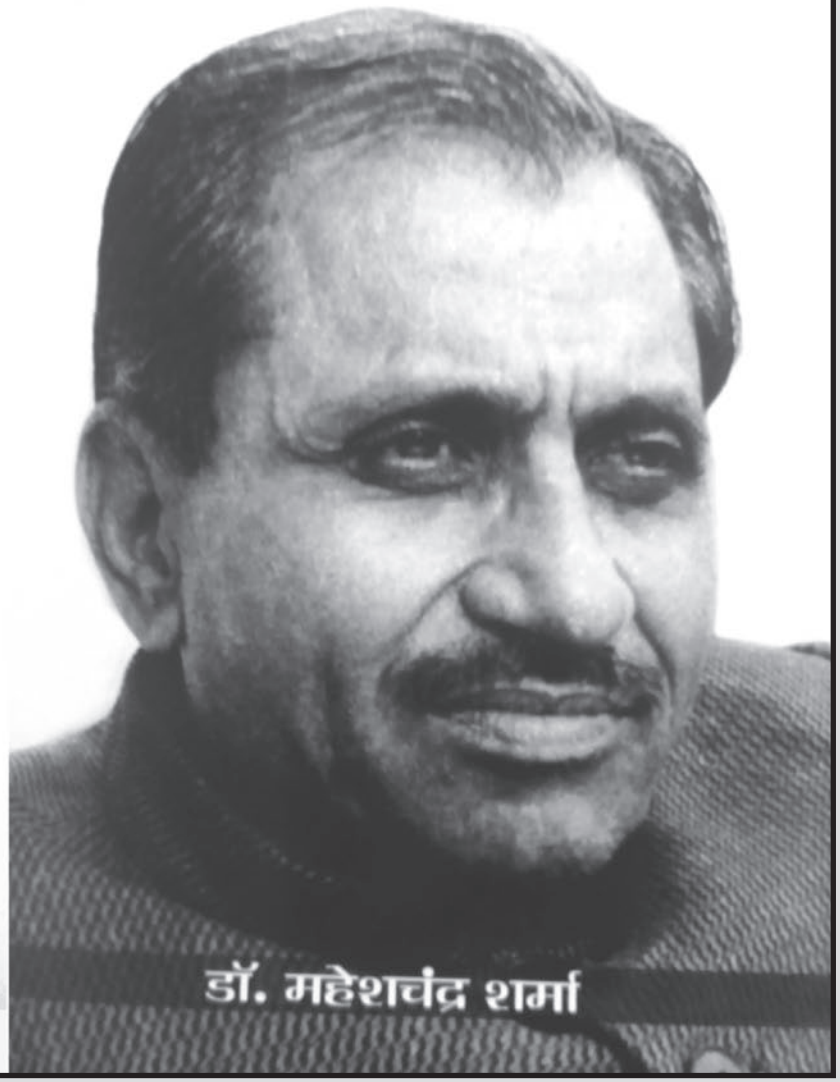

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"माननीय प्रधानमंत्री नरेंद्र मोदी जी के दूरदर्शी नेतृत्व में हम अपने राज्य की प्राकृतिक सुंदरता, समृद्ध सांस्कृतिक विरासत और अपार संभावनाओं का लाभ उठाते हुए समग्र विकास के लिए प्रतिबद्ध हैं। हमारा लक्ष्य स्थायी नीतियों और रणनीतिक पहलों के माध्यम से राज्य के आर्थिक विकास को बढ़ावा देना, बुनियादी ढांचे में सुधार करना और नागरिकों की जीवन गुणवत्ता को बेहतर करना है। हम उत्तराखंड को प्रगति का एक ऐसा मॉडल बनाना चाहते हैं, जहां परंपरा नवाचार से मिलती है। हर व्यक्ति राज्य की समृद्धि व कल्याण में अपना अपार योगदान दे सकता है।

-पुष्कर सिंह धामी, मुख्यमंत्री"

