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Original Article

Scheduled Tribes and Forest Dweller's Rights in India: Karnataka and Andhra Pradesh Perspectives

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Abstract

There is an inseparable link between the forests and the tribes and other forest dwellers. Generation together these communities are residing alongside the forests and are most dependent on the forest products. Some argue that the rights granted under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 to the Scheduled Tribes and other Traditional Forest Dwellers will lead to destruction, damage and loss of biodiversity. Others argue that recognition of forest rights and, more importantly, making conservation democratic - is the only way forward. The more power the forest bureaucracy retains, the more it will harm both wildlife and people. It is being observed that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an instrument which will be implemented for protecting the interests of tribes and other forest dwellers for inclusive sustainable development.

This paper attempts to examine that the measures ensured to protect the interest of tribes and other forest dweller's in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 taking the note of experiences of the states of Karnataka and Andhra Pradesh.

Keywords: Conservation; Bio-diversity; Sustainable use; Sustainable Development; Instruments; Policies; Tribes; Forest Dwellers Rights.

Introduction

Tribes are aborigines of the country who had been sidelined by the progressive societies especially the Aryans in ancient, Mohammedans in medieval and the Britishers in modern period. The tribes remained outside the mainstream even though in scientific and modern era. This is because they were very much attached to the nature especially the forest. Their life was fully associated with the nature for that they were not come out to the mainstream. Their life even today is dependent on the nature especially the forests. The forests are their hometown, it is their market, and it is their permanent abode. They are very much far away from the taste of literacy and modern life of city and urban area. Their living style, food system, housing pattern, clothing, culture, marriage and other relationships are appears to be highly different from the mainstream people. So they are far from the developmental process of the society remained unchanged in their habits and styles. Because of this

community who is lagging behind in developmental aspects for that we are not achieving sustainable development in society. Sustainable development [1] is the need of the hour for inclusive development of the society including in this process the tribal as well. The Government of India and the respective state governments have carved out many legislative and policy measures supported with schemes and programmes to implement the policies practically for the overall development of the Scheduled Tribes in India. However, still STs are underrepresented in various avenues of public life and their economic and social status still needs to be achieved. One among several legislative measures for the upliftment of the STs is the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which addresses certain issues surrounded with the protection of interest of the STs and recognizes the their land rights for which they are entitled.

Recognition and Proetection of the Rights of Scheduled Tribes and Forest Dwellers

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is aimed at protecting the interest of the tribes and other forest dwellers. The Act seeks to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded. However, it's all depends upon how best this law is implemented to achieve its goals. The Ministry of Tribal Affairs is the nodal agency for implementing the provisions of the Act. The Act was notified for operation with effect from 31.12.2007 [2]. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 for implementing the provisions of the Act were notified on 1.1.2008. As per the provisions of the Act and the Rules framed there under, the onus of implementation of the Act lies at the level of the State/UT Governments. The Act seeks to recognize and vest certain forest rights in the forest dwelling Scheduled Tribes and other traditional forest dwellers. The Ministry, to ensure that the intended benefits of this welfare legislation flow to the eligible forest dwellers, has also issued comprehensive guidelines to the State/UT Governments on 12.7.2012 for better implementation of the Act. Further, to strengthen the Forest Right Rules, 2008, the Ministry has also notified the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 on 6.9.2012. [3]

The Main Objectives of the Act are [4]

The main objectives of the Act have been described in object clause of the Act which are as follows:

1. To provide and vest the forest rights and occupations in forest land in forest dwelling STs and other traditional forest dwellers [5] who have been residing in such forests for generations but whose rights could not be recorded;
2. To provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.
3. To recognize rights of the forest dwelling STs and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling STs and other traditional forest dwellers.
4. To declare the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling STs and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.

The Rights of the Forest Dwellers

The fundamental purpose of this Act is to protect and recognize the rights of the Scheduled Tribes (STs) and others who are the forest dwellers. This Act categorically protects and recognizes three main types of rights which are as follows:

Land Rights

No one gets rights to any land that they have not been cultivating prior to December 13, 2005 (Section 4(3)) and that they are not cultivating right now. Those who are cultivating land but don't have document can claim up to 4 hectares, as long as they are cultivating the land themselves for a livelihood (Section 3(1) (a) and 4(6)). Those who have a patta or a government lease, but whose land has been illegally taken by the Forest Department or whose land is the subject of a dispute between Forest and Revenue Departments, can claim those lands (Section 3(1)(f) and (g)). The land cannot be sold or transferred to anyone except by inheritance (Section 4(4)).

Right to Use

The law secondly provides for rights to use and/or collect the following:

1. Minor forest produce [6] Section 2 (i) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 defines the meaning of Minor Forest Produce as " 'Minor forest produce' includes all non-timber forest things like tendu patta, herbs, medicinal plants etc "that has been traditionally collected. This does not include timber [7].
2. Community rights uses or entitlements such as fish and other products of water bodies and grazing grounds [8].
3. Traditional areas of use by nomadic or pastoralist communities i.e. communities that move with their herds, as opposed to practicing settled agriculture.
4. Right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected.

Right to Protect and Conserve Sustainably

Though the forest is supposed to belong to all of us, till date no one except the Forest Department had a right to protect it. If the Forest Department should decide to destroy it, or to hand it over to someone who would, stopping them was a criminal offence. For the first time, this law also gives certain rights to the community:

a. The rights to protect, regenerate, conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use (Section 3(1) (i)).
b. The right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity (Section 3(1)(k).

Section 5 gives the community a general power to protect wildlife, forests, etc. This is vital for the thousands of village communities who are protecting their forests and wildlife against threats from forest mafias, industries and land grabbers, most of whom operate in connivance with the Forest Department.

This Act does not give traditional right of hunting or trapping or extracting a part of the body of any species of wild animal (Section 3(1)(l)).

Mode and Method of Recognition of Rights

Section 6 of the Act provides a transparent three step procedure for deciding on who gets rights. First, the gram sabha (full village assembly, not the gram panchayat) makes a recommendation i.e. who has been cultivating land for how long, which minor forest produce is collected, etc. The Gram Sabha plays this role because it is a public body where all people participate, and hence is fully democratic and transparent. The gram sabha's recommendation goes through two stages of screening committees at the taluka and district levels. The district level committee makes the final decision (see section 6(6)). The Committees have six members - three government officers and three elected persons. At both the taluka and the district levels, any person who believes a claim is false can appeal to the Committees, and if they prove their case the right is denied (sections 6(2) and 6(4)). Finally, land recognized under this Act cannot be sold or transferred.

Diversion of Forest Land

The Act provides for the diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding 75% per hectare namely: (a) Schools, (b)Dispensaries/hospitals, (c) Anganwadis, (d) Fair price shops, (e) Electric and telecommunication lines, (f) Tanks and other minor water bodies, (g) Drinking water supply and water pipelines, (h) Water or rain water harvesting structures (i) Minor irrigation canals, (j) Non-conventional source of energy, (k) Skill upgradation or vocational training centres, (l) Roads and (m)Community centres.

However, the diversion of forest land will be allowed only if following conditions are fulfilled:

a. The forest land to be diverted for the purposes above is less than one hectare and
b. The clearance of such developmental projects should be subject to the condition that the same is recommended by the Grama Sabha [9].

Implementation of the Forest Rights Act

As per the Ministry of Tribal Affairs, Government of India status report till 30th September, 2013, 35,39,793 claims have been filed and 14,06,971 titles have been distributed. Further, 18,299 titles were ready for distribution. A total of 30,78,483 claims have been disposed of (86.96%).[10] The same is described in the following table 1.

States of Tripura, Kerala and Orissa are the top states in implementing the Act, while Gujarat is the 11th rank and Karnataka is the 15th rank in the implementation of the Act. No claims are registered

Table 1: Statement showing percentage of titles distributed over number of claims received in each State under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (As on 30.09.2013)

Sl. No.	State	Total Number of Claims Received	Total number of titles deeds distributed/ ready	% of titles distributed over number of claims received
1	Tripura	1,82,617	1,20,473 distributed	65.97%
2	Kerala	37,535	23,167 distributed	61.72%
3	Orissa	5,41,800	3,24,130 distributed	59.82%
4	**Andhra Pradesh**	**3,30,479**	**1,67,797 distributed**	**50.77 %**
5	Rajasthan	69,677	33,646 distributed	48.28%
6	Chhattisgarh	7,56,062	3,06,184 distributed	40.49%
7	Madhya Pradesh	4,81,128	1,79,526 distributed and 11,607 ready	37.31%
8	Jharkhand	42,003	15,296 distributed	36.41%
9	Maharashtra	3,45,975	1,03,225 distributed	29.83%
10	Assam	1,31,911	36,267 distributed	27.49 %
11	Gujarat	1,91,592	42,752 distributed	22.31%
12	West Bengal	1,37,278	29,852 distributed and 2,969 ready	21.74%
13	Uttar Pradesh	92,433	17,705 distributed	19.15%
14	Himachal Pradesh	5,692	346	6.07%
15	**Karnataka**	**1,68,718**	**6,577**	**3.89%**
16	Bihar	2,930	28	0.95 %
17	Tamil Nadu#	21,781	3,723 ready#	0.00%
18	Uttarakhand	182	Nil	0.00%
19	Arunachal Pradesh*	--	--	--
20	Goa*	--	--	--
21	Manipur*	--	--	--
22	Meghalaya*	--	--	--
23	Mizoram*	--	--	--
24	Sikkim*	--	--	--
25	A & N Islands*	--	--	--
26	Daman & Diu*	--	--	--
27	Dadra & Nagar Haveli*	--	--	--
	Total	**35,39,793 (34,68,639 individual and 71,154 community)**	**14,06,971 (13,86,116 individual and 20,885 community) and 18,299 ready for distribution**	**39.74%**

*No Claims received
High Court's restrictive order

Table 2: Claims received and titles granted in Karnataka, Andhra and Telangana

States	No. of Claims Received upto 31.01.2016			No. of Titles Distributed upto 31.01.2016			Extent of Forest Land for which Titles Distributed (in Acres)		
	Individual	Community	Total	Individual	Community	Total	Individual	Community	Total
Karnataka	3,66,040	6,208	3,72,248	8,159	144	8,303	11,166.00	26,274.79	37,440.79
Andhra Pradesh	4,00,053	10,959	4,11,012	1,67,263	2,107	1,69,370	14,56,542.00	--	14,56,542.00
Telangana	2,11,698	3,672	2,15,370	99,486	744	1,00,230	3,29,571.00	5,03,082.00	8,32,653.00

Source:http://fra.org.in/document/Status%20Report%20January%202016.pdf

in Arunachal Pradesh, Goa, Manipur, Meghalaya, Mizoram, Sikkim, Andaman & Nichobar Islands, Daman & Diu, Dadra & Nagar Haveli, this is beacuse it may be lack of awareness of the Act or the authorities meant for the implementation are unable to bring awareness of the rights of the forest dwellers.

Present Status of Sts in Karnataka and Andhra

There are three issues that come up in the majority of the States. Here's an explanation of the terms and the problems that are being referred to.

Gram Sabhas

The "gram sabha" (village assembly) is the first tier of decision-making in the Act. But which gram sabha? In reality gram sabhas can be called at three levels. A typical gram panchayat includes multiple revenue villages, which each in turn include multiple

hamlets. Hence the gram sabha can be called either as the assembly of all voters in a gram panchayat, as the assembly of all the residents of a revenue village, or as the assembly of the residents of a hamlet. The movements had long demanded that the gram sabhas for this Act should be at the level of the actual settlements - the hamlets, or at most the revenue villages - and not at the artificial administrative level of the gram panchayat, where they would be very large and make democratic functioning impossible. In the final form of the law, in Scheduled Areas, hamlet level gram sabhas are required, while in other areas the law permits revenue village gram sabhas.

The Forest Rights Committees

Each village is to elect a committee of 10 - 15 people from its own residents as a "Forest Rights Committee", which will do the initial verification of rights and place its recommendations before the gram sabha (which makes the decision).

Community Rights

Contrary to common conception, the Act is not solely or even primarily about individual land claims. Many of the rights, such as the right to minor forest produce, are to be exercised as a community. The most powerful sections of the Act concern the community right to manage, protect and conserve forests, the first step towards a genuinely democratic system of forest management (sections 3(1)(i) and 5). In most areas the State and Central governments have made concerted efforts to deny or ignore these community rights and to instead treat the Act as if it is purely about individual land rights. A key aspect of the struggle is to use and expand these community rights and powers.

The present of titles granted under the FRA Act, 2006 as on January 31, 2016 is as follows: 44,13,922 claims (42,99,778) individual and 1,14,144 community claims) have been filed and 17,14,911 titles (16,73,544 Individual and 41,367 community claims) have been distributed. A total of 38,35,914 (68.90%) claims have been disposed of. The status of Karnataka, Andhra and Telangana is shown in the Table 2.

Karnataka

There was an initial burst of activity in February 2008, when Forest Rights Committees were constituted in several districts of southern Karnataka. In some areas Committees were constituted without even holding a gram sabha. Elected representatives and local organisations protested to demand the cancellation of these Committees. The process then came to a halt due to state elections. Since then, it appears that District Level Committees and Sub-Divisional Level Committees have been set up in some districts, but information is very poor.

