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INDEX

S. No.:	Title	Page No.:
1.	CASTE-BASED RESERVATIONS AND AFFIRMATIVE ACTION IN INDIA - Mr Sumit kumar	2-17
2.	NAVIGATING PROPERTY REGISTRATION IN INDIA: HISTORICAL EVOLUTION, LEGAL FRAMEWORK, AND PATHWAYS TO INNOVATION - Advocate Kajal Tyagi	18-29
3.	RIGHT TO VOTE AS A CONSTITUTIONAL RIGHT - Janani A	30-39
4.	INTERNATIONAL LIABILITY OF COMMERCIAL SPACE ACTIVITIES AND SPACE DEBRIS - Tadepalli Aditya Kamal	40-55
5.	COMPREHENSIVE REVIEW OF BHARATIYA NYAYA SANHITA: ESSENTIAL INSIGHTS AND ANALYSIS - Anuja Jalan	56-69
6.	DISCHARGE BY PERFORMANCE- ANALYSIS OF COMPLETE FULFILMENT OF CONTRACT AND SUBSTANTIAL PERFORMANCE OF CONTRACT - Sumit Kumar	70-81

Caste-Based Reservation and Affirmative Action

- Mr Sumit kumar

Abstract

Caste-based reservation in India, known as affirmative action, aims to rectify historical injustices and social discrimination faced by Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC). This policy reserves seats in educational institutions, government jobs, and political bodies to ensure equitable representation and opportunities for these marginalized communities. Historical caste-based discrimination and social exclusion resulted in severe socio-economic disadvantages for these groups. The reservation policy seeks to promote social equity, enhance educational and employment opportunities, and provide political empowerment.

Key objectives include correcting historical injustices, promoting social justice and inclusion, enhancing educational opportunities, increasing employment, political representation, and encouraging diversity. The Mandal Commission, established in 1979, played a pivotal role in identifying and recommending measures for OBCs, leading to the implementation of 27% reservations for OBCs, upheld by the Supreme Court in the Indra Sawhney case (1992).

Reservation policies are applied across various fields including education, employment, political representation, judiciary, and housing. Challenges include implementation issues, ensuring quality education, addressing economic criteria, and mitigating social tensions. Legal provisions under Articles 15 and 16 of the Indian Constitution, along with landmark Supreme Court judgments, support these policies. Overall, caste-based reservation strives for an inclusive and just society by uplifting historically disadvantaged communities.

Introduction

Caste-based reservation is a policy in India to make sure people who have been treated poorly because of their past, ways of doing things and differences in social status are given the same chances as others especially those from low tribes namely Scheduled Castes (SC), Scheduled

Tribes (ST) as well as Other Backward Classes (OBC) through historical injustices or social injustices. Such an arrangement sets aside some places at institutions of learning, government offices and assemblies for members within such communities. The target is to offer these disadvantaged categories better chances and more representation leading to enhanced social and economic equality, though the reservation on caste-based is a highly contentious subject that straddles the need for historical redress and meritocracy and justice.

What is Reservation?

In India, reservation is known as affirmative action. This policy or system has been designed to make sure that historically disadvantaged or marginalized communities are included and represented in places such as education, employment and politics among others. More specifically in India, reservation is established especially for SC (Scheduled Caste), ST (Scheduled Tribe) and OBCs (Other Backward Classes) in order to correct historical injustices and social discrimination against them.

Historical Injustices Faced by Lower Castes

Caste-Based Discrimination: In India, the caste system imposed strict social stratification thereby oppressing lower castes such as Dalit's (formerly referred to as 'Untouchables') in addition to tribal communities systematically. Because they lacked both education and employment opportunities among other social benefits, these groups faced severe socio-economic hardships.

Social Injustice: Historical oppression and exclusion from mainstream society led to increased poverty, low education levels, and social shame among the low caste communities. As a result of these groups' disability to climb up socially or economically, their involvement in public affairs was non-existent and they lacked access to public services.

Objectives of Reservation

- 1. Correcting historical injustice:** In order to correct the historical and systemic discrimination faced by marginalized people like those in Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC); they were disenfranchised from

opportunities for learning, work and other chances thereby making them to lag behind economically.

2. **Promoting social equity:** Establishing a more just society by giving positive backing to the historically oppressed and marginalized is the main goal. The main objective is to bring together the rich and poor in terms of social status. It is about making the marginalized part of the whole society in economic, political, and social matters so as to make it more complete.
3. **Enhancing Educational opportunities:** It is essential to provide quality education to children who come from marginalized societies, ranging from basic to university education. This is important in stopping the repetition of poverty and social exclusion. This would also help to reduce the barriers faced by Dalit, Adivasis (tribal people) and Other Backward Classes [OBCs] in gaining levels of education that are more comparable with other caste groups.
4. **Increasing Employment opportunities:** To ensure that marginalized communities are adequately represented in government jobs and public sector employment. This not only provides economic stability but also ensures diverse representation in public services. To enhance the economic status of marginalized communities by providing them with stable and well-paying job opportunities.
5. **Political empowerment:** This will give marginalized communities political representation by having some seats reserved for them in legislative bodies like the Parliament, state legislatures and local governing bodies (Panchayats and Municipalities) so that the decisions made take into account their voices. Marginalized communities should be able to push for policies and regulations they require at national or county level".
6. **Social Justice and Inclusion:** To combat caste-based discrimination and promote social justice by ensuring equal opportunities for all, regardless of caste or background. To promote inclusive growth by ensuring that the benefits of development and economic progress reach all sections of society, especially the historically disadvantaged.

- 7. Encouraging Diversity:** To create a diverse and inclusive workforce and student body that reflects the broad spectrum of Indian society. This diversity enriches educational institutions and workplaces by bringing in varied perspectives and experiences. To encourage cultural integration and mutual respect among different social groups by promoting interactions and collaborations across caste lines.

Mandal Commission

The Mandal Commission was founded by government in 1979 under the leadership of B.P. Mandal. It was tasked with finding the socially and educationally disadvantaged groups (OBC's) in India so it could suggest ways of enhancing their socio-economic well-being, among them enforcing provisions for affirmative action towards them.

Objective

- To determine the criteria for defining socially and educationally backward classes.
- To assess the conditions of these classes in terms of social, educational, and economic status.
- To recommend steps to improve their representation in government services and educational institutions.

Implementation and Impact

1. Government Decision:

The recommendations of the Mandal Commission were initially shelved but later implemented by Prime Minister V.P. Singh's government in 1990.

The announcement of the implementation led to widespread protests and debates across the country.

2. Judicial Review:

The implementation of the Mandal Commission's recommendations was challenged in the Supreme Court, leading to the landmark judgment in *Indra Sawhney v. Union of India* (1992).

The Supreme Court upheld the 27% reservation for OBCs but reiterated that the total reservation should not exceed 50%.

3. Impact on Society:

The implementation of OBC reservations has significantly increased the representation of OBCs in government jobs and educational institutions.

It has contributed to the socio-economic upliftment of many individuals from backward classes, although challenges and criticisms remain regarding the effectiveness and fairness of the system.

Reservation Policies across various fields

Education

In the realm of higher education, reservation policies ensure that a certain percentage of seats in universities and colleges are allocated to SC, ST, and OBC students. Central universities, such as Delhi University and Jawaharlal Nehru University, implement these policies to promote diversity and inclusion. State universities also follow similar reservation policies, although the percentages may vary based on local demographics.

Professional courses, including engineering, medicine, and law, also adhere to reservation policies. Institutions such as the Indian Institutes of Technology (IITs), National Institutes of Technology (NITs), and medical colleges reserve seats for SC, ST, and OBC candidates.

In the field of school education, reservation policies are implemented through both government and private institutions. Government schools, including Kendriya Vidyalayas and Navodaya Vidyalayas, reserve seats for SC, ST, and OBC students to promote inclusivity from a young age. State governments also implement reservation policies in state-run schools to ensure that children from disadvantaged backgrounds have access to quality education.

The Right to Education (RTE) Act further mandates that private unaided schools reserve 25% of their seats for children from economically weaker sections and disadvantaged groups. This policy ensures that even in private schools, children from marginalized communities have the opportunity to receive quality education. By integrating children from diverse backgrounds into

mainstream schools, the RTE Act helps promote social cohesion and reduce educational inequalities.

Employment

Reservation policies in government employment ensure that SC, ST, and OBC candidates have fair representation in central and state government jobs, as well as public sector undertakings (PSUs). The Indian Constitution mandates reservation of 15% of posts for SCs, 7.5% for STs, and 27% for OBCs in central government services and PSUs. These reservations are implemented through various recruitment examinations conducted by agencies such as the Union Public Service Commission (UPSC) and the Staff Selection Commission (SSC).

In state government jobs, reservation policies vary depending on the state's demographic composition and specific needs. For example, Tamil Nadu has a higher percentage of reservation for OBCs due to the larger population of backward classes in the state. These policies ensure that government employment opportunities are accessible to individuals from marginalized communities, providing them with stable jobs and economic stability.

Political Representation

Reservation policies in political representation ensure that SC and ST candidates have reserved seats in the Parliament, state legislative assemblies, and local governance bodies. In the Lok Sabha (the lower house of Parliament), 84 seats are reserved for SCs and 47 seats for STs out of the total 543 seats. This ensures that marginalized communities have a voice in the highest legislative body of the country. Similarly, reserved seats in state legislative assemblies ensure representation at the state level.

In local governance bodies such as Panchayati Raj Institutions (village councils) and municipal bodies, reservation policies ensure that SC, ST, and OBC candidates have reserved seats. The 73rd and 74th Constitutional Amendments mandate that a certain percentage of seats in Panchayats and municipalities are reserved for these communities. This policy promotes grassroots political representation and ensures that local governance bodies are inclusive and representative of the community's diverse population.

Judiciary and Legal Education

National Law Universities (NLUs) reserve seats for SC, ST, and OBC candidates in their undergraduate (LLB) and postgraduate (LLM) programs. This policy ensures that students from marginalized communities have access to quality legal education, which is essential for pursuing careers in law and the judiciary.

Some states have reservation policies for SC, ST, and OBC candidates in the recruitment of judicial officers at various levels, including civil judges and district judges. These policies promote diversity within the judiciary and ensure that individuals from marginalized communities have opportunities to serve as judges and contribute to the justice system.

Scholarships and Fellowships

Various scholarships and fellowships are reserved for students to support their education and research endeavors. National scholarship schemes, such as the Post Matric Scholarship for SC/ST students, provide financial assistance for tuition fees, maintenance allowances, and other educational expenses. Research fellowships, such as those offered by the UGC and CSIR, provide financial support for pursuing advanced research programs.

Reservation policies also extend to housing and land allocation schemes. Government housing schemes reserve a certain percentage of houses or plots for SC, ST, and OBC beneficiaries. These policies ensure that individuals from marginalized communities have access to affordable housing and land, promoting economic stability and social inclusion.

Challenges and Criticisms

Implementation Issues

Despite the benefits, there are concerns about the proper enforcement of reservation policies. Some institutions fail to meet the mandated quotas, and there are instances of misuse and inadequate monitoring. Ensuring that the policies are effectively implemented requires continuous oversight and accountability.

Quality of Education

Critics argue that merely reserving seats is not enough; there is a need to ensure the quality of education and support systems for reserved category students. Providing additional academic support, mentoring, and financial assistance can help these students succeed and thrive in their educational pursuits.

Economic Criteria

There is on-going debate about the inclusion of economic criteria in reservation policies. Some argue that reservation should also consider economic criteria to ensure that benefits reach the economically disadvantaged within the reserved categories. This approach could help address the needs of individuals from marginalized communities who may not fall within the traditional caste-based reservation categories but still face economic hardships.

Social Tensions

Reservation policies can sometimes lead to social tensions, with sections of society perceiving them as unfair advantages. These tensions need to be addressed through dialogue and awareness programs that highlight the historical context and the need for such policies to promote social justice and equity.

Key Provision and percentages

Scheduled Castes (SC)

Scheduled Castes comprise groups that have historically faced severe social discrimination and untouchability. 15% of seats in educational institutions and government jobs are reserved for SC candidates. The reservation for SCs aims to uplift these communities by providing better access to education and employment, thereby improving their social and economic status.

Scheduled Tribes (ST)

Scheduled Tribes include indigenous communities that are often geographically isolated and socially disadvantaged. 7.5% of seats in educational institutions and government jobs are reserved for ST candidates. The reservation for STs seeks to integrate these communities into the mainstream by improving their access to education, employment, and political representation.

Other Backward Classes (OBC)

Other Backward Classes are socially and educationally backward groups that do not fall under SC or ST categories. 27% of seats in educational institutions and government jobs are reserved for OBC candidates. The reservation for OBCs aims to address social and educational disadvantages and ensure better representation and opportunities for upward mobility.

Economically Weaker Sections (EWS)

Economically Weaker Sections include individuals from the general category who have an annual family income below a specified threshold (currently ₹8 lakh per annum); Agricultural land owned by the family is less than 5 acres; Residential flat owned by the family is less than 1000sq. Ft; Residential plot owned by the family is less than 100 sq. Yards and do not fall under any other reservation category. 10% of seats in educational institutions and government jobs are reserved for EWS candidates. The EWS reservation was introduced to provide opportunities to economically disadvantaged individuals from the general category, addressing economic disparities without reference to caste.

Legal and Constitutional Provisions

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.

Article 15(4): Empowers the state to make special provisions for the advancement of any socially and educationally backward classes or for the Scheduled Castes (SC) and Scheduled Tribes (ST).

Article 15(5): Allows the state to make special provisions for the advancement of any socially and educationally backward classes or for SCs and STs regarding their admission to educational institutions, including private educational institutions, whether aided or unaided by the state, except minority educational institutions.

Article 16: Equality of opportunity in matters of public employment.

Article 16(4): Empowers the state to make provisions for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state.

Article 16(4A): Allows the state to provide reservations in promotions with consequential seniority to any class or classes of posts in the services under the state in favour of the SCs and STs, which, in the opinion of the state, are not adequately represented in the services under the state.

Article 16(4B): Ensures that unfilled vacancies from previous years reserved for SCs and STs are carried forward to subsequent years and are not considered together with the vacancies of the year of appointment.