एसडीजी इंडिया इंडेक्स 2023-24 में उत्तराखंड का शानदार प्रदर्शन

प्रधानमंत्री नरेंद्र मोदी के दूरदर्शी मार्गदर्शन और मुख्यमंत्री पुष्कर सिंह धामी के कुशल नेतृत्व में उत्तराखंड ने सतत विकास लक्ष्यों (एसडीजी) में शानदार प्रगति का प्रदर्शन किया है, जो कि एसडीजी इंडिया इंडेक्स 2023-24 में प्रदर्शित हो रहा है

PIC: DIPR, UTTARAKHAND GOVERNMENT

प्रधानमंत्री नरेंद्र मोदी को उत्तराखंड के अनाज उपहार में देते मुख्यमंत्री पुष्कर सिंह धामी

हाल ही में जारी एसडीजी (सस्टेनेबल डेवलपमेंट गोल्स) इंडिया इंडेक्स 2023-24 में उत्तराखंड सबसे बेहतरीन प्रदर्शनकर्ता के रूप में उभरा है। उत्तराखंड ने केरल के साथ 79 के प्रभावशाली स्कोर के साथ यह रैंकिंग हासिल की है। प्रधानमंत्री नरेंद्र मोदी के दूरदर्शी मार्गदर्शन और मुख्यमंत्री पुष्कर सिंह धामी के कुशल नेतृत्व में राज्य ने विकास, नवीकरणीय ऊर्जा को बढ़ावा देने, स्वास्थ्य के बुनियादी ढांचे को बढ़ाने, शहरी परिवेश को विकसित करने और जैव विविधता को संरक्षित करने जैसे विषयों पर काम किया है, जो सतत विकास और प्रभावी नीति क्रियान्वयन के प्रति उत्तराखंड सरकार की प्रतिबद्धता को रेखांकित करता है। अपने इस प्रयास के चलते प्रदेश ने कई एसडीजी लक्ष्यों में शीर्ष पांच राज्यों में स्थान प्राप्त किया है।

गरीबी उन्मूलन और वित्तीय सुरक्षा

गरीबी उन्मूलन में देवभूमि उत्तराखंड का प्रदर्शन सराहनीय रहा है, जो इस दिशा में राज्य के प्रयासों की सफलता को दर्शाता है। एसडीजी इंडिया इंडेक्स इस बात पर जोर देता है कि उत्तराखंड ने गरीबी के स्तर को कम करने, अपने नागरिकों के लिए वित्तीय सुरक्षा सुनिश्चित करने और प्रभावशाली सामाजिक सुरक्षा कार्यक्रमों को लागू करने में किन महत्वपूर्ण उपलब्धियों को हासिल किया है। राज्य की प्रभावी नीतियों ने वंचित लोगों के लिए व्यवसाय सृजन, आवास, स्कूली शिक्षा और स्वास्थ्य जैसे मूलभूत सुविधाओं तक पहुंच में सुधार के लिए लक्षित रणनीतियां शामिल होती हैं। इन प्रयासों ने सामूहिक रूप से गरीबी उन्मूलन में राज्य की शीर्ष रैंकिंग में योगदान दिया है।

सभी तक स्वास्थ्य लाभ पहुंचाने का प्रयास

उत्तराखंड राज्य ने स्वास्थ्य सेवाओं को बढ़ावा देने में उल्लेखनीय प्रगति की है। राज्य की स्वास्थ्य सेवा प्रणाली ने मां और बच्चे के स्वास्थ्य, टीकाकरण कवरेज, संचारी और गैर-संचारी रोगों के प्रबंधन के साथ विभिन्न हेल्थ इंडीकेटर्स में उत्कृष्ट प्रगति की है। स्वास्थ्य सेवा के बुनियादी ढांचे को मजबूत करने, दूरदराज के इलाकों तक स्वास्थ्य सुविधाओं का लाभ पहुंचाने और स्वास्थ्य सेवाओं की गुणवत्ता में सुधार लाने में सरकार का प्रयास कारगर सिद्ध हुआ है। स्वास्थ्य एजेंडा और सार्वजनिक स्वास्थ्य में विस्तारित निवेश ने उत्तराखंड की रैंकिंग को और मजबूती दी है। इससे उत्तराखंड सर्वोच्च उपलब्धि हासिल करने वाले राज्यों में शामिल हो गया है।