In October 2008, fresh orders were issued by the CM's office to constitute Forest Rights Committees by November 4th, but it is not clear if this happened in all areas. The Forest Department has been attempting to push JFM Committees into the role of Forest Rights Committees.

In tiger reserves, the administration along with some environmental NGO's such as Wildlife First has been spreading false propaganda to the effect that people will now be relocated with a compensation of Rs. 10 lakhs per family without clarifying that rights must be recognised first and that relocation can only take place with the informant consent of the gram sabhas and only if it has been scientifically proven that co-existance is not possible..

In the area in which the BRT Hills wildlife sanctuary falls, representatives of Soligas have been made members of both the SDLCs and DLC. The District Collector is willing to approve the Soligas' claim for ownership rights over NTFPs but the DFO has till now refused his consent citing a Supreme Court order of February 2000. Upto date information about further developments is not readily available.

In Nagarhole Tiger Reserve, in mid-May 2009, four adivasi homes were demolished in the hamlet of Nanachicovu hadi. At least seven families have reportedly already accepted cash compensation and moved out, though it is illegal for any relocation to take place prior to the recognition of rights (which has not even been initiated in the area) and it is also illegal to provide only cash compensation. Reportedly the authorities are not accepting claims from tribals under the Forest Rights Act. There is increasing pressure on people to accept the cash compensation and to move.

Tribal leaders in the State have alleged that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (Forest Rights Act) was not being properly implemented in Karnataka. Applications filed by many claimants seeking lands were rejected for frivolous reasons, they alleged.

The leaders met UPA chairperson Sonia Gandhi and Union Minister for Tribal Affairs Kishore Chandra Deo in this regard in New Delhi a couple of years ago.

In a statement, the Adivasi leaders said the district-

level committees headed by Deputy Commissioners had issued rights to certain Adivasis for land ranging from 10 guntas to an acre. This was against the prescribed norm of granting a maximum of 10 acres to each applicant under the Act.

Community rights covering large areas, encompassing their temples and graveyards, were pending for the last three years, except in some cases. The tribal people were not given access to collect minor forest produce, though the Act gave them the right to do so, the leaders alleged.

Rights over water bodies to allow fishing and cultivation too should be given to tribal people, they demanded.

The leaders appealed to the Centre to advise the State government and district-level committees, particularly in Kodagu, Mysore, Chikmagalur, Chamarajanagar, Uttara Kannada and Ramanagaram, to implement the Act.

PESA Act

Forest-dependent tribes were dwelling in nine districts of the Western Ghats in Karnataka. All tribal habitats numbering more than 1,300 had to be declared under Schedule V of the Constitution in order to implement the Panchayat Extension to Scheduled Areas (PESA) Act to manage their lives and resources in a traditional manner by adopting local self-governance.

The Betta Kuruba forest-dependent tribal community in the State was identified as Kadu Kuruba (generic name). They should be specifically identified as Betta Kurubas. All ashram schools in tribal areas should be upgraded on a par with Navodaya schools to provide quality education. A tribal university should be initiated to promote higher education, they said [11].

The court of judicial magistrate of Chamrajnagar in Karnataka has upheld the rights of Soliga tribal people to harvest and sell forest produce independent of the forest department. On May 24, the court ordered Punjanur range forest officer to return 1,100 kg of honey seized from the Hosepodu gram sabha, located within the Biligiri Rangaswami Temple (BRT) tiger reserve, during a raid. The honey was returned to the gram sabha.

BRT tiger reserve is the first protected area in the country where community forest rights (CFR) have been granted under the Forest Rights Act, 2006 (FRA). On October 2, 2011, as many as 25 villages of Soliga tribals located inside the sanctuary received community rights, including the crucial forest conservation and management right to around 60 per cent of the sanctuary area, comprising the Yellandur, K Gudi and Punjanur ranges. Some 30 more villages located inside the sanctuary are awaiting CFR [12].

Court upholds Soliga Tribe's Community Forest Rights, Down to Earth, Tuesday 04 June 2013. See http://www.downtoearth.org.in/news/court-upholds-soliga-tribes-community-forest-rights—41256.

Andhra Pradesh

Forest Rights Committees had been constituted mainly at the panchayat level in February and March of 2008. Despite Andhra's large tribal population and the large area under schedule V of the constitution, leave aside hamlet level gram sabhas, even revenue village gram sabhas have not been permitted. Consequently, residents of remote tribal hamlets of large panchayats have been unable to file their claims under the FRA. In several areas the ITDA undertook surveys with GPS systems to assist in mapping. One "social mobiliser" was appointed in every village under the existing World Bank sponsored Indira Kranthi Patakam scheme (formerly known as the Velugu scheme), and these mobilisers were instructed to help with claims. However, the government has focused entirely on individual claims. ITDAs are sending surveyors for surveying the lands for which only individual claims have been made. The verification forms for these have illegal additional pages that require sanction from beat officers and revenue officials. Many claims were illegally rejected by forest guards during the initial phase of verification by the FRCs. In Adilabad, many claims were initially rejected but the people have re-filed them. In addition, GPS surveys have been abused and people have found smaller areas of land being recorded than those that they claimed, leading to demands for resurveys in many areas. Forest Department interference has also increased, leading to recognition of much smaller areas than were claimed or are actually existing on the ground.

Initially no claim forms were being issued for community rights, and when they were subsequently issued, people were informed to simply tick those that they wished to claim - which clearly led to their rejection. Following mobilisation by movements and grassroots groups, and providing villagers training in mapping their community forest resources, claims for community forest resource rights have now been filed by several hundred villages. This has incidentally also led to rediscovery of many

community lands that had been illegally seized by the Forest Department, and in some areas (as in the case of Orient Cement in a village in Adilabad) contributed to helping people resist handover of their common lands to private companies. Community claims were being sent directly to the SDLCs. Although District Collectors and ITDA officers had agreed to accept claims for community rights, no facilitation for these was or is being provided by the government. Out of an estimated 5000 tribal villages in the state, organisations have been able to mobilise 700 to 800 villages. In protected areas as well the process of claiming rights has taken place to a limited extent.

It appears that the AP government intends to compel those issued individual titles to undertake plantations on their lands instead of self cultivation for which the rights have been granted. The government has begun promoting coffee plantations on people's lands in Vishakhapatnam District, rubber in East Godavari District and biodiesel in several districts.

In the Gudem area of Vishakhapatnam district, the forest department was not permitting the filing of any claims on the grounds that no survey of forest land had been done under the AP Forest Act, 1967 and for which no final notifications have been issued to date. However, the villagers have rejected this premise saying that there is no link between notification of the land and people's right to file claims under the FRA. Similarly, claims were not being entertained for the land to be submerged by the Polavaram dam or allocated for other development purposes.

Due to the lack of organisation among the Chenchus in Srisailam Tiger Reserve, efforts are continuing to illegally relocate them. The wildlife wing now appears to have decided to permit the Chenchus living in the core of the tiger reserve to stay on as it feels it can use them for tiger conservation.

In August 2008, the AP High Court followed the lead of the Madras High Court and issued an interim order barring grant of final titles for rights. In May 2009, the High Court in turn vacated this order and granted permission to issue titles (see here for more information). The earlier interim order of the High Court had led to a general apathy among government officials (who widely interpreted the order as a stay order, when it was not one).

As per official data of August 2009, 1,79,643 individual titles have been issued for a total area of 4.86,780 acres. This is against a total of 3,27,715 individual claims being filed with gram sabhas for a total area of 9,47,788 acres. Thus the approved claims and approved area is roughly 50% of what was claimed. No reason has been provided for the rejection of such a large number of claims or reducing the area claimed, thereby depriving the people the right to appeal. People are now seeking such information under RTI to challenge arbitrary rejections and reductions in area claimed. The average area of approved title is just over one hectare, a far cry from the permitted maximum of 4 ha and the fear expressed by conservationists that the FRA will result in the 'distribution of 4 ha to every tribal family resulting in the decimation of the country's forests'.

On the surface, Andhra has also issued an impressive 2276 'community certificates of titles' (presumably meaning titles for community rights) for a total area of 7,84,949 acres. Information obtained under RTI about the details of these community claims, however, has revealed an attempted 'coup' of community forest rights by the forest department. The majority of community forest rights which have been approved are claims filed by JFM committees (VSSs in AP) which have no right to file claims under the Act. If the forest department created committees continue, the gram sabhas empowered to protect, conserve and manage their CFRs for sustainable use will be illegally deprived of their statutory right under the Act while the FD will retain control over JFMCs as before. In contrast, many of the community claims filed by villagers have either been rejected or approved for a much smaller area than that claimed. The Adivasi Aikya Vedike organized a protest against this abuse of the FRA in Adilabad and the villagers are planning to file fresh claims for CFR rights. Herding and grazier communities have been struggling to file claims for seasonal grazing rights which continue being ignored [13].

By the recent amendment of the Act it has made applicable to municipal areas too. Accordingly, the Directorate Scheduled Tribes Welfare, Government of Karnataka, has directed officers to take note of the Union government's clarification and take action on constituting Forest Rights' Committees in municipal areas too on the lines of the Village Forest Rights Committees (Gram Aranya Samithis).

Deputy Commissioner B S Shekarappa, in a circular dated January 6, has directed the Divisional Commissioners and the chief officers of the Town Municipal Councils and Town Panchayats to act on the basis of the amendments made to the Act in 2008 to be implemented in 2012.

Shekarappa, when asked about the clarification on the extension of the utility of the Act to the municipal areas, told Express that some taluk headquarters are situated in the middle of the forest

region in districts like Chikmagalur, Kodagu, Mysore, Hassan, Uttara Kannada, Udupi, Dakshina Kannada, Belgaum etc and the tribal people living there can lay claim to their right to the land under the Act. In Chikmagalur district, for example, Chikmagalur, Mudigere, Tarikere, Sringeri, Koppa, N R Pura taluks fall in the forest region. The same parameters apply to the constitution of Municipal Forest Committees as in the Gram Aranya Samithis, he added.

In a committee of minimum 10 and maximum 15 members, there should be 2/3 ST members, 1/3 other members and 1/3 women members. The committee president and the secretary will be decided by the committee.

However, Krishik Budakattu Welfare Committee President K N Vittal has questioned the necessity of new committees when the Gram Aranya Samithis have not been completely constituted in many areas of the district. The rights of the tribal and forest dwellers on the land have not been recognised completely as of now, he added [14].

Demand for Effective Implementation of the Act

There were protests across India against NDA Government's attack on Forest Rights. Between November 18th and November 24th, mass protests attended by tens of thousands of people are taking place in seven States across India. The demands of the protesters are simple: stop illegally encouraging government officials and private business to engage in scams, and start respecting democracy, transparency and accountability under the law. The specific demands are below.

Today the Central and State governments are moving very fast to make it easier for the Forest Department and big companies to take over forests and violate people's rights. The Forest Rights Act of 2006 has barely been implemented properly. Even though the law says that every village with forest dwellers should have rights recorded over their community forest resources, this has not even happened in 1% of the villages. In the places where this has happened, such as in Gadchiroli or parts of Maharashtra, the Forest Department is trying to take control back into its own hands.

The new Central government - continuing the work of the Environment Ministry of the last government - is trying to destroy the Act through the back door. Some of the steps taken since May:

Orders have been issued that control over minor forest produce should be given to JFM committees, not the gram sabha (this is completely illegal).

On July 31st, the Prime Minister's Office held a meeting where they asked the Environment Ministry to issue orders saying that projects can be given forest land without gram sabha consent. This is illegal and in violation of the Supreme Court's orders. Meanwhile, even though this change has not been made, the government has cleared projects without taking the consent of gram sabhas.

On October 28th, the Environment Ministry issued an illegal notification giving District Collectors the power to decide, in certain areas, if the Forest Rights Act needs to be implemented prior to forest land diversion. This is an incitement to criminal actions and violations of the law.

We condemn these steps and call upon the government to respect democracy in the forest and stop trying to illegally sabotage the power of the gram sabha. We demand:

1. Respect the power of the gram sabha to manage, use and protect forests and forest lands.
2. Stop rejecting claims and recognise all individual and community rights. Stop interfering with role of the gram sabha in deciding rights.
3. Reject any project which gram sabhas have not consented to. Punish officials and companies who have taken over forest land without gram sabha consent.
4. Respect gram sabha's power to manage and non-timber forest produce, and to take the full revenue from it [15].

Mines and Minerals (Development and Regulation) Amendment Bill 2015 (Mmdra) and Rights of Tribals

The Mines and Minerals Amendment Bill 2015 contains no provisions for consent from tribals for mining operations, but strengthens the rights of private sector mining companies.

Even as countrywide protests against the land ordinance gain momentum, Adivasi communities living in mineral-rich areas are apprehensive of what awaits them as the Mines and Minerals (Development and Regulation) Amendment Bill 2015(MMDRA) has received presidential assent and the government has drafted Rules for some clauses of the Act.