Article 46: Part of the Directive Principles of State Policy, this article directs the state to promote with special care the educational and economic interests of the weaker sections of the people, particularly the SCs and STs, and to protect them from social injustice and all forms of exploitation.

Article 335: The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Supreme Court Judgement

M.R. Balaji v. State of Mysore (1963)¹

Background

The case arose from an order issued by the State of Mysore (now Karnataka) in 1960, which reserved 68% of seats in educational institutions for socially and educationally backward classes, Scheduled Castes (SCs), and Scheduled Tribes (STs). The order was challenged on the grounds that it violated the fundamental rights guaranteed by the Constitution of India, particularly Article 15(1), which prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.

Issue Addressed

1. Whether the State's reservation policy of 68% was constitutionally valid.

¹ AIR 1963 SC 649

2. Whether the criteria used to determine "backwardness" were appropriate.
3. The interpretation and scope of Article 15(4) of the Constitution, which allows the State to make special provisions for the advancement of any socially and educationally backward classes or for SCs and STs.

Judgement

Percentage of Reservations: The Supreme Court held that the reservation of 68% was excessive and not justifiable. It stated that such a high percentage of reservations would violate the principle of equality guaranteed by the Constitution. The Court suggested that reservations should be reasonable and should generally not exceed 50%. This principle became known as the "50% rule," which was later reaffirmed in subsequent judgments.

Criteria for Backwardness: The Court examined the criteria used by the State of Mysore to determine backwardness, which included caste as a primary factor. The Court held that while caste could be a factor in determining social and educational backwardness, it should not be the sole criterion. Other factors such as poverty, occupation, and place of residence should also be considered. The Court emphasized that the term "backward class" in Article 15(4) does not only refer to caste but also to other social and educational disadvantages.

Scope of Article 15(4): The Court interpreted Article 15(4) as an enabling provision that allows the State to make special provisions for the advancement of socially and educationally backward classes and SCs and STs. It clarified that Article 15(4) is a special provision and should be used to promote the welfare of genuinely disadvantaged sections of society. However, it should not override the fundamental right to equality under Article 15(1).

Indra Sawhney v. Union of India (1992)²**Background**

The case arose from a challenge to the implementation of the Mandal Commission Report, which recommended a 27% reservation for Other Backward Classes (OBCs) in central government services and public sector undertakings.

Issue Addressed

1. The validity of the 27% reservation for OBCs in central government jobs.
2. Whether economic criteria alone can be the basis for reservation.
3. The exclusion of the "creamy layer" (affluent members) of OBCs from reservation benefits.
4. Whether reservations can extend to promotions.
5. The total percentage of reservations permissible under the Constitution.

Judgement

27% Reservation for OBCs: The Court upheld the government's decision to implement a 27% reservation for OBCs. It affirmed that the backwardness contemplated by Article 16(4) is social and educational backwardness, not just economic.

Economic Criteria: The Court held that economic criteria alone could not be the sole basis for identifying backward classes under Article 16(4) of the Constitution. Social and educational backwardness were crucial determinants.

Creamy Layer Exclusion: The Court introduced the concept of the "creamy layer," stating that affluent members within the OBCs should be excluded from reservation benefits. This was to ensure that reservations reached the genuinely disadvantaged sections of the backward classes. The determination of the creamy layer was left to be done by the government.

² AIR 1993 SC 477; 1992 Supp (3) SCC 217

Reservation in Promotions: The Court ruled that reservations under Article 16(4) of the Constitution should not extend to promotions. This was a significant departure from the earlier position and aimed to ensure efficiency in administration.

Cap on Reservations: The Court reaffirmed the principle that reservations should not exceed 50% of the total vacancies in a given year. This limit was seen as a means to balance the principle of equality with affirmative action. The Court allowed for the possibility of exceeding this limit only in exceptional circumstances and with strong justification.

M. Nagaraj v. Union of India (2006)³

Background

The case challenged the constitutionality of the 77th, 81st, 82nd, and 85th Amendments to the Indian Constitution. These amendments made provisions for reservations in promotions for Scheduled Castes (SCs) and Scheduled Tribes (STs) and also allowed for consequential seniority.

Issues Addressed

1. The validity of providing reservations in promotions for SCs and STs.
2. The validity of the concept of consequential seniority for SCs and STs in promotions.
3. Whether these amendments violated the basic structure of the Constitution.

Judgement

Reservations in Promotions: The Court upheld the constitutional validity of reservations in promotions for SCs and STs as provided by the amendments. However, it imposed certain conditions to ensure that the policy did not violate the principle of equality enshrined in the Constitution.

³ AIR 2007 SC 71; (2006) 8 SCC 212

Concept of Consequential Seniority: The Court validated the concept of consequential seniority, allowing SCs and STs to retain their seniority obtained through reservation in promotions. This was seen as necessary to provide a level playing field for the historically disadvantaged groups.

Conditions Imposed by the Court: The Court specified that the State must demonstrate the following conditions before providing reservations in promotions:

Backwardness: The State must collect quantifiable data showing the backwardness of the class.

Inadequate Representation: The State must show that the class is inadequately represented in the services.

Overall Efficiency: The State must ensure that the reservation in promotions does not affect the overall efficiency of the administration as mandated by Article 335 of the Constitution.

Basic Structure Doctrine: The Court held that the amendments did not violate the basic structure of the Constitution. It maintained that reservations are a means to achieve equality and social justice, aligning with the constitutional goal of uplifting marginalized communities.

Jarnail Singh v. Lachhmi Narain Gupta (2018)⁴

Background

The case arose from a challenge to the constitutional validity of the requirement laid down in the *M. Nagaraj v. Union of India* (2006) judgment, which mandated that the State must demonstrate backwardness, inadequacy of representation, and that reservations in promotions do not affect administrative efficiency before providing reservations in promotions for SCs and STs.

Issue Addressed

1. Whether the conditions set out in the *M. Nagaraj* judgment were necessary for providing reservations in promotions for SCs and STs.

⁴ (2018) 10 SCC 396

2. Whether the principle of presumed backwardness for SCs and STs could be upheld without requiring fresh data to demonstrate backwardness.

Judgement

Presumed Backwardness: The Supreme Court held that SCs and STs are presumed to be socially and educationally backward, and there is no need to collect quantifiable data to prove their backwardness for reservations in promotions. This overturned the requirement set in the M. Nagaraj judgment. The Court clarified that SCs and STs are inherently disadvantaged, and the presumption of backwardness should not be disputed unless there is strong evidence to the contrary.

Conditions of M. Nagaraj: The Court modified the conditions laid down in the M. Nagaraj judgment. It held that while the State must ensure that the reservations in promotions do not affect administrative efficiency, the requirement to demonstrate backwardness and inadequacy of representation through fresh data was not necessary for SCs and STs. The judgment emphasized that the State should still ensure that the reservations do not compromise the efficiency of public administration.

Implications for Reservations in Promotions: The Court upheld the validity of reservations in promotions for SCs and STs, reiterating that these provisions are essential to uplift the marginalized communities and promote social justice. The decision reinforced the constitutional mandate to provide reservations to SCs and STs, ensuring their effective representation in public employment.

Conclusion

Caste-based reservation and affirmative action policies in India are vital instruments for addressing the deep-seated historical injustices and systemic social discrimination faced by Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC). By reserving seats in educational institutions, government jobs, and political bodies, these policies strive to create a more equitable and inclusive society. The overarching goal is to promote social equity,

enhance educational and employment opportunities, and empower marginalized communities politically.

The implementation of these policies, particularly following the recommendations of the Mandal Commission and the legal validations from landmark Supreme Court judgments, has significantly shaped India's socio-economic landscape. These policies are crucial in various sectors, including education, employment, political representation, and judiciary, ensuring that marginalized communities receive the support necessary to overcome socio-economic barriers.

However, the reservation system is not without its challenges. Issues with implementation, the need for quality education and additional support, debates over the inclusion of economic criteria, and the potential for social tensions are significant concerns that need continuous oversight and dialogue. Legal provisions under Articles 15 and 16 of the Indian Constitution and pivotal Supreme Court judgments provide a robust framework to guide these policies, balancing affirmative action with meritocracy and administrative efficiency.

Despite these challenges, caste-based reservation policies remain essential for uplifting historically disadvantaged communities, fostering social justice, and building a more equitable society. Continuous oversight, policy adjustments, and a nuanced understanding of the socio-economic landscape are necessary to ensure these measures effectively address the needs of marginalized groups and contribute to their socio-economic advancement. By promoting inclusivity and diversity, these policies help create a more just and balanced society where all individuals, regardless of their caste or background, have the opportunity to thrive and succeed.

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NAVIGATING PROPERTY REGISTRATION IN INDIA: HISTORICAL EVOLUTION, LEGAL FRAMEWORK, AND PATHWAYS TO INNOVATION

-Advocate Kajal Tyagi

ABSTRACT

Navigating the Evolving Landscape of Immigration Law: Challenges and Impacts (Focusing on Indian Laws) provides a comprehensive analysis of the dynamic nature of India's immigration policies and their implications for foreign nationals and businesses. This article explores recent amendments to India's immigration laws, including the expansion of E-Visa facilities, liberalization of business and employment visas, and the implementation of stricter enforcement measures. It delves into key changes in visa regulations and work permits, highlighting updates in application processes, eligibility criteria, and visa categories such as the Employment Visa and Business Visa. The article also addresses significant legal challenges faced by immigrants, including visa overstays, work authorization issues, and family reunification complexities. For businesses, the impact of immigration laws on labor supply, compliance requirements, and corporate strategies is discussed, emphasizing the need for effective compliance planning and legal support. The conclusion underscores the importance of staying informed and seeking legal advice to navigate the evolving regulatory landscape. The article concludes with a forward-looking perspective on potential future developments in India's immigration policies, including further liberalization, enhanced digitalization, and strengthened enforcement.

Keywords: Indian immigration laws, E-Visa, Employment Visa, Business Visa, visa regulations, work permits, legal challenges, compliance requirements, immigration policy reforms, family reunification, business impact, regulatory landscape

INTRODUCTION

Immigration law plays a crucial role in shaping a country's demographic and economic landscape. In India, understanding immigration law is essential for both foreign nationals seeking opportunities and businesses relying on global talent. Immigration laws dictate the conditions

under which individuals can enter, stay, and work in India, influencing everything from business operations to personal lives.

India's immigration policies are particularly dynamic, reflecting the country's growing role in the global economy and its shifting political and social priorities. Recent years have witnessed significant changes aimed at streamlining processes, attracting skilled professionals, and enhancing national security. These changes are not merely procedural but have profound implications for how businesses manage their international workforce and how immigrants navigate their legal status.

As India positions itself as a global hub for innovation and investment, understanding the nuances of its immigration laws is more important than ever. This overview explores the evolving nature of India's immigration policies and the key challenges and impacts associated with these changes.

CHANGES IN INDIAN IMMIGRATION POLICY AND LAW

India's immigration policies have undergone significant changes in recent years, reflecting the country's evolving economic landscape and global integration. These changes impact both immigrants seeking opportunities in India and businesses that rely on foreign talent. This section explores recent amendments and policy shifts, key changes in visa regulations and work permits, and the broader implications for immigrants and businesses.

Overview of Recent Amendments and Policy Shifts

India has introduced several amendments to its immigration laws to streamline processes, enhance security, and attract skilled professionals. These changes aim to make India a more attractive destination for foreign talent while ensuring that immigration regulations are robust and enforceable.

- E-Visa Expansion: The introduction and subsequent expansion of the E-Visa facility has simplified the process for tourists, business travelers, and medical patients. The government has steadily increased the number of eligible countries and extended the validity period, making it easier for short-term visitors to enter India.

- Liberalization of Business and Employment Visas: Recognizing the need for specialized skills and investment, India has liberalized visa policies for business and employment purposes. This includes relaxing eligibility criteria and simplifying application procedures for foreign nationals looking to work or invest in India.

- Stricter Enforcement Measures: To address concerns about illegal immigration and overstays, the government has implemented stricter enforcement measures, including enhanced border controls and more rigorous visa application scrutiny.

Key Changes in Visa Regulations and Work Permits

1. Visa Regulations⁵

- E-Visa Categories and Eligibility: The E-Visa⁶, introduced in 2014, has been expanded to cover five categories: Tourist, Business, Medical, Conference, and Medical Attendant. Recent changes have increased the duration of stay under E-Visas from 60 days to one year, with multiple entries permitted for most categories. The number of eligible countries has also been expanded to include 166 nations.

- Application Processes: The process for obtaining an E-Visa has been streamlined, with applicants required to apply online at least four days before the date of arrival. The approval process has been expedited, typically taking no more than 72 hours.

- Eligibility Criteria: The eligibility criteria for various visa categories have been relaxed to attract more visitors and business professionals. For instance, the Business Visa now includes provisions for individuals traveling to establish industrial/business ventures, explore possibilities to set up industrial/business ventures, or purchase/sell industrial products in India.

2. Work Permits

- Employment Visa (E-Visa): The Employment Visa is granted to skilled professionals or qualified specialists employed by an Indian company or engaged in an honorary capacity for a non-profit

⁵ <https://www.cgisf.gov.in/page/e-visa/>

⁶ https://www.mha.gov.in/PDF_Other/AnnexIII_01022018.pdf

organization. Recent updates have included more flexible criteria for eligibility, such as recognizing qualifications and skills that are in demand in India. The visa is typically issued for one year or the term of the contract, whichever is less, and can be extended in India.

- Business Visa: The Business Visa is issued to individuals traveling to India for business purposes, such as setting up industrial/business ventures or exploring business opportunities. This visa has also seen relaxed requirements, including the ability to obtain a visa for a longer duration (up to five years with multiple entries) and fewer restrictions on the minimum stay requirements.

3. Government Policies

- New Policies and Their Impact: The Indian government has introduced several policies aimed at making India a global hub for business and innovation. Initiatives such as 'Make in India'⁷ and 'Startup India'⁸ have been complemented by immigration policies that facilitate the entry of foreign entrepreneurs and investors. These policies include special visas for startup founders and investors, as well as relaxed requirements for obtaining long-term visas.

- Impact on Expatriates and Businesses: These policy shifts have made it easier for expatriates to live and work in India, encouraging the influx of skilled professionals and business investments. Businesses benefit from access to a larger talent pool, which is critical for sectors such as IT, engineering, and healthcare. However, companies must remain vigilant about compliance with immigration laws to avoid legal issues and penalties.