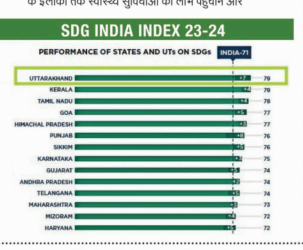
उत्तराखंड ने स्वास्थ्य, स्वच्छ ऊर्जा, गरीबी उन्मूलन, शहरी स्थिरता और पर्यावरण संरक्षण सहित कई अहम क्षेत्रों में अग्रणी रहकर नए मानक स्थापित किए हैं

किफायती और स्वच्छ ऊर्जा का विस्तार

एसडीजी इंडिया इंडेक्स में उत्तराखंड की उपलब्धियां नागरिकों तक पर्याप्त, सतत व स्वच्छ ऊर्जा की पहुंच सुनिश्चित करने पर जोर देती हैं। राज्य ने अक्षय ऊर्जा क्षमता को बढ़ाने, विशेष रूप से अपनी जलविद्युत क्षमता का उपयोग करने की दिशा में उल्लेखनीय कदम उठाए हैं। इसके अलावा, उत्तराखंड ने ऊर्जा दक्षता को बढ़ाने, ग्रामीण और दूरदराज के क्षेत्रों में बिजली ग्रिड के विस्तार पर ध्यान दिया है, जिससे स्वच्छ ऊर्जा तक समग्र पहुंच सुनिश्चित हो सकी है। इन उपायों ने ऊर्जा सुरक्षा में सुधार के साथ पर्यावरणीय स्थिरता में योगदान दिया है। इससे राज्य इस वर्गीकरण में अग्रणी स्थान प्राप्त कर सका है।

समावेशी और सतत शहरी समुदायों का विकास

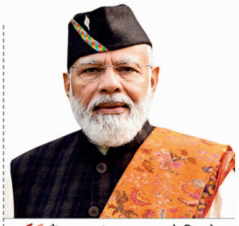
उत्तराखंड ने शहरों और मानव क्षेत्रों को समावेशी, सुरक्षित और टिकाऊ बनाने के लिए सराहनीय कदम उठाए हैं। राज्य ने बुनियादी ढांचे को बढ़ाने, सार्वजनिक सेवाओं में सुधार करने और सतत शहरीकरण को प्रोत्साहित करने के लिए कई महानगरीय विस्तार प्रयासों को लागू किया है। आवश्यक उपक्रमों में स्मार्ट शहरों का विकास, किफायती आवास योजनाएं और शहरी नियोजन में आपदा जोखिम को कम करने के प्रयासों का एकीकरण शामिल है। इन प्रयासों ने शहरी नागरिकों के जीवन गुणवत्ता में सुधार किया है और उत्तराखंड को सतत विकसित शहरों व समुदायों के निर्माण में शीर्ष राज्यों में शामिल किया है।



स्थलीय पारिस्थितिकी तंत्र और जैव विविधता का संरक्षण

स्थलीय पारिस्थितिकी तंत्र और जैव विविधता को बनाए रखने के लिए उत्तराखंड की प्रतिबद्धता एसडीजी इंडिया इंडेक्स रैंकिंग में स्पष्टरूप से देखी जा सकती है। राज्य ने जंगलों को बचाने, उन्हें पुनर्जीवित करने, जंगल की विविधता को समझने और भूमि क्षरण को रोकने के लिए अथक प्रयास शुरू किए हैं।