The principal Act of 1957 is as draconian a law for Adivasis as was the Land Acquisition Act of 1894 for all farmers. The main flaw in the Act is that it does not address the critical issue of the rights of those (mostly from Adivasi communities) who own or occupy the surface land beneath which minerals

lie. The Act has no provision for consent or even consultation with gram sabhas which would be affected by mining operations. Adivasis are described in the law as "occupiers of the surface of the land." As "occupiers", they have the right to compensation, but as enunciated in the Rules, if they do not agree to the mining plan or to the amount of compensation, the "State Government shall order the occupier to allow the licensee to enter upon the said land and carry out such operations as may be necessary."

It is under this provision that lakhs of Adivasi families have been displaced, turned into migrants or, at best, into daily contract labourers in mines that have destroyed their forests, lands and water. Adivasi movements have been demanding amendments to ensure that before such leases are given, their informed consent is taken and they have a share in profits from mineral wealth. Governments have refused to heed this democratic demand. In India, the state has all rights over minerals, but over the years it has acted as a front to hand over mineral resources for private profit. There have been substantial amendments to the Act since 1957, but they have been to strengthen the rights of mining companies further, not to strengthen the rights of Adivasis. This despite the Supreme Court Samatha judgment of 1997, which upheld Adivasi rights to informed consent and to a share in mineral wealth. The judgement ruled that under the Fifth Schedule (administration and control of scheduled areas and scheduled tribes in these areas) and laws in different States, since Adivasi lands can neither be transferred nor leased to non-Adivasis, mining activities in tribal-dominated areas should involve the tribals themselves. Since 1997, other laws such as the Panchayat Extension to Scheduled Areas Act (1996), the Forest Rights Act (2006), and the Wildlife (Protection) Amendment Act (2006) have helped establish the rights of Adivasis and gram sabhas. The more recent Vedanta judgment by the Supreme Court struck down the agreement reached between the company and the State government because it did not have the consent of Scheduled Tribes whose "traditional rights" were affected.

There is no dispute that a country's mineral wealth should be mined and used for development. However the predominant understanding of 'development' by ruling governments at the Centre have privileged profit, in this case of mining companies, over the more sustainable and equitable use of minerals in partnership with local communities. This would also require a sane assessment of the amount of minerals required during a specific period of time with consideration being given to intergenerational equity instead of reckless loot in the name of development.

In 2010, in partial recognition of the Adivasi demand for a stake in mineral wealth, the United Progressive Alliance government had moved an amendment to the 1957 Land Acquisition Act. The Act stated, "any person or persons holding occupation or usufruct or traditional rights over the surface of the land will be allotted free shares equal to 26 per cent through company's quota, or an annuity equal to 26 per cent of the profit (after tax paid)…". It mandated "annual compensation as may be mutually agreed." It also made other provisions towards the welfare of Adivasi communities.

However, the UPA government soon succumbed to opposition from mining companies and replaced the amendment with a much more diluted version in the 2011 MMDRA Bill.

Even these diluted provisions have been scrapped by the Narendra Modi government. The government has brought 22 substantial amendments, each one to strengthen the rights of private sector mining companies in the name of attracting investment. For instance, in the 2011 Bill, it was incumbent on State governments to obtain all necessary permissions from the owners and occupiers of land for major minerals, and consult with gram sabhas in Fifth and Sixth Schedule areas for minor minerals. The Bill also mandated that all environment and forest clearances under the Forest (Conservation) Act, Wildlife (Protection) Act or any other law in force be taken before a lease was given. It made tribal cooperatives eligible for the grant of leases for minor minerals in Fifth and Sixth Schedule areas. The 2015 Bill neither mentions tribal cooperatives nor contains provisions for consent, consultation or clearances. This is an attempt to bypass gram sabhas and environmental norms in the name of "speedy clearances" and "ease of doing business" [16].

Conclusion

The tribal families rehabilitated elsewhere face regularly the problems of land alienation and inability to obtain land title deeds. The phenomenon of land alienation is referred to the practice of purchasing or forcefully acquiring the agriculture land of the tribes by the main land people. The mainland people give loans and advances to the tribes and give alcohol and good feasts to the tribes to influence them to sell their land at nominal prices. Such events should have been reported by the national SC and ST commission reports from the states of Bihar, Madhya Pradesh and Orissa including Karnataka and Andhra Pradesh where

mining projects and other industrial as well as major and medium irrigation projects are implemented. Further in many states where tribal rehabilitation and resettlement projects are implemented all tribal families have not been given land title deeds. Sometimes for want of land some of the late comers into tribal rehabilitation centre are not given land or small plots of agricultural land (less than one hectare) has been allotted on oral instruction of the project officer by encroaching the already allotted agriculture land to the early settlers in the tribal rehabilitation centers. Thus the shifted/ displaced and rehabilitated tribal families face the problems of uneconomic land holdings as well as insecurity and fear of evacuation from the land on account of the absence of suitable land title deeds.

Still the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is not implemented properly and fully to uphold the rights of forest dwellers and Adivasis, the Mines and Minerals (Development and Regulation) Amendment Act (MMDRA), 2015 has turned a draconian law to disturb and disentitle the rights of the Adivasis.

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Globalisation and the Application of Rule of Law Principles in the Context of SEZ: A Study in the Context of Acquisition of Land

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Abstract

Globalization is both an 'out there' and an 'in here' phenomenon, blending the distant with the local.[1] Furthermore, it is a two-way process. As Anthony Giddens puts it, the globalization process, "link [s] distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa."[2] The universalization of human rights norms and the global liberalization of corporate and commercial endeavour are two especially conspicuous players on the globalization stage. Both, to some extent, rely on the notion of the Rule of Law to promote their ends, though they rely on different features of the notion in so doing–the latter more on "certainty;" the former more on "equality." In the age of globalisation, a specific and significant trend there are two that stand out—namely, corporate/commercial enterprise and human rights/ humanitarian standard-setting. The corporate/commercial enterprise is characterized by the patent aggrandizement of the power of multinational enterprises, the influence of capital markets,19 and the concomitant expansion of international regimes for trade regulation—such as the World Trade Organization (WTO), the North America Free Trade Agreement (NAFTA) and the EU—and for economic development— such as the International Monetary Fund (IMF), the World Bank and the regional development banks of Africa, Asia and South America. Human rights standard setting is characterized by the spreading, though not unqualified, acceptance across states of the universality and indivisibility of human rights. It is also characterized by the emergence of new regional human rights regimes beyond the European and American progenitors—that is in Africa, the Arab States and in rudimentary form in Asia. Under the given circumstances, this paper aims to explore the relationship between the globalisation and rule of law in the context of SEZ in the context of acquisition of land.

Keywords: Globalisation; Rule of Law; SEZ; WTO; Acquisition of Land; Displacement; Rehabilitation and Resettlement; Fair Market Value; Sustainability.

Introduction

Rule of Law symbolizes the quest of civilized democratic societies', be they eastern or western, to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence. The phrase can be traced back to 16th century Britain, and in the following century

the Scottish theologian Samuel Rutherford used the phrase in his argument against the divine right of kings [1]. The concept, if not the phrase, was familiar to ancient philosophers such as Aristotle, who wrote "*Law should govern*" [2]. The rule of law was further popularized in the 19th century by British jurist A. V. Dicey. To him, rule of law includes, supremacy of law, equality before law and predominance of legal spirit. This paper aims to explore the relationship between the globalisation and rule of law in the context of SEZ in the context of acquisition of land.

Concept of Rule of Law

According to the Oxford English Dictionary, The authority and influence of law in society, esp. when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes. In the words of Justice Vivian Bose of the Supreme Court of India, Rule of Law, "is the heritage of all mankind" because its underlying rationale is belief in the human rights and human dignity of all individuals everywhere in the world. Rule of Law is "a device that enables the shrewd, the calculating, and the wealthy to manipulate its form to their own advantage" [3]. Professor BRIAN TAMANAHA has described Rule of Law as "an exceedingly elusive notion giving rise to a rampant divergence of understandings and analogous to the notion of the Good in the sense that everyone is for it, but have contrasting convictions about what it is" [4]. According to the *WORLD JUSTICE PROJECT*'s definition of the rule of law is a system in which the following four universal principles are upheld [5]:

- ✓ The government and its officials and agents as well as individuals and private entities are accountable under the law.
- ✓ The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property.
- ✓ The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- ✓ Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they Serve.

The International Development Law Organization has a holistic definition of the rule of law: More than a matter of due process, the rule of law is an enabler of justice and development. The three notions are interdependent; when realized, they are mutually reinforcing. For IDLO, as much as a question of laws and procedure, the rule of law is a culture and daily practice. It is inseparable from equality, from access to justice and education, from access to health and the protection of the most vulnerable. It is crucial for the viability of communities and nations, and for the [6]. The *SECRETARY-GENERAL OF THE UNITED NATIONS* defines the rule of law as: a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of 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 [7]. The GENERAL ASSEMBLY has considered rule of law as an agenda item since 1992, with renewed interest since 2006 and has adopted resolutions at its last three sessions [8]. The COUNCIL OF THE INTERNATIONAL BAR ASSOCIATION passed a resolution in 2009 endorsing a substantive or "thick" definition of the rule of law: An independent, impartial judiciary; the presumption of innocence; the right to a fair and public trial without undue delay; a rational and proportionate approach to punishment; a strong and independent legal profession; strict protection of confidential communications between lawyer and client; equality of all before the law; these are all fundamental principles of the Rule of Law. The Rule of Law is the foundation of a civilised society. It establishes a transparent process accessible and equal to all. It ensures adherence to principles that both liberate and protect. The IBA calls upon all countries to respect these fundamental principles. It also calls upon its members to speak out in support of the Rule of Law within their respective communities [9].

Rule of Law vis-à-vis the Indian Constitution

Rule of Law runs like a golden thread in the Indian Constitution. Part III of the Indian Constitution guarantees certain fundamental rights akin to a Bill of Rights. For example, Article 14 states "The State

shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". No fundamental right in the Indian Constitution is absolute. Reasonable restrictions can be imposed on the exercise of the various fundamental rights guaranteed under Article 19 but the primary requirement is that the restriction must be prescribed by law, not by administrative non-statutory instructions. Further, Art. 300 A stipulates that no person shall be deprived of property save by law. In I.R. Coelho v. State of Tamil Nadu [10] Rule of Law the Supreme Court regarded as part of the basic structure of the Constitution. Consequently Rule of Law cannot be abolished even by a constitutional amendment.

Issue of Displacement and the Initiatives at the International Level

• *The United Nations Comprehensive Guidelines on Development Based Displacement, 1997*

The present the United Nations Comprehensive Guidelines on Development-Based Displacement, 1997 emphasises that States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection for all persons under their jurisdiction against the practice of forced evictions from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups. These obligations are of an immediate nature and are not qualified by resource-related considerations [11]. The UN Guidelines also says that the states should ensure that eviction impact assessments are carried out prior to the initiation of any project involving all the affected persons, including women, children and indigenous peoples shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives which could result in development-based displacement, with a view to fully securing the human rights of all potentially affected persons, groups and communities [12]. The states should refrain from introducing any deliberately regressive measures with respect to *de jure* or *de facto* protection against forced evictions [13]. All persons subjected to any forced eviction not in full accordance with the present Guidelines, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments [14]. All persons, groups and communities have the right to suitable resettlement which includes the right to alternative land or housing, which is safe, secure, accessible, affordable and habitable [15].

• *United Nations Guiding Principles on Internally Displaced Persons, 1998*

The United Nations has declared a Guiding Principles on Internally Displaced Persons, 1998 provide protection against arbitrary displacement; offer a basis for protection and assistance during displacement. Principle 6(C) of the same prohibits the arbitrary displacement in cases of large- scale development projects. Still, the subject was gradually faded into oblivion until 2003 when the draft National Rehabilitation Policy was notified by the NDA government. This policy came into effect in February, 2004 as the National Policy on Rehabilitation Policy on Rehabilitation and Resettlement for Project Affected Families. At this, the National Advisory Council being unsatisfied with this sent its own revised policy draft to the government. The bureaucracy then brought out a revised version of the 2003 Policy in 2006 which has become the National Rehabilitation and Resettlement Policy, 2007. On this issue, again, the Parliament has brought the Rehabilitation and Resettlement Bill, 2007. and the Land Acquisition (Amendment) Bill, 2007 which includes 'land for land', to the extent Government land available in their resettlement areas [16]; preference for employment in the project to at least one person from each nuclear family subject to the availability of vacancies and suitability of affected person [17]. Now let's have a look over these steps of the government.

• *Indian Approach to Globalisation and Rule of Law concept in respect to SEZ*

In India, the concept of rule of law in the globalised era is clearly noticeable in the statutory form. The *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act*, 2013 along with the ordinances is one of the prominent example to this. Under the law, government has the power to acquire any kind of property be it land or

any property for public purpose following the doctrine of Eminent Domain. Prior to the enactment of the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Lands, were acquired according to the provisions of the Land Acquisition Act, 1894 after paying compensation [18] against the very land vest in the Government and afterwards in the company for whom the same have been acquired free from all encumbrances. Acquisition of land is associated with the following conflicting issues -

- Apprehension of inadequate compensation
- Shifting of livelihood pattern
- Uncertainty of Job guarantee
- Fear of losing shelter or place of residence
- Fear of losing balance of food security
- Fear of keeping the land idle after acquisition and there by delaying the enforcement of commitments to the project affected people
- Engulfment of the fertile agricultural lands by industry in the name of development
- Absence of separate policies of acquisition of land for the Urgent and Important projects
- Suffering from mental trauma
- Improper rehabilitation and resettlement policy of the government
- Socio- economic hardship
- Activism of touts/ land sharks in the adjacent areas

Development of state or country should not at the cost of a section of people. Generally, it has been the common picture of every displacement that the displaced people's interest is hardly respected. So, it may be submitted that state needs to pay much interest in the rehabilitation and resettlement matters of the displaced people. When, the SEZ Act, 2005 applies after the acquisition of land and the acquisition of land takes place only after the land is acquired under the Act of 2013, the issue concerning displacement is regulated with the globalised concept of rule of law.

