

Welcome to "Mindificent" - The College Magazine of Surendranath Law College

Welcome to "Mindificent," the vibrant and thought-provoking college magazine of Surendranath Law College. The name "Mindificent" is a unique blend of two powerful words: 'mind' and 'magnificent,' embodying the intellectual brilliance and creative splendor that our college community stands for.

At Surendranath Law College, we believe in fostering a holistic educational environment that goes beyond textbooks and classrooms. "Mindificent" serves as a testament to this philosophy, offering a platform for our students, faculty, and alumni to showcase their literary prowess, critical thinking, and artistic talents.

Each edition of "Mindificent" is a mosaic of diverse perspectives, insightful articles, compelling stories, and artistic expressions. It reflects the dynamic spirit of our college, capturing the essence of our academic pursuits, cultural activities, and social engagements. Through its pages, readers can explore a wide array of topics, ranging from legal analyses and societal issues to creative writing and artistic endeavors.

"Mindificent" is not just a magazine; it is a celebration of our collective intellectual and creative journey. It is where ideas come to life, where voices are heard, and where the mind meets magnificence. We invite you to delve into the pages of "Mindificent" and experience the extraordinary talents and thoughts of the Surendranath Law College community.

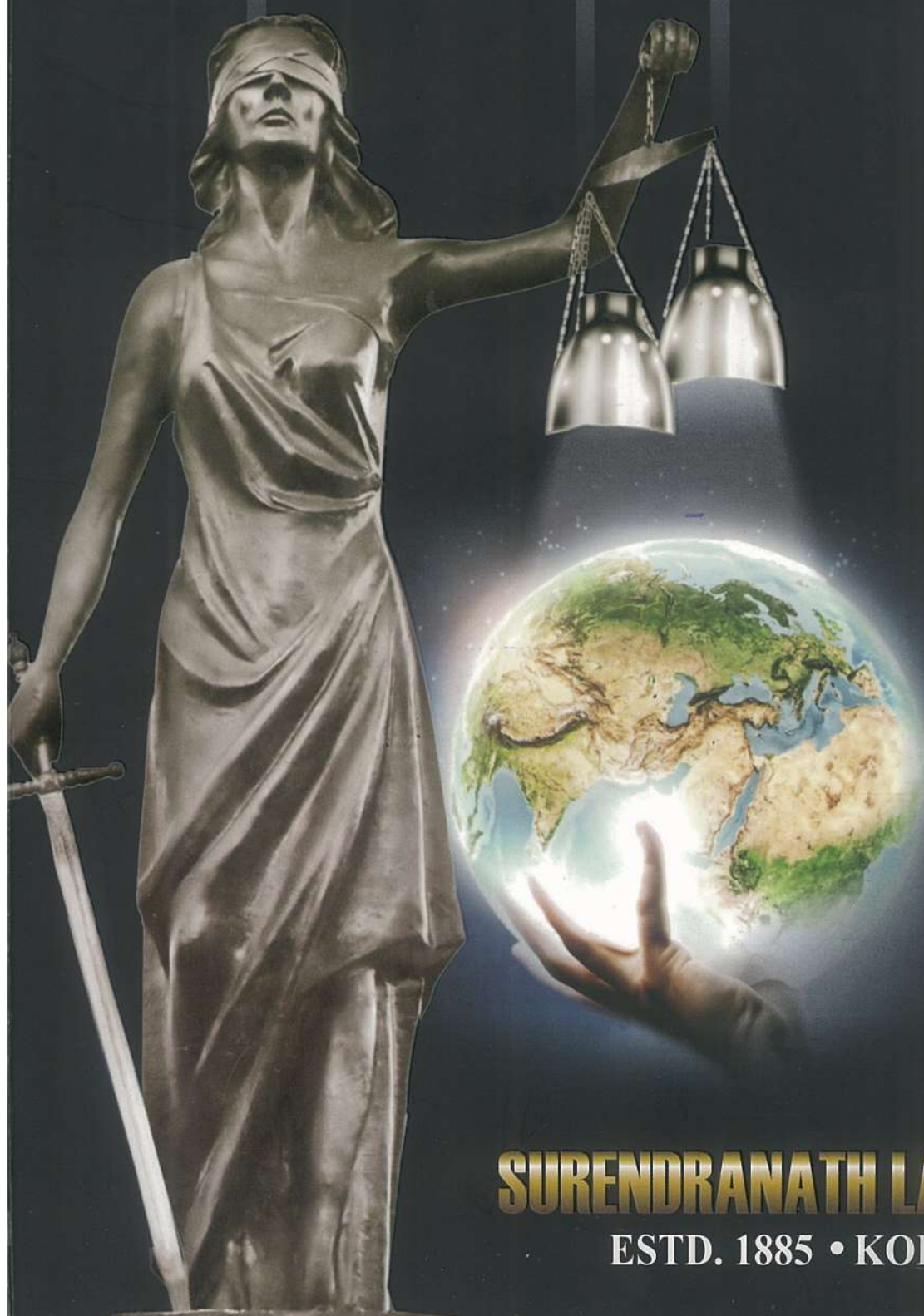
Magazine Committee, Surendranath Law College

1. Dr. Sarani Roy, Convenor
2. Dr. Shubhodeep Chakrabarti, (Jt. Convenor)
3. Dr. Rukmini Thapa, Member
4. Mrs. Salma Begum, Member
5. Ms. Nivedita Baraily, Member

Attached below is a specimen of the college magazine, hope you enjoy it.

Mindifificent

2019



SURENDRANATH LAW COLLEGE

ESTD. 1885 • KOLKATA - 9



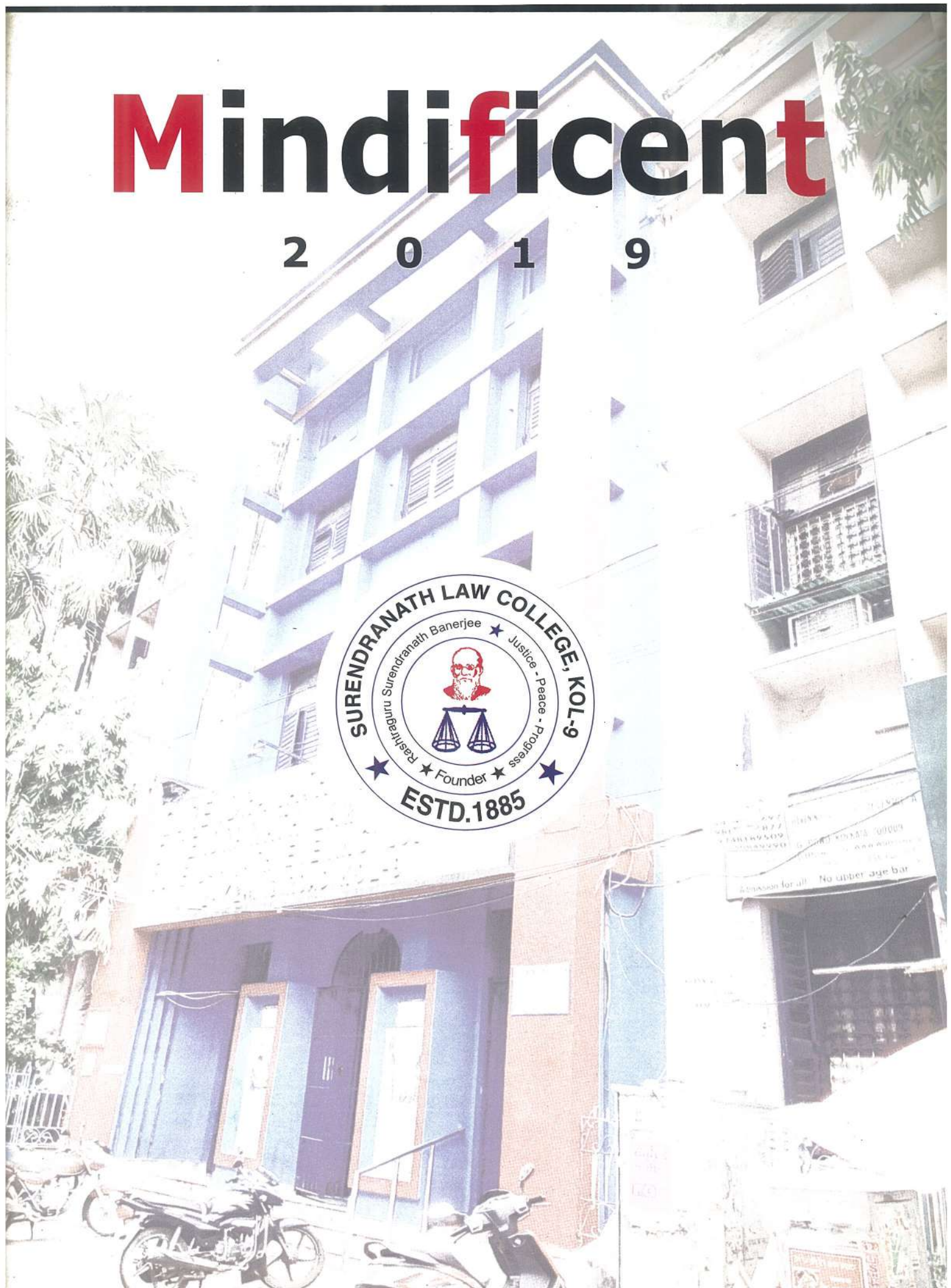
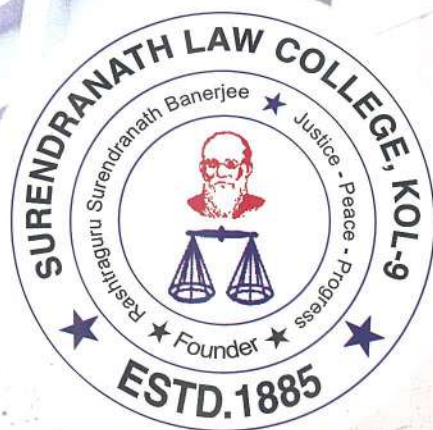
Surendranath Banerjea