उत्तराखंड की समृद्ध जैव विविधता और विशाल वन क्षेत्र राज्य की महत्वपूर्ण संपत्ति हैं, जिन्हें विभिन्न पर्यावरणीय दृष्टिकोण और समुदाय-आधारित संरक्षण एजेंडा से संरक्षित किया गया है। सतत खेती और वानिकी तकनीकों को बढ़ावा देने के उपायों ने राज्य के पारिस्थितिक सामंजस्य को और मजबूत किया है, जिससे प्राकृतिक संसाधनों के दीर्घकालिक बने रहने का विश्वास मिलता है। विकास के लिए उत्तराखंड की समग्र रणनीति में सामाजिक समावेशन और पर्यावरण प्रबंधन के साथ आर्थिक विकास को भी शामिल किया गया है, जो राज्य के सतत विकास लक्ष्यों के प्रति उनके समर्पण को दर्शाती है।



"मैं उत्तराखंड सरकार को पिछले कुछ वर्षों में हासिल की गई उपलब्धियों के लिए बधाई देता हूं। यह पर्यटन और नवीकरणीय ऊर्जा जैसे प्रमुख क्षेत्रों पर निरंतर नीतिगत प्रोत्साहन और इस पर ध्यान देने से ही संभव हुआ है। साथ ही, राज्य ने बुनियादी ढांचे के विकास में महत्वपूर्ण प्रगति की है, जो सतत विकास के लिए नए मानक स्थापित करता है। अपने प्राकृतिक संसाधनों के उपयोग और पर्यटन को बढ़ावा देने की प्रतिबद्धता ने न केवल यहां की अर्थव्यवस्था को मजबूती दी है, बल्कि वैश्विक मंच पर राज्य ने अपनी क्षमता को प्रदर्शित किया है। मैं समावेशी विकास के लिए राज्य के समर्पण की सराहना करता हूं और आने वाले वर्षों में इसकी निरंतर सफलता की आशा करता हूं।

-नरेंद्र मोदी, प्रधानमंत्री"

उत्तराखंड ने सकल पर्यावरण उत्पाद (जीईपी) सूचकांक शुरू करने का ऐतिहासिक कदम उठाया है। इस तरह से उत्तराखंड पारिस्थितिकी को अर्थव्यवस्था से जोड़ने वाला पहला भारतीय राज्य बन गया है

सकल पर्यावरण उत्पाद सूचकांक शुरू करने वाला पहला राज्य बना उत्तराखंड

उत्तराखंड ने सकल पर्यावरण उत्पाद (जीईपी) सूचकांक शुरू करने का ऐतिहासिक कदम उठाया है, जो प्रदेश की पारिस्थितिकी को अर्थव्यवस्था से जोड़ने वाला अनूठा कदम है। इसके साथ ही उत्तराखंड ऐसा अग्रणी प्रयास शुरू करने वाला पहला भारतीय राज्य भी बन गया है। जीईपी सूचकांक हाल ही में मुख्यमंत्री पुष्कर सिंह धामी द्वारा लॉन्च किया गया और इसमें चार जरूरी तत्वों को शामिल किया गया है, जिसमें वायु, जल, वन और मिट्टी की गुणवत्ता के आधार पर राज्य के पर्यावरणीय स्वास्थ्य का मूल्यांकन किया जाता है। जीईपी 2020 से 2022 तक के सापेक्ष डेटा के माध्यम से 0.9% की वृद्धि को दर्शाता है, जो विस्तार के साथ अनुकूल पर्यावरणीय रुझानों का संकेत देता है।