• *The Land Acquisition Act, 1894*

The acquisition of land is done according to the Land Acquisition Act, 1894. Under the Act, 1894 the state is entitled to acquire land [19] for public purpose clause or for a company. Land is a matter which is dealt with under the State List of the Constitution. Land[20] as property has been subjected to acquisition under the Land Acquisition Act, 1894. The Act I of 1894 aims at promoting important public interest - *salus populi suprema lex*- which subordinates private interests on speedy payment of compensation which was originally irrelevant prior to the Amendment Act 38 of 1923. Any presumption or rule of construction or of convincing unless just and equitable cannot be applied to compulsory acquisitions of land. Under this Act, following kinds of acquisitions are covered-

- For public purpose (Sec. 6)
- For industrial concern not being a company[21](Sec. 38A)
- For companies for the erection of dwelling houses etc. for workmen [Sec. 40(1) (a)]
- For companies engaged in work for public purpose [Sec. 40(1) (aa)]
- For companies for some work likely to prove useful for public [Sec. 40(1) (b)]
- For public purpose primarily and on behalf of a company (Sec. 6 & 40)
- For railway or other companies with which the appropriate government is bound by agreement to provide land (Sec. 43)

Bridging Right to Property with Right to Life and Personal Liberty

• *Deprivation of Property vis-à-vis Right to Minimum Human Dignity*

The Supreme Court linked and applied right to life and personal liberty with property in *Kharak Singh v. State of UP [22]*, for the first time. Art. 21 to recognizes the right to mean more than mere survival and mere animal existence and embodies the right to live with minimum human dignity after *Maneka Gandhi [23]* and *Francis Coralie [24]*. In *B.D. Sharma v. Union of India [25]*, it was ruled that the overreaching projected benefits from the dam should not be counted as an alibi to deprive the fundamental rights of the oustees. They should be rehabilitated as soon as they are uprooted. Further, the court provided a time frame by which the rehabilitation must be complete: before six months of submergence. However, in *Chameli Singh v. State of Uttar Pradesh [26]*, the Supreme Court held that "in every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The state exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose."

Deprivation of Property vis-à-vis Right to Livelihood

Again, Article 21 includes the right to livelihood also [27]. On this issue, the Supreme Court has held that if the right to life is not treated as a part of right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the state to secure to the citizen an adequate means of livelihood. In *New Reviera Co- operative Housing Society v. Special LAO [28]* dismissing the proposition of the land owners that such acquisition of land will deprive them of their livelihood, the court held that since the Land Acquisition Act provides for the payments of solatium and other monetary benefits for deprivation of rights of enjoyment of property, therefore any contention that it will deprive their livelihood is unsustainable. Thus, following the above judicial pronouncements, it may be assumed that, if the solatium and other monetary benefits are provided to the project affected peoples (PAP), then deprivation of property may be tenable. In *D. K. Yadav v. JMA Industries [29]*, the court held Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced into animal existence. But, in a number of occasions it is seen that the poor always get a raw deal from the politics of a market driven economic paradigm. The broad contours of this story are the same all over the globe wherever the profit and growth objectives of big capital come into conflict with the livelihood rights of the economically weak, landless labourers, small farmers and artisans in villages, tribals in forests, fishing communities in relevant regions and city based vendors and workers living in slums and other low income areas. Such people are constantly denied their right of livelihoods when they come in the way of commercial projects that demand large- scale acquisition of land, water, minerals, forests and other natural resources. This is how the capital driven market works. The present statutory instruction is to pay the market value of the land in addition to which solatium etc are to be paid. At this point the determination of market value of land is a very significant issue. The judiciary on this issue is not silent on this point.

In *Narmada Bachao Andolan v. Union of India*,[30] it was observed that rehabilitation is not only about providing just food, cloth, or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is thus a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitation locations. Further, in *N.D. Jayal and Another v. Union of India*,[31] the court held that the right to development encompasses in its definition the guarantee of fundamental human rights. Thus, the courts have recognised the rights of the oustees to be resettled and right to rehabilitation has been read into Article 21. Very recently, in a significant ruling, a division bench constituting Justices Mr. Altamas Kabir and Mr. Cyreese Joseph the Honb'le Supreme Court in some land owners of Narwana in Haryana's Jind district observed that, a right under Section 5 (A) of the land Acquisition Act is not merely statutory but also has the flavour of the Fundamental Rights under Articles 14 and 19 of the Constitution. Again, noting the urgency clause in Section 17 of the Act, under which the concerned land owners can be denied the opportunity to file objections to the proposed acquisition, can be pressed into service only in exceptional circumstances, the apex court directed the land acquisition collector- cum- district revenue officer of Jind, to consider the objections to be filed by the land owners and dispose of the same within a month and then the government would be at liberty to take the appropriate consequential steps after the disposal of the objections [32].

• *Determination of Market Value of Land Subjected to Acquisition*

To determine what is just and fair compensation the basic component is the fair market value of land subjected to be acquired. In determining the fair market value ("FMV") the courts routinely decide whether compensation owed by the benefit conferred. According to Bell and Parchimovsky's proposal, takings, fall into three categories: physical, regulatory, and derivative [33]. Whether a giving is compensable or not is determined by a four factor test, balancing the "reversibility of the act, identifiability of the recipient, proximity of the act to a taking, and refusability of the benefit [34]. As to the valuation Bogey, Bell and Parchomovsky advocate "relative wealth" as a baseline instead of "absolute wealth [35]." In terms of relative wealth, the landowner deprived of the giving becomes poorer than his neighbors [36]. The landowners in most of cases get only one time compensation. It is nothing but merely robbing of the landowners or peasants to satisfy the will of the corporate bodies. The acquisition laws must necessarily ensure that the private owner is suitably compensated. The just compensation clause in the Fifth Amendment to the Federal Constitution of the USA says, that such laws should also ensure that the powers of acquisition can be exercised only when the pain and suffering of

a person being deprived of his property is overwhelmingly outweighed by the public good sought to be achieved by the acquisition. Such laws should also ensure that no private owner of property is deprived of his life or livelihood in the process of acquisition if the land in question forms his only source of economic sustenance. As long as farmers have their sickle, they will be peaceful. But if their sickle is snatched from their hands, it will be replaced by a gun. After Jenkins C.J. in *Babujan v. Secretary of State and the Chairman, Gaya Municipality [37]* ' for the purpose of ascertaining the market value of land the court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it. In *Bombay Improvement Trust v. Jolbhai [38]*, Batchelor J. commented, "reading the act as a whole I can come to no other conclusion than that it contemplates the award of compensation in this way; first, you ascertain the market value of the land on the footing that all separate interests combine to sale and then you apportion or distribute that sum among the various persons found to be interested." In *Atma Singh (died) through LRs. & Ors v. State of Haryana & Anr [39]* the expression 'market value' was a subject-matter of consideration in this case. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz., a price outcome of hypothetical sale expressed in terms of probabilities. For ascertaining the market value of the land, the potentiality [40] of the acquired land should also be taken into consideration. In *C.E.S.C. Ltd. v. Sandhya Rani Barik & Ors [41]*. The court held that while determining the amount of compensation, one should attempt to find out the just and reasonable compensation without attempting any mathematical precision in that regard. For the purpose of assessing compensation, the efforts should be to find out the price fixed for the similar land in the vicinity. The difference in the land acquired and the land sold might take on various aspects. One plot of land might be larger, another small, one plot of land might have a large frontage and another might have none. There might be differences in land development and location. There might be special features which have to be taken note of and reasonably considered in the matter of assessing compensation. In *Lucknow Development Authority vs. Krishna Gopal Lahoti and Ors* [42]the court held that the amount of compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. The element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made: (i) when sale is within a reasonable time of the date of notification under Section 4(1); (ii) it should be a bona fide transaction; (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages. It is only when these factors are present; it can merit a consideration as a comparable case. Later on in *State of Haryana v. Gurbax Singh (Dead) By Lrs. & Anr. etc [43]* the subject matter of the case was the quantum of compensation payable for the lands acquired from Villages Ratgal, Sunderpur and Palwal. The Division Bench marginally increased the compensation from Rs.99,668/- per acre to Rs.1,25,000/- per acre. The Division Bench justified this increase by observing that there was continuous rise in the prices of land; that though the two transactions were in respect of the small pieces of lands. At this, the Court held that there is nothing wrong in this and, therefore, the appeals filed by the Government of Haryana against the marginal increase are dismissed. Again, in *Madishetti Bala Ramul (D) By LRs Vs. The Land Acquisition Officer [44]*, two notifications were issued separately. Here on the issue of determination of the value of the land acquired the Court held that as the second notification was issued, the first notification did not survive. Valuation of the market rate for the acquired land, thus, was required to be determined on the basis of the notification dated 23.12.1991. The earlier notification dated 16.03.1979 lost its force. The Supreme Court in *Sagunthala (Dead) through Lrs. v. Special Tehsildar (L.A.) [45]*, ruled that the purpose for which the land is acquired will be one of the most important factors in determining its market value as well as award of compensation. Finally in *Bondu Ramaswamy v. Bangalore Development Authority [46]*,

the Supreme Court observed, as most of the agriculturists/ small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. Hence a comprehensive mechanism needs to be devised to reduce the pains to be suffered by the displaced people.

SEZ ACT, 2005

The SEZ is packaged under larger neoliberal economic framework. The main objectives of the SEZ Act are: (a) *generation of additional economic activity*; (b) *promotion of exports of goods and services*; (c) *promotion of investment from domestic and foreign sources*; (d) *creation of employment opportunities*; (e) *development of infrastructure facilities*. Under the Act, a Single Window SEZ approval mechanism has been provided through a 19 member inter-ministerial SEZ Board of Approval (BoA). The applications duly recommended by the respective State Governments/UT Administration are considered by this BoA periodically. All decisions of the Board of approvals are with consensus. The SEZ Rules provide for different minimum land requirement for different class of SEZs. Every SEZ is divided into a processing area where alone the SEZ units would come up and the non-processing area where the supporting infrastructure is to be created.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Act of 2013 features the issues as under-

- The Act requires the consent of the affected people's consent to carry on the process of acquisition for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose with the prior consent of at least seventy per cent of those affected families; and (b) for private companies for public purpose with the prior consent of at least eighty percent of those affected families [47].
- The Act of 2013 prohibits the acquisition of fertile agriculture land beyond 5% per district.
- The Act of 2013 requires conducting of a Social Impact Assessment Study under Section 4(4)) and the Framing of Rehabilitation and Resettlement Scheme under Section16 after Evaluation of the Social Impact Assessment under Section 7 of the Act.
- The 2013 Act has laid down a comprehensive policy regarding the determination of market value of the land to be acquired [48] and compensation amount [49].
- The Draft Rehabilitation and Resettlement Scheme under Section 16(2) require to be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities and public hearing is required to be conducted where more than 25% of the land belonging to that Gram Sabhas or Municipalities.
- Additional compensation for multiple displacements is payable under Section 39 [50].
- An additional compensation of seventy-five per cent of the total compensation as determined under section 27 shall be paid by the Collector in respect of land and property for acquisition in case of urgency [51].
- Setting up of National and State Monitoring Committee [52]; and Setting up of Land acquisition, rehabilitation and resettlement authority [53].
- Whenever the appropriate Government withdraws from any such acquisition, the collector shall determine the amount of compensation due for the damage suffered by the owner [54].
- The present legislation has defined the concept of the Land Bank as a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use [55].
- Under the present legal framework [56], When any land acquired remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government.
- Differential value of land to be shared for non-utilization of land for five years or more [57].
- The appropriate Government may use the provision for lease under Section 104 [58].