Born: 10 November 1848

Died: 6 August 1925

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01. Contents	
02. Message from Mrs. Mamata Banerjee, Chief Minister	
03. Message from the Mr. Sudip Bandyopadhyay, M.P.	
04. Message from Prof. Dr. Partha Chatterjee, Education Minister	
05. Message from Mr. Maloy Ghatak (Law & Judicial Minister)	
06. Message from the Chairman of the Bar Council	
07. Message from the Mrs. Nayna Bandyopadhyay, MLA	
08. About us	1
09. President's message	5
10. Message from the Vice-Principal	6
11. Governing body of the College	9
12. Internal Quality assurance cell	10
13. Teaching Faculty	12
14. Non-Teaching Staff	13
15. Student's Union	14
16. Library	15
17. Seminar, Workshop, Conference	17
18. Sports Club	18
19. Cultural Club	21
20. Debate Club and Quiz Club	26
21. Eco Club	27
22. Moot Court	28
23. Legal aid clinic	29
24. Alumni Association	30
25. A brief study on Nature and Definition of Partnership - <i>Amrita Biswas</i>	31
26. A comparative study between Unitary and Federal forms of Government - <i>Somnath Das</i>	38
27. The role of Public Opinion in a Democracy - <i>Anirban Ghosal</i>	43
28. Family Law-II [commenton the Nature of Muslim Marriage] - <i>Priyabrota Das</i>	47
29. Implication of the Expression "Equality before Law and equal protection of Law" - <i>Manisha Shome</i>	53
30. The Rational of Criminal Conspiracy : A Review - <i>Lubdha Baag</i>	59
31. Powers & Functions of United Nations Secretariat - <i>Madhurima De</i>	65
32. A Project On Fundamental Duties - <i>Rohan Kumar Dey</i>	70
33. A Critical Studyon Protection of Environment and Sustainable Development - <i>Munira Alam</i>	78
34. Infringement of Copyright under Copyright Act 1957 and Remedies against such Infringement - <i>Tamjid Khan</i>	88
35. General Exceptions to Criminal Liability - <i>Dibya Shankha Das</i>	96

মমতা ব্যানার্জী
ममता बैनर्जी
ممتا بنرجی

Mamata Banerjee



মুখ্যমন্ত্রী, পশ্চিমবঙ্গ
मुख्यमंत्री, पश्चिम बंगाल
وزیر اعلیٰ مغربی بنگال

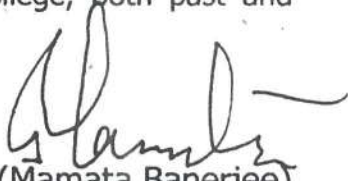
CHIEF MINISTER, WEST BENGAL

29th August, 2018

MESSAGE

I am glad to know that **Surendranath Law College**, Kolkata, will soon be publishing its **Annual Magazine** for the session 2018-19.

On the occasion, I convey my heartiest greetings and best wishes to the teachers, students and support staff of the college, both past and present, and wish the initiative all success.


(Mamata Banerjee)

Dr. Mohammadi Tarannum
Vice Principal
Surendranath Law College
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SUDIP BANDYOPADHYAY
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ALL INDIA TRINAMOOL CONGRESS
PARLIAMENTARY PARTY, LOK SABHA
CHAIRMAN
STANDING COMMITTEE ON RAILWAYS
(LOK SABHA)



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Dated, Kolkata, the 27 August, 2019

MESSAGE

It is my pleasure to know that Surendranath Law College is going to publish the forthcoming issue of their College Magazine for the year 2018-19. A premiere Institution of Kolkata, founded by Rastraguru Surendranath Banerjee, has been imparting legal education to the students since the year 1884 and it has rich alumni of many distinguished personalities in the arena of law of the country.

Surendranath Law College efficiently provides a milieu to the students wherein law is not just taught in classroom, but analyzed and researched.

My best wishes to all the members of Management, Principal, Vice-Principal, Professors, Staff and students of the College for all success.

(Sudip Bandyopadhyay)

Dr. Mohammadi Tarannum
Vice Principal
Surendranath Law College
24/2, Mahatma Gandhi Road
Kolkata-700009

Dr. Partha Chatterjee



Minister-in-charge
Departments of Higher Education,
School Education, Parliamentary Affairs
Government of West Bengal

No. -293/MIC/HED, SED&PA/19



MESSAGE

It gives me immense pleasure to know that Historic Institution "Surendranath Law College" is going to publish forthwith its college magazine for the session 2018-19. On occasion of this glorious moment I congratulate the college authority as well as all the students, faculties and non-teaching stuffs of the college and expect a grand success of the college magazine.


(Dr. Partha Chatterjee)

*Dr. Mohammadi Tarannum
Vice Principal
Surendranath Law College
24/2, Mahatma Gandhi Road,
Kolkata - 700009*

মলয় ঘটক

ভারপ্রাপ্ত মন্ত্রী

জনস্বাস্থ্য কারিগরী, শ্রম এবং আইন ও বিচার বিভাগ
পশ্চিমবঙ্গ সরকার



Moloy Ghatak

Minister-in-Charge,

Department of PHE, Department of Labour and
Departments of Law & Judicial
Government of West Bengal



MESSAGE

I am glad to learn that Surendranath Law College, Kolkata is bringing out its first publication for its College Magazine shortly. This College needs no introduction in the field of education particularly pertaining to legal education. The great luminary and freedom fighter “Rastruguru” Surendranath Banerjee found this Institution in 1884 in Kolkata. This College is amongst one of the best law colleges in our country having rich alumnus like Dr Rajendra Prasad, the first President of India, Harendra Kr Mukherjee, Ex-Governor of West Bengal and Justice Bijan Kr Mukherjee, Ex- Chief Justice of Supreme Court of India.

This college aims to educate law students for exploring various avenues by providing experience based legal education. This college is a unique institution of its kind imparting legal education coupled with wisdom and values to the students. The college has also a dedicated Mentor Group continuously working for this purpose. Every law student is given distinct individual care and encouraged to explore their full potential and excel in their fields.

I do hope that the College Magazine will nurture the budding talents and provide the students a platform for showing their creativity and sharing of thoughts and ideas. Let this College flourish more in the days to come.

Moloy Ghatak
17.07.18
(Moloy Ghatak)

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भारतीय विधिज्ञ परिषद BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110002

Ashok Kumar Deb

Co-Chairman
BAR COUNCIL OF INDIA



MESSAGE FROM THE CHAIRMAN OF THE BAR COUNCIL

I feel extremely happy and honoured to announce that my alma mater, Surendranath Law College is going to publish its first yearly magazine. I have been a proud student of this prestigious institution and I shall be forever grateful to it for making me what I am today. So this comes as a very emotional moment for me when I was approached to give my message for the magazine.

Surendranath Banerjee needs no introduction as a great patriot, political leader, orator, teacher, educationist, journalist. He is one of the most eminent personalities in the history of India. He was the founder of this prestigious institution and his noble idea of bringing higher education within the reach of the widest possible sections of the society remains the guiding motto of this college. The great luminary 'Rastraguru' Surendranath Banerjee found this institution in the heart of the city Kolkata close to the Sealdah Station considering the convenience of commuting and to encourage more students to partake of quality education, especially for those who belonged to the downtrodden community. Surendranath Law College is a unique institution committed to impart legal education with its innate qualities for practical wisdom, commitment to the rule of law and good compassion to make its students perfect individuals of tomorrow.

As an alumni of this institution, I extend my full support and love to all the students, faculties and the committee members and express my heartfelt wishes. I hope the college magazine will be a huge success and I am eagerly looking forward to reading it as soon as it is published.

I convey my best wishes and love.


Ashok Kumar Deb

NAYNA BANDYOPADHYAY

Member,
West Bengal Legislative Assembly



72/4 S. N. Banerjee Road
Kolkata-700 014
Ph. (O) : 22175010

Date

Dated, Kolkata, the 27 August, 2019

MESSAGE

I am delighted to know that the college magazine for the year 2018-19 will be published by Surendranath Law College, Kolkata. A college magazine is presenting an intimate, timely and honest portrait of the College and has an important role for faculty and students.

I hope, the purpose of publishing the College Magazine will uphold the academic dignity and status of the oldest and renowned Institution like Surendranath Law College in Kolkata.

I wish all the members of faculty and students for publication of College Magazine all success.