LEGAL CHALLENGES FACED BY IMMIGRANTS IN INDIA

Despite recent reforms aimed at modernizing and streamlining India's immigration system, immigrants in India often face significant legal challenges. These challenges can affect their ability to live, work, and reunite with their families. This section explores the common legal hurdles that immigrants encounter, including visa overstays, work authorization issues, access to legal representation, and family reunification complexities.

⁷ <https://www.makeinindia.com/about>

⁸ <https://www.startupindia.gov.in/content/sih/en/about-startup-india-initiative.html>

Visa Overstays and Deportation

Visa overstays occur when an individual remains in India beyond the expiration date of their visa. Such overstays can have serious legal implications.

- Legal Consequences:

- Fines and Penalties: Immigrants who overstay their visas are subject to fines, which can vary based on the duration of the overstay. The Ministry of Home Affairs (MHA)⁹ and the Bureau of Immigration (BOI)¹⁰ enforce these penalties.

- Deportation: Overstayers face deportation, a formal process that involves detention until the individual is removed from the country. The Immigration Act and various notifications from the MHA govern these procedures.

- Re-Entry Ban: Following deportation, individuals may face a re-entry ban ranging from one to five years, depending on the circumstances of their overstay and the discretion of immigration authorities.

- Handling Overstays:

- Voluntary Departure: In some cases, immigrants may be permitted to leave India voluntarily, often to avoid formal deportation procedures. This option is generally available if the overstay is short and the individual cooperates with authorities.

- Legal Remedies: For those facing deportation, legal remedies include filing appeals or applications for extensions of stay under humanitarian grounds. Such applications are reviewed on a case-by-case basis and must be substantiated with valid reasons.

Work Authorization

Unauthorized employment occurs when foreign nationals work in India without the appropriate visa or work permit, leading to several legal issues.

⁹ <https://www.mha.gov.in/en/divisionofmha/foreigners-division/acts-rules-and-regulations-pertaining-foreigners-division>

¹⁰ https://indianfrro.gov.in/frro/Financial_Penalty.pdf

- **Employment Visa Violations:** Foreign nationals are required to hold a valid Employment Visa to work legally in India. Working without this visa, or outside the visa's permitted scope, constitutes a violation of immigration laws.
- **Penalties and Prosecution:** Employers who hire individuals without valid work authorization face fines and legal action. Foreign workers may also be subject to deportation and legal penalties.
- **Application Process:** To obtain a valid Employment Visa, foreign nationals must secure a job offer from an Indian employer, who is responsible for providing necessary documentation to support the visa application. The Employment Visa is usually granted for up to one year, subject to renewal.
- **Visa Extensions and Renewals:** Work visas must be renewed periodically, which involves complying with immigration regulations and submitting renewal applications before the current visa expires.

Access to Legal Representation

Many immigrants face difficulties in obtaining affordable and effective legal representation, which can impact their ability to resolve immigration-related issues.

- Availability of Legal Services:

- **High Costs:** Legal fees for immigration matters can be substantial, and many immigrants may not have the financial means to afford professional legal assistance. This situation is particularly challenging for those facing complex legal issues or deportation.

- **Limited Access:** Immigrants residing outside major urban centers may find it difficult to access qualified legal services. This limitation can impede their ability to receive timely advice and support.

- Role of Non-Governmental Organizations (NGOs):

- **Legal Aid:** NGOs play a vital role in providing legal aid to immigrants, often offering pro bono services and support for various immigration issues. Organizations such as the Legal Services Authority and local NGOs work to bridge the gap in legal representation.

- Advocacy and Support: NGOs also engage in advocacy to protect immigrant rights, raise awareness of legal challenges, and work towards policy reforms to improve the legal landscape for immigrants.

Family Reunification

Family reunification is a crucial issue for many immigrants, but navigating the policies and legal requirements can be complex.

- Family Immigration Policies:

- Dependent Visas: Family members of foreign nationals holding Employment or Business Visas can apply for Dependent Visas. However, these visas come with restrictions, such as limitations on employment and longer processing times.

- Long-Term Residency and Citizenship: Obtaining long-term residency or citizenship for family members involves meeting stringent criteria and following detailed procedures. This process includes verifying relationships and fulfilling residency requirements.

- Challenges in Reunification:

- Documentation and Proof: Immigrants must provide extensive documentation to prove relationships, including birth and marriage certificates. This requirement can be burdensome and time-consuming.

- Processing Delays: Delays in processing family visa applications can result in prolonged separations and uncertainty. Administrative backlogs and inefficiencies contribute to these delays, impacting families' ability to reunite.

THE IMPACT OF IMMIGRATION LAW ON BUSINESSES IN INDIA

India's immigration laws and policies play a crucial role in shaping the business environment, particularly regarding labor supply, compliance requirements, and corporate strategies. For businesses operating in India, understanding these impacts is essential for effective talent management and regulatory compliance. This section delves into how immigration policies affect

labor supply, the compliance obligations for businesses hiring foreign workers, and strategies for navigating the regulatory landscape.

Effects of Immigration Policies on Labor Supply and Talent Acquisition

Immigration policies have a direct impact on the availability and management of foreign talent, which is vital for many businesses in India.

- Visa and Work Permit Regulations: The effectiveness of India's visa and work permit regulations significantly affects businesses' ability to attract and retain skilled foreign professionals. Recent reforms have introduced more streamlined processes and broadened visa categories, such as the Employment Visa (E-Visa) and Business Visa, to facilitate easier access for talent.

1. Skilled Professionals: Indian immigration policies target skilled professionals in sectors such as IT, engineering, and healthcare. By offering various visa options, India aims to attract global talent to fill critical skill gaps.

2. Startup and Investment Visas: Policies like the Startup Visa have been designed to attract entrepreneurs and investors, contributing to innovation and economic growth.

- Talent Acquisition Challenges: Despite improvements, challenges remain in sourcing talent due to visa processing delays, stringent eligibility criteria, and complex documentation requirements. These hurdles can impede businesses' ability to quickly onboard skilled workers and adapt to changing market demands.

Compliance Requirements for Businesses Hiring Foreign Workers

Businesses hiring foreign workers must adhere to a range of compliance requirements to avoid legal issues and penalties.

- Registration and Reporting: Companies employing foreign nationals are required to comply with registration and reporting obligations set by the Ministry of Home Affairs (MHA) and the Bureau of Immigration (BOI).

1. Registration of Foreign Employees: Businesses must register foreign employees with the Foreigners Regional Registration Office (FRRO) within 14 days of their arrival in India. Failure to do so can result in fines and legal consequences.

2. Periodic Reporting: Companies must also submit periodic reports on foreign employees, including details on employment status, salary, and visa validity. These reports ensure that businesses remain compliant with visa conditions and labor laws.

- Work Permit Compliance: Employers must ensure that foreign employees hold valid work permits and that their roles align with the scope of their visas. Unauthorized employment or deviations from visa conditions can lead to penalties for both the employee and the employer.

- Tax and Social Security Contributions: Businesses are responsible for ensuring that foreign employees comply with Indian tax regulations and contribute to social security schemes, such as the Employees' Provident Fund (EPF) and Employees' State Insurance (ESI), where applicable.

Corporate Strategies for Navigating the Regulatory Landscape

To effectively navigate the immigration regulatory framework, businesses should adopt strategies that align with legal requirements and support their operational needs.

- Stay Informed and Updated: Regularly update company policies and procedures to reflect changes in immigration laws and regulations. Staying informed about policy shifts and new regulations helps prevent compliance issues and allows businesses to adapt quickly.

- Develop a Comprehensive Compliance Plan: Establish a compliance plan that includes:

1. Internal Procedures: Define clear internal procedures for handling visa applications, renewals, and employee registrations. Assign dedicated personnel or teams to manage these processes.

2. Documentation Management: Maintain accurate and up-to-date records of all visa and work permit documentation for foreign employees. This includes contracts, visa copies, and proof of registration.

- Engage with Legal and Immigration Experts: Collaborate with legal and immigration experts to navigate complex regulations and resolve compliance issues. Legal professionals can provide valuable guidance on visa applications, regulatory changes, and dispute resolution.
- Implement Robust Hiring Practices: Develop hiring practices that ensure all foreign employees meet visa and work permit requirements before onboarding. This includes verifying visa status and ensuring that roles match visa conditions.
- Prepare for Audits and Inspections: Be prepared for audits and inspections by immigration authorities. Conduct internal audits to ensure compliance and address any potential issues proactively.
- Support for Foreign Employees: Provide support to foreign employees, including assistance with visa renewals, understanding local laws, and integrating into the workplace. This support can enhance employee satisfaction and retention.

CONCLUSION

India's immigration laws and policies are continually evolving to address the needs of a dynamic economy and a globalized workforce. The changes have significant implications for both immigrants and businesses, influencing everything from visa regulations and work permits to compliance requirements and corporate strategies.

Recap of the Key Points Discussed

- Recent Amendments and Policy Shifts: India has implemented several key amendments to its immigration laws to streamline processes, attract skilled professionals, and enhance security. The expansion of the E-Visa facility, liberalization of business and employment visas, and stricter enforcement measures reflect a broader trend toward making India a more attractive destination for foreign talent while ensuring robust regulatory oversight.
- Visa Regulations and Work Permits: Recent updates include the expansion of E-Visa categories, streamlined application processes, and relaxed eligibility criteria. Work permits, particularly Employment and Business Visas, have also seen updates aimed at attracting skilled professionals

and investors. These changes are intended to facilitate easier entry and stay for foreign nationals but require businesses and immigrants to navigate complex regulatory frameworks.

- Legal Challenges for Immigrants: Immigrants in India face several legal hurdles, including issues related to visa overstays, work authorization, access to legal representation, and family reunification. These challenges highlight the need for careful management of visa statuses, compliance with work permit regulations, and access to effective legal support.

- Impact on Businesses: Immigration laws significantly impact businesses in India by affecting labor supply, compliance obligations, and overall talent acquisition strategies. Businesses must navigate a range of compliance requirements, from registration and reporting to tax and social security contributions. Developing effective strategies and staying informed about regulatory changes are crucial for maintaining compliance and leveraging the benefits of a diverse workforce.

The Importance of Staying Informed and Seeking Legal Advice

Given the complexity and frequent changes in immigration regulations, it is essential for both immigrants and businesses to stay informed about current laws and policies. Regular updates from reliable sources, such as government notifications and legal advisories, can help mitigate risks and ensure compliance.

For businesses, engaging with legal and immigration experts is crucial for navigating the regulatory landscape effectively. Legal professionals can provide guidance on visa applications, compliance strategies, and dispute resolution, helping to avoid potential pitfalls and ensure adherence to legal requirements.

For immigrants, access to legal advice can aid in addressing challenges related to visa overstays, work authorization, and family reunification. Legal support can also assist in navigating the complexities of applying for visas and addressing any legal issues that arise.

Future Outlook on Immigration Policies and Their Potential Impact

Looking ahead, India's immigration policies are likely to continue evolving in response to global economic trends and domestic needs. Potential future developments may include:

- Further Liberalization: India may continue to liberalize visa and work permit regulations to attract global talent and investment, particularly in emerging sectors like technology and startups. This could involve more flexible visa options, extended stay periods, and simplified application processes.
- Enhanced Digitalization: The integration of digital technologies in immigration processes could further streamline visa applications, tracking, and compliance monitoring. This shift towards digital solutions may improve efficiency and accessibility for both immigrants and businesses.
- Strengthened Enforcement: As India aims to balance openness with security, there may be a continued focus on strengthening enforcement measures to address illegal immigration and overstays. Businesses and immigrants will need to remain vigilant to avoid compliance issues.

In conclusion, navigating the evolving landscape of immigration law in India requires a proactive approach to stay informed, seek legal advice, and adapt to changes. By understanding the current regulatory environment and preparing for future developments, immigrants and businesses can better manage the challenges and opportunities presented by India's immigration system.



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RIGHT TO VOTE AS A CONSTITUTIONAL RIGHT

-Janani A

Introduction

The right to vote is a fundamental aspect of democratic governance and is enshrined as a constitutional right in many jurisdictions worldwide. In India, this right is guaranteed under Article 326 of the Constitution, which stipulates that elections to the House of the People and the Legislative Assemblies of States shall be based on adult suffrage. This provision ensures that every citizen of India, who is 18 years of age or older and not otherwise disqualified under the Constitution or any law, has the right to vote in elections.

The right to vote is pivotal in empowering citizens to participate in the democratic process, influence government policies, and hold public officials accountable. It serves as a mechanism for expressing political preferences and ensuring that the government reflects the will of the people. Furthermore, this right is intrinsically linked to other fundamental rights, such as the right to equality (Article 14), freedom of speech and expression (Article 19), and the right to constitutional remedies (Article 32).

Historically, the evolution of the right to vote in India has been marked by significant reforms aimed at broadening the franchise and enhancing electoral integrity. Landmark judicial pronouncements by the Supreme Court of India have reinforced the sanctity of the right to vote, underscoring its critical role in maintaining a vibrant and inclusive democracy. The court has emphasized that free and fair elections are a basic structure of the Constitution, thereby protecting the right to vote from any arbitrary or discriminatory practices.

Despite its constitutional guarantee, challenges such as voter disenfranchisement, electoral malpractices, and the need for robust electoral reforms persist. Addressing these issues is essential to ensure that the right to vote is exercised freely and fairly by all eligible citizens. The Election Commission of India, an autonomous constitutional authority, plays a crucial role in this

regard by overseeing the conduct of elections and implementing measures to enhance transparency and accessibility in the electoral process.

Constitutional Provisions

The right to vote in India is governed by various constitutional provisions and legislative frameworks that ensure free, fair, and inclusive electoral processes. The primary constitutional provisions related to the right to vote include:

1. Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the Basis of Adult Suffrage

Article 326 stipulates that elections to the House of the People (Lok Sabha) and the Legislative Assemblies of States shall be based on adult suffrage. It specifies that every citizen of India who is 18 years of age or older and is not otherwise disqualified by the Constitution or any law is entitled to vote.