Sustainability and Displacement

For an overall development, there needs to have a balance between the giver and taker of property, so

that neither the industry, nor the agriculture suffer. Development means an act of improving by expanding or enlarging. It is a continuous process by which value is added to the existing level of economic condition of a country. The right to development cannot be treated as a mere right to economic betterment nor can it be limited to simple construction activities. The right to development encompasses much more than economic well-being, and includes within its definition the guarantee of fundamental human rights. The right to development includes the whole spectrum of civil, cultural, economic, political and social process, for the improvement of peoples' well-being and realization of their full potential. It is an integral part of human rights. Today, the development indicates the sustainable development. The idea of sustainable development has been applied to both global and local issues. The sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. It implies the handing down to successive generations not only man- made wealth but also natural wealth in adequate amounts to ensure continuing

Developmental Impacts of SEZ In India

Types of Impacts	Economic	Social	Regional
Growth	Export based; short term growth.	Mainly for highly skilled and literate workers	Uneven geographical development; skewed regional growth.
Trade	Rising exports accompanied by rising imports (capital intensive).	Dominance of domestic investors (big corporate capitalists in India)	Trading activity mainly concentrated within DTA; growth of trade poles; cities and urban areas.
Economic activities	Driven by tax incentives; low level of industrial manufacturing; high services sector activities (e.g. IT & software).	Pockets of good infrastructural facilities; planned city enclaves.	Industrial clusters formation in already advanced regions (cities and states in southern India); uneven urban development.
Governance issues	States lobbying for central government funds.	Corporate governance versus representative governance.	Multi - lateral governance system. (Overlapping jurisdiction of SEZs governance. governance with other levels of governance at village, municipal, city or state government).
Land acquisition	Sale of public assets (land) to private capitalists; loss of agricultural land.	Compensation for land owners only; richer famer main beneficiaries	Largely done in areas of flat topography; easy transportation routes; near rural- urban fringe of big cities (Metropolitan cities of India).
Employment generation	Low employment generation capability.	Low level of skill transfers to workers; casualization of labour; unorganised employment;	Migration towards urban areas; mainly in urban areas; increase in rural unemployment.
Poverty reduction	Contributes marginally and temporarily (immediate monetary compensation for land).	Landless workers worst Landless workers worst	Number of poor increase in both rural and urban poverty
Income inequity	Rise in income inequality	Consolidation of wealth both among the rural and urban elites	Rural- urban and rich- poor conflict.
Displacement of population	Occupational displacement evident and leads to physical displacement.	Resettlement and rehabilitation policy not in place.	High in densely populated states; Northern and Eastern states with high level of agriculturally dependent population.

improvements in quality of life [59]. Therefore it is necessary to formulate a comprehensive rehabilitation and resettlement policy for displacement to sustain the development and not at the cost of the oustees.

State's Role Of Benevolent Trustee: In *Bondu Ramaswamy v. Bangalore Development Authority [60]*, the Supreme Court observed, as most of the agriculturists/ small holders who lose their land, do not have the expertise or the capacity for a negotiated settlement, the state should act as a benevolent trustee and safeguard their interests. Under the Act of 2013, the draft Rehabilitation and Resettlement Scheme under Section 16(2) require to be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities and public hearing is required to be conducted where more than 25% of the land belonging to that Gram Sabhas or Municipalities. Under the Act of 2013, though a comprehensive policy has laid down regarding the determination of market value of the land to be acquired[61] and compensation amount[62], the appropriate government should monitor the price at which the affected people have negotiated as except for the purposes under section 2(1), the respective entities requiring land requires to purchase directly from the owners of land.

SEZ and Development

According to one of the Senior Advisor, Planning Commission, Government of India, interview with NDTV, 2007. Large scale industrialisation as development model 'Fragmentation of land holding has made farming unviable, so government should rather consolidate the land and use it for industrialisation'. This has caused the massive land acquisition for SEZs (210,000 hectares). By 2007 massive resistance against land acquisition for SEZs. And it became a national issue. Now, let's have an analysis on the impact of SEZ in the socio- economic affairs of the nation-

Conclusion and Suggestions

If the government or development authorities act as facilitators for industrial or business houses, mining companies and developers or colonizers, to acquire large extent of land ignoring the legitimate rights of land- owners, it leads to resistance, resentment and hostility towards acquisition process [1].' To determine what is just and fair compensation the basic component is the fair market value of land subjected to be acquired. In determining the fair market value ("FMV") the courts routinely decide whether compensation owed by the benefit conferred. According to Bell and Parchimovsky's proposal, takings, fall into three categories: *physical, regulatory,* and *derivative [2]*. Whether a giving is compensable or not is determined by a four factor test, balancing the "*reversibility of the act*, *identifiability of the recipient*, *proximity of the act to a taking*, and *refusability of the benefit [3]*. As to the valuation Bogey, Bell and Parchomovsky advocate "relative wealth" as a baseline instead of "absolute wealth [4]." In terms of relative wealth, the landowner deprived of the giving becomes poorer than his neighbours [5].

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2. ANTHONY GIDDENS, THE CONSEQUENCES OF MODERNITY 64 (1990).
3. Samuel Rutherford, Lex, rex: the law and the prince, at pg. 237
4. Aristotle, *Politics* 3.16
5. Available at http://www.brandeis.edu/programs/southasianstudies/pdfs/rule%20of%20law%20full%20text.pdf
6. Available at http://www.brandeis.edu/programs/southasianstudies/pdfs/rule%20of%20law%20full%20text.pdf
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8. http://www.idlo.int/what-we-do/rule-law
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10. United Nations General Assembly Resolutions A/RES/61/39, A/RES/62/70, A/RES/63/128.
11. Resolution of the Council of the International Bar Association of October 8, 2009, on the Commentary on Rule of Law Resolution (2005)
12. [(2007) 2 SCC 1]
13. Section 3.9, The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
14. Section 3.12; Section 3.13 & Section 3.16 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.

15. Section 3;10 The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
16. Section 4(24), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
17. Section 4(27), The United Nations Comprehensive Guidelines on Development-Based Displacement, 1997.
18. Clause 7.4. 1 The Rehabilitation and Resettlement Policy, 2007.
19. Clause 7.13.1 The Rehabilitation and Resettlement Policy, 2007.
20. The award of compensation under the Act of 1894 is given by the Collector on the acquisition of land considering the followings-

- The market value of the land on the date of notification u/ sec.4 of the Act.
- Damages sustained in process of taking possession
- Bonafide loss etc.

But damages likely to be caused after the publication of declaration u/sec.6 or in consequence of the use to which it would be put or any outlay or improvements on, or disposal of the land acquired, made without the sanction of the collector after the date of publication of notification u/sec.4 shall not be taken into consideration. After the award is made by the collector any person may refuse to accept the award and apply to the Collector, who is bound to refer the dispute for determination of the Court of Land Acquisition and any award made by the Land Acquisition Judge amounts to a decree and against which an appeal lies to the High Court. If there is laying any difficulty in paying the compensation, the Collector can deposit the amount in Court. The claimant can accept the amounts in protest. If the money is lying in the Court, the Court can invest it in proper securities for the benefit of the claimants.

21. Section 4, The Land Acquisition Act, 1894.
22. Land is defined as as *'massuages; lands, tenements, heriditaments, of any tenure'*23. The term *Massuage* is substantially equivalent to a house. Tenement is a large idea used to pass not only lands and other inheritances, but also offices, rents. Heriditament is the largest of all kinds, be it corporeal or incorporeal, real, personal or mixed. The word 'land' is used in the same sense as 'immovable property'. 24. 'Immovable property' has been defined as not to include 'standing timber, growing crops and grasses25. Land is said to include things attached to earth the Act of 189426. However, the Act doesn't contemplate the acquisition of things attached to land without the land itself. It is only the land including the rights which arise out of it and not merely some subsidiary right which is capable of acquisition under the Act. The taking of property which merely injures a franchisee but doesn't interfere with the exercise of it; and it doesn't entitle the owner of the franchisee to compensation for damage to the franchise. Under the West Bengal Land Reforms Act, 1955 under section 2(7) land means land of every description and includes tank, tank- fishery, homestead, or land used for the purpose of livestock, breeding, poultry farming, dairy or land comprised in tea garden, mill, factory, workshop, orchard, hat, bazaar, ferries, tolls or land having any other sairati interests and other land together with all interests, and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to earth; under the definition, the term homestead shall have the same meaning as in the West Bengal Estate Acquisition Act, 1953.
23. According to clause (e) of Section 3 of the Act, the expression 'company' means-

(i) A company as defined in Section 3 of the Companies Act, 1956, other than a Government company referred to in clause (cc) of Section 3 of the Land Acquisition Act;

(ii) A society registered under the Societies Registration Act, 1869 or under any corresponding law for the time being in force in any state, other than a society referred to in clause (cc) of the Act;

(iii) A co- operative society within the meaning of any law relating to co- operative societies for the time being in force in any state, other than a co- operative society referred to in clause (cc) of the Act.

24. AIR 1963 SC 1295.
25. *Maneka Gandhi v. Union of India,* AIR 1978 SC 597.
26. *Francis Coralie v. Union of India,* AIR1981 SC 746.
27. 1992 Supp (3) SCC 93.
28. (1996)2 SCC 549.
29. *Olga Tellis v. Bombay Municipal Corporation,* AIR 1986 SC 180; (1985) 3 SCC 545.
30. (1996)1 SCC 731.
31. (1993) 3 SCC 258.
32. AIR 2000 SC 3751.
33. (2004) 9 SCC 362.
34. *Babu Ram & Anr. Vs. State of Haryana & Anr*. CIVIL APPEAL NO. 6864 OF 2009
35. Abraham Bell & Gideon Parchomovsky, *Givings*, 111 YALE L.J. 547, 611-12 (2001), at pg. 553.
36. Id. at 551.
37. Id. at 557.
38. Larissa N. Schwartz, *Subordinate or Fundamental Rights in Property? Special Benefits and Givings Recapture in Determining Just Compensation* available at https://www.planning.org/divisions/plannin gandlaw/writingcompetition/pdf/schwartz.pdf, visited on 7th September, 2014 at 9.22 PM

39. 4 CLJ 256.
40. (1903)23 Bom 483: 11 Bom LR 674
41. 2008(2) SCC568.
42. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like, water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. *Atma Singh (died) through LRs. & Ors Vs. State of Haryana & Anr*, 2008(2) SCC568.
43. 2008 AIR 2873.
44. 2008 AIR 399.
45. 2008(11) SCC65.
46. 2007(9)SCC650.
47. AIR 2010 SC 984
48. (2010) 7 SCC 129, Para 32.
49. Section 2(2) (b), the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
50. Section 26, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
51. Section 28, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
52. Section 39, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
53. Section 40, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
54. Section 48, 50, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
55. Section 51, 53, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
56. Section 93, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
57. Land bank is a governmental entity that focuses on the conversion of Government owned vacant, abandoned, unutilised acquired lands and tax-delinquent properties into productive use. Explanation, Section 101, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
58. Section 101, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
59. Section 102, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
60. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Reset tlement Act, 2013.
61. Brundtland Commission Report, 1986.
62. (2010) 7 SCC 129, Para 32.
63. Section 26, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
64. Section 28, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
65. *Bondu Ramaswamy v. Bangalore Development Authority,* (2010) 7 SCC 129, Para 32.
66. Abraham Bell & Gideon Parchomovsky, Givings, 111 YALE L.J. 547, 611-12 (2001), at pg. 553.
67. Id. at 551.
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Original Article

Position of Death Convicts in the Sea of Humanitarian Jurisprudence: Need for a Review

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Abstract is not provided

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"In any case, frequent punishments are a sign of weakness or slackness in the government. There is no man so bad that he cannot be made good for something. No man should be put to death, even as an example, if he can be left to live without danger to society."

- J. J. Rousseau,
The Social Contract

The Concept of Human Rights

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. In a way: "human rights are those minimal rights which every individual must have against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration [1]." Thus, human rights are not dependent upon grant or permission of the state.

On the other hand each and every state has granted a limited number of rights to its citizens. They are known as fundamental rights. In a way these rights can be equated with the doctrine of natural rights. Just as a written constitution has evolved from the concept of natural law, so the fundamental rights may be said to have sprung from the doctrine of natural rights. As the Supreme Court of India has put it: "Fundamental rights are the modem name for what have been traditionally known as natural rights [2]." These rights would differ from country to country, but human rights are the rights that are common to the humankind in general. In short, whatever the rights add to the dignified and free existence of a human being should be regarded as human rights. These are the rights which serve as a necessary prelude for the well-being of human beings for they are universally applicable to all human beings irrespective of colour, race, religion, region, and so on. For example, right to fair trail is a human right, and is equally applicable to the people of east or west.

Another notable distinction between a human right and a fundamental right or freedom is that while a "human right" as it is understood in the preamble of the Universal Declaration, 1948, is confined to natural persons as "members of the human family", but a constitution may guarantee fundamental rights, of which may be available not

only to natural but also to the artificial persons.[3] Again, some constitutions do not extend certain fundamental rights to all human beings but confined them to citizens, e.g. Articles 15, 16(2), 18(2), 19, 29, and 30 of the Constitution of India. As we said earlier that human rights are available to every human being, which means it also available to death convicts. But the question is what would be the consequences if there is delay in execution of death convicts?

Delay in Execution of Death Sentence: A Gross Violation of Human Rights of Death Convicts

This above heading looks at how the Supreme Court of India has dealt with the issue of delay in judicial and executive proceedings as a factor to be taken into account while deciding on sentence. As the following narrative shows, in this as with so many other factors, the court has been, and continues to be, inconsistent. While jurisprudence has developed, as is to be expected in a common law context, glaring anomalies exist which highlight death row and the death penalty itself as cruel, inhuman and degrading punishment. Perhaps not surprisingly, the Supreme Court – which sits at the apex of a criminal justice system that allows individuals to languish in jails awaiting trial for many years (in many cases longer than their sentences would be) because of the huge backlog of cases – has gradually moved to a position in which it currently refuses to consider judicial delay as a ground for commutation. However in doing so, it ignores a crucial fair trial standard that individuals should be tried without undue delay set out in Article 14(3)(c) of the ICCPR [4] to which India is a party.