(Nayna Bandyopadhyay)

Dr. Mohammadi Tarannum
Vice Principal
Surendranath Law College
24/2, Mahatma Gandhi Road
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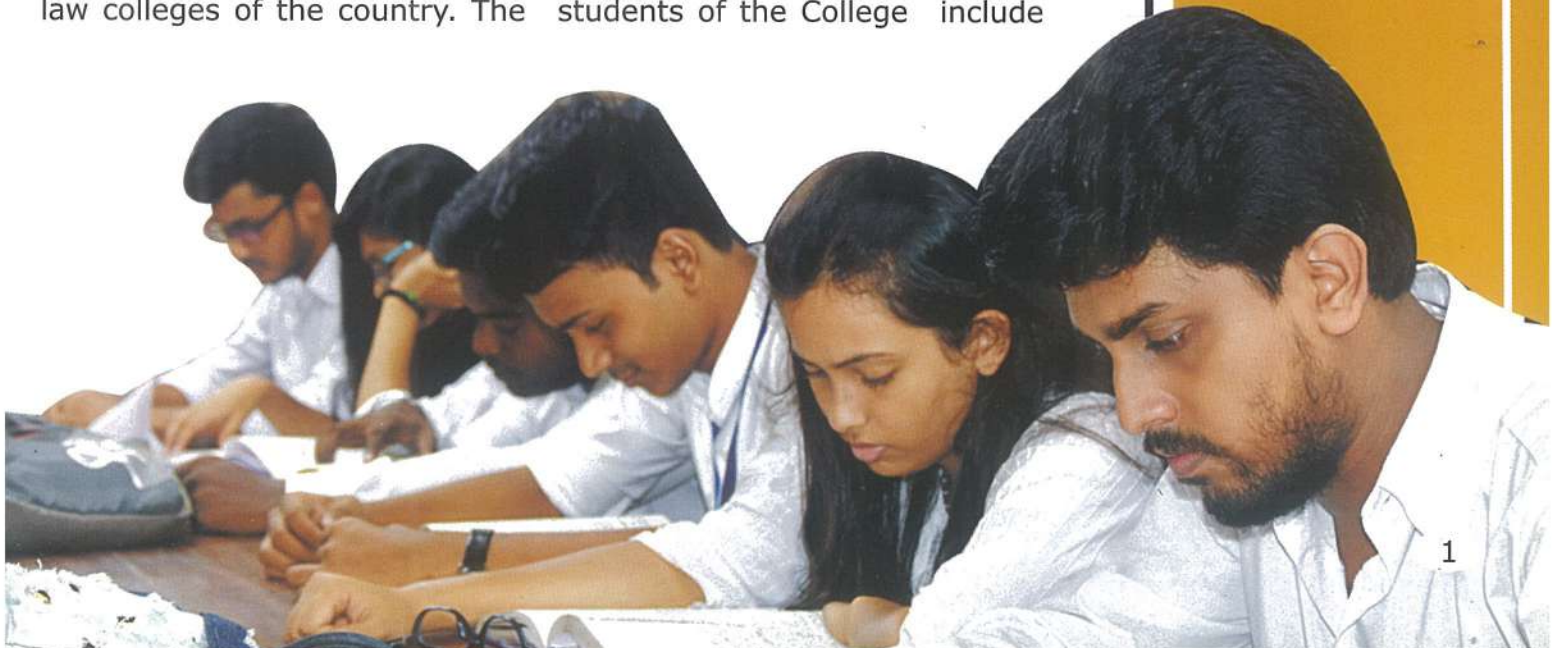
About Us

Surendranath Banerjea needs no introduction as a great patriot, political leader, orator, teacher, educationist, journalist. He is one of the most eminent personalities in the history of India. He was the founder of this prestigious institution and his noble idea of bringing higher education within the reach of the widest possible sections of the society remains the guiding motto of the college.

In 1882, the Presidency School, which formed the nucleus of the present Institution, was handed over to Sir Surendranath Banerjea on 1st January 1884. He raised it to the status of a college affiliated to the F.A. standard and named it "THE PRESIDENCY INSTITUTION". Within a year the institution was converted into a full fledged, first grade college under the name "RIPON COLLEGE". Its activity was further extended through the opening of the Post-Graduate Department of Law in 1884, which was later affiliated to the Calcutta University in the year 1885, as an independent professional college. Since then, as long as he lived, Sir Surendranath not only remained at the helm of affairs, but was also active as a teacher, in the college. Sir Surendranath attached the name of Lord Ripon to his Institution as a tribute to the enlightened policies of the Viceroy. But after the attainment of independence, the golden cause to which Sir Surendranath dedicated his entire life, the name of the college was altered to Surendranath College. This was done to commemorate Sir Surendranath who had established this pioneering institution and nurtured it with utmost love and dedication.

This esteemed Law College is now regarded as one of the oldest law colleges of the country. The students of the College include

About Us





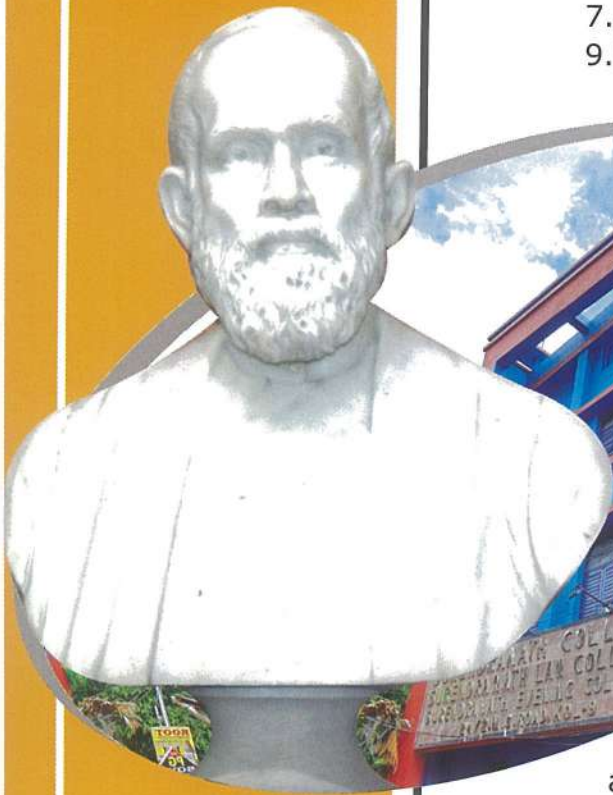
About Us

Dr. Rajendra Prasad, the first president of India, Harendra Kum Mukherjee, the Ex Governor of West Bengal, Justice Bij Kumar Mukherjee, the Ex Chief Justice of the Supreme Court India and many other luminaries and eminent personalities.

'Rashtraguru' Surendranath Banerjea founded this college in the heart of the city close to the Sealdah Station - considering the convenience of commuting and to encourage more students to partake of quality education, especially for those who belonged to the downtrodden community. The former address of the college was 60, Mirzapur Street. The present address is 24/2, Mahatma Gandhi Road, Calcutta - 700 009.

Surendranath Banerjea was the absolute owner of Ripon College (now Surendranath College) and Ripon Law College including the Collegiate School up to 1908. With the aim of placing the Ripon Group of Institutions on a permanent footing and affiliating them to public institutions, Surendranath Banerjea, the proprietor, thought it desirable to divest himself of all private rights of property that he had over the said institutions and vesting them with a Public Charitable Trust in the year 1909. The signatories of the Trust deed were all notable personalities and educationists. The first signatory was Surendranath Banerjea and the rest were —

1. Satyendra Nath Mukherjee
2. Upendra Nath Mukherjee
3. Jogesh Chandra Choudhury
4. Rashbehari Ghosh
5. Ashutosh Chaudhuri
6. Baikuntanath Sen
7. Baron Sinha of Raipur
8. Bhupendranath Basu
9. Ramendra Sundar Trivedi



After 1948, at the instance of the Hon'ble Chief Justice of the High Court at Calcutta, the Ripon Group of Institutions was renamed after Rashtraguru Surendranath Banerjea. Both in the pre-independence and post-independence era, Surendranath Law College always responded to the demand of the time and society in all its earnestness. During the Partition Movement in 1905 and 1947, many teachers and students actively protested against the wrongful act of partition and did not hesitate to sacrifice their lives for the noble cause. Many students were arrested by the British Police from Ripon Hostel attached to the college. In fact, the sense of nationalism and patriotism were genuinely inculcated amongst the students by their teachers.

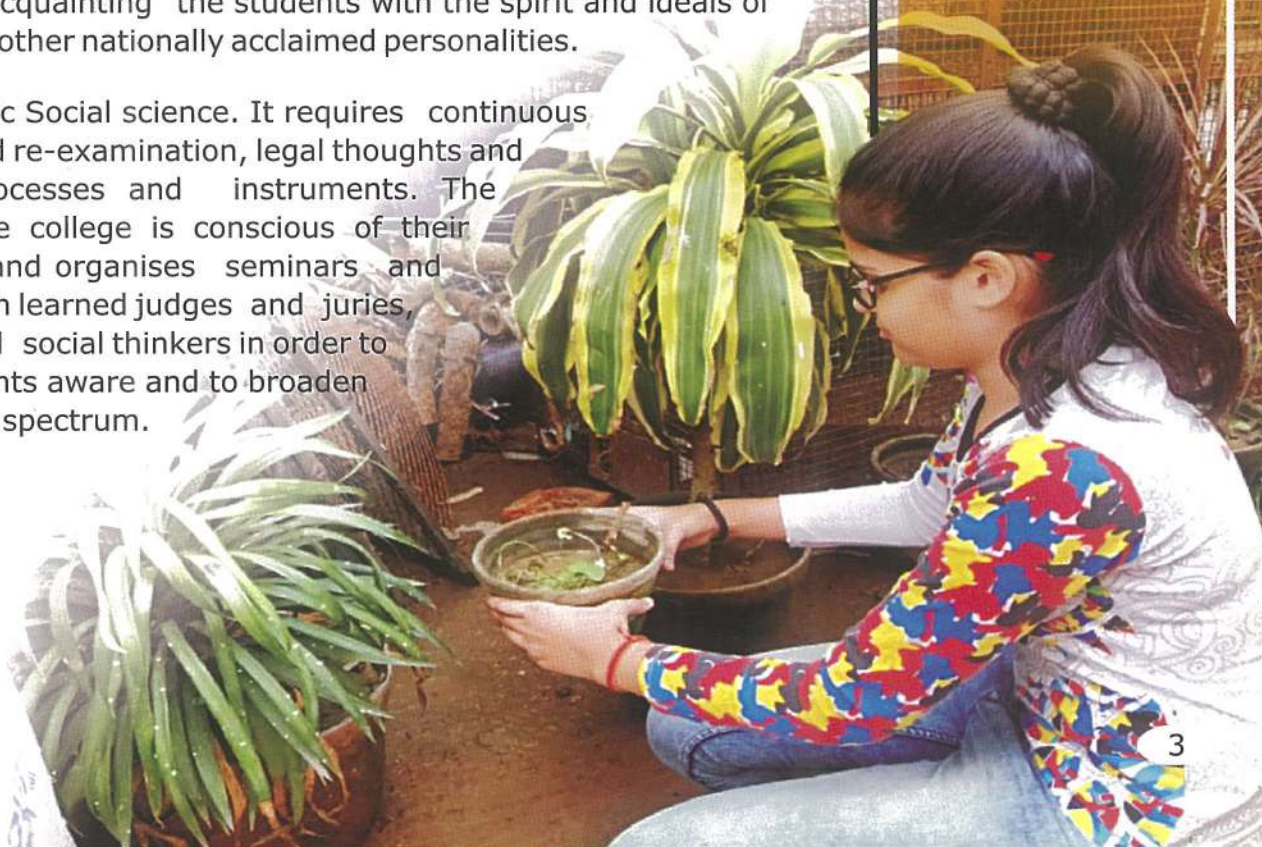
In the field of academic performance, including university examinations, students from this college have performed brilliantly and have secured gold medals in their respective course of study. After 1980 legal education in Calcutta University was revamped to meet the challenge of time and 5 year LL.B. course was introduced instead of 3 year LL.B. Course. In Surendranath Law College 5 year LL. B. Course was introduced since 1987 with renewed vigour and infrastructural change. Presently there are 700 students in 5 yr. LL.B. Course. The rate of success in the university examination has been always above 95% since its inception.