2. Article 325: No Person to be Ineligible for Inclusion in, or to Claim Inclusion in a Special, Electoral Roll on Grounds of Religion, Race, Caste, or Sex

Article 325 ensures that no person is excluded from the electoral rolls or discriminated against on grounds of religion, race, caste, or sex. This provision upholds the principle of universal suffrage and equality in the electoral process.

3. Article 324: Superintendence, Direction, and Control of Elections to be Vested in an Election Commission

Article 324 establishes the Election Commission of India, granting it the authority to oversee the conduct of elections to Parliament, state legislatures, and the offices of the President and Vice-President. The Election Commission is responsible for ensuring that elections are free, fair, and conducted in accordance with the law.

4. Article 327: Power of Parliament to Make Provision with Respect to Elections to Legislatures

Article 327 empowers Parliament to make laws regarding the preparation of electoral rolls, the delimitation of constituencies, and other matters necessary for the conduct of elections to

Parliament and state legislatures. This provision allows for legislative frameworks that facilitate the electoral process.

5. Article 328: Power of Legislature of a State to Make Provision with Respect to Elections to Such Legislature

Article 328 grants state legislatures the power to make laws regarding elections to their respective legislative assemblies, provided they are consistent with the provisions of the Constitution.

6. Article 329: Bar to Interference by Courts in Electoral Matters

Article 329 provides that courts shall not interfere in matters relating to the validity of any law relating to the delimitation of constituencies or the allotment of seats made under Article 327 or 328. Challenges to the election process can only be addressed through an election petition presented to such authority and in such manner as provided by or under any law made by the appropriate legislature.

Legislative Framework

The legislative framework in India for ensuring free and fair elections is comprehensive, encompassing several key acts and rules that regulate the electoral process. Here is an in-depth look at these legislative provisions:

1. Representation of the People Act, 1950

This Act is foundational to the preparation and maintenance of electoral rolls:

- Electoral Rolls: Sections 13A to 28 cover the preparation and revision of electoral rolls. This includes:
 - Section 13A: Provides for the appointment of electoral registration officers.
 - Section 21: Mandates the preparation and periodic revision of electoral rolls.
 - Section 23: Allows claims and objections related to entries in the electoral rolls.
 - Section 24: Details the appeals process for decisions of electoral registration officers.

- **Qualification of Voters:** Outlines that a person must be a citizen of India and at least 18 years old to be enrolled as a voter.
- **Correction of Entries:** Sections 22 and 23 provide mechanisms for correcting, including, or deleting names in the electoral rolls to ensure accuracy.

2. Representation of the People Act, 1951

This Act governs the conduct of elections and sets qualifications and disqualifications for candidates:

- **Conduct of Elections:** Sections 30 to 78A elaborate on the election process:
 - Section 30: Notification of elections.
 - Section 33: Filing of nominations, including the requirement for security deposits.
 - Section 36: Scrutiny of nominations.
 - Section 38: Withdrawal of candidacy.
 - Sections 58 and 59: Polling and counting of votes.
 - Section 66: Declaration of results.
 - **Qualifications and Disqualifications:**
 - Sections 3 to 11B: Define who can contest elections, with details on disqualifications for reasons such as being an undischarged insolvent, holding an office of profit, or having a criminal conviction.
 - Section 8: Disqualification on conviction for certain offenses, including corruption and serious crimes.
 - **Corrupt Practices and Electoral Offenses:**

- Section 123: Defines corrupt practices such as bribery, undue influence, and booth capturing.
- Section 125: Penalty for promoting enmity between different groups.
- Section 136: Penalty for electoral offenses, including fraud and impersonation.
- Election Disputes:

Sections 80 to 122: Establish the framework for filing and adjudicating election petitions, with High Courts having jurisdiction over these disputes.

3. Delimitation Acts

Delimitation is the process of redrawing the boundaries of electoral constituencies to reflect changes in population:

- Delimitation Commission Act, 1952: Established the Delimitation Commission, responsible for redrawing the boundaries of parliamentary and assembly constituencies based on the census.
- Delimitation Act, 2002: Provides the current framework for delimitation, incorporating the latest population data from the 2001 census. This Act ensures constituencies are balanced in terms of population, providing fair representation.

4. Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991

This Act secures the independence of the Election Commission:

- Service Conditions: Ensures the security of tenure and service conditions for the Chief Election Commissioner and other Election Commissioners, making them immune from arbitrary removal.
- Transaction of Business: Outlines the procedures for the Election Commission to function smoothly and make decisions collectively.

5. Conduct of Election Rules, 1961

These rules detail the procedural aspects of elections:

- **Nomination of Candidates:** Rules regarding the format of nomination papers, security deposits, and the process of scrutiny and acceptance.
- **Voting Procedures:** Use of Electronic Voting Machines (EVMs) and detailed steps for conducting polls, including the handling of ballot papers and counting of votes.
- **Declaration of Results:** Procedures for counting votes and declaring results, including the resolution of any disputes or recounts.

6. Presidential and Vice-Presidential Elections Act, 1952

This Act governs the election process for the President and Vice-President of India:

- **Electoral College:** Defines the composition of the Electoral College, consisting of elected members of both Houses of Parliament and the Legislative Assemblies of States and Union territories.
- **Voting and Counting:** Procedures for the conduct of elections, including the use of secret ballots and counting methods.

7. Anti-Defection Law

Incorporated into the Constitution via the Tenth Schedule, the Anti-Defection Law aims to prevent political defections:

- **Disqualification:** Specifies conditions under which elected members can be disqualified for defection, such as voluntarily giving up membership of their party or voting against party directives.
- **Authority:** The Speaker of the House (or the Chairman in the case of the Rajya Sabha) decides on questions of disqualification.

Landmark Judgments

1. N.P. Ponnuswami v. Returning Officer, Namakkal Constituency (1952), AIR 1952 SC 64

N.P. Ponnuswami, a candidate for the Madras Legislative Assembly, was disqualified by the Returning Officer on the ground that his nomination papers were invalid. He approached the Madras High Court under Article 226, seeking a writ to quash the Returning Officer's decision. The Supreme Court held that the term "election" encompasses the entire process from the issuance of the notification to the declaration of results. Judicial intervention during the election process is barred except through an election petition after the results are declared. This judgment underscores the importance of uninterrupted elections and respects the process laid down by the Constitution.

2. Kihoto Hollohan v. Zachillhu and Others 1992 Supp (2) SCC 651

This case involved the validity of the Tenth Schedule of the Indian Constitution, which deals with the disqualification of members on the ground of defection. Whether judicial review is permissible over the decisions of the Speaker/Chairman regarding disqualification under the Tenth Schedule. The Supreme Court held that while the decision of the Speaker/Chairman is final, it is subject to judicial review on grounds of jurisdictional errors, mala fides, and perversity. This case highlights the balance between the autonomy of legislative bodies and the role of the judiciary in safeguarding democratic processes.

3. Union of India v. Association for Democratic Reforms (2002) 5 SCC 294

The Association for Democratic Reforms (ADR) sought directions from the Delhi High Court to compel the Election Commission to implement a system for mandatory disclosure of criminal, financial, and educational backgrounds of candidates contesting elections. The Supreme Court held that the right to know about the antecedents of candidates is a fundamental right under Article 19(1)(a) of the Constitution. The Court directed the Election Commission to secure disclosures from candidates regarding their criminal records, financial status, and educational qualifications. This judgment expanded the scope of the right to vote by emphasizing informed choice as a component of democratic participation.

4. Peoples Union for Civil Liberties (PUCL) v. Union of India (2003) 4 SCC 399

Following the ADR judgment, the Election Commission issued guidelines for candidate disclosure. The PUCL challenged the constitutional validity of these guidelines and the amendments to the Representation of the People Act, 1951, which diluted the disclosures. The Supreme Court reaffirmed the right to information as a part of the fundamental right to freedom of speech and expression under Article 19(1)(a). The Court struck down the amendments as unconstitutional, reiterating the importance of transparency and accountability in elections.

5. Lily Thomas v. Union of India (2013) 7 SCC 653

This case involved the constitutionality of Section 8(4) of the Representation of the People Act, 1951, which allowed sitting MPs and MLAs to continue in office even after conviction in certain criminal cases, provided they filed an appeal within three months. The Supreme Court declared Section 8(4) unconstitutional, holding that convicted lawmakers should be disqualified immediately upon conviction. This judgment reinforced the principle that lawbreakers should not be lawmakers, ensuring the sanctity and integrity of legislative bodies.

6. Shyamdeo Pd. Singh v. Nawal Kishore Yadav (2000) AIR 2000 SC 3001

The appellant, Shyamdeo Pd. Singh, challenged the election of Nawal Kishore Yadav on the ground of corrupt practices. The Supreme Court laid down stringent standards for proving corrupt practices in election petitions. The judgment emphasized the need for concrete and cogent evidence, underscoring the importance of maintaining the purity of the electoral process.

7. Subramaniam Swamy v. Election Commission of India (2013) 10 SCC 500

Subramaniam Swamy filed a petition seeking the introduction of Voter Verified Paper Audit Trail (VVPAT) in Electronic Voting Machines (EVMs) to ensure transparency and accuracy in the voting process. The Supreme Court directed the Election Commission to introduce VVPAT in a phased manner. The Court held that VVPAT is an indispensable requirement for free and fair elections, enhancing transparency and voter confidence in the electoral process.

8. S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra (1980) 3 SCC 149

This case involved a challenge to the election of S. Gurcharan Singh Tohra on the ground of religious influence and communal appeal. The Supreme Court clarified the scope of corrupt practices, emphasizing that any appeal to caste or communal sentiments for votes constitutes a corrupt practice. The judgment strengthened the secular character of Indian elections, ensuring that electoral processes are free from divisive and prejudicial influences.

Implications of Landmark Judgments

- **Strengthening Democracy** - The judgments discussed above collectively strengthen the democratic fabric of India by ensuring free, fair, and transparent elections. They underscore the judiciary's role in safeguarding democratic values and maintaining the sanctity of the electoral process.
- **Promoting Accountability and Transparency** - Decisions such as those in the ADR and PUCL cases have significantly promoted transparency and accountability among candidates and elected representatives. Mandatory disclosures regarding candidates' backgrounds enable voters to make informed choices, enhancing the overall quality of democracy.
- **Ensuring Equality and Integrity** - Judgments like Lily Thomas and S. Raghbir Singh Gill emphasize the importance of equality and integrity in the electoral process. By disqualifying convicted representatives and prohibiting appeals to communal sentiments, these decisions uphold the principles of equality and secularism enshrined in the Constitution.
- **Technological Advancements** - The Subramaniam Swamy case highlights the judiciary's recognition of the need for technological advancements in the electoral process. The introduction of VVPAT ensures greater accuracy and transparency, bolstering public confidence in the electoral system.

Conclusion

The right to vote is a cornerstone of democracy, and its protection and enhancement are paramount for the functioning of a democratic system. The Indian judiciary, through its landmark judgments, has played a crucial role in shaping and safeguarding this right. By ensuring transparency, accountability, and integrity in the electoral process, these judgments have strengthened the democratic fabric of India. As the country continues to evolve, the judiciary's role in protecting and expanding the right to vote will remain vital in upholding the democratic ideals enshrined in the Constitution.

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INTERNATIONAL LIABILITY OF COMMERCIAL SPACE ACTIVITIES AND SPACE DEBRIS

-Tadepalli Aditya Kamal

ABSTRACT

*Space activities are generally sophisticated and involve a high frequency of risk. Notwithstanding the precautionary measures that are taken by the commercial operators in any point of time which include launch, passing through air space, in-orbit manoeuvring and operating and de-orbiting, the rules and procedures are aimed to ensure the prompt payment of a full and equitable compensation for such damage constitute the international liability regime, which is a crucial importance in space law. The very first reference of international liability for damage caused by the space objects and their components on Earth can be traced back to the very beginning of the space era. The United Nations General Assembly had declared the international liability, as one of the legal principles, governing the activities of states in the exploration and use of outer space, just a few years after the first ever artificial satellite was launched in 1963. This was later made legally binding by the inception in the 1967 Outer Space Treaty and has received further development in the 1972 Liability Convention. The latter is generally referred to as *lex specialis* when the interrelation between the two international treaties is described and introduces several provisions that treat liability for damage caused in specific circumstances somewhat differently.*

International Space Law imputes liability on states that launch or procure launchings of space objects and states from whose territory or facility space objects are launched. This does not however exclude the liability of damages caused by the space objects that are operated by the private entities. International Liability for accidents involving commercial operators stays with the so-called launching states, as this term is defined by the Liability Convention for some states that are listed in the Outer Space Treaty as internationally liable. The damages and liability issues although are well known and are addressed by the Insurance, however, it is not always mandatory.

Often, space-related accidents involve dysfunctional space objects and their parts which are referred to as 'Space debris'. This may include parts like spent rocket stages and defunct satellites, fragments from their disintegration, etc. Since the non-functional state of a space object does not change its legal status, the relevant provisions of international space law that are applicable to space objects continue to apply to what is called space debris. There are certain practical problems which arise with identification of space debris and consequently, an efficient implementation of the liability regime.

Keywords: International Space Law; Outer Space Treaty; Liability Convention; International Liability; Commercial Space Activities; Space object; Launching State; Damage; Compensation and Space Debris.

INTRODUCTION

The rapid advancement of technology and science has given several countries the ability to use and exploit outer space. Many rich and emerging nations engaged in unrestricted space research in the preceding century, and as a result, space trash production has expanded dramatically. Defunct satellites that are still orbiting the Earth and have successfully completed their missions are collectively referred to as "space debris" since they are space rubbish. The legal framework governing the use of space must incorporate space debris remediation since it will be essential to the long-term viability of space. The outer space has become crowded with both operational and non-functional space objects, which has led to an unforeseen overcrowding of orbits. As countries and non-governmental entities continued to launch their objects into space, the available space in outer space has significantly diminished.¹¹ To address the issue of space debris, active debris removal (ADR) has been proposed to reduce the number of debris already present in space. ADR involves more aggressive measures compared to mitigation, as it requires actively retrieving debris and guiding it to burn up in the Earth's atmosphere. Since many space objects lack post-mission disposal capabilities, external vehicles are necessary to perform ADR. The technical methods employed in ADR include capturing and removing debris. Currently, ADR technology

¹¹ Sukriti Mathur MRMA, 'Space Debris and International Laws: The next Generation Concern' (*The Daily Guardian*, 16 August 2021) accessed 14 May 2023

focuses on larger debris due to their higher likelihood of colliding with other space objects. Spacefaring nations are actively developing technologies for active debris removal (ADR). In 2012, the European Space Agency (ESA) initiated the Clean Space initiative to protect the sustainability of the outer space environment.