मुख्यमंत्री पुष्कर सिंह धामी ने वित्तीय विकास और पारिस्थितिकी संरक्षण के बीच संतुलन को सुविधाजनक बनाने में इस प्रयास के महत्व पर प्रकाश डाला। जीईपी सूचकांक भावी पर्यावरण संरक्षण उद्देश्यों को बनाने और प्राकृतिक संसाधनों की सुरक्षा के महत्व के बारे में लोगों की समझ बढ़ाने में महत्वपूर्ण पहल के रूप में कार्य करेगा। मुख्यमंत्री ने उत्तराखंड की समृद्ध प्राकृतिक विरासत पर जोर देते हुए व्यापक पौधरोपण, जल संरक्षण संबंधी उपायों के माध्यम से वन संपदा के प्रभावी उपयोग और जल स्रोतों के पुनरोद्धार की आवश्यकता पर भी प्रकाश डाला।

PICS: DIPR, UTTARAKHAND GOVERNMENT

विकास को पर्यावरणीय स्थिरता के साथ संतुलित करने में जीईपी सूचकांक की शुरुआत करके विशिष्ट उदाहरण प्रस्तुत करने का प्रयास कर रहा है उत्तराखंड

जीईपी की अवधारणा पर्यावरणविद् डॉ. अनिल प्रकाश जोशी द्वारा परिकल्पित की गई थी और यह पर्यावरणीय सेवाओं को आर्थिक मूल्य के साथ बेहतर सामंजस्य स्थापित करने पर जोर देती है। साथ ही, पारिस्थितिक प्रभाव को ठोस आधार भी प्रदान करती है। उत्तराखंड पर्यावरणीय स्थिरता के साथ विकास को संतुलित करने में जीईपी सूचकांक की शुरुआत के साथ विशिष्ट उदाहरण पेश कर रहा है। राज्य अपने नागरिकों के बेहतर कल को सुनिश्चित करते हुए अन्य राज्यों को भी इसके अनुसरण के लिए प्रेरित कर रहा है।

प्रधानमंत्री नरेंद्र मोदी के मार्गदर्शन और मुख्यमंत्री पुष्कर सिंह धामी के कुशल नेतृत्व में शुरू की गई 'एक जिला दो उत्पाद' योजना का उद्देश्य राज्य के सभी 13 जिलों में स्थानीय उत्पादों को बढ़ावा देना और स्वरोजगार के अवसर सृजित करना है

उत्तराखंड सरकार की ओडीटीपी योजना: स्थानीय आर्थिक सशक्तिकरण की दिशा में बड़ा कदम

उत्तराखंड की 'एक जिला दो उत्पाद योजना' की (ODTP) योजना अक्टूबर 2021 में मुख्यमंत्री पुष्कर सिंह धामी द्वारा शुरू की गई एक अभिनव पहल है। इसका उद्देश्य राज्य के सभी 13 जिलों में स्थानीय उत्पादों को बढ़ावा देना और स्वरोजगार के अवसर सृजित करना है। राज्य सरकार का उद्देश्य पारंपरिक और शिल्प उद्योगों पर ध्यान रखते हुए हर जिले में बाजार की मांग के अनुसार कौशल विकास, डिजाइन और कच्चे माल से नई तकनीक के आधार पर दो उत्पाद विकसित करना है।

आर्थिक व रोजगार के दृष्टिकोण से दिख रहा सकारात्मक प्रभाव

ओडीटीपी योजना का एक अहम पहलू स्थानीय स्तर पर रोजगार के अवसर सृजित करना भी है। जिलों में स्थानीय उत्पादों को पहचान कर वहां के पारंपरिक और शिल्प उद्योगों को विकसित करना है। 'एक जिला दो उत्पाद' योजना के तहत अब उत्तराखंड के स्थानीय उत्पादों को देश और दुनिया के बाजार में पहचान मिलेगी। उत्पादों का कारोबार बढ़ने से रोजगार के अवसर भी बढ़ेंगे। बाजार की मांग के आधार पर उत्पाद विकसित करके और आधुनिक तकनीक का उपयोग करके, यह योजना पैकेजिंग, परीक्षण और लॉजिस्टिक्स सहित विभिन्न क्षेत्रों में रोजगार पैदा करती है। व्यापार और निर्यात के अवसरों में वृद्धि से रोजगार को और बढ़ावा मिलने की उम्मीद है, जिससे स्थानीय किसानों, कारीगरों और शिल्पकारों को लाभ होगा।