The college is committed towards the overall development of the students and encourage them to regularly take part in extra-curricular activities. Students take keen interest in games and sports, in both the state and national level. They also take part in all India Moot Court competitions held in different parts of the country. Students and teachers, jointly organize awareness generating camps in various parts of the country to help people to fight social maladies and evils. With the help of the Directorate, various NGOs, and the Government of West Bengal, the students have successfully organized anti-dowry campaigns and anti-pollution campaigns in the city and AIDs prevention campaign in the college premises.

On 10th December, Universal Declaration of Human Rights Day is celebrated each year in the college.

Students and teachers of this institution are aware of the lofty ideals and heritage of this college and from time to time organize many cultural programmes. These programmes are also organized with the motive of acquainting the students with the spirit and ideals of the founder and other nationally acclaimed personalities.

Law is a dynamic Social science. It requires continuous examination and re-examination, legal thoughts and legislative processes and instruments. The authority of the college is conscious of their responsibility and organises seminars and symposium with learned judges and juries, educationist and social thinkers in order to make the students aware and to broaden their knowledge spectrum.





Performance in Lok-Adalat

Since the inception of the Lok-Adalats in the Annexe Building of the Calcutta High Court under the able guidance and leadership of Justice Dilip Kumar Basu, the students of this esteemed institution have continued to take an active part in it. They get specialised training for becoming good counselors to effectively adopt the alternative dispute resolution (ADR). Through counseling camps across the different parts of the state, our students have received applause and appreciation from the Bar, press and law-abiding people, particularly the down-trodden.

Training for Participation in Family Court

This institution, after enactment of the Family Court, has decided to impart legal training to the students and with this aim the training process is in progress.

Legal Aid Clinic

As a corollary to the centenary programme, the college has started a Legal Aid Clinic in the college premises to render legal assistance for ensuring social justice to the victimized poor and downtrodden people. The 21st century poses new challenges in every sphere including the field of legal education. Keeping in view its heritage, this college is modulating the academic curriculum to make the students more adept to the present crises and needs of the society.

Vision

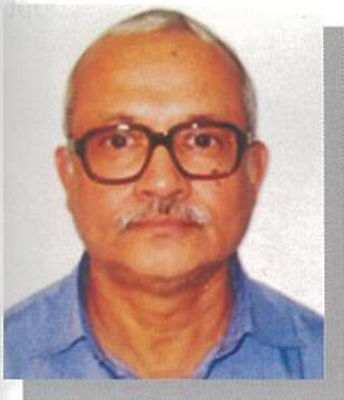
The Surendranath Law College seeks to impart and advance quality legal education by engaging in teaching and dissemination of legal knowledge. The college has a specific plan for the development of the college. The academic programmes and activities of the college are prepared and executed keeping in mind the values enshrined in the vision of our founder Sir Surendranath Banerjee. This has developed among students a sense of responsibility to serve the society in the field of law.

Mission

The mission of Surendranath Law College is to provide a forum to produce and disseminate on the implications and applications of law within social and legal context. As a dedicated professional educator, our mission is to provide quality legal education to students and equipping them with the skills and competence to emerge as world class professionals, scholars and academic in the field of law, justice and administration.



President's Message



The illuminating history revealed that Sir Surendranath Banerjea on 1st January 1884, inaugurated the first grade college under the name "RIPON COLLEGE". Then its activity was further extended through the opening of the Post-Graduate Department of Law in 1884, which was later affiliated under the Calcutta University in the year 1885, as an independent professional college. The "Surendranath Law College", situated in 24/2 Mahatma Gandhi Road, Kolkata

700009, possesses a Himalayan heritage, which always attracts me. I all the time enters the gate with bended head under the foot prints of the legends once associated with this institute.

Being a student of this prestigious college since 1975, I feel privileged. My father and I both are proud alumni of this esteemed institute. My father inducted me to feel proud and glorious to be a part of the renowned institute.

During the golden era of Bengal, some bright sons of mother India assembled with the dream to form a highly enlightened Bengal in the field of education. Their far sightedness hatched with the formation of this Law College. Among the founder members, Satyendra Nath Mukherjee, Upendra Nath Mukherjee, Jogesh Chandra Choudhury, Rashbehari Ghosh, Ashutosh Chaudhuri, Baikunthanath Sen, Baron Sinha of Raipur, Bhupendranath Basu, Ramendra Sundar Trivedi was the prominent personalities.

This esteemed Law College is now regarded as one of the oldest law colleges of the country. The alumni of the College include Dr. Rajendra Prasad, the first President of India, Sri Harendra Kumar Mukherjee, the first Governor of West Bengal, Justice Bijan Kumar Mukherjee, the first Chief Justice of the Supreme Court of India and many other luminaries and eminent personalities.

The teachers' room is studded with a team, of heavily enthusiastic, highly qualified and West Bengal College Service Commission recommended full-time faculties. The present students are very much sincere and hard working for upholding their past glory. The vigorous student teacher interaction, results into the various interesting performances. Some of the remarkable activities are evident in the result outcome of their Performance in Lok-Adalat, Training for Participation in Family Court and Legal Aid Clinic. The whole Surendranath Law College family are continuously nurturing and exploring the modern methodologies in the study of law. I hope they will march forward with the flag of their heritage in future.

Finally, as an alumnus of this institution I am overwhelmed with the performance of the Teachers, Non-teaching staff and Students and wish the colorfully illuminated glory in near future. We are sure, that our collective effort will definitely make some scratch on the glass of future Bengal.

Dr. Korak Kanti Chaki

President, Governing Body, Surendranath Law College



Message from the Vice-Principal



In the words of Dalai Lama, "When educating the minds of our youth, we must not forget to educate their hearts". As the Vice - Principal of Surendranath Law College, I strive to focus on discovering, developing and drawing out the hidden talents lying dormant inside all the students. We are fortunate to have a talented, highly committed teaching and support staff here to ensure the learning environment of our students to be the best it can be. Our foundation is committed to impart comprehensive legal education that will uphold the noble ideals of the Constitution of India and inculcate a spirit of enquiry in the young minds. The purpose of our institution is to make the students both nationally and internationally competent to respond to any kind of challenges and to be forthright in tackling any sort of injustice. As an educational institute, we believe in serving the humanity and our primary emphasis is to develop the students' moral and ethical values, which will make them aware and sensitized regarding the true professional commitment of a legal practitioner. We seek to instill in our students a passion for learning that will bring the knowledge and understanding they acquire to make a positive contribution towards the society, with compassion and responsibility.

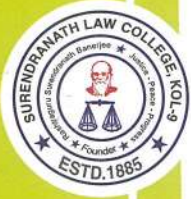
The great luminary 'Rashtraguru' Surendranath Banerjea found this institution in the heart of the city Kolkata close to the Sealdah Station considering the convenience of commuting and to encourage more students to partake of quality education, especially for those who belonged to the downtrodden community. Our institute holds the manifold distinction of being among the best when it comes to legal education in India. Our institution boasts of a rich alumni association, notably the respected Dr. Rajendra Prasad, the first President of India, Harendra Kumar Mukherjee the Governor of West Bengal, Justice Bijan Kumar Mukherjee the Chief Justice of the Supreme

Court of India and many other respected and great personalities of our country. The institution continues to nurture brilliant minds and radical personalities, who carry forward our rich legacy.

Surendranath Law College is an institute of Law affiliated to the University of Calcutta and recognized by the Bar Council of India. We continuously upgrade our techniques of teaching and impart dynamic and practical knowledge. We inspire our law graduates to practice outside the traditional legal practitioner roles, such as in the educational sector, business partnerships, management, politics, civil service, diplomacy, social work etc. Surendranath Law College aims to educate the law students in a manner, by which they are ready to explore various avenues, by providing experience based legal education that promotes intellectual breadth, analytical skills and ethical sense of role and purpose of lawyers in society. We spare no efforts to make the educational experience of our students meaningful and relevant to the socio-economic needs of the times and to equip our youth to face the challenges of the future for leading the society from the front, while ensuring that at the same time they are enjoying their experience of learning. We encourage high academic standards and have high expectations of personal discipline and motivation from our students. These are the keys to success in life after college.