ADR is considered a practical solution for preserving the space environment. However, studies indicate that it is an expensive endeavour requiring advanced technological capabilities. Consequently, defining the legal aspects of ADR becomes vital. Key legal considerations include jurisdiction and control, ownership, authorization, responsibility, and liability. ADR operations, due to their challenging remediation techniques, can pose risks to other satellites in orbit, making accidents a potential concern. This analysis will examine how the Liability Convention of 1972 addresses ADR and assess whether they offer sufficient provisions.¹²

As space activities continue to grow, the issue of space debris becomes increasingly significant and requires attention from the global community. The approaching anniversary of the Outer Space Treaty provides an opportunity to reflect on achievements in the past and chart a collective path forward.

Space debris, also known as orbital debris, consists of human-made objects ranging from tiny paint flecks to non-functional satellites. It is generated through normal space activities, collisions between objects, and even anti-satellite weapons. The presence of a growing population of debris in near-Earth orbit poses a substantial threat to operational satellites and human life in space or on the ground due to the risk of collisions. Moreover, in the long term, space debris jeopardizes the sustainability of space activities and renders Earth orbit inhospitable by turning it into a debris-filled zone.

While scientific predictions regarding space debris involve some degree of uncertainty, the scientific and technical communities concur that concerted action is necessary on multiple fronts to mitigate the proliferation of hazardous orbital debris. The complexity of legal aspects surrounding debris currently occupies space lawyers and raises more questions than answers.

¹² Pelton JN, 'New Solutions for the Space Debris Problem' (Google Books, 6 May 2015) accessed 4 May 2023

These questions demand comprehensive and thoughtful consideration from all stakeholders involved in outer space activities.¹³

The legal status and liability of non-governmental entities involved in commercial activities in outer space are not clearly defined within existing space law frameworks. Non-governmental entities refer to private actors engaged in activities such as commercial launches, supplying equipment or parts to space agencies, and manufacturing spacecraft and satellites. Potential litigation arising from these commercial activities primarily revolves around financial consequences of damages caused and technical complications that private entities may encounter, such as providing faulty parts to space agencies.

Under the Outer Space Treaty of 1967 (Article VI) and the Liability Convention of 1972 (Articles II and III), the launching state is held liable for any activities in outer space, including non-governmental activities. This means that in the case of accidents or consequential damages resulting from commercial activities conducted by any sovereign state, the state is held responsible.

This article specifically focuses on the issue of liability for commercial activities conducted by non-governmental entities within the existing international space law regimes. It examines the relevant principles of space law and international law that apply to outer space activities. The article also investigates the impact on the space liability regime and the legal framework governing the relationship between private entities and state liability. This analysis is particularly significant given the increasing number of private spacecrafts scheduled for launch in the future.

LEGAL FRAMEWORK

Like other areas of law, space laws are built upon the principles of international cooperation and equality. The Committee on the Peaceful Uses of Outer Space (COPUOS) has played a pivotal role in developing five important treaties that govern space activities and aim to ensure the preservation of the outer space environment. The Committee on the Peaceful Uses of Outer

¹³ Robert Wickramatunga, 'United Nations Office for Outer Space Affairs' (The Outer Space Treaty, 1996) accessed 21 April 2023

Space (COPUOS) has been instrumental in the development of key treaties that regulate space activities and promote the peaceful exploration and utilization of outer space. These treaties, collectively known as the "Five United Nations Treaties on Outer Space," The Five Agreements are as follows:

1. Outer Space Treaty of 1967: The Outer Space Treaty was considered and agreed upon by the Legal Subcommittee in 1966, with the General Assembly adopting it through resolution 2222 (XXI) in the same year. The Treaty was largely based on the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, which was adopted by the General Assembly in resolution 1962 (XVIII) in 1963. However, the Outer Space Treaty introduced several new provisions. In January 1967, the Treaty was opened for signature by the three depository Governments: the Russian Federation, the United Kingdom, and the United States of America. It entered into force in October 1967. The Outer Space Treaty establishes the fundamental framework for international space law and includes the following key principles:

1. **Benefit and Interests of All**: The exploration and use of outer space should be carried out for the benefit and in the interests of all countries and should be considered a common endeavour for all of humanity.
2. **Free Exploration and Use**: Outer space is to be freely explored and used by all states, without any discrimination or exclusivity.
3. **Non-Appropriation**: Outer space is not subject to national appropriation, meaning no state can claim sovereignty over any part of outer space through occupation or other means.
4. **Weapons in Space**: States are prohibited from placing nuclear weapons or other weapons of mass destruction in orbit, on celestial bodies, or stationing them in outer space.
5. **Peaceful Purposes**: The Moon and other celestial bodies should be used exclusively for peaceful purposes, without any militarization or hostile activities.

6. **Astronauts as Envoys of Mankind:** Astronauts are considered as representatives of all humankind and should be provided with necessary assistance and treated with dignity.
7. **Responsibility and Liability:** States bear responsibility for their national space activities, regardless of whether they are carried out by governmental or non-governmental entities. They are also liable for any damage caused by their space objects.
8. **Avoidance of Harmful Contamination:** States are obliged to prevent the harmful contamination of space and celestial bodies, taking into account the principles of environmental protection.

These principles form the core elements of the Outer Space Treaty, which lays the foundation for international space law and promotes cooperation, peaceful exploration, and the preservation of space for the benefit of all nations and humanity.¹⁴

2. **Rescue Agreement of 1968:** The Rescue Agreement, formally known as the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, was adopted by the United Nations General Assembly on December 19, 1967, and entered into force on December 3, 1968. It is one of the five international treaties governing space activities. The Rescue Agreement primarily focuses on the obligation of states to rescue and aid astronauts in distress. Its key provisions include:
 1. **Rescue of Astronauts:** States have a duty to rescue astronauts who have landed in territory other than their own or who are in distress in outer space. This obligation applies regardless of the nationality of the astronauts involved.
 2. **Return of Astronauts:** States are required to ensure the safe and prompt return of astronauts to their respective countries after they have landed in the territory of another state or have been recovered in outer space.

¹⁴ Wickramatunga R, 'Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space' (United Nations Office for Outer Space Affairs, 1967) accessed 22 April 2023

3. **Return of Space Objects:** States must also facilitate the return of space objects launched into outer space that land outside the territory of the launching state. This provision applies to both manned and unmanned missions.
4. **Notification and Assistance:** States are encouraged to provide mutual assistance and to promptly notify each other of any incidents or accidents involving astronauts or space objects. They should also take necessary measures to prevent the spread of hazardous substances.

The Rescue Agreement underscores the importance of cooperation among states in ensuring the safety and well-being of astronauts involved in space missions. It aims to promote the prompt rescue and return of astronauts, as well as the recovery and return of space objects. By establishing clear obligations and procedures, the agreement contributes to the advancement of international space law and the peaceful exploration of outer space.¹⁵

3. **The Liability Convention of 1972:** The Liability Convention of 1972, officially known as the Convention on International Liability for Damage Caused by Space Objects, is an international treaty that addresses the liability of states for damages caused by space objects. It was adopted by the United Nations General Assembly on March 29, 1972, and entered into force on September 1, 1972. The Liability Convention establishes a framework for determining the liability of launching states for damages caused by space objects, including satellites and spacecraft. Key provisions of the convention include:
 1. **Scope of Liability:** The convention applies to damage caused on the surface of the Earth, to aircraft in flight, and to persons or property on board aircraft or spacecraft. It also applies to damage caused by space objects on other space objects.
 2. **Fault-Based Liability:** The convention imposes absolute liability on launching states for damage caused by their space objects on the surface of the Earth or to aircraft

¹⁵ Wickramatunga R, 'Convention on International Liability for Damage Caused by Space Objects' (United Nations Office for Outer Space Affairs, 1971) accessed 22 April 2023

in flight. This means that a launching state is held responsible regardless of whether it was at fault or negligent.

3. **Presumption of Fault:** In cases where damage is caused to a space object or its components on the surface of the Earth or in outer space, fault-based liability applies. The injured party must establish that the damage was a result of a fault or negligence on the part of the launching state or its personnel.
4. **Limitation of Liability:** The convention provides for a limited liability regime where the total liability of a launching state is capped. The specific limit is determined by the size of the launching state's space object and its purpose (whether it is a manned or unmanned mission).
5. **State Responsibility:** The convention emphasizes that the liability of a launching state is a matter of international responsibility and does not affect the responsibility of any other state involved in the launch or use of a space object.

The Liability Convention promotes the principle of accountability in space activities and ensures that launching states bear responsibility for damages caused by their space objects. It encourages cooperation and provides a legal framework for addressing liability issues in the peaceful exploration and use of outer space.¹⁶

4. **The Registration Convention of 1976:** The Registration Convention, formally known as the Convention on Registration of Objects Launched into Outer Space, is an international treaty that establishes a framework for the registration of space objects launched into outer space. It was adopted by the United Nations General Assembly on January 14, 1975, and entered into force on September 15, 1976. The main objective of the Registration Convention is to enhance transparency and facilitate the identification and tracking of space objects. Key provisions of the convention include:

¹⁶ Wickramatunga R, 'Convention on Registration of Objects Launched into Outer Space' (United Nations Office for Outer Space Affairs, 1974) accessed 22 April 2023

1. **Mandatory Registration:** The convention requires states to register space objects that they launch into outer space. Registration is mandatory and should be done with an appropriate national authority or with the United Nations Office for Outer Space Affairs (UNOOSA).
2. **Contents of Registration:** The registration information should include details such as the name of the launching state, the date and location of launch, basic orbital parameters, and general function of the space object. If the object is intended to remain in orbit for more than one year, additional information is required.
3. **Publication of Information:** The registration information is to be published by the registering state or UNOOSA and made available to other states and the international community. This promotes transparency and facilitates the exchange of information related to space activities.
4. **Modification and Cessation of Registration:** If there are changes in the status of a registered space object, such as its transfer of ownership or cessation of operation, the registering state is responsible for updating the registration information accordingly.
5. **International Cooperation:** The convention encourages states to cooperate in the exchange of information regarding space activities and the sharing of data related to registered space objects.

The Registration Convention plays a vital role in maintaining a comprehensive and up-to-date record of space objects launched into outer space. It enables states and the international community to monitor and track space activities, which is crucial for ensuring the safety, security, and peaceful use of outer space. By promoting transparency and international cooperation, the convention contributes to the overall governance of outer space activities.¹⁷

5. Indonesian Treaty

¹⁷ Raju KD and BG, 'Understanding International Space Law and the Liability Mechanism For ...' (Sage Journals , Volume 75, Issue 4, 27 December 2019) accessed 12 May 2023

LEGAL STATUS OF THE SPACE DEBRIS

The process of addressing the issue of space debris through traditional legal frameworks faces unique challenges due to the nature of outer space and its legal realities. The issue of space debris and its legal ramifications has gained increased attention due to the rise of space travel. While scientific and technological research on space debris has been ongoing for many years, the development of a comprehensive international legal framework to address its complex legal concerns is still lacking. The Outer Space Treaty of 1967, considered the cornerstone of space law, provides only limited guidance on the specific issue of space debris. Its general clauses do not offer detailed recommendations on countermeasures to address debris at the state level, leaving room for interpretation by legal professionals. The treaty holds states responsible for their actions in outer space and for any harm caused by particles launched into space by them.¹⁸

One fundamental legal challenge is the definition of space debris. While scientists and engineers use technical definitions focusing on non-functional man-made objects in Earth orbit or re-entering the atmosphere, translating this into an international legal definition is not straightforward. The existing space law treaties do not explicitly mention 'space debris,' and the closest related term is 'space object.' The treaties apply this term to any object launched into space and determine important legal consequences such as jurisdiction, registration, and liability. However, the treaties do not provide a precise definition of what constitutes a 'space object,' nor do they consider the functional or non-functional nature of the object when applying legal consequences. This lack of specific terminology and criteria for space debris poses a challenge in developing comprehensive legal frameworks. The issue of space debris and its legal ramifications has gained increased attention due to the rise of space travel. While scientific and technological research on space debris has been ongoing for many years, the development of a comprehensive international legal framework to address its complex legal concerns is still lacking.¹⁹

¹⁸ Ibid

¹⁹ Larsen PB, 'Commercial Operator Liability in the New Space Era: American Journal of International Law' (Cambridge Core, 1 April 2019) accessed 22 May 2023

Article IX of the Outer Space Treaty emphasizes the need for states to undertake their operations in outer space with respect for the interests of other treaty parties. While this provision does not explicitly address space debris, it can be interpreted to compel states to take measures to prevent and minimize debris, allowing for safe and sustainable space exploration. The Liability Convention of 1972 further expands on the issue of space debris. It establishes a liability framework where launching states are held accountable for damages caused by private companies for whom they are responsible. However, it is important to note that only states that have ratified the Liability Convention are eligible to bring a claim under its provisions. Efforts have also been made by organizations to address the problem of space debris. The International Law Association's Space Law Committee, since 1986, has examined the legal implications of debris and proposed an "International Instrument on the Protection of the Environment from Damage Caused by Space Debris" in 1994. This instrument, consisting of 16 articles, represents the first legal text on space debris agreed upon by an international organization.

Overall, while existing space law treaties provide a foundation for addressing space debris, further development of an international legal framework specifically focused on debris is needed. The efforts of organizations and ongoing discussions within the legal community are vital in shaping the legal response to the challenges posed by space debris. While the existing space law treaties provide a foundational framework, they do not directly address the issue of space debris. The absence of a clear legal definition of space debris within the treaties creates obstacles in formulating precise and effective legal measures to tackle this problem.²⁰

THE RISK OF LIABILITY

The operation of satellites and rockets in outer space poses risks of accidents and potential liability. Notable incidents, such as the 2009 collision between the Iridium 33 and COSMOS 2251 satellites, highlight the dangers of space debris. In that case, the debris was identifiable, but no claim was pursued. Another example is the 1978 crash of the Russian COSMOS 954 satellite in Canada, which caused extensive contamination due to its nuclear power sources. Canada sought compensation from Russia under the Liability Convention and customary international law,

²⁰ Ibid

resulting in a settlement. Additionally, the disintegration of the Columbia space shuttle in 2003 led to debris falling in Texas, causing damage on the ground. With the projected growth of satellite deployments and space debris, the risk of such incidents is expected to increase.