व्यापक रणनीति तैयार

उत्तराखंड सरकार ने ओडीटीपी योजना के सफल कार्यान्वयन को सुनिश्चित करने के लिए एक व्यापक रणनीति तैयार की है। इसमें जिला स्तर पर पैकेजिंग, परीक्षण, विस्तार और लॉजिस्टिक्स के लिए सुविधाएं शामिल हैं। इन संरचनाओं को सुदृढ़ करते हुए योजना के माध्यम से चुने गए उत्पादों की गुणवत्ता और बाजार तक पहुंच को बेहतर बनाना है। कौशल विकास और डिजाइन संवर्द्धन भी इस कार्यान्वयन रणनीति का अहम हिस्सा है। स्थानीय कारीगरों और शिल्पकारों को आधुनिक कौशल और डिजाइन तकनीकों से लैस करके, योजना यह सुनिश्चित करती है कि उत्पाद समकालीन बाजार की मांगों को पूरा करें। यह समग्र दृष्टिकोण न केवल पारंपरिक शिल्प कौशल को संरक्षित करता है, बल्कि इसे आज के बाजार के अनुरूप भी बनाता है।

PIC: DIPR, UTTARAKHAND GOVERNMENT

मुख्यमंत्री पुष्कर सिंह धामी स्थानीय कारीगरों से उत्पाद की जानकारी लेते हुए।

बाजार और निर्यात की संभावनाएं

ओडीटीपी योजना का उद्देश्य उत्तराखंड के स्थानीय उत्पादों को घरेलू और अंतर्राष्ट्रीय दोनों बाजारों में स्थापित करना है। इन उत्पादों को बढ़ावा देकर, उनकी दृश्यता और मांग को बढ़ाने का प्रयास किया जा रहा है। इसके तहत पैकेजिंग, ब्रांडिंग और मार्केटिंग को बेहतर बनाने के लिए सरकार की ओर से असीमित प्रयास किए जा रहे हैं। बाजार में इस योजना को बढ़ावा देने में पर्यटन की भी अहम भूमिका है। प्रधानमंत्री नरेंद्र मोदी ने पर्यटकों को अपने कुल खर्च का कम से कम 5% स्थानीय उत्पादों पर खर्च करने के लिए प्रोत्साहित किया है। यह पहल न केवल स्थानीय अर्थव्यवस्था को बढ़ावा देती है, बल्कि उत्तराखंड की समृद्ध सांस्कृतिक विरासत को संरक्षित करने में भी मदद करती है।

स्थानीय पारंपरिक शिल्प को मिल रही मान्यता

स्थानीय उत्पादों को मिल रहा राष्ट्रीय व वैश्विक मंच

PIC: DIPR, UTTARAKHAND GOVERNMENT

प्रधानमंत्री नरेंद्र मोदी निवेशक शिखर सम्मेलन 2023 के दौरान महिला उद्यमियों (एसएचजी) से बात करते हुए

एक जिला एक उत्पाद' (ODOP) योजना आत्मनिर्भर भारत अभियान के तहत एक प्रयास है, जिसका उद्देश्य क्षेत्रीय उत्पादों को बढ़ावा देना और देशभर के जिलों में वितीय विकास को बढ़ावा देना है। प्रत्येक जिले के उत्कृष्ट उत्पादों को मान्यता देकर और उन्हें पहचान दिलाकर, यह योजना विनिर्माण को सुविधाजनक बनाने, क्षेत्रीय कारीगरों की मदद करने और देश व दुनिया के बाजारों में इन उत्पादों के लिए एक मंच प्रदान करने का प्रयास करती है। हाल ही में, उत्तराखंड और इसके सीमावर्ती जिले उत्तरकाशी ने इस योजना में देशभर में प्रशंसा हासिल की है, जो राज्य के लिए एक उल्लेखनीय उपलब्धि है।