Surendranath Law College is a unique institution committed to impart legal education with its innate qualities for practical wisdom, commitment to the rule of law and good compassion to make our students perfect individuals of tomorrow. Our dedicated mentor group is continuously working to fulfill this purpose. We provide distinct individual care to each and every student to help them explore their own potential and skill, thereby, shaping a successful future for them. We encourage more students from economically-backward classes and from minority and other backward communities to be a part of our esteemed institution, so that we can continue to uphold the vision of Sir Surendranath Banerjee to create a truly equal, but uniquely diversified society. We also believe that nurturing academic merit is the primary duty of our institution. Hence, we are constantly attentive to our students' academic progress and offer special guidance to academically weaker students. This cumulative effort of the teachers and students to maintain our high academic standard is reflected in our students' commendable performance in both the graduate and post-graduate course of study. Our college regularly organizes seminars, workshops and symposiums to enlighten the knowledge of the students and offer them an enriched and critical perspective. In addition to our expert faculty members, lectures and classes are regularly held by eminent scholars in Law, senior Advocates of the High Court of Calcutta and also Supreme Court of India and senior judicial officers. We organize intensive Moot Court Training sessions, so that the students are acquainted with the various intricacies of law from the very beginning of their academic course and are well-versed with innovative and improved legal methods. Our students actively take part in several intra and inter-level moot court session competitions and have been greatly lauded for their performance. We are presently undergoing the procedures to publish a high-quality Law Academic Journal which will contain articles on various topics on Law by the students,

*Message from the
Vice-Principal*



Message from the
Vice-Principal

teachers and also by other eminent jurists which will give an exposure to the faculty and students, in order to encourage merit and develop interest in the subject. Extracurricular activities form a vital part of a student's experience in our college. Our college offers the scope to every student to be an active participant in any of our clubs, like the sports club, cultural club, and debate and quiz club. We endeavour to create a profound academic experience through the holistic development of each of our students. We, therefore, lay immense stress on the students' participation in extracurricular activities, and nurture such talents, which will be beneficial for both our students and the society in the long run. Our students regularly take part in several competitions and have emerged as winners or runners-up in their respective fields and have made our institution proud. The college holds the cultural fest 'Umang' every year, where we organize several Inter-college competitions, along with high-end cultural programmes. This provides a necessary platform for the students to express their talents and gives them the desired exposure. As an age-old institution, we are aware of the growing environmental needs and are conscious of our duty towards the environment. We have an active Eco club, which continuously strives to make our students sensitive towards the protection and conservation of the environment in which we live in. For this we regularly organize awareness campaigns, seminars, lectures, rallies, marches and street theatres. Our college has drafted a 'Green Policy', which is to be strictly followed by all the students, teachers and the staff.

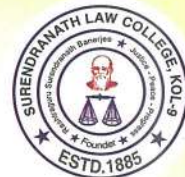
Surendranath Law College is committed to impart the best academic and professional knowledge to our students and groom their overall personality, so that they can shine in their individual fields. Being the Teacher-in-Charge of such a premium institution, I welcome you here and look forward to your valuable association with us for better tomorrow. Your academic pursuit here will not only help you earn your degree, but will transform you by empowering you to lead a more successful life.

Best regards
Dr. Mohammadi Tarannum
Vice-Principal
Governing body of Surendranath Law College

Governing Body of the college



01. **Dr. Milan Kr. Paul** *President*
02. **Dr. Mohammadi Tarannum** *Ex- Officio Member*
03. **Dr. Nilansu Das** *Member Govt. Nominee*
04. **Mr. Debashis Banerjee** *Member, Govt. Nominee*
05. **Mrs Sarmistha Chakraborty** *Member, Nominee, University of Calcutta*
06. **Mr. Subhra Bakul Karmakar** *Member, Teaching Representative*
07. **Mrs. Aparajita Dasgupta** *Member, Local Councillor*
08. **Mr. Samujjal Chakraborty** *Member, Non-Teaching Representative*
09. **Mr. Tapan Roy** *Member, Non-Teaching Representative*
10. **Mr. Amitava Aich** *Member, Student Representative*



Governing Body
of the college



Internal Quality Assurance Cell



The IQAC cell was established on 17th June 2013. This cell is trying its best for the advancement in the field of teaching and learning. The cell is also giving importance to research and development. The IQAC encourages faculty members and staff to orient and refresh themselves by arranging/attending seminars/conferences/workshops. The IQAC expects the faculty members to follow the academic calendar outlined at the beginning of the session. If there is any divergence from the plan outlined in the academic calendar like the syllabus completion is not undertaken within due time etc., then the faculty members are advised to take extra classes and make it up so that the students are not deprived. The IQAC also has setup a research committee that record the developments of research if any in the college and report this to the IQAC.

In pursuance of its Action Plan for performance evaluation, assessment and accreditation and quality up-gradation of institutions of higher education, the National Assessment and Accreditation Council (NAAC), Bangalore proposes that every accredited institution should establish an Internal Quality Assurance Cell (IQAC) as a post-accreditation quality sustenance measure. Since quality enhancement is a continuous process, the IQAC has become a part of the institution's system and work towards realisation of the goals of quality enhancement and sustenance. The prime task of the IQAC is

to develop a system for conscious, consistent and catalytic improvement in the overall performance of institutions. For this, during the post-accreditation period, it will channelize all efforts and measures of the institution towards promoting its holistic academic excellence.

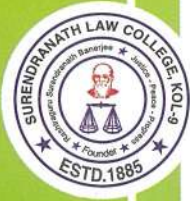
The work of the IQAC is the first step towards internalization and institutionalization of quality enhancement initiatives. Its success depends upon the sense of belongingness and participation it can inculcate in all the constituents of the institution. It will not be yet another hierarchical structure or a record-keeping exercise in the institution. It will be a facilitative and participative voluntary system/unit/organ of the institution. It has the potential to become a vehicle for ushering in quality enhancement by working out planned interventionist strategies to remove deficiencies and enhance quality like the "Quality Circles" in industries.

The college has organized the following events in adherence to the regulations of the IQAC:-

1. UGC sponsored National Seminar dated: 23rd and 24th March 2012 .
2. Seminar on Jago Grahok Jago arranged by Dist. Consumer Forum at the College Campus dated: 9th May ,2014
3. UGC sponsored Workshop on Internal Quality Assurance Cell dated: 19th September 2015.
4. Workshop on Pre-Conception and Pre-Natal Diagnostic Techniques Act 1994 in collaboration with CINI ASHAA, (NGO) Health department, Govt. of West Bengal dated: 10th December 2015.
5. College level Seminar on Capital Market in collaboration with SEBI. Dated: 22nd May 2015.
6. Legal Awareness Camp and Legal Aid Clinic organized by Surendranath Law College on 19. 12. 2015.
7. Seminar on Principle of Environmental Jurisprudence and Judicial Pronouncements organized by the College on 30.01.2016.
8. Workshop on Career Counselling organized on 04.02.2016.
9. Seminar on Violence Against Women and Legislations For Women Empowerment organized by the Surendranath Law College o 16.02.2016.
10. National Seminar on Rights Based Society : Its Transformation and Evaluation organized on 20th and 21st January 2017.
11. UGC Sponsored National Seminar on A Socio-Legal Study On Surrogacy: A Rented Accommodation For the Foetus organized on 8th and 9th March 2017.

In addition to this, the college has active Anti-Ragging Cell Committee and Women Assistance Cell. The college also organizes Bridge Course to acquaint the newly-admitted students to the degree programme.

The college is committed towards improving the academic and cultural infrastructure of the college and continuously strives towards it.



Teaching Faculty



The teaching objective of faculty members reflect their centrality in addressing the primary educational mission of our college. As faculty members, they disseminate and impart basic or applied knowledge to students and assist students with the learning process and applying the acquired knowledge. In this construction of the teaching role, the teacher is the content expert, and students are regarded as learners or novices to the academic discipline or field of study. Our focus on learning incorporates a broad set of goals for learners, such as students' mastery of content, their abilities to consider and critique, and particularly in professional fields, the development of skill sets that enable students to undertake career positions.

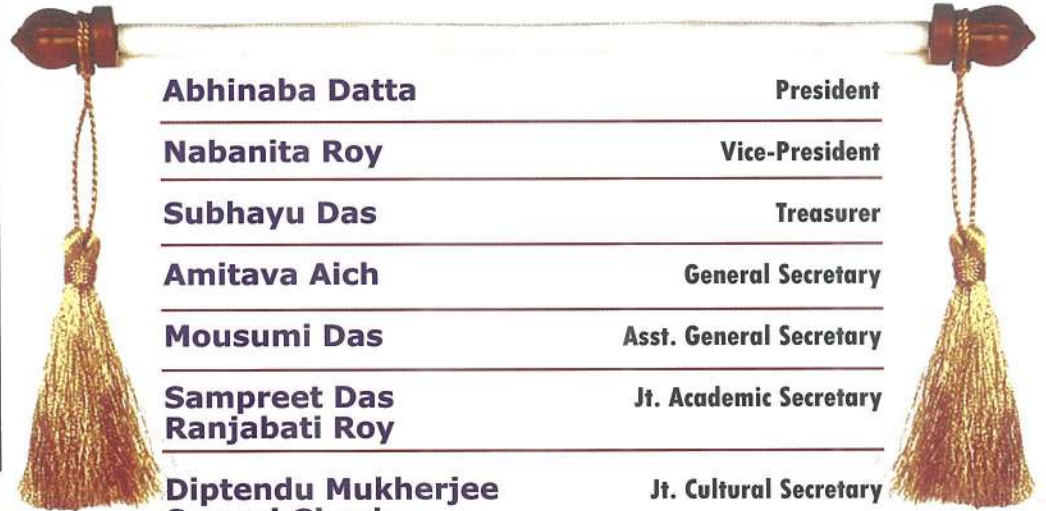


Non-Teaching Staff

*N*on-Teaching staff forms the backbone of the college. They are entrusted with maintaining all the indispensable tasks of the college. They are categorized into official and unofficial staff as per their work duties. They work in cooperation together and maintain a wide network for the smooth functioning of the college. Their work ranges from looking after the college campus to several official and administrative tasks.