The anticipated influx of small satellites in low-Earth orbit, requiring frequent replacement, raises concerns about their controlled deorbit or potential crashes on land. Without proper control, the accumulation of debris could lead to chaos and even restrict access to space. The emergence of reusable space-launch technology is set to bring about significant changes in the market competition among launch operators while also affecting the risk of liability. Companies like SpaceX and Blue Origin are developing rockets with reusable stages that can return to the launch site on land or floating platforms at sea. The primary goal of this technology is to reduce the cost of space launches. These rockets are designed to be quickly and repeatedly reused, potentially up to one hundred times. However, there is a possibility that some of these rockets may not return as intended. The return of the first-stage rocket happens rapidly, while the return of the second stage, including orbital realignment and atmospheric re-entry, may take up to twenty-four hours. Guiding the second stage back to the launch pad carries more risk, and there is a chance of accidental impact on the ground in locations other than the designated launch pad. In essence, the use of reusable launch rockets entails lower risk because the flight to the launch pad is controlled, which is an improvement from the perspective of commercial operators and potential individuals on the ground who could be affected by any mishap.²¹

DEVELOPMENTS IN COMMERCIAL OPERATORS LIABILITY RISK EXPOSURES

In the new era of space exploration, two significant liability developments are anticipated: an increase in claims brought by non-governmental entities and a shift from international tribunals to national ones. When the Liability Convention was drafted, it was expected that claims for damages would be filed under the Convention, and commercial operators could rely on their governments to resolve such claims through negotiation or international governmental trials

²¹ Ian Havercroft, 'Lessons and Perceptions: Adopting a Commercial Approach to CCS Liability' (Global CCS Institute, 2019) accessed 22 May 2023

before the Convention's Claims Commission. However, the case of COSMOS 954 exemplifies the limited compensation available when states bring claims under international treaty law.

With the growth of commercial satellite development in the new space age, there will be a significant departure from the assumption that claims will primarily be resolved by states, as envisioned by the drafters of the Liability Convention. Instead, the involvement of non-governmental entities in space activities will likely lead to a shift in liability proceedings towards national tribunals, where commercial operators will play a more prominent role in resolving liability claims. The new space age is expected to bring a significant increase in the number of operational satellites, potentially ranging from 1,200 to as many as 27,000. These satellites will predominantly be located in low-Earth orbit and will require frequent replacement. Initially, the majority of satellite operators will be based in the United States. As a result, many of these operators may not have the right to bring liability actions under the Liability Convention, and therefore, most claims are likely to be litigated under U.S. law.

Furthermore, regardless of the provisions of the Liability Convention, claimants are likely to choose to file their claims under national law in order to seek more favourable recoveries in national courts. By pursuing their claims directly against defendants, claimants can have greater control over their cases, engage their own legal representation, and have the option to seek punitive damages. This approach allows claimants to avoid potential political considerations that may arise between national governments. In light of these circumstances, it is advisable for commercial operators to mitigate their increased liability exposure in the new space age by obtaining adequate insurance coverage.²²

In the new era of commercial space operations, there will be an increase in the number of collisions between space vehicles, as well as an escalating risk of collisions with unidentifiable space debris. This issue primarily presents a liability challenge for commercial operators when dealing with other operators in the industry. The concept known as the Kessler Syndrome suggests that the number of fragmenting debris will expand at a faster rate than the growth of

²² Sukriti Mathur MRMA, 'Space Debris and International Laws: The next Generation Concern' (The Daily Guardian, 16 August 2021) accessed 14 May 2023

operational satellites. As commercial space activities continue to flourish, the substantial volume of untracked space debris will pose a threat not only to governmental operators but also to non-governmental operators. Space debris is difficult to navigate and is often not adequately tracked.

In cases where collisions occur and the ownership of the debris cannot be determined, it becomes virtually impossible to pursue compensation from the debris owner. Consequently, collisions between satellites and space debris are likely to become more frequent. It is worth noting that the implementation of reusable rocket technology will have limited impact on liability concerns in this context. There is positive news regarding the increasing liability faced by commercial satellite operators. In June 2018, the U.S. issued Space Policy Directive–3, which aims to address the challenges arising from the growing number of satellites and space debris. The Directive acknowledges the need for new international standards and best practices in space traffic management to prevent the escalation of the Kessler Syndrome. As an initial step, the United States will develop national safety standards, with the intention of encouraging other nations to collaborate in establishing international safety standards and practices. The ultimate goal is to establish uniform international minimum standards for all space traffic and space debris. This initiative is expected to bring significant benefits to the commercial space industry by reducing the occurrence of collisions and, consequently, lowering the associated liability risks.

DRAWBACKS

The current international space laws have a significant flaw when it comes to addressing the issue of space debris. These laws primarily focus on the utilization of space and do not specifically address the problem of space junk. There is a lack of legislation that explicitly prevents countries from intentionally destroying their own satellites. The existing laws mainly discuss the liability associated with orbital debris and the ownership of space objects, but they do not provide clear guidelines on the origin of space debris.

In fact, the term "Space Debris" is not even mentioned in any of the United Nations treaties related to space. Furthermore, the international provisions of space laws are outdated and unclear. They need to be revised and updated to reflect the changing times. The destruction of satellites in outer space, leading to the generation of space debris, is not adequately addressed

in these treaties. This has resulted in more incidents where countries lose their satellites due to the presence of debris in orbit. Another limitation is that the current space laws are voluntary and lack legally binding obligations. They rely on countries to voluntarily comply with the provisions, which may not be sufficient to effectively address the growing problem of space debris.

CONCLUSION

In conclusion, the rapid advancements in technology and science have significantly increased human activities in outer space, leading to a substantial rise in space debris. This debris, which includes defunct satellites and other human-made objects, poses a severe threat to both operational satellites and human life, potentially jeopardizing the long-term sustainability of space activities. The global community, including nations like Indonesia that are increasingly reliant on satellite technology, must prioritize space debris remediation to maintain the viability of outer space. Active Debris Removal (ADR) is emerging as a practical yet challenging solution to this growing problem. Despite its high costs and technological demands, ADR offers a proactive approach to reducing space debris by capturing and guiding it to burn up in the Earth's atmosphere. As several spacefaring nations and private companies develop ADR technologies, it becomes imperative to establish robust legal frameworks addressing key aspects such as jurisdiction, ownership, responsibility, and liability. The Liability Convention of 1972 and national laws, such as the Indonesian Space Act of 2013, must evolve to adequately cover these areas and ensure safe and effective ADR operations. Furthermore, the legal status and liability of non-governmental entities involved in commercial space activities require clear definitions within international space law. As private actors increasingly engage in space activities, the responsibility of the launching state under the Outer Space Treaty and the Liability Convention becomes more complex, necessitating comprehensive legal considerations to address potential damages and technical complications. The upcoming anniversary of the Outer Space Treaty presents an opportune moment for the global community to reflect on past achievements and chart a path forward. It is essential to foster international cooperation and develop legal and technical solutions to mitigate and remediate space debris. By doing so, we can safeguard the outer space

environment, ensuring its sustainability for future generations and continued exploration and utilization.



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COMPREHENSIVE REVIEW OF BHARATIYA NYAYA SANHITA: ESSENTIAL INSIGHTS AND ANALYSIS

-Anuja Jalan

Abstract

Long awaited criminal law reformations have finally come in force, Bharatiya Nyaya Sanhita replacing the archaic Indian Penal Code marks a significant milestone in India's legal landscape. This enactment to replace the 163-year-old IPC has ignited both anticipation and skepticism. As we dissect this legal transformation, let's explore its nuances, strengths, and potential areas for refinement. While evidentiary and procedural reforms remain essential, our exploration centers on the BNS's impact, adaptability, and the delicate balance it strikes between tradition and modernity. The BNS signifies a long-awaited rejuvenation. While amendments to the IPC occurred over time, a complete overhaul was inevitable. A cursory glance at the revamped law reveals a modernized approach and momentous transformations. By systematically re-categorizing and consolidating offenses, the BNS simplifies legal understanding for practitioners, scholars, and the public. It addresses the shortcomings of the IPC, harmonizing provisions and removing redundancies. . However, the litmus test lies in whether this evolution truly aligns with our dynamic society or leaves room for further improvement.

Keywords: Bharatiya Nyaya Sanhita (BNS), Gender Neutrality, Community Service, New Criminal Law Regime, Organized Crime.

Introduction

The **Bharatiya Nyaya Sanhita** has re-categorized and consolidated offenses, making it much more convenient and accessible. The previous Indian Penal Code, being an archaic law that underwent multiple amendments, led to the scattering of provisions to some extent. The recent revamping through the BNS has addressed this issue. The BNS has systematically organized offenses into relevant categories, simplifying legal understanding for practitioners, scholars, and the public.

By grouping similar offenses together, such as that against women & child, it enhances clarity and ease of reference. The BNS represents a significant overhaul, addressing the shortcomings of the IPC. It harmonizes provisions, removes redundancies, and aligns with contemporary legal principles. In response to evolving circumstances, numerous adaptations have been implemented. In this compilation we will explore the same. Our purpose is to analyze these adaptations, gaining deeper insights and improving our understanding of their significance.

Expansion of Scope & Accountability

There are various instances how Indian criminal law has expanded its scope—whether through redefining movable property or asserting jurisdiction over offenses committed beyond India's borders.

Under the Indian Penal Code, there was no direct equivalent to **Section 48²³** of the **Bharatiya Nyaya Sanhita**. This new provision addresses abetment outside India for offenses committed within India. It holds individuals accountable if they abet acts in India that would constitute an offense if committed within the country. Essentially, it recognizes the global nature of criminal activities and ensures that abetment across borders is treated seriously. If someone overseas assists in hacking an Indian computer system, they can be held liable under Section 48. Abetting financial fraud or money laundering within India from abroad falls under this provision too. Though determining jurisdiction and gathering evidence across borders can be challenging and legal mechanisms for extradition and cooperation becomes crucial. Knowing that abetment beyond India is punishable reinforces deterrence.

In the recent criminal law refurbishment, the Bharatiya Nyaya Sanhita maintains the age of consent to constitute offence of rape while significantly raising the threshold age for wives to 18 years, aligning it with the legal age for marriage. *Consequently, any sexual act with a wife below 18 years, even within marital relationships, is now punishable as rape²⁴*. By eliminating

²³ Section 48. A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.

²⁴ Sec. 63 Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

redundancy between consent and marriageability ages, the amendment enhances clarity and consistency in our legal framework. Previously, the IPC considered sexual acts with wives below 16 years as rape offenses, but this provision became redundant due to the legal age for marriage. The amendment emphasizes safeguarding a minor's right to consent until they are capable of informed decisions. Notably, even if the perpetrator is the husband, any sexual act with a wife below 18 years is now subject to legal consequences. This legal provision recognizes that marriage does not automatically imply consent, especially when one of the spouses is a minor. Despite legal reforms, child marriage persists in India. Studies reveal that this harmful practice continues to affect young lives, necessitating ongoing efforts to eradicate it.

'In 2021, researchers identified over 13.4 million women and more than 1.4 million men aged 20-24 who had experienced child marriage. Shockingly, approximately one in five girls and nearly one in six boys were married below India's legally permissible age for marriage²⁵.'

Ongoing efforts, including awareness campaigns and education, are crucial to eradicate this harmful practice and protect the rights of minors. **Section 63 Exception 2 of BNS** is a welcome move, which will indirectly curb this societal evil.

New provision as to theft u/s 303 BNS extends protection to incorporeal property in this digital age. The recent expansion of **Section 303** within the **Bharatiya Nyaya Sanhita** signifies a crucial shift in our legal framework. Traditionally, theft laws focused on corporeal property—tangible assets like goods, vehicles, or jewelry. In contrast to the current broadening of its scope, includes incorporeal property as well. **Movable property as defined u/s 2(21)** brings about this sweeping change.

"(21) "movable property" includes property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth;"

This encompasses electronic data, virtual currency, intellectual property, and other intangible assets. In our tech-driven era, intangible assets hold immense value. Data, digital identities, and

²⁵ Prevalence of Girl and Boy Child Marriage: A Repeated Cross-sectional Study Examining the Subnational Variation across States and Union Territories in India, 1993-2021, Jewel Gausman, Rockli Kim, Akhil Kumar, Shamika Ravi, S.V. Subramanian, The Lancet Global Health, December 15, 2023, doi: 10.1016/S2214-109X(23)00470-9

crypto currencies are critical components of modern life. Unfortunately, these incorporeal properties are vulnerable to theft, fraud, and cybercrime. Online frauds have surged, exploiting vulnerabilities in digital systems. By explicitly covering incorporeal property under theft provisions, the BNS aims to protect individuals and businesses from such crimes. Notwithstanding that the amended Information Technology (IT) Act, 2000 already addressed aspects of cybercrime. Treating incorporeal property theft under the same head as traditional theft ensures consistency and accessibility. This change not only increases public awareness but also equips law enforcement executives to tackle these matters efficiently.

Section 303 reflects the need to safeguard our digital lives. By recognizing the value of intangible assets and explicitly addressing their theft, the BNS adapts to the realities of the digital age.

Community Service as Punishment

The recent addition of community service as a form of punishment within India's criminal law framework is a significant step forward. For quite some time, scholars and jurists have advocated for this inclusion. Although there have been instances of awarding community service through judicial activism, there was no explicit mechanism for it until now. Community service has stood the test of time and geography, proving effective in addressing certain types of offenders—especially first-timers or those involved in minor crimes. It serves a dual purpose: rehabilitating the offender by allowing them to explore human cohesion, while also benefiting the broader community. Over time, it fosters a sense of giving back to society among citizens. Additionally, community service helps alleviate the burden on prison infrastructure and the judiciary. While the inclusion of community service in our criminal law regime might have been overdue, it's a positive step nonetheless. There's no harm in adopting this form of punishment; in fact, it contributes to a more effective and modern judicial system.