उत्तराखंड की प्रशंसा आत्मनिर्भर भारत उत्सव 2024 पुरस्कारों के दौरान हुई, जहां उत्तरकाशी जिले ने कृषि श्रेणी में लाल चावल के उत्पादन के लिए दूसरा पुरस्कार जीता। यह पुरस्कार विदेश मंत्री डॉ. एस जयशंकर और वाणिज्य एवं उद्योग मंत्री पीयूष गोयल द्वारा दिया गया। उत्तराखंड की और से उत्तरकाशी के तत्कालीन डीएम अभिषेक रोहिल्ला ने यह सम्मान प्राप्त किया।

उत्तरकाशी के लाल चावल ने अपने स्वास्थ्यवर्धक गुणों के कारण काफी ध्यान आकर्षित किया है। चावल की यह किस्म पोषण के मामले में बहुत महत्वपूर्ण है। इसे जीआई टैग भी मिला हुआ है, जिससे इसकी मार्केटिंग और प्रतिष्ठा में भी सुधार हुआ है। उत्तरकाशी के लाल चावल को एक महत्वपूर्ण कृषि उत्पाद के रूप में पहचान कर इसे राष्ट्रीय और वैश्विक स्तर पर पहचान बनाने की रणनीति पर जोर देता है। लाल चावल को उत्तराखंड के विभिन्न जिलों के ओडीओपी योजना के तहत विशेष उत्पादों के रूप में मान्यता दी गई है। हर जिले का विशेष उत्पाद उत्तराखंड की क्षेत्रीय अर्थव्यवस्था की समृद्ध विविधता और संभावनाओं का प्रतीक है।

इन सहायक प्रयासों में कॉमन फैसिलिटी सेंटर (सीएफसी) योजना भी शामिल है, जो परियोजना व्यय का 90 प्रतिशत तक आर्थिक सहायता प्रदान करती है। इससे स्थानीय उत्पादकों को अपने उत्पादन प्रतिष्ठानों में सुधार करने और अपने उत्पाद की गुणवत्ता बढ़ाने में मदद मिलती है। विपणन विकास सहायता योजना राष्ट्रव्यापी और प्रदर्शनियों व मेलों के प्रतिभागियों को आर्थिक सहायता प्रदान करती है। इससे उन्हें अपने ओडीओपी-चयनित उत्पादों का प्रदर्शन और विपणन करने का अवसर मिलता है। इसके अलावा, मार्जिन मनी स्कीम इस परियोजनाओं की स्थापना के लिए सहायता प्रदान करती है, ताकि यह सुनिश्चित किया जा सके कि आर्थिक सीमाएं स्थानीय उद्यमों के विकास में बाधा न बनें।

राज्य (श्रेणी वी)

रैंक	राज्य	पुरस्कार
1.	जम्मू-कश्मीर	स्वर्ण
2.	उत्तराखंड	रजत
3.	मेघालय	कांस्य
4.	सिक्किम	कांस्य

उत्तराखंड बन रहा आयुष एवं वेलनेस डेस्टिनेशन

उत्तराखंड आयुष नीति ला रही स्वास्थ्य सेवाओं में व्यापक बदलाव

PIC: DIPR, UTTARAKHAND GOVERNMENT

मुख्यमंत्री पुष्कर सिंह धामी ने अपनी आदि कैलाश यात्रा से इस क्षेत्र को एक उल्लेखनीय तीर्थस्थल के रूप में बढ़ावा देने का प्रयास किया

उत्तराखंड की आयुष नीति में स्वास्थ्य देखभाल प्रक्रियाओं को शामिल करने के साथ ही समग्र स्वास्थ्य और आर्थिक विकास संबंधी उद्यमशील नीतियों को भी शामिल किया गया है।