Student's Union



Abhinaba Datta President

Nabanita Roy Vice-President

Subhayu Das Treasurer

Amitava Aich General Secretary

Mousumi Das Asst. General Secretary

Sampreet Das
Ranjabati Roy Jt. Academic Secretary

Diptendu Mukherjee
Swaraj Ghosh Jt. Cultural Secretary

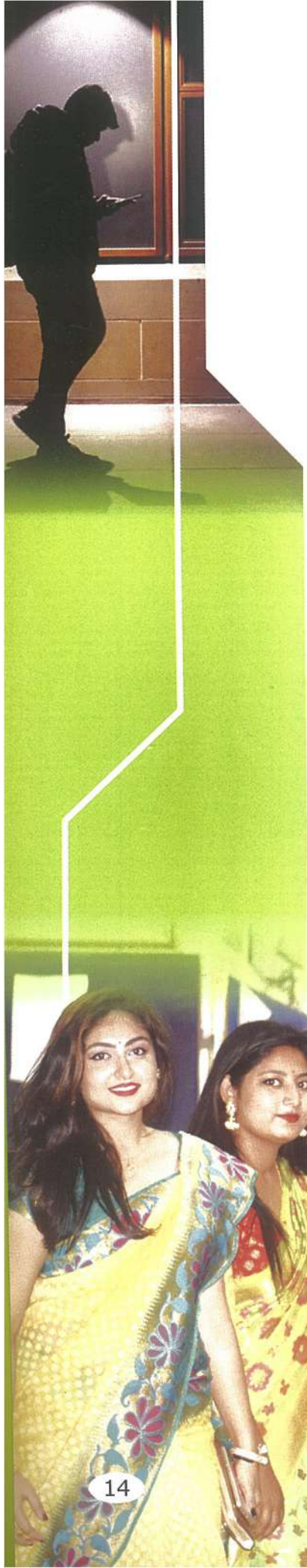
Sabyasachi Bhattacharjee
Anneysha Mukherjee Jt. Magazine Secretary

Shounak Mallick
Suprin Roy Jt. Sports Secretary

Arpan Dey
Subhamita Banerjee Jt. Common Room Secretary

Promila Mukherjee Social Welfare Secretary

Somrita Banerjee Aid Fund Secretary



LIBRARY

The Library has developed as an indispensable part of the entire college. The law library provides access to law and law-related resources and a wide range of services that support the law school curriculum and programs, promote the advancement of legal scholarship, and fulfill the information needs of our library users. The Central Library is situated on the ground floor of the building. The Departmental Library is located on the 5th floor. The membership of the Library is open faculty members, students and support staff of the College.

The Library has a rich collection of books and journals. These include some rare and priceless books and journals. Thousands of new books are added every year. The departmental library has been built up with the aim of providing easy access of books to students. It contains texts and reference books which are often needed by the students and they can borrow these books with permission from the departmental teacher. The Central Library of the College has well-equipped and spacious reading room facility with seating capacity of 50 users. We have multi-user library software under client server connected by LAN. The widely used Linux-based Library software LibSys (College Version) has also been installed. The Online Public Access Catalogue (OPAC) is a real-time updated internal database which enables users to search the library's collection and guides them to precise locations. The internal database of the library can be accessed from anywhere. The library is currently in the process of creating a proposal for obtaining access to case records at the various levels of the Indian judicial system and is seeking to generate an oral archive of testimonies surrounding landmark legal developments, cases, legislations or law reform initiatives. Students and faculty members can place requisition for a book that is not available in the library. The requisition should be given in the Demand Book Register available from the concerned library staff and through the Web OPAC facility.

The collection of books includes both Law and non-law books, such as History, Political Science, Sociology, Economics, Hindu law, Mohammedan law, English, Legal Language, Law of contract, Legal Theory, Banking Law, Constitutional Law, Law of Crimes, International Law, Law of Evidence, Law of Torts, Law of Consumer Protection, Transfer of Property Act, labour law, Criminal Procedure





Code, Law of Taxation, Civil Procedure Code, Environmental Law, Administrative Law, Books on Law in General, Land Law, Intellectual Property Law, Human Rights, Law of Arbitration, Cyber Law, Labour and Industrial Law, Bare Act, Lok Adalat and general books. The librarians have tried their best to ensure up gradation of books to adhere to the needs of the users. The library also provides access to law journals of both national and international relevance. The reading section in the library is well furnished, well lighted and ventilated. It is open for teachers and students even after normal working hours of the institution. It also provides leading newspapers, magazines and periodicals in almost all Indian languages for the benefit of staff and students to improve their general knowledge in their leisure hours. Students are provided with resources to copy the required information, in a controlled fashion on to a CD. They are provided with printouts and Internet access on demand. Experienced and well-qualified staffs manage the center and are always available for any help in using the facility.

The collection of books includes both Law and non-law books, such as History, Political Science, Sociology, Economics, Hindu law, Mohammedan law, English, Legal language, Law of Contract, Legal Theory, Banking Law, Constitutional Law, Law of Crimes, International Law, Law of Evidence, Law of Torts, Law of Consumer Protection, Transfer of Property Act, labour law, Criminal Procedure Code, Law of Taxation, Civil Procedure Code, Environmental Law, Administrative Law, Books on Law in General, Land Law, Intellectual Property Law, Human Rights, Law of Arbitration, Cyber Law,

Labour and Industrial Law, Bare Act, Lok Adalat and general books. The librarians have tried their best to ensure up gradation of books to adhere to the needs of the users.



Seminar, Workshop, Conference

The college organizes regular seminars, workshops and conferences on current and relevant legal topics for developing the knowledge of our students and faculty members. Special workshops are arranged for the teaching faculties to develop their skills. Symposia and special classes are arranged from time to time for the students. Lectures by eminent speakers, academicians and practicing advocates are arranged periodically for the benefit of the students for their practical knowledge.

- UGC sponsored National Seminar dated: 23rd and 24th March 2012.
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Seminar, Workshop, Conference



SPORTS C L U B



Sports is an important part of the student life. We believe in fostering a healthy body and mind, which will prepare our students to take up any challenges, and in due course of time, be beneficial for the development of our country. We encourage each student to be associated with a particular sports, since it develops tenacity, nurtures team spirit, creates an alert and quick mind and fosters healthy sportsman qualities among the students. Our students have made remarkable achievements in the field of sports and have made our college extremely proud.



SPORTS COMMITTEE

Mr. Shibasish Banerjee
Co-Ordinator

Mrs. Moumi Banerjee
Mr. Rakesh Mukherjee
Suprin Roy
Shounak Mallick
Member

Sports Achievements

Sabyasachi Bhattacharya

Chess Champion, 'Rigolo' 2016.

Sabyasachi Samal

Carrom (Men), 2nd Runner Up, 'Umang' 2016.

Neha Payel Datta

Carrom (Women), Stood 4th, 'Umang' 2016.

Swaraj Ghosh -Captain

Calcutta University Inter College Cricket Tournament, 2016.
- Reached the 2nd round.

Shibashish Banerjee -Captain

Calcutta University Inter College Football
Tournament, 2016 - Reached the 1st round.

Sabyasachi Bhattacharya & Trinisha Chakraborty

Umang Chess Championship Qualifiers.

Kaushal Singh, Swaraj Ghosh, Imtiaz, Sampreet Das, Somraj, Suvajit Saha

2nd Runner Up, Tug of War.



SPORTS CLUB



Cultural Club

The cultural club is an attempt to make the member students well acquainted with the various cultural activities and in the process, facilitating others to join, participate and develop culturally. The cultural activity club aims to encourage student's interest, participation, and responsibility in the ingenious field through a medium of creative art and literary curriculum and



Scope. Our students have displayed a wide array of cultural process and have participated and won in several competitions, making our college extremely proud and famous.

COMMITTEE MEMBERS

Mr. Shibasish Banerjee

Co- Ordinator

Mrs. Moumi Banerjee

Mrs. Debjani Banerjee

Miss. Aankita Ganguly

Swaraj Ghosh

Member





Achievements

Sampreet Das

Bengali Creative Writing, Runner Up.

Mehraj Begum, Bidish Ghosh

Quiz, 2nd Runner Up, 'J.D. Birla Fest'.

Gourab Kumar, Subhajit Mukherjee,

Srijani Ghosh, Koustav Banerjee

Debate, Qualifiers.

Ratul Paul

Photography, 1st, Rigolo.

Joyraj Dhar

English Creative Writing, 2nd Runner Up, 'J.D. Birla Fest'.

Debosmita Ghosh

Classical Dancing (Solo), 1st, 'Jogesh Chandra Fest.'

Diptendu Mukherjee, Swarnavo Ghosh

'Umang Idol', 2nd Runner Up.

Subhamita Banerjee, Sreejita Bose

Antakshari, Qualifiers, 'Umang.'

Suprin Roy

'Umang Selfie', Runner Up.

Debjit Roy

Free Style Football, 3rd, 'Umang.'

Priyom Biswas, Diptendu Mukherjee,

Shiven Ray, Swarnavo Ghosh,

Subhamita Banerjee, Sreejita Bose

Western Band, 2nd, 'Umang.'