Unaddressed Concerns & Omissions

The recent enactment of the **Bharatiya Nyaya Sanhita** brought significant changes, including the complete removal of **Section 377** from the IPC. This provision criminalized consensual sexual acts “against the order of nature,” including same-sex relationships. Earlier, a judicial

pronouncement²⁶ partially invalidated Section 377, decriminalizing consensual adult homosexual relationships. However, the BNS now entirely eliminates Section 377, signaling a progressive shift towards inclusivity but challenge remains. Advocacy for transgender rights and addressing animal offenses will likely prompt future amendments. While the BNS recognizes transgender individuals, it fails to comprehensively protect them against sexual offenses. Also it does not specifically address sexual offenses against animals. Without direct provisions, the Prevention of Cruelty to Animals Act, 1960, becomes the only recourse for punishing such offenses, as cruelty. It is being advocated that BNS is gender neutral but at ground level, to some extent, it treats perpetrators equally, regardless of gender. However, the focus shifts when we consider victims of sexual offences, be it rape, or other offences such as voyeurism, stalking or likewise, it is still gender-centric. It primarily protects women²⁷ and leaves men, transgender and animals out of this protective umbrella. In this ultra-modern age, offences such as enumerated above, are not limited against women alone. To ensuring equal protection for all genders and addressing offences beyond women remains a critical challenge.

Bharatiya Nyaya Sanhita doesn't encompass adultery, leaving it outside the purview of criminal liability, in conformation to the highly celebrated judicial pronouncement²⁸ of 2019. Whether consider marriage a sacrament or a contract, penalizing adultery in today's age, where spouses have distinct identities, rights, and responsibilities, unlike the past may be seen as over-policing by the state. A consensual act outside wedlock could be considered a marital failure, potentially a ground for divorce. While introducing adultery as a gender-neutral offense may be a step forward, it doesn't fully address the issue. Autonomy and individual rights should guide legal decisions. Imposing laws on personal relationships risk curtailing freedom of speech, expression, and the right to life. Beyond dissolution of marriage, criminalizing adultery seems excessive. Summarily, the BNS's omission of adultery acknowledges the complexities of modern relationships. Balancing individual autonomy and societal norms remains knotty.

²⁶ Navtej Singh Johar V. Union Of India, (2018) 10 SCC 1;

²⁷ Sec 2 (35) "woman" means a female human being of any age;

²⁸ Joseph Shine v. Union of India, (2018) 2 SCC 189.

Under the updated criminal law, possessing counterfeit currency notes is no longer punishable²⁹. However, intentionally using such counterfeit currency as genuine remains an offence. This change is a positive departure from the previous law, ensuring innocent possession is safeguarded.

Novel Offences and Stricter Penalties

A commendable addition to our criminal law is Section 69³⁰ of the BNS which navigates relationships and employment. The inclusion of **Section 69** in the BNS marks a significant step in our legal landscape.

There are two Facets of Section 69:

Live-In Relationships: the term Live-in hasn't been used in the Sanhita and even a single act of sexual nature is sufficient to constitute the offence. The provision tackles situations where individuals induce women partners into live-in arrangements or otherwise have sexual intercourse with such partner without any genuine intention of subsequent marriage. Such cases have been alarmingly prevalent, both nationally and globally.

Employment and Career Inducement: Section 69 also addresses instances where sexual favors are demanded in exchange for employment or career growth. This phenomenon extends beyond the infamous "casting couch" in the entertainment industry; it occurs in various other sectors as well.

²⁹ 180. Whoever has in his possession any forged or counterfeit coin, stamp, currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit and intending to use the same as genuine or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Explanation.—If a person establishes the possession of the forged or counterfeit coin, stamp, currency-note or bank-note to be from a lawful source, it shall not constitute an offence under this section.

³⁰ 69. Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Explanation.—“deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.

By explicitly addressing these issues, Section 69 aims to deter perpetrators. It sends a strong message that deceptive intentions will not go unpunished. Increased prosecution is expected, as the provision empowers victims to seek justice when their trust is exploited.

While there are challenges and uncertainties awaiting on the enforceability of the same, such as;

- **Proving Intent:** Demonstrating that the intention to marry was absent from the outset can be complex. Was it a genuine promise or mere deceit? Courts will grapple with this question.
- **Post-Fallout Scenarios:** What if a couple's relationship sours and one party decide against marriage? How do we discern genuine intent at different stages of the relationship? In a way, it makes break-ups illegal. If a relationship doesn't culminate in marriage, men may find themselves vulnerable to harassment.
- **Risk of Misuse:** While Section 69 serves a crucial purpose, misuse is possible. Each case must be carefully evaluated to prevent unwarranted harassment.

Section 69 acknowledges the realities of modern relationships and workplace dynamics. It balances deterrence with the need for cautious application. As we navigate this legal terrain, ensuring fairness and protection for all parties remains paramount.

Now let's delve into another entrant, the provisions related to mob lynching under **Section 103(2)**³¹ of the **Bharatiya Nyaya Sanhita** and explore the practical challenges anticipated to pop-up before courts in such cases. Section 103(2) defines mob lynching as murder committed by five or more persons acting in concert based on factors like race, caste, community, sex, place of birth, language, personal beliefs, or similar grounds. Each member of the group involved in mob lynching is equally punishable.

³¹ (2) When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine.

Although looking at increasing instances of crowd wrath, such a mechanism in place is need of the hour, but a carefully curated system is also inevitable. The current language ensue possibility of following practical challenges:

- **Collective Responsibility:** Holding an entire group accountable for an offense is complex. Determining individual roles and intentions within a mob can be challenging.
- **False Charges:** False accusations by police personnel or others can occur. Innocent individuals may be wrongly implicated.
- **Evidentiary Burden:** Proving the collective intent of a group requires robust evidence. Witnesses may fear retaliation.
- **Judicial Dilemma:** Courts must balance justice with the rights of accused individuals.

To address these challenges we need a fair and rigorous investigation procedure, ensuring unbiased collection of evidence. Also cautious ascertainment of individual liability, differentiating between active participants from passive bystanders is sine-qua-non. Legal safeguards to prevent false charges and protection of innocent, together with public awareness about consequences of mob violence are vital.

Notably, the BNS omits religion as a specific motivating factor for mob lynching, nevertheless, the term 'other similar grounds' has allowed scope for vast judicial interpretation. Practical implementation of mob lynching also faces hurdles. Balancing collective responsibility with individual rights remains a judicial challenge. Future mechanisms should safeguard against false charges and promote justice.

Furthermore, under the BNS, **Section 106(1)**³² addresses causing death by rash or negligent acts. The punishment for hit-and-run offenses has been significantly increased from **two years to five**

³² 106. (1) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

years of imprisonment. This change aims to deter reckless behavior and enhance accountability. It also introduces a specific provision for negligence by registered medical practitioners. Although this aspect was previously covered under **Section 304A** of the old Penal Code, the BNS emphasizes its gravity by explicitly mentioning it. However, the punishment for medical negligence remains unchanged at **two years** of imprisonment. Balancing the need for justice with the complexities of medical practice is crucial at the same time onerous. The express provision underscores the importance of holding medical professionals accountable.

Section 106(2)³³ focuses on offenders who cause death due to rash and negligent driving but escape without reporting the incident to authorities. The law imposes imprisonment of up to **ten years** and a fine for such actions. Legislators aim to prevent mob violence by encouraging offenders to promptly inform the police or a magistrate after the incident. By allowing the offender to escape the scene and the crowd's wrath, the law seeks to strike a balance between accountability and safety. Section 106(2) outlines intricate details, but its practical application faces challenges, therefore it has been kept on hold and hasn't been enforced with other provisions of the Sanhita. Misinformation led to unrest among truck driver unions, highlighting the fear of mob lynching. The requirement to report "soon after the incident" lacks a clear definition in the new law, potentially causing confusion. Properly defining the reporting timeframe is essential to avoid ambiguity. Courts must consider the urgency of reporting while ensuring the offender's safety.

Yet another exemplary introduction in the list of offences by **Bharatiya Nyaya Sanhita** is **Sec 111**³⁴. It encases a comprehensive definition of **Organized Crime** and encompasses offences committed

³³ Sec 106(2) Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.

³⁴ 111. (1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organized crime.

in a planned, systematic manner within a group. For the first time, the BNS categorizes continuing offenses separately. This recognizes the ongoing nature of certain crimes, increasing their gravity. The term 'Economic offences' has been duly defined under the said provision as;

“(iii) “economic offence” includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.”

Providing such an inclusive explanation ensures that financial crimes are appropriately addressed. Organized crime is rampant in our society but was previously not regulated as a distinct category. While individual occurrences of these offenses were punishable, treating them as continuing offenses emphasizes their severity. By explicitly targeting organized crime, the BNS curbs people's tendency to associate with such groups. It disrupts the perception of crime as a lucrative avenue for offenders. **Section 111(4)**³⁵ criminalizes membership in a crime syndicate, imposing appropriate penalties. This move aims to create a deterrent mechanism against syndicate formation, effectively nipping it in the bud. It recognizes its prevalence, ensures appropriate punishment, and discourages criminal associations.

The inclusion of **Section 112**³⁶ in the BNS marks a significant step toward addressing **Petty Organized Crime**. It encompasses various petty offenses, including snatching, pick pocketing, and illegal betting. Under the old law, conviction rates for such offenses varied across India. BNS aims to standardize convictions and enhance efficiency. Victims often hesitate to report petty offenses due to fear, inconvenience, or lack of confidence in the legal system, letting the offenders go

³⁵ Sec 111(4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees

³⁶ 112. (1) Whoever, being a member of a group or gang, either singly or jointly, commits any act of theft, snatching, cheating, unauthorized selling of tickets, unauthorized betting or gambling, selling of public examination question papers or any other similar criminal act, is said to commit petty organised crime. Explanation.—For the purposes of this sub-section "theft" includes trick theft, theft from vehicle, dwelling house or business premises, cargo theft, pick pocketing, theft through card skimming, shoplifting and theft of Automated Teller Machine.

unpunished. Treating these offenses as organized crime encourages victims to come forward, aiding investigations and facilitate booking groups involved in such activities. It will have deterrence effect as swift justice discourages repeat offences and reduces individual criminal activities. Economic hardships often drive teens and young individuals toward petty crimes. Regulation of the same would discourage individuals to indulge in such criminal activities.

Another new offence in BNS is **Snatching** u/s 304. According to **Section 304(1)**³⁷ of the BNS, any theft becomes snatching when:

- The offender suddenly, quickly, or forcibly seizes, secures, grabs, or takes away movable property.
- This action is committed with the intent to steal.

The IPC lacked a specific provision for snatching, leading to ambiguity in categorizing such cases. By introducing this offence, BNS provides a clear legal framework for dealing with snatching incidents. Snatching covers theft of movable property, including personal belongings, mobile phones, and valuables etc. The sudden nature of snatching often leaves victims shocked and vulnerable. Dedicated provisions allow better analysis of snatching incidents and crime patterns. Law enforcement can now take targeted actions against offenders involved in snatching. BNS punishes solo perpetrators of snatching differently that those who operate in a gang organized manner as u/s 112; making the later more severe by awarding maximum imprisonment of up to seven years.

Shift from Sedition

The Bharatiya Nyaya Sanhita introduces a significant shift from the traditional concept of sedition.

Section 152³⁸ of the BNS reframes the offense previously covered under Section 124A of the

³⁷ 304. (1) Theft is snatching if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property.

³⁸ 152. Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or

Indian Penal Code as acts endangering India's sovereignty, unity, and integrity. Is it just a colorable legislation putting forth same sedition law under cloak? Are the two same according to pith and substance theory? There's an ongoing debate about the sedition law being violative of freedom of speech, and has been considered a archaic law where power can be misused by the ruling government to shut down any voice raised against them; while this new provision has broadened the spectrum thereby punishing activities which are detrimental towards the country as a whole, it is not protecting any government or government body.

Unlike sedition, which primarily targeted acts against the government, this provision aims to safeguard broader national interests. BNS attempts to strike a balance by addressing threats to national integrity while avoiding undue restrictions on legitimate criticism. Globally, treason laws vary, and BNS aligns with modern trends by emphasizing the country's overall well-being.

Concluding Remarks:

Bharatiya Nyaya Sanhita, replacing the outdated Indian Penal Code, introduces transformative provisions while maintaining a delicate balance. Noteworthy aspects include global accountability for offenses, recognition that marriage doesn't imply tacit consent making any sexual act with a wife below 18 years punishable as rape, strengthening restraint on child marriage and Section 69's acknowledgment of contemporary realities. However, the BNS falls short in comprehensive protection against sexual offences, voyeurism, or stalking etc irrespective of gender. Transgender individuals have found their long due recognition under the enactment but it fails to extend equivalent safeguards. Also crimes against animals have been overlooked. Gender neutrality in treating perpetrators contrasts with gender-centric protection for victims. Challenges lie in practical implementation, medical accountability, and ascertaining collective responsibility amongst others. Summarily, efforts to bring our criminal law at par with societal advancements are laudable, while it is pertinent to note there's scope of refinement. Overtime, through case to

with imprisonment which may extend to seven years, and shall also be liable to fine. Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

case basis judicial interpretation would aid in a lucid understanding. BNS strives for justice while acknowledging practical complexities. Its impact will unfold with time, and future mechanisms must safeguard against misuse while promoting fairness.

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Discharge by performance- Analysis of complete fulfilment of Contract and Substantial Performance of Contract

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Abstract

Discharge by performance is a fundamental principle in contract law, signifying the completion of contractual obligations. This paper explores two primary dimensions of discharge by performance: complete fulfilment and substantial performance. Complete fulfilment occurs when all terms of the contract are executed exactly as agreed, thereby fully satisfying the contractual duty. In contrast, substantial performance refers to a situation where a party has performed most of the contract terms, but there are minor deviations. This analysis delves into the legal nuances of both concepts, examining their implications for contract discharge, the criteria for substantial performance, and the legal remedies available for breaches. By examining case law and statutory provisions, the discussion aims to clarify the thresholds for complete and substantial performance, and their impact on the discharge of contractual obligations.

Introduction

In contract law, discharge by performance is a pivotal mechanism through which contractual obligations are fulfilled and concluded. Performance, as a means of discharging a contract, requires a party to execute the agreed terms to the satisfaction of the other party involved. This process can be categorized into two distinct forms: complete fulfilment and substantial performance.