आयुष नीति का उद्देश्य इसका लाभ उठाकर क्षेत्र के 1,000 से अधिक दुर्लभ औषधीय पौधों की खेती को सक्षम बनाना है। मुख्यमंत्री औषधीय पौध विकास कार्यक्रम जैसे प्रयासों से 50,000 किसानों को इन पौधों की खेती में शामिल करने, इस तरह की खेती के तरीकों को बढ़ावा देने और क्षेत्रीय राजस्व में वृद्धि करने की योजना है।

आयुष उत्पादन को लेकर उत्तराखंड पहले से ही एक विशेष अभियान चला रहा है। इसमें पर्याप्त मात्रा में कच्चा माल और व्यावसायिक आवश्यकताओं पर जोर दिया जा रहा है। राज्य में कई GMP-प्रमाणित विनिर्माण विभाग हैं, जो आयुष दवाओं और उपभोक्ता वस्तुओं की एक विस्तृत श्रृंखला बनाते हैं। नई नीति के तहत, अधिक इकाइयों को WHO GMP प्रमाणन प्राप्त करने और वैश्विक गुणवत्ता मानदंडों का पालन करने में सक्षम बनाने के लिए प्रोत्साहन और सहायता प्रदान की जाएगी। यह एक सकारात्मक कदम है और इससे राज्य के सकल घरेलू उत्पाद में और सुधार होने की उम्मीद है, जिसका वर्तमान में मूल्यांकन 4,000-5,000 करोड़ रुपये है।

प्रदेश में आयुष सेवाओं को अगले पांच वर्षों तक जन-जन तक पहुंचाने का लक्ष्य रखा गया है। उत्तराखंड आयुष नीति में पांच वर्षों के भीतर एमएचएच (अस्पतालों और स्वास्थ्य सेवा प्रदाताओं के लिए राष्ट्रीय प्रत्यायन बोर्ड) के तहत सभी सरकारी आयुष स्वास्थ्य केंद्रों को मान्यता देने की बात कही गई है।

योग और ध्यान के प्रति प्रधानमंत्री नरेंद्र मोदी के लगाव ने सदियों पुरानी परंपराओं के प्रति उत्तराखंड में लोकप्रियता को नए आयाम दिए हैं

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पनीर

टिहरी नथ

चम्पावत
लौह शिल्प उत्पाद

शहद

देहरादून
बेकरी उत्पाद

मशरुम

पर्यटक अपने यात्रा व्यय का 5% स्थानीय उत्पादों पर खर्च करें: प्रधानमंत्री

प्रधानमंत्री नरेन्द्र मोदी ने आत्मनिर्भर भारत के लक्ष्य को हासिल करने के लिए वोकल फॉर लोकल की बात कही है। स्थानीय उत्पादों को बढ़ावा दिये जाने के उद्देश्य से भारत सरकार द्वारा वन डिस्ट्रिक्ट वन प्रोडक्ट की शुरुआत की गई।

मुख्यमंत्री पुष्कर सिंह धामी के नेतृत्व में उत्तराखण्ड सरकार ने इस योजना को वन डिस्ट्रिक्ट टू प्रोडक्ट के रूप में आगे बढ़ाया है। बदरीनाथ धाम के निकट माणा गांव में आयोजित कार्यक्रम में प्रधानमंत्री नरेन्द्र मोदी ने देशवासियों से अपील की थी कि कहीं भी घूमने जाएं तो अपने यात्रा व्यय का 5 प्रतिशत स्थानीय उत्पादों पर खर्च करें। इससे स्थानीय आर्थिकी में जबरदस्त परिवर्तन देखने को मिलेगा। किसी भी क्षेत्र की पहचान उनकी भाषा-बोली एवं स्थानीय उत्पादों से होती है, इनको बढ़ावा देने के लिए हर संभव प्रयास किये जाने चाहिए।

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