In *Mohinder Singh* v. *The State [5]*, finding that the accused had not received a fair trial, the Supreme Court acquitted him, holding that though it would ordinarily order a retrial, this would "be unfair to ordinary and settled practice seeing that the appellant has been in a state of suspense over his sentence of death for more than a year." This judgment shows not only that executions were being carried out soon after court verdicts but also that a period of one year spent on death row was considered a ground for commutation.

In *Habeeb Mohammad* v. *State of Hyderabad [6]* too, an acquittal was directed in place of a retrial as six years had passed since the offence with the accused imprisoned throughout, part of the time on death row, as also in *Abdul Khader and ors.* v. *State of Mysore [7]* where the sentence was commuted on the grounds that three years had elapsed since conviction. In contrast to these early cases, the last person to be executed in India - Dhananjoy Chatterjee – had completed over 14 years in prison, most of them under the sentence of death and in solitary confinement, before he was eventually executed in August 2004. Yet this was not considered a ground for commutation by the Supreme Court, which refused to be drawn into on the issue of delay.

Interestingly, in *Nawab Singh* v. *State of Uttar Pradesh [8]*, a Supreme Court Bench clarified that while delay may be a factor, it was no rule of law and was a factor primarily to be considered by the executive in its decision on clemency. Subsequently, a Constitutional Bench in *Babu and 3 others* v. *State of Uttar Pradesh [9]* rejected the ground of delay for commutation without giving any reasons why it was doing so. A change was visible however in *Vivian Rodrick* v. *The State of West Bengal [10]* where a five judge Bench of the Supreme Court commuted the sentence as the accused had been "under the fear of sentence of death" for over six years. The bench ruled that, "extremely excessive delay in the disposal of the case of the appellant would by itself be sufficient for imposing a lesser sentence." In this case the High Court had noted the delay even when it confirmed the death sentence in 1967 but stated that since the law was clear that delay alone could not be a ground for commutation, it had to reject this plea. With the case again before it after being remanded by the Supreme Court on another ground (*Vivian Rodrick* v. *The State of West Bengal)* [11], the High Court repeated its previous position but also suggested that the state government could examine the delay.

In *T.V. Vatheeswaran* v. *The State of Tamil Nadu [12]* that finally laid down a clear guideline that where there was a delay of two years between the initial sentence of death and the hearing of the case by the Supreme Court, such sentence would be quashed. In the particular case before it, the accused had been under sentence of death – including solitary confinement – for eight years. In fact two other accused sentenced to death along with Vatheeswaran had previously received commutation in *Kannan and anr.* v. *State of Tamil Nadu [13]* due to their 'junior' roles in the killings and a delay of seven years. Only a few weeks after the *T.V. Vatheeswaran* judgment however, another Bench of Chief Justice Chandrachud and Justice A.N Sen. while commuting the sentence of an accused in *K.P. Mohammed* v. *State of Kerala [14]*, made an indirect though obvious reference to *T.V. Vatheeswaran* v. *The State of Tamil Nadu [15]*, stating, "It is however necessary to add that we are not setting aside the death sentence merely for the reason that a certain number of years have passed after the imposition of the death sentence. We do not hold or share the view that a sentence of death becomes in executable after the

lapse of any particular number of years."

Another two weeks later the judgment in *T.V. Vatheeswaran* v. *The State of Tamil Nadu* was over-ruled by a Bench of Chief Justice Chandrachud and Justices Tulzapulkar and Varadarajan in *Sher Singh and Ors.* v. *State of Punjab [16]*. In this case the accused had been sentenced to death in November 1977 and the sentence was confirmed by the High Court in July 1978. The appeal before the Supreme Court was dismissed in March 1979, a writ petition challenging constitutionality of the death sentence was dismissed in January 1981, a review petition was dismissed in March 1981 and another writ petition dismissed in April 1981. The Bench in its 1983 judgment noted that the *Vatheeswaran* rule of two years was unrealistic and no hard and fast rule could be laid down given the present statistics on disposal of cases as also that no priority was given to mercy petitions by the President. The Court also argued that the cause of the delay too was relevant and the object would be defeated if the accused benefited from such a rule after resorting to frivolous litigation. This judgment was followed by *Munawar Harun Shah* v. *State of Maharashtra*[17] where a delay of five years was rejected as a ground for commutation.

Present Scenario

With the position on delay still largely unclear, a five-judge Constitutional Bench gave a judgment in *Smt. Triveniben* v. *State of Gujarat [18],* which effectively overruled the two-year rule set by *T.V. Vatheeswaran* v. *The State of Tamil Nadu*. The Constitution Bench ruled that an unduly long delay in execution of the sentence of death would entitle an approach to the court but only delay after the conclusion of the judicial process would be relevant and the period could not be fixed. The Bench specified that a Bench hearing a delay matter would have no jurisdiction to re-open the conclusions reached while sentencing the person to death but could take into account all the circumstances of the case to decide on whether sentence should be commuted or not. The judgment in *Smt. Triveniben* v. *State of Gujarat* effectively moved the entire focus of the question of delay away from the judicial process to that of the executive process of clemency.

In *Daya Singh* v. *Union of India and ors [19],* a Bench of Justices Sharma and Varma of the Supreme Court directed the commutation of a sentence of death awarded on conviction in 1978 for the murder of the former Chief Minister of Punjab in 1965. The death sentence was confirmed by the High Court in 1980 and upheld by the Supreme Court in August 1980 (a review petition was rejected by the Supreme Court in September 1981). Mercy petitions had been rejected by the Governor and the President and another writ petition filed by the brother of the accused was heard by the Supreme Court along with *Smt. Triveniben* v. *State of Gujarat [20]* in 1988 and rejected. Another mercy petition had been filed before the President in 1988 and was still pending. The Supreme Court noted in its 1991 judgment that the prisoner had been in prison since 1972 and therefore commuted the sentence, noting that no rule was being laid down and the sentence was being commuted on 'cumulative grounds.' A similar period of 17 years was also taken note of as a mitigating factor by Justices Hegde and B.P. Singh in commuting a death sentence in *Ram Pal v. State of Uttar Pradesh [21].*

Despite the judgment in *Daya Singh* v. *Union of India and ors [22]*, the law on delay since *Smt. Triveniben* v. *State of Gujarat [23]* is relatively clear that only delay after completion of the judicial process can be considered as a ground for commutation. Importantly, a reading of the judgment of the Constitutional Bench in *Smt. Triveniben* v. *State of Gujarat* reveals that the rationale for the Court's position was to avoid a rush through the judicial process, which might jeopardize procedural safeguards and lead to challenges based on the fairness of the trial. The intention of the Bench in *Smt.* Triveniben v. *State of Gujarat* then was clearly not to exclude cases like Dhananjoy Chatterjee where the judicial process was stalled for years on end as a result of the negligence of officials of the state.

Dhananjoy Chatterjee's is not the only case where negligence of judicial or executive officials has led to significant delays in the judicial process, and there are no doubt many others. What is of concern of course is that as a result of the *Smt. Triveniben* judgment, the Supreme Court has failed to consider appeals for commutation in such cases because strictly speaking the delay was in the judicial process. Even if delay as a ground for commutation is restricted to the period when 'mercy petitions' are under consideration by the executive, a number of questions arise. On 29th November 2006, in a response to a question in the Rajya Sabha (Upper House) of the Parliament, the Minister of Home Affairs reported that at present mercy petitions of 44 persons were pending before the President of India, a number of which had been pending since 1998 and 1999. On 13th December 2006, responding to the clamor by members of the Opposition for rejection of the mercy petition in the case of Mohd. Afzal Guru, who had been found guilty of involvement in the conspiracy to attack the Indian Parliament and

sentenced to death in December 2002, the Minister of Home Affairs announced that the government would rush through the process in this particular case and added that, "no mercy petition has been decided before six or seven years." In July 2007 the Supreme Court dismissed a petition filed 'in the public interest' which challenged the delayed decisions on mercy petitions and sought the fixing of a time-period for such decisions. The Court however dismissed the petition on the grounds that it was not a matter fit for public interest litigation, leaving the possibility open for a future Bench to entertain a petition on this question.

Recently in *Shatrughan Chauhan* v. *Union of India [24]* the Supreme Court of India expanded the scope and ambit of Art. 21 of the Constitution by commuting the death sentence of 15 individuals to life time imprisonment on the ground of existence supervening circumstances and held that inordinate unexplained delay in execution of death sentence would be violative of Art. 21 of the Constitution. The Court held that Art. 21 is available to every prisoner until his/her last breath and the court will protect the right even if the noose being tied on the condemned prisoner's neck.

Conclusion

Our Constitution is highly valued for its articulation. One such astute drafting is Article 21 of the Constitution which postulates that every human being has inherent right to life and mandates that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Over the span of years, the Supreme Court has expanded the horizon of "right to life" guaranteed under the Constitution to balance with the progress of human life. This right to life is available not only to citizens but to all human beings irrespective of caste class creed sex etc. this right is also available to that prisoner who is waiting for death which is evident from the above discussion. But as we noticed there is a big uncertainty relating to the law on delay of execution of death sentence which directly affect the basic human rights of the prisoner.

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Original Article

International Responsibility and Terrorism: with Special Emphasis on State Responsibility in International Law

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Abstract

Terror attacks such as those executed in the United States, Bali, Istanbul and India in recent years render beyond doubt the challenge facing the international community to address effectively the scourge of international terrorism. They also present countless challenges for international scholars and practitioners. These include: ensuring the centrality of law, and the uncompromising governance of the principle of legality, in the highly charged debate on countering the terrorist threat; advancing an understanding of the law as sufficiently clear and accessible to provide a meaningful framework for action; demonstrating that the law enables, and indeed obliges, states to take effective measures against terrorism, and is inherently responsive to the security challenges posed by international terrorism; where the law is unsettled or unclear, or mechanisms and procedures ineffective or inadequate, promoting normative clarification or reform; monitoring, and seeking accountability in respect of, violations of international law. This article hopes to make a modest contribution to these enormous challenges. It seeks principally to address the question whether there is an identifiable framework of international law capable of addressing issues related to these grave violations.

Keywords: Terrorism; International Law; State Responsibility.

Introduction

The atrocities committed on 11 September 2001 ('September 11' or '9/11'), like others since then, highlight the critical importance of the international rule of law and the terrible consequences of its disregard. Ultimately, however, the impact of such attacks on the international system of law depends on the responses to them and in turn on the reaction to those responses. To the extent that lawlessness is met with unlawfulness, unlawfulness with impunity, the long-term implications for the rule of law, and the peace, stability and justice it serves, will be grave. Undermining the authority of law can only lay the foundation for future violations, whether by terrorists or by states committing abuses in the name of counter-terrorism [1].

A proliferation of legal measures ensued, with broad-reaching political and legal effect, including Security Council resolutions that imposed a wide range of obligations on states to prevent and suppress terrorism. These include ensuring that 'terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts' [2].

Definition

The search for an accepted definition of terrorism

in international law has been described as 'resembling the Quest for the Holy Grail'. Various diplomatic attempts, some of which are on-going, to draft a global terrorism convention have failed as consensus around a single definition of international terrorism has proved elusive [3].

The current informal definition of terrorism for the purposes of the Draft Comprehensive Convention (Article 2), prepared by the Coordinator for negotiating purposes, defines terrorism as unlawfully and intentionally causing (a) death or serious bodily injury to any person; (b) serious damage to public and private property, including a State or government facility; or (c) other such damage where it is likely to result in major economic loss. The definition further requires that 'the purpose of the conduct, by its nature or context, is to intimidate a population or to compel a Government or an international organization to do or abstain from doing any act' [4].

International law also provides a definition of terrorism for the specific context of armed conflict. IHL prohibits 'acts or threats of violence the primary purpose of which is to spread terror among the civilian population', in international and non-international armed conflict. Serious violations of this and other IHL prohibitions may also amount to a war crime for which individuals may be held to account, as recently affirmed by the ICTY.As such, terror inflicted on the civilian population in armed conflict is a special case, providing an exception to the rule that 'terrorism' as such is not defined in, and does not constitute a crime under, international treaty law [5].

The Arab Convention on the Suppression of Terrorism was adopted by the League of Arab States in 1998. Article 1(2) of the Convention defines terrorism as

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize national resources [6].

Responsibility of a State for Acts of Terrorism

The international responsibility of a state arises fromthe commission of an internationally wrongful act, consisting of conduct that (a) is attributable to a state under international law and (b) constitutes a breach of an international obligation of the state. As regards acts commonly referred to as 'terrorist', committed by individuals or groups not *formally* linked to the state, it is the first part of the test that is critical [7].

The question of attribution is relatively straightforward where conduct occurs at the hand of state officials or organs of the state, or persons exercising elements of 'governmental authority' in accordance with national law. In respect of such persons, states are directly responsible for their conduct which amounts to an 'act of state'. This is so even if the official exceeded or acted outside his or her authority [8].