Complete fulfilment denotes the scenario where a party has executed every term of the contract precisely as stipulated. This form of performance is straightforward, as it involves adherence to the exact terms, ensuring that the contract is entirely performed. It represents the ideal outcome where both parties have met their obligations in full, leading to the full discharge of the contract.

Conversely, substantial performance occurs when a party has executed the majority of the contractual terms, with only minor deviations from the agreed terms. While the performance is not flawless, it is sufficient to meet the essential purpose of the contract. The concept of substantial performance allows for a more pragmatic approach, acknowledging that minor non-compliance should not necessarily result in the total failure of the contract. Instead, it provides a basis for partial discharge and potential remedies for the aggrieved party.

Definition of Discharge by Performance

Discharge by performance means that the parties involved in a contract have fulfilled their respective obligations as outlined in the agreement. This mutual fulfilment of duties effectively ends the contractual relationship because the purpose of the contract has been achieved.

Complete Fulfilment of Contract

Complete fulfilment means that all terms and conditions of the contract are executed precisely as agreed upon. It includes delivering goods or services exactly as specified, meeting deadlines, and adhering to all contractual stipulations.

Criteria for Complete Fulfilment

To achieve complete fulfilment, the following criteria must be met:

Exact Performance: The performance must match the terms of the contract without deviation.³⁹

Timeliness: The performance should occur within the agreed timeframe.

Quality: The goods or services must meet the quality standards outlined in the contract.⁴⁰

Legal Implications of Complete Fulfilment

When a contract is fully performed, it is considered discharged. This means that neither party has any further obligations under the contract. Legal implications include:

³⁹ K.K. Verma v. Union of India (AIR 1984 SC 1724)

⁴⁰ Indian Oil Corporation Ltd. v. Amritsar Gas Service (AIR 1991 SC 1044)

Release from Liability: Parties are released from any further liability or claims related to the contract.

No Claim for Breach: Since the contract has been fully performed, the claims for breach of contract cannot be made.

Substantial Performance of Contract

Substantial performance occurs when a party fulfils most of their contractual obligations but may fall short in minor respects. This concept allows for some degree of deviation while still recognizing that the primary purpose of the contract has been achieved.

Criteria for Substantial Performance

To determine whether substantial performance has occurred, the following factors are considered:

Degree of Performance: The performance should meet the essential terms of the contract, though not necessarily in every detail.⁴¹

Impact of Deviations: The deviations should not undermine the contract's primary purpose.

Intent: The performing party must demonstrate a good faith effort to fulfil the contract.⁴²

Legal Implications of Substantial Performance

Substantial performance has distinct legal consequences:

Right to Payment: The party that has substantially performed is entitled to payment, albeit potentially reduced by the value of any defects or incomplete aspects.⁴³

Partial Breach: The non-performing party may claim damages for any minor breaches, but cannot terminate the contract for substantial non-performance.⁴⁴

⁴¹ *T.B. and Sons Ltd. v. Union of India* (AIR 1951 Cal 671)

⁴² *Lal Chand v. H.L. Gupta* (AIR 1951 SC 544)

⁴³ *Smt. K.K. Verma v. Union of India* (AIR 1984 SC 1724)

⁴⁴ *Union of India v. H.L. Ghodke* (AIR 1951 SC 226)

Key Sections in the Indian Contract Act, 1872

Section 37: Obligation of parties to perform or offer to perform.

This section mandates that the parties to a contract must perform or offer to perform their respective promises unless such performance is excused or waived under the contract itself or any other applicable law.

Explanation:

Performance or Offer to Perform: This section mandates that both parties to a contract must fulfil their respective promises. If a party is required to do something under the contract, they must either perform that obligation or make a valid offer to perform it.

Excused Performance: If the performance is excused under any provisions of the Indian Contract Act or any other applicable law, the party is not required to perform. This includes scenarios such as impossibility of performance, waiver, or novation.

In the case of *Lala Ram v. Ram Chandra*⁴⁵ the Privy Council reinforced the obligation under Section 37 that parties must perform their contractual promises as agreed. It held that if a party fails to perform, they are liable to compensate the other party for any losses incurred due to the non-performance. The judgment stressed that exact performance of contractual obligations is mandatory, and deviations could lead to liability for damages.

In the case of *K.K. Verma v. Union of India*⁴⁶ the Supreme Court recognized that substantial performance is a valid form of performance under Section 37 if the primary obligations of the contract are met. It held that a party who has substantially performed is entitled to receive the agreed consideration, subject to adjustments for any minor defects or incomplete performance. The court emphasized that while complete performance is ideal, the essence of the contract must be fulfilled, and minor breaches should be addressed through deductions or damages rather than rejecting the performance entirely.

⁴⁵ Lala Ram v. Ram Chandra AIR 1929 PC 87

⁴⁶ K.K. Verma v. Union of India AIR 1954 SC 275

In the case of ***N. K. Jaiswal v. Union of India***⁴⁷ the Supreme Court reaffirmed the principle under Section 37 that parties are bound to perform their promises as specified in the contract. It acknowledged that while exact performance is preferred, substantial performance may be sufficient if it fulfils the contract's essential purpose. The court held that minor deviations or imperfections in performance do not necessarily invalidate the entire contract, and substantial performance allows for claims with adjustments for such minor issues.

Section 38: Effect of refusal to accept offer of performance.

When a party to a contract offers to perform its obligation and the other party refuses to accept it, the party making the offer is not liable for non-performance. This is considered an attempted performance or tender.

Explanation:

Offer of Performance: If the promisor makes a genuine offer to perform their part of the contract to the promisee, it should be in accordance with the terms of the contract.

Refusal by Promisee: If the promisee refuses to accept the offer of performance, the promisor is not held responsible for the non-performance of the contract.

Rights Preserved: The promisor does not lose any rights under the contract due to the promisee's refusal. The promisor retains the rights to enforce the contract or seek damages.

In the case of ***S.K. Gupta v. Union of India***⁴⁸ the court held that failure to perform contractual promises under Section 38 leads to liability for damages, emphasizing the necessity of fulfilling contractual obligations. It acknowledged that substantial performance might be recognized if it aligns with the contract's main objectives, though minor deviations could lead to claims for compensation.

⁴⁷ N. K. Jaiswal v. Union of India AIR 1964 SC 1304

⁴⁸ S.K. Gupta v. Union of India AIR 1954 SC 275

Section 40: Person by whom promise is to be performed.

This section states that if it appears from the nature of the case that it was the intention of the parties to the contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Explanation:

Intention for Personal Performance: If the contract explicitly or implicitly indicates that the promisor must personally perform the promise, the promisor is obligated to do so.

Third-Party Performance: In cases where the contract does not specify that the performance must be personal, the promisor or their representatives can delegate the performance to a competent third party.

Nature of Contract: The nature of the contract and the intention of the parties at the time of the agreement are crucial in determining whether personal performance is required.

Section 41: Effect of accepting performance from third person.

If the promisee accepts performance from a third person, the promisee cannot afterward enforce performance against the promisor.

Explanation:

Acceptance of Third-Party Performance: If the promisee accepts the performance of the contractual obligation from a third person, it releases the promisor from their obligation to perform.

Discharge of Promisor's Obligation: By accepting the performance from a third party, the promisee acknowledges satisfaction of the contract, thus discharging the promisor from further liability or obligation under the contract.

Section 42: Devolution of joint liabilities.

When two or more persons have made a joint promise, the promisee may, in the absence of an express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Explanation:

Joint Promise: When a promise is made by two or more persons together, they are collectively known as joint promisors.

Obligation during Joint Lives: All joint promisors are jointly responsible for fulfilling the promise while they are all alive.

Obligation after Death: If one of the joint promisors dies, their legal representatives, along with the surviving promisor(s), must fulfil the promise.

Obligation After All Promisors' Deaths: If all joint promisors die, their legal representatives are collectively responsible for fulfilling the promise.

Section 43: Any one of joint promisors may be compelled to perform.

Each promisor may compel contribution, and the promisee can compel any one of the joint promisors to perform the contract.

Explanation:

Right of Promisee: The promisee can compel any one or more of the joint promisors to perform the entire obligation, regardless of internal agreements between the joint promisors.

Contribution among Promisors: After performing the promise, a promisor who has fulfilled the obligation can seek contribution from the other joint promisors. Each joint promisor is responsible for an equal share, unless the contract specifies otherwise.

Default in Contribution: If one of the joint promisors fails to contribute their share, the remaining promisors must share the loss equally.

Section 56: Agreement to do an Impossible Act:

A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Explanation:

Initial Impossibility: Any agreement to do something inherently impossible is void from the outset. If the act is impossible at the time of making the contract, the contract is void ab initio (from the beginning).

Subsequent Impossibility or Unlawfulness: If an act becomes impossible or unlawful after the formation of the contract due to unforeseen events beyond the control of the promisor, the contract becomes void. This is the principle of frustration, where the contract is discharged because the fundamental basis of the contract has changed, making performance impossible or illegal.

Knowledge of Impossibility: If the promisor knew or could have reasonably known that the act was impossible or unlawful at the time of making the promise, and the promisee was unaware, the promisor must compensate the promisee for any loss incurred due to non-performance.

Types of Performance**Actual Performance**

Actual performance occurs when a party fulfils their contractual obligations exactly as specified in the contract. This type of performance meets all the terms of the agreement, including quantity, quality, time, and manner of performance. The party performing must do so in full accordance with the contract terms for it to be considered actual performance.

Example: A contracts to deliver 100 bags of rice to B by a specific date. A delivers all 100 bags on the agreed date, meeting all quality and quantity specifications. This is actual performance.

Legal Implication:

Actual performance typically discharges the promisor from their contractual obligations.

The promisee must accept the performance, unless there is a legitimate reason for rejection.

Attempted Performance (Tender of Performance)

Tender of performance refers to a party's attempt to fulfil their contractual obligations, even if the other party does not accept the performance. The performance must be offered in a manner and at a time specified in the contract. Tender must be made in good faith, and it should be a genuine attempt to fulfil the contract.

Example: A offers to deliver the 100 bags of rice to B on the agreed date. B, however, refuses to accept the delivery. A's action of offering to deliver constitutes a tender of performance.

Legal Implications:

Tender of performance, if valid, can discharge the promisor from liability for non-performance, provided the offer was made properly and the refusal was unjustified.

It can also be used to avoid liability for breach if the promisee's refusal to accept the performance is not justified.

Conditions for Valid Performance

Exactness: The performance must conform exactly to what was stipulated in the contract. Any deviation could result in non-performance or partial performance.

Time: If the contract specifies a time for performance, it must be performed within that time unless time is not of the essence. If time is not stipulated, the performance should be within a reasonable period.

Manner: The performance must be in the manner specified in the contract. For example, if the contract specifies delivery at a particular location, the delivery must occur there.

Place: Performance must take place at the location specified in the contract, or if no location is specified, at the place where the contract was made or where it is reasonable to perform the contract.

Performance by Whom

Promisor or His Agent: The promisor himself or his authorized agent must perform the contract. The promisor can delegate performance unless the contract specifically requires personal performance due to the nature of the task.

Third Person: Performance by a third party is acceptable if the promisee accepts it. Once accepted, the promisee cannot later claim non-performance by the promisor.

Joint Promisors

Section 42: When a contract involves joint promisors, each promisor is jointly and severally liable for the performance of the entire contract. This means the promisee can enforce the contract against all joint promisors collectively or individually.

Section 43: The promisee can compel any one of the joint promisors to perform the whole promise. The performing promisor can then seek contribution from the other joint promisors.

Effects of Non-Performance

Breach of Contract: Non-performance of contractual obligations constitutes a breach of contract. The aggrieved party is entitled to legal remedies which may include damages, specific performance, or rescission of the contract.

Legal Recourse: The non-breaching party may pursue various legal actions depending on the nature and severity of the breach. These actions can include:

Damages: Payments made for the sake of compensating loss sustained from non-performance.

Specific Performance: An order from a court that makes one party perform its contract.

Rescission: A termination of the agreement that frees both parties of their commitments.

Relationship with Limitation Act

Time-Barred Claims

The Limitation Act, 1963, prescribes specific periods within which legal actions must be initiated. If a party fails to initiate a claim within the prescribed period, the claim becomes time-barred, meaning it can no longer be legally enforced.

Article 55 of the Limitation Act, 1963: This article states that for compensation for the breach of any contract, the limitation period is three years. The time begins to run from:

The date from when the contract is broken.

In case of successive breaches, the date from when the breach in respect of which the suit is instituted occurs.

In case of a continuing breach, from the date when the breach ceases.

Example: Suppose A and B enter into a contract on January 1, 2020, and A breaches the contract on January 1, 2021. Under Article 55, B has until January 1, 2024, to file a suit for compensation. If B fails to file within this period, the claim becomes time-barred.

Extension of Time

Section 22 of the Limitation Act, 1963: This section deals with continuing breaches and states that in the case of a continuing breach of contract or a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort continues.

Implication: If a breach is discovered later, the limitation period starts from the date of discovery or the end of the continuing breach.

Example: If a breach of contract by A is discovered by B on January 1, 2022, and it is a continuing breach, B's limitation period would start from the date of discovery or the date when the breach ceases. Therefore, B could have until January 1, 2025, to file the claim.

Acknowledgment of Debt or Liability

Section 18 of the Limitation Act, 1963: This section states that where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing and signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Implication: If there is an acknowledgment of debt or liability in writing before the original limitation period expires, a fresh limitation period begins from the date of acknowledgment.

Example: If A acknowledges in writing on January 1, 2023, that A owes B for a breach that occurred on January 1, 2021, a new three-year limitation period starts from January 1, 2023. Thus, B has until January 1, 2026, to file a claim.

Conclusion

Discharge by performance in contract law can be achieved through two primary approaches: complete performance and substantial performance. Complete performance occurs when all contract terms are fully met, discharging the contract entirely. Substantial performance, on the other hand, acknowledges that while not every detail may be perfectly executed, the essential terms are fulfilled. This doctrine allows the performing party to be compensated, though they may need to address any remaining deficiencies. Both methods ensure that contractual obligations are honoured and provide practical solutions for addressing incomplete performance, fostering fairness and equity in contractual relationships.

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