Champion

Fashion Show, 'J.D. Birla Fest.'

Shiven Ray

Meme Making, 1st, 'J.D. Birla Fest.'

Swarnava Ghosh, Subhamita Banerjee,

Sreejita Bose

Indipop Champions 2017 and 2019 Umang





Innaguration Ceremony of Lakhsya- 4,2017 in August Presence of Sri Sovan Chatterjee (Hon'ble Mayor), Kolkata Dr. Saugata Sen, Pro-Vice-Chancellor (Academic) University of Calcutta & Other Respected Guests.



College proudly acknowledge the promise made by Honourable MLA Smt. Naina Bandhopadhyay for providing a lift for the College and thankful to Honourable MP Sri Sudip Bandhopadhyay for the sanction of the fund of Rs. 36 Lakhs for restructuring of College Auditorium.



Union organize gala annul socia Lakshya at Netaji Indoor Stadium With reputed artists from Mumbai :

- Lakshya- 1 : Arijit
- Lakshya- 2 : Krishna Kant (KK)
- Lakshya- 3 : Arijit Singh
- Lakshya- 4 : Milka Singh, Palak Muchhal, Palash Muchhal
- Lakshya- 5 : Shreya Ghoshal





&



COMMITTEE MEMBERS

Mrs. Diyali Roy
Co- Ordinator

**Mrs. Sebonti Roy
Chowdhury
Sampreet Das**
Member

The debate and quiz club is one of the most dynamic clubs of our institution. We lay great stress on making our students both socially and politically aware as well as sensitizing them to the various issues that are prevalent in the world. We encourage our students to develop their perspective and analytical skills, together with their academic endeavours. Our students regularly take part in debate and quiz competitions and have won many awards and accolades, making our college very proud and famous.





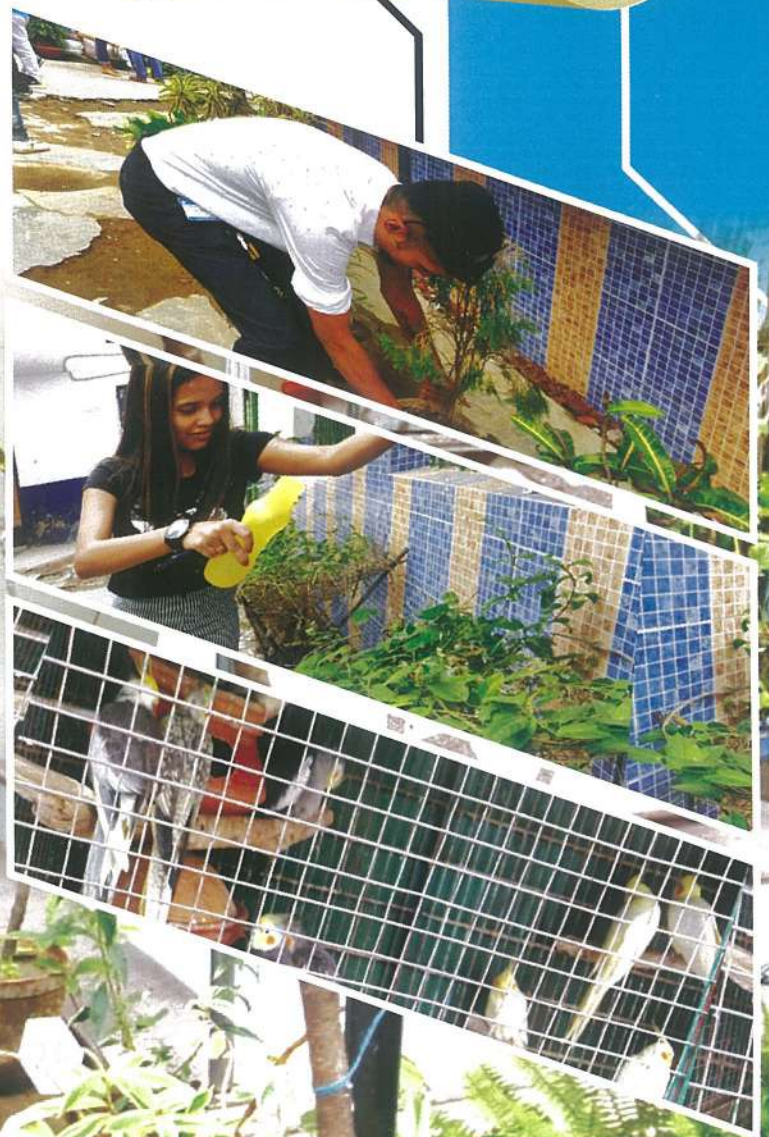
COMMITTEE MEMBERS

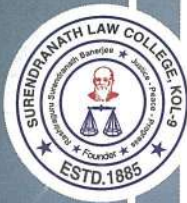
Mr. Subhra Bakul Karmakar
Co-Ordinator

Mrs. Moumi Banerjee
Member

Miss. Sanhita Mukherjee
Promila Mukherjee
Member

Being a college that promotes social awareness, we are committed to make our students sensitive towards the protection and conservation of the environment where we live in, and also educate our students regarding the intricacies of the environmental laws. Our students take active part in protecting the environment, by involving themselves in various cleaning, tree planting and awareness programmes.





MOOT COURT



COMMITTEE MEMBERS

Mrs. Avirupa Chatterjee

Co- Ordinator

Mr. Shibasish Banerjee

Mr. Imtiaz Ahmed

Member

The Moot Court of Surendranath Law College is a committee entrusted with the responsibility of administering mooting activities. Mooting as an activity can perhaps best be described as the closest one that comes to being a lawyer while still in law school - it involves identifying legal issues in situations, exhaustive research in that area of law, followed by extensive written submissions and gruelling orals before a bench of eminent judges, in short, everything a lawyer is expected to do.

Moot court involves appellate cases as opposed to those at the trial level, which are often called "mock trials." Moot court experience on a resume is typically considered to be more stellar than mock trial experience, although mock trial experience is better than none. The judges are usually law professors and attorneys from the community, but sometimes they're actually members of the judiciary. Moot court members research their respective sides, write appellate briefs and present oral arguments in front of the judges. Oral argument is typically the only chance an attorney has in an appellate court to verbally argue his case in person to a panel of judges, so moot court can be a great proving ground. Judges are free to ask questions at any time during the presentation, and students must respond accordingly. A profound understanding of the facts of the case, the students' arguments and their opponents' arguments are required. Moot court is modeled after the appellate procedure employed in state and federal courts. Moot court is sometimes confused with mock trials, a similar learning method by which students conduct a jury trial based on a hypothetical fact pattern. Where moot court emphasizes legal research, analysis, writing, and oratory, mock trials emphasize jury persuasion techniques and a thorough familiarity with the Rules Of Evidence.

The Convener of the Moot Court has been entrusted with the following duties :

- Planning, organising and executing the various moot court sessions.
- To ensure the maximum participation of students in the sessions.
- To organise extensive workshops and demonstrations to enable the students to learn the process of mooting from the very basics to the most intricate details.
- To frame rules and regulations for the internal moot court.
- To devise challenging cases, so that the students can be acquainted with innovative and improved legal methods.
- To hold sessions which are based on current and exceptional judicial cases.
- To encourage the students to inculcate a broader and unique perspective concerning legal matters.
- Preparing the students to successfully participate in several inter- and intra-level moot court session competitions held at the state and national levels.





Legal Aid

CLINIC

The Legal Aid Clinic exists with the sole aim of bridging the gap between what law promises to offer and the actual realities of law. It follows the model of good governance through citizen participation, which believes that good governance will come about only when citizens at all levels of our democracy effectively participate in it. All our students have to compulsorily take part in the legal aid clinic and assist their respective mentors. The legal aid clinic is organised periodically and students get a first hand knowledge and experience of the legal profession.



COMMITTEE MEMBERS

Mrs. Dipanwita Dutta Deb

Co-Ordinator

Mr. Shibasish Banerjee

Somrita Banerjee

Member





ALUMNI ASSOCIATION

Our college boasts of an active alumni association. The ex-students of our college have not only achieved significant success in their respective fields, but are also committed towards serving the society. The alumni members conduct regular meets. These meets serve an important function in rejuvenating old companionship and at the same time allows our alumni association to discuss their course of actions, that would make significant contributions towards the society. Our alumni association has already conducted numerous blood donation camps, free cloth and medicine distribution programmes, environmental campaigns and provide free legal service to the down-trodden, to name only a few of their works. Since our college continuously strives towards becoming a world-class institute, the alumni association has also made several contributions towards the development and progress of our college.

The students of our college can register themselves as alumni members with extreme ease by only filling-up and submitting an online form, through the college website. This has been done keeping in mind that our ex-students are spread all around the world.

We are extremely proud of the achievements of our students and look forward to their active participation and worthy suggestions to help us work towards improving our college.



A brief study on Nature and Definition of Partnership

Amrita Biswas
2nd Semester

The Indian Partnership Act, 1932 Section 4 of the Indian Partnership Act, 1932 defines 'Partnership' in the following terms :

"Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all" Partnership is a form of business in which two or more persons come together with their resources to invest in a common business with the purpose of sharing the profits of the business.

There are some limitations of Sole Proprietorship, viz., limited capital, no risk sharing, limited skill etc. Partnership is the solution to such problems faced by a sole proprietor. In a partnership a few persons can come together to start a new business with an agreement to share the profits and losses of the business.

According to Section 4 of the Indian Partnership Act, 1932, "Partnership is a relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all".