Somewhat more controversial is the questions of the standard for attribution where those directly responsible for conduct are private individuals or groups with no formal relationship with the state. As 'a transparent relationship between terrorist actors and the state is predictably uncommon', this is the critical question for assessing state responsibility for acts of 'terrorism'.

International jurisprudence and the work of the International Law Commission support the view that the acts of private individuals may be attributed to a state which exercises sufficient control over the conduct in question. According to the International Court of Justice in the *Nicaragua* case, the test is whether the state or states in question exercised 'effective control'. Although the Court found the US to have helped finance, organise, equip, and train the Nicaraguan Contras, this was not sufficient to render the Contras' activities attributable to the US. Such a level of support and assistance did not 'warrant the conclusion that these forces were subject to the United States to such an extent that any acts they have committed are imputable to that State [9].

Where the state does not exercise the necessary control at the time of the conduct in question, it may nonetheless assume responsibility for the wrong *ex post facto*, where it subsequently 'acknowledges or accepts' the conduct as its own. In the *Tehran Hostages* case, the ICJ held that while the 'direct' responsibility of Iran for the original takeover of the US Embassy in Tehran in 1979 was not proved, subsequent statements in the face of incidents involving hostage taking by students created liability on the part of the state. To the extent that the judgment indicates that the Iranian State was considered capable of putting a stop to an on-going situation and instead chose to endorse and to 'perpetuate' it, the Court's finding against Iran is consistent with the application of the 'effective control' test. But the judgment also makes clear that even if such a test were not met, the state

may become responsible through its subsequent 'approval' or 'endorsement' of wrongful acts [10].

The rejection of strict liability for a state on whose territory crimes are orchestrated has been long established, since before *Nicaragua*. As the ICJ noted in 1949 in the *Corfu Channel* case, it is impossible to conclude 'from the mere fact of the control exercised by a state over its territory and waters that that State necessarily knew or ought to have known of any unlawful act perpetrated therein nor that it should have known the authors' [11].

States have obligations to take a range of measures in respect of terrorism, which have been supplemented and strengthened since. The Security Council has obliged all states, *inter alia*, to 'refrain from providing support, active or passive', 'deny safe haven' to persons involved in terrorism, 'freeze without delay terrorist assets' and cooperate fully with other states in criminal matters, stressing that 'those responsible for aiding, supporting or harboring the perpetrators, organizers and sponsors of these acts will be held accountable. If it can be established that a state has 'harboured or supported' terrorist groups, this may represent a breach of the obligations of the state, for example the longstanding obligation not to allow international terrorist groups to operate on its territory. A critical distinction exists, however, between a state being responsible for failing to meet its obligations vis a vis terrorism on its territory, and the acts of terrorists being 'attributable' or 'imputable' to the state, such that the state itself becomes responsible for the terrorists' wrongs [12].

Legal consequences flow from state responsibility for an internationally wrongful act. The extent to which practical consequences also ensue depends, at least in considerable degree, on the question of enforcement, the Achilles heel of the international legal system. Upon the commission of an internationally wrongful act, certain 'secondary' obligations arise under international law [13]. If a state is responsible for an internationally wrongful act it is obliged to cease the act (if it is ongoing), offer assurances of non-repetition and make full reparation for material or moral injury suffered. If the state responsible for the internationally wrongful act denies cessation of the wrongful act or refuses to comply with its secondary obligation to make full reparation, the injured state for its part may take 'countermeasures' against the responsible state to induce it to comply with these obligations [14].

In practice, the breach of an international obligation by a state may trigger various responses. States will often resort to diplomacy to persuade states to desist from or cease internationally wrongful conducts. In addition, they may take lawful but 'unfriendly' acts, which may include, for example the breaking of diplomatic relations, limitations on trade with the wrongdoing state or the withdrawal of voluntary aid programmes. Countermeasures are however subject to limits: they must, as far as possible, be reversible, they can only target the responsible state, they must not be disproportionate to the injury caused by the internationally wrongful act, and they cannot involve the violation of fundamental human rights, humanitarian law or peremptory norms of international law. Given these limits, the lawfulness of certain countermeasures commonly resorted to by states, such as economic sanctions, is controversial: while some would argue that economic sanctions constitute lawful countermeasures, others would question their compatibility with 'obligations for the protection of fundamental human rights'. Moreover, the ILC Articles make clear that if the internationally wrongful act amounts to a gross or systematic breach of obligations under peremptory norms such as serious violations of human rights or of basic rules of IHL or the unlawful use of force states are not only entitled, but may be obliged, to act together to end the breach [15].

Responsibility of Non State Actors under International Law

The primordial rule of international law is that it is made by states, for states. As a basic governing principle, while states are the subjects of international law, 'non-state actors' are governed instead by national law. In respect of 'terrorists' and 'terrorist organizations' which fall within the broad non-state actor category the principal source of applicable law is national law. International law for its part focuses on ensuring that the state meets its obligation to provide a national legal system that effectively represses acts of terrorism, within the framework of the rule of law. In general then, international obligations, emanating from various branches and sources of international law, are directed towards states The sharpness of this dichotomy between states and non-state actors has however been eroded to a degree through developments in international law.

While individual criminal responsibility under international law is not anewphenomenon, in recent years a system of international justice, with national and international components, has crystallized from the experience of addressing atrocities on the domestic and international planes. The work of the *ad hoc* international criminal tribunals for the former Yugoslavia and Rwanda ('ICTY' and 'ICTR' or 'the

ad hoc tribunals'), the Special Court for Sierra Leone, the adoption of the International Criminal Court Statute and supplementary documents and innovations in domestic law and practice have been the principal contributors [16]. The experience of, among others, the *ad hoc* tribunals demonstrates the viability of prosecutions involving complex criminal networks, including against those in the highest echelons of power, and in respect of massive crimes.

Conclusion

Thus, it may be concluded by saying that, a state is responsible for an act of terrorism by private actors where it exercises effective control over the act, or subsequently endorses it as its own. States may also be responsible for other internationally wrongful acts related to acts of terrorism, such as failing to take reasonable measures to prevent their territories being used by terrorists. As a matter of law, state responsibility has serious implications for the wrong doing state and, potentially, for the rights and obligations of other states. Finally, it is recalled that state responsibility may result from wrongs committed through terrorism or counter-terrorism. The challenge to injured states and to others that, as the above framework reflects, share responsibility to act in the face of serious wrongs is to ensure that international law is upheld and enforced against states involved in 'terrorism', or in unlawful responses thereto.

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Original Article

Concept of Administration of Justice in Ancient India: An Analysis

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Abstract

"Justice has always evoked ideas of equality, of proportion of compensation.

Equity signifies equality. Rules and regulations, right and righteousness are concerned with equality in value. If all men are equal, then all men are of the same essence, and the common essence entitles them of the same fundamental rights and equal liberty. In short justice is another name of liberty, equality and fraternity."

Keywords: Administration; Ancient; Justice; Dharma; Fundamental Rights; Liberty; Equality and Fraternity.

Introduction

The history does not depict the existence of the judicial system to administer the justice. In the before Vedic period the aggrieved party used to sit (as a dharna) before the house of wrong doers (accused) and create the pressure on him to settle the case to his satisfaction. Later, started adopting the simple procedure by modifying existing one to suit the circumstance and started administering the justice by the tribe and clan assemblies. The village elders started acting as judges and awarding the punishments in accordance with the nature of crime committed. While delivering the judgment the local customs, adopted, were followed where the natural justice i.e "treating all are equal before the law formula" was not administered and Varnas (caste system) have been made the basis for delivering the judgment and it was practiced and believed that the judgment given on the basis of Varnas was having sanctity of divinity which was biased one. The law and morality both were given importance and considered during the administration of Justice. It is very difficult to trace out the truth of existence of different types of laws of ancient times such as Civil and Criminal. The Judicial system of that period may be understood by the three shastras such as Dharmashastra, Neetishashtra and Arthashastras. The King of that era was the prominent person holding all the powers and used to spend some time regularly to study the cases and deliver the judgment by punishing the wrongdoers but the law in the rule was Dharma shastara subject to local and other usages which are consistent with the shastras.

Concept of Justice

Ancient India was essentially Hindu-ruled. And its foundation of judicial system was based on the concept of 'Dharma', or rules of right conduct, as outlined in the puranas and smritis(remembrance) which explains vedic scriptures. The King had no independent authority but derived his powers from `Dharma', which he was expected to uphold. So, Dharma denotes 'rule of law'. Hindus followed the concept of 'Dharam' and therefore the legal framework in Ancient India was uniform [1]. And also Dharma is used to mean Justice (Nyaya). Justice

means Nyaya and what is good to society that is justice. An also what is right in given circumstance, moral, religion, pious or righteous conduct, being helpful to living beings, giving charity or alms, natural qualities or characteristics or properties of living being and thing, duty, law and usages or customs having the force of law, and also a valid Rajashasana (royal edict) [2].

Administration of Justice in Ancient India

The period between 800 B.C and 320 B.C is described as the age of law and philosophy. In this period people was followed only the Dharmasastras and the king was considered as the highest of the judiciary.

According to Brihaspati, "Relations, companies (of artisans), assemblies (of cohabitation) and other persons duly authorized by the king concurring violent crimes (shahasa)." Then there were the treaties of "Sukranitisar" which laid fundamental principles of law. The first treaties were the composition of 'Arthashastra' by Kautilya [3].

In ancient period king administer only accords with the smites. An important feature of the judicial system of ancient India was the special courts of criminal jurisdiction called the Kantakasodhana Courts.

The Artha-shastra says, "Three commissioners (pradeshtarah) or three ministers shall deal with measures to suppress disturbance to peace (kantakasodhanam kuryuh). According to the Artha-shastra these courts took cognizance not only of offences against the States but also violations of the law by officials in the discharge of their official duties. Thus if traders used false weights or sold adulterated goods, or charged excessive prices, if the labourer in the factory was given less than a fair wage or did not do its work properly, the Kantakasodhana courts intervened to punish the culprits. Officers charged with misconduct, persons accused of theft, dacoity and sex offences had to appear before the same court. These Courts had all the characteristics of administrative courts. The existence of an Administrative Code is indicated in the fourth part of the Artha-shastra [4].

The Vedic Period

The Vedic Period (or Vedic Age) is the period during which the Vedas, texts related to early Indo-Aryan religion, were being composed, during the period of roughly the mid second to mid first millennium BCE [5].

Vedas, Vedangas, and Upanishads gives the information about the Indian judiciary. Vedas are four in number namely: Rigveda, Yajurveda, Samaveda and Atharva veda. And vedangas namely**:** Siksha, Chandas, Vyakarana, Nyrukta, Jyotishya and Kalpa. Eighteen Upanishads, supplemented to the respective Vedas and other texts which together constitute the Shrutis are mainly religious book. However, they contain some rudiments of law. Vedas are the sources of Dharma [6]. It is difficult to trace law from the Vedas, except by following the indications of positive (Vidhis) or negative (Nishedas) indications. There are several Vidhis and Nidhis which formed foundation of the Smriti laws in later period. Some of such Vidhis and Nishedas are: tell the truth, never tell untruth, never hurt anyone, follow dharma, treat your father and mother as god, perform only such acts which are not forbidden , etc.

According to the Hindus, the foundation head of Dharma or law is the Vedas or revelation, but there are no special chapters in Vedas treating of law [7].

The Smritis and Dharma Sutras Period

The Smritis means literally what was remembered, are the recollections handed down by the sages of antiquity of the precepts (commandments) of god. According to some sages the number of Smritis is 36. Yajnavalkya mentioned 20 Smritis in his smriti. The Dharma shastras are the smritis written in verses. The Dharma sastra existed even before BC 600 to 300 [8].

During the Vedic period, the society was composed of patriarchal families. The head of the family had full authority over the individual members of the family. As time passed, gradually, individual rights came to be asserted as different from family. To meet the requirements of a changing society, laws and treatises. Regulating the rights and liabilities of individuals are in the form of Sutras (aphorisms).

Dharma Sutras

The earlier works which laid down the law in the form of sutras were divided into three classes:

Dharma Sutras

dealing with civil and criminal law.

The important Dharma Sutras were of Gautama, Baudhayana, Apastamba, Harita, Vasista and Vishu.

Gautama

The Dharma Sutras of Gautama is the oldest of the text on law. It lays down law both on religious and legal matters. It contains law relating to inheritance, partition and stridhan.

Gautama attached adequate importance to tradition and practices of cultivators, traders, herdsmen, moneylenders and artisans. He detailed the law of marriage.

Baudhyana (500 to 300 B.C)

The Dharma sutra of Baudyana had not come down to us in original shape as some portion of it had been destroyed. He treated variety of subjects including inheritance, sonship, adoption and marriage.

Apastamba

The Dharma sutra of Apastamba has dealt with certain aspects of law of marriage and of inheritance besides criminal law. It has been regarded as an authoritative work.

Harita

The Dharma sutra of Harita is considered of great authority of Apastamba. The doctrine of res-judicata in Hindu law is ascribed to him.[9] This rule propounded by him shows that at so early a stage, the idea of finality of judgment, as an important rule in the administration of justice, was visualized and incorporated [10].