Thus, Partnership is the starting of a relationship among its members, i.e., the partners who have agreed to share the profits of a business to be carried on by all or by any of them acting for all. Here, we are giving some of the basic features of a Partnership Firm. In the absence of any of these features, a business cannot be termed as a partnership.

1. Two or more persons : Minimum number of persons to start a Partnership is two however, there is no maximum limit on the number of partners according to the Indian Partnership Act. But the Indian Companies Act has restricted the number of partners in a Banking Business to ten and for any other business it is 20.

2. Agreement among partners : Partnership comes into existence by an agreement among the partners willing to enter into a Partnership. The agreement can be written or oral. Partnership is not the result of any operation of law. It is the result of an agreement on the basis of which the rights and duties of the partners are defined.

3. Business : The purpose of a Partnership firm is to carry on a business. The business must be legal. Any agreement to share the profits of an illegal business is not Partnership. Also joint ownership of a property cannot be termed as Partnership. The business must be continuous in nature. Coming together for a single venture is not Partnership.

4. Agreement to share profits : In a partnership business the main aim of the partners is to carry on some business for the purpose of earning profits. They share the profits or losses of the business among themselves according to a predetermined ratio. If there is no agreement over the profit sharing ratio these are to be shared equally. A person not having the right to share profits cannot be called partner. However, the partners can agree that one or more partners among is not liable to share the losses.





5. Business is to be carried on by all or any of them acting for all : Each partner has the right to participate in the proceedings of the business. The business can be carried by one or more of them or by all of them. Some partners may be sleeping, i.e., they are not actively involved in the activities of the firm. Each partner is an agent as well as a principal. As an agent he can bind all the other partners by his acts. As a principal he is bound by the acts of the other partners.

ADVANTAGE OF PARTNERSHIP OVER A COMPANY

1. For the creation of partnership just an agreement between various persons is all what you require. In case of a company a lot of procedural formalities which have to be gone through before a company is created.
2. The partners are their own masters for regulating their affair. A company is subject to a lot of statutory control.
3. For dissolution of partnership, a mere agreement between the partners is enough but that is not the case of a company which can be wound up by only after certain set of procedure is followed.
4. Since all the profits are to be pocketed by the partners in a partnership firm, there is a great incentive for the partners to make business successful but that is not in case of a company.
5. In a Partnership the persons who have entered into are individually called partners and collectively a firm. A partnership firm does not have a separate legal personality. A company is a legal entity different from its members.
6. A partnership firm means all the partners put together, if all the partners cease to be partners, e.g., all of them die or become insolvent, the partnership firm gets dissolved. A company being a person different from the members, the members may come and go but the company's life is not affected thereby.
7. The shareholder of a company can transfer his share to anybody he likes but a partner cannot substitute another person in his place unless all the other partners agree to the same. Similarly, on the death of a member of a company his legal representatives will step into his shoes for the purpose of the rights in the company, but on the death of a partner his legal representatives do not get substituted in his place of partnership.
8. The minimum number of members in partnership in two and maximum in case of partnership carrying on banking business is 10 and in case of any other business is 20. In the case of a private company the minimum number is 2 and the maximum is 50 whereas in the case of a public company the minimum number should be 7 but there is no limit to the maximum number and therefore, any number of persons can hold shares in a public company.
9. The liability of the members of a company is limited but the liability of the partners is unlimited.

INDIAN PARTNERSHIP ACT, 1932 PREAMBLE SCOPE AND PURPOSE

The preamble is an admissible aid to construction. It throws light on

the intent and design of the legislature and indicates the scope and purpose of the legislation itself. But it cannot be used to control or qualify precise and unambiguous language of the enactment. It is only when there is a doubt as to the meaning of a provision, that recourse may be had to the preamble to ascertain the reasons for the enactment and hence, the intention of Parliament.

Scope: The scope of a partnership is primarily a question of the intention of the partners. There is no restriction on the exercise of such powers as it chooses at any time to exercise, except such prohibitions on illegal, immoral or fraudulent conduct as apply equally to individuals.

1- A partnership may itself be a member of another firm if the partners of the constituent firm consent thereto.

2- If it appears that all the partners have either authorized or ratified the contract, no further question as to its validity ordinarily remains. The cases where the question of the validity of partnership contract arises is where one partner has made the contract without specific authority from his copartners. As to their implied scope partnerships may be divided into the classes of the non-trading and the trading. Some powers can be exercised by partners in partnership of either type. Thus a partner may retain an attorney protect the interests of the firm.

Definition of Partnership: Section 4 of the Indian Partnership Act, 1932 defines 'Partnership' as under 'Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all '

Essentials Of Partnership : According to Section 4, the following essentials are necessary to constitute a 'Partnership'.

1. There should be an agreement between the persons who wants to be partners.
2. The purpose of creating partnership should be carrying on of business
3. The motive for the creation partnership should be earning and sharing profits.
4. The business of the firm should be carried on by all of them or any of them acting for all, i.e., in mutual agency

When all the above mentioned elements are present in certain relationship that is known as 'partnership'. Persons who have entered into partnership with one another are called individually 'partners' and collectively 'a firm' and the name under which their business is carried on is called the ' firm name'.

Elements Of 'Partnership':

The definition of 'partnership' contains three elements

1. There must be an agreement entered into by all the persons concerned.,
2. The agreement must be to share the profits of business ; and
3. The business must be carried on by all or any of the persons concerned, acting for all.



Illustrations :

- a) A and B buy 100 bales of cotton, which they agree to sell for their joint account. A and B are partners in respect of such cotton.[9]
- b) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.
- c) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked on by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

Partnership Agreement - Oral, Written or By Conduct

The Supreme Court has, construing the provisions of section 4, observed that a partnership agreement is the source of a partnership, and it also gives expression to the other ingredients defining the partnership, specifying the business agreed to be carried on, the persons who will actually carry on the business, the shares in which the profits will be divided, and several other considerations which constitute such an organic relationship. A partnership agreement therefore, identifies the firm and each partnership agreement may constitute a distinct and separate partnership. That is not to say that a firm is corporate entity or enjoys a juristic personality in that sense. However, each partnership is a distinct relationship. The partners may be different and yet the nature of the business may be the same, the business may be different and yet the partners may be the same. The intention may be to constitute two separate partnerships and therefore, two distinct firms, or to extend merely a partnership, originally constituted to carry on one business, to the carrying on of another business. The intention of the partners will have to be decided with reference to the terms of the agreement and all the surrounding circumstances, including evidence as to the interlacing or interlocking of management, finance and, other incidents of the respective business.

Agreement of partnership need not to be express, but can be inferred from the course of conduct of the parties to the agreement. The firm rule is that once the parties entering into the partnership are clearly described in the instrument, there is no scope for further inquiry to find out by some process or casuistry, if any of the parties has got obligation to others for the purpose of inducting those others to whom any of the parties may be accountable in law, into the arena of partnership and for treating them as partners under the law. If, the parties to an agreement have not agreed on the date of commencement of the partnership, it cannot be said that they have become partners.

The Supreme Court, in **Tarsem Singh v Sukhminder Singh** has held that it is not necessary under the law that every contract must be in writing. There can be an equally binding contract between the parties on the basis of oral agreement, unless there is a law which requires the agreement to be in writing.

The relations inter se, among the promoters of a company, are not the same as the relations between partners. Persons entering into contract are not, on the authority of **Keth Spicer Ltd v Mansell**,

necessarily to be viewed as partners. However, if they perform a large number of acts as part of the promotion, the court might come to a different conclusion.

Construction Of Partnership Agreements :

It is settled canon of construction that a contract of partnership must be read as a whole and the intention of the parties must be gathered from the language used in the contract by adopting harmonious construction of all the clauses contained therein. The cardinal principle is to ascertain the intention of the parties to the contract through the words they have used, which are key to open the mind of the makers. It is seldom that any technical or pedantic rule of construction can be brought to bear on their construction. The guiding rule really is to ascertain the natural and ordinary sensible meaning to the language through which the parties have expressed themselves, unless the meaning leads to absurdity. A partnership deed must be constructed reasonably.

Determining The Existence Of Partnership :

In *Ross v. Parkyn & Jessel, M.R.*, stated the law as follows : " It is said (and that there is no doubt) that the mere participation in profit inters se affords cogent evidence of partnership. But it is now settled by the case of *Cox v. Hickman, Buiier v. Sharp* that although a right to participate in profits is a strong test of partnership, and there may be cases where upon a single presumption, not of law, but of fact, that there is a partnership, yet whether the relation of partnership does or does not exist must depend upon the whole contract between the parties, and that circumstances is not conclusive." The law as stated above has been restated in this section.

The section also indicates the manner in which the general principle to be applied to a particular circumstances. The question whether the relation of partnership does or does not exist must depend on the real intention and contract of the parties.

Explanation I - The mere fact that a person is entitled to a share in the profits does not make him a partner, because the real relationship may be one of debtor and creditor.

Importance of Partnership:

A Partnership Agreement is a voluntary contract between two or more persons to enter into a business relationship between or among one another with the intention of carrying out the said business and sharing its profits/losses among themselves as agreed to in the document.

The parties to the agreement are referred to as Partners. The Partners agree to put all their capital, labour and skills towards achieving maximum gains from the venture. A Partnership Agreement will also spell out the manner in which it may be dissolved and must be signed and followed by each of the Partners.

A Partnership Agreement is defined as being an arrangement that is agreed to by all parties to the transaction and is an effectual method of helping each of the partners to:

- Agree to share a vision to collaborate together



- Set up mutually acceptable goals
- Specify the basis on which to begin working together
- Make sure that each of the partners are dear about about what needs to be achieved
- Assess the effectiveness of the agreement
- Bring out issues related to accountability and responsibility
- Lay a strong foundation that can sail through difficulties and testing times ahead

A partnership should begin small and slowly expand. It