Vashista

Vasista attaches great importance to the custom and usage and recognizes them as supplement law. He has dealt with various topics of law, such as marriage, sonship, inheritance, adoption as also the sources of law.

Vishnu

Vishnu is referred to as one of the law writers Yajanavalkya. The major portion of this work is in prose from and the concluding portions are in the form of metrical verses. He deals with various topics of civil law, such as marriage, inheritance, debts, treasure trove etc., as also criminal law Vijayani is a commentary on Vishnu dharma sutra, by the well known writer Nanda pandita. The work is translated into English by Dr.Jolly and is published in S.B.E.Series vol. III [11].

The Smriti

Smriti smrti (Sanskrit) [from the verbal root smri to remember] What is remembered; unwritten teachings handed down by word of mouth, distinguished from srutis or teachings handed down in traditional writings. The Hebrew word qabbalah has a literally identical meaning.

The smritis were a system of oral teaching, passing from one generation of recipients to the succeeding generation, as was the case with the Brahmanical books before they were embodied in manuscript. The Smartava-Brahmanas are, for this reason, considered by many to be esoterically superior to the Srauta-Brahmanas. In its widest application, the smritis include the Vedangas, the Sutras, the Ramayana, the Mahabharata, the Puranas, the Dharma-sastras, especially the works of Manu, Yajnavalkya, and other inspired lawgivers, and the ethical writing or Niti-sastras; whereas the typical example of the sruti are the Vedas themselves considered as revelations. Shruti means that which is "heard" or received as direct oral revelation from a superior being, considered by orthodox Hindus to be equally holy to smriti; yet in ancient times the most sacred and secret teachings were never committed to writing but were invariably passed on from teacher to pupil with "mouth at ear" and at "low breath," whether among the Egyptians, Persians, Chaldeans, Greeks, Romans, Druids, Chinese, or Hindus [12].

Dharmasatras are the *major texts or documents* which formed the legal framework in Ancient India. Dharmasatra has following smritis:

1. The Manusmrti (200BC-200CE)
2. The Yajnavalkya Smrti (200-500CE)
3. The Naradasmrti (100BC-400CE)
4. The Brhaspatismrti (200-400CE)
5. The Katyayanasmrti (300-600CE) [13]

Manu Smriti (200BC-200CE)

This Smriti or the code of manu forms an important landmark in the legal history of India. The pre-eminent position attained by Manusmriti as early as the 2nd century gives the indication that it must have come into existence much earlier to 2nd century and in course of time secured place by virtue of its merit and popular acceptance. As the opening of the manusmrit indicates, the smriti in its present form appears to have been recast or complied by sage Brighu. This happened probably somewhere between

200 B.C and 200 A.D and that he gave the title of "Manusmriti" to the code so complied [14].

The Manusmriti divided in to twelve chapters and consists of 2,694 verses. It is written in a simple and fluent style. The subject matter of the twelve chapters are:

a. Creation of the Universe.
b. Definition of Dharma and Source of Dharma.
c. Celibacy – Studentship – Marriage.
d. Mode of life – means of subsistence and householder's code of conduct.
e. Rules governing food.
f. Rules governing forest hermit.
g. Rajadharama.
h. King's duty relating to administration of justice. This includes.
    a. 18 titles of law
    b. King and judge
    c. Other persons as judges
    d. Constitution of sabha
    e. Duty of restore stolen wealth
    f. Creditor's means to recover debts
    g. Grounds on which the plaintiff may fail in his suit [15].

Yajanavalkya Smriti (200-500CE)

The importance of ?Yajanvlkya lies in arranging the materials of the Manusmriti in a more systematic and concise fashion.

Yanavalkya was the first to mention specifically three popular courts, namely, Kula, Sreni and Puga arranged in the ascending order of importance, the kula being lowest court for arbitration in small matters. With these courts "we well compare the village, caste and family panchayats of modern times" [16].

J.C.Ghose remarks about Yajnavaklya Smriti as "Now it should be remembered that though Manu's authority is unquestioned by all Hindus, it is the law of Yajanavalkya by which they are really governed. Yajanavalkya's authority is supreme in India".

This Smriti Consists of 1010 Verses Divded into 3 Chapters

a. Achara or ecclesiastical law contains 368 verses.
b. Vyavahara or Civil and Criminal law contains 307 verses.
c. Prayaschitta or atonement for sins committed contains 335 verses [17].

Narada Smriti (100BC-400CE)

Narada was the first to give a code free from a crowding of religious and moral principles. He proclaimed that the laws and ordinances passed by princes and rulers could override even the smritis. He thus thought of the doctrine of civil law. He differed in several respected from that Manu proclaimed. He allowed remarriage of widows. He declared that a father had sbsolute right to distribute or given his property as he wished among his sons, but he did not recognize the widow as an heir. He gave the adopted son ninth rank.

Narada smriti was compiled somewhere about 200 A.D. He was fully conscious of the social, economic and political changes taking place in the social set up in his treatment of law. He was well alive to the realities of life. His smriti is remarkable for its progressive views on various matters. The procedural law laid down by this smriti contains provisions relating to pleading, evidence (oral and documentary) as also the procedure required to be adopted by the courts of law.

Brihaspati Smriti (200-400CE)

The smriti of Brihaspati was compiled somewhere between 3000 and 400 A.D. He was the first jurist who made clear distinction between civil and criminal justice.

Brihaspati deals with some of the important branches of substantive law such as rules of partnership, agency and civil wrongs. He speaks of four stages of judicial procedure, namely;

1. Filing of plaint
2. Filling of reply
3. Trial of the suit, and
4. Passing the decree.

Katyayana Smriti (300-600CE)

The Katyayana Smriti was compiled somewhere between fourth or fifth century A.D. It is not available in its entirety but about 600 of his verses have been cited in the Smriti Chandrika. The great importance of this smriti lies in the veriety of subjects which it deals with. It deals with substantive as well as adjective law.

According to Katyayana, land belong to the subjects and not to the king. The king is only the protector of the interests of his subjects in return for which he is entitled to land revenue [18].

Other Works

Other works includes the Arthashastra of Kautilya, Ramayana and Mahabharata as follows:

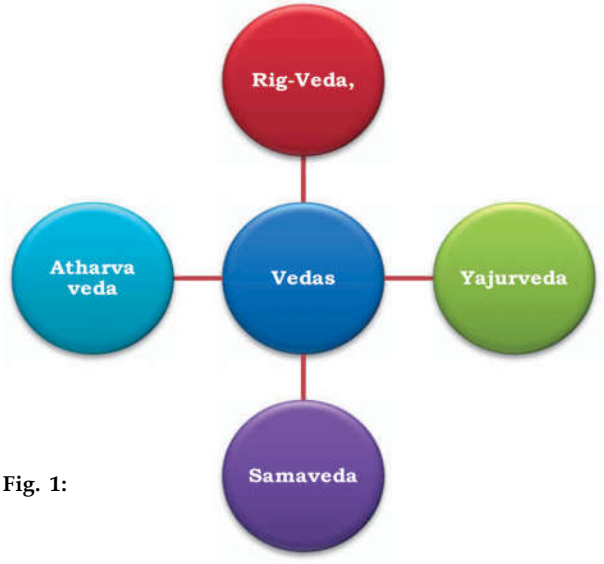
Arthashastra of Kautilya

Arthasastra of Kautilya does not fall in the category of Dharma Sastras, it is the most important and a masterly treatise on statecraft. The author of this great work is Vishugupta commentary know as chanakya, who was the Prime Minister of the Magadha Empire during the reign of Chandragupta Maurya. Chandragupta Maurya became the king in 322 B.C and his son Bindusara ascended the throne in 298 B.C. it is during this period that Chanakya lived and wrote this famous work Arthashatra, sometime between 322 and 300 B.C. it is necessary to set out the contents of the fifteen parts or books of his Arthasastra to give an idea at a glance about the extent of the subject matter covered by Kautilya on various topics relating to law, constitutional law and other affairs of the state.

i. Education, training and discipline to be imparted to a king to equip him to discharge his onerous responsibilities ably and efficiently, such as appointment of ministers and other officers of the state and other matters relating to its administration.
ii. Duties of various executive officers of the state.
iii. Law and its administration.
iv. Suppression of crime.
v. Miscellaneous matters- such as steps to be taken in emergencies, pay scales for state officers, duty of Chief Minister for ensuring continuity of the rule on the demise of king, etc.
vi. Seven constituents of state- Rajamandala – for discussion of states relations with neighbours.
vii. Foreign policy.
viii. Methods to overcome various calamities to the state.
ix. Military code- kinds of troops to be mobilized for an expedition and proper seasons for the expedition and precautions to be taken.
x. Fighting methodology at war.
xi. Steps to be taken by a would be conqueror.
xii. Designs to be adopted by a weaker king when threatened by a stronger king.
xiii. Conquest of the enemy by various methods.
xiv. Remedies and plans to be adopted in getting rid of enemies of traitors.
xv. Object of and purpose achieved by Arthshastra [19].

The two Epics- Ramayana and Mahabharata

The Ramayana and Mahabharata are the two known epics of the Aryans. They are concerned with events which took between 100 and 700 B.C. They are not books on the topics of Dharmashastra. However, Valmiki and Vyasa, who are held in highest esteem by the society, have incorporated important principles of Dharma. Rama killed Rakshasa to protect Dharma. Rama, as the eldest son was entitled to succed to his father's kingdom. Mahabharata contained the topics of law in the Shantiparva. Some of the important topics covered are; coronation rights, evils of anarchy, Rajdharma, importance of punishment and penalties.



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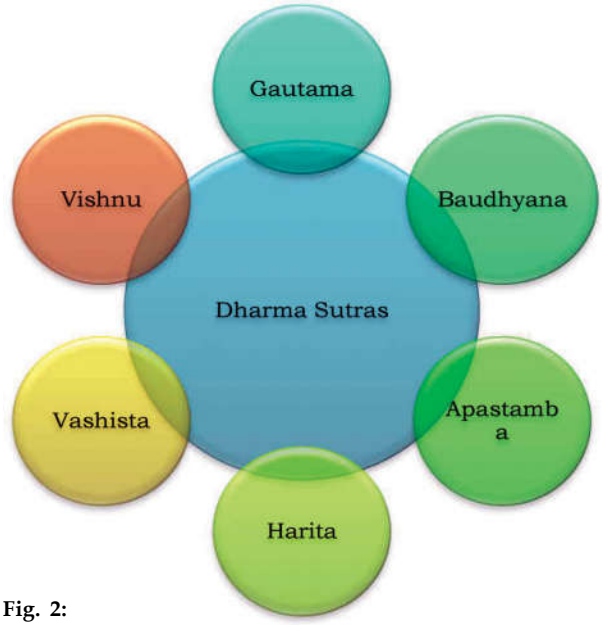

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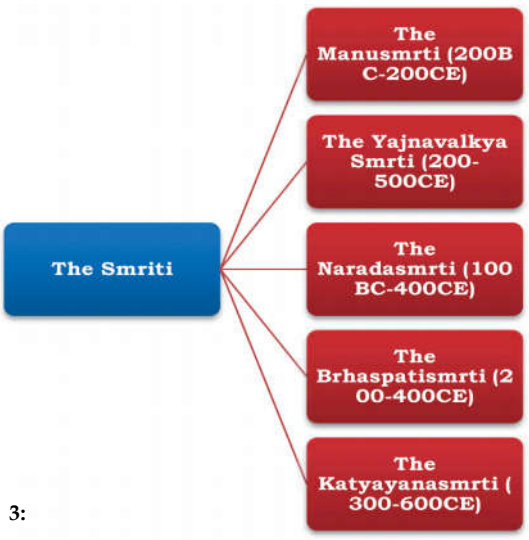

Fig. 3:

The two epics have the source of Dharma (justice) in ancient time [20]. In ancient period laid down that administration of justice was one of the fundamental duties of the state, guildelines were laid down to ensure rendering of justice impartially. Important of them are: According to Yajnavalkya "cases should be decided according to law (Dharma sastra) without being influenced any anger or greed". According to Sukraniti, there are five causes which give rise to the charges of partiality (against the judge). They are:

a. Raga (affection in favour of a party)
b. Lobha (greed)
c. Bhaya (fear)
d. Dvesha (ill-will against a party) and
e. Vadinoscha Rahashrutihi (the judge meeting and hearing a party to a case secretly)

According to Manu, guilty must be punished whoever he may be, "the ruler should not leave an offender unpunished, and whatever may be his relationship with him, whether the guilty is father or a teacher or a friend or mother of wife of a son or a domestic priest. If the guilty are not punished there will be no rule of law" [21].

Conclusion

Ancient times, the judicial institutions were considered as prominent wing of society where administration of justice was being delivered. The King was delivering the justice by practicing the Rajadharma where there is no discrimination. As per Brihadaranykopanishad, the power of Kingship was not sufficient and hence the excellent Dharma "the law" was created which is superior to King and it enabled the king to protect the people. The law (or Dharma= Justice) is defined as "Law is the King of Kings, nothing is superior to law; the law aided by the power of the King enables the weak to prevail over the strongs". Administration of justice in ancient India was well structured though it was in a rudimentary stage in those days. This system provides as excellent foundation upon which the modern system of administration of justice have been built up and structured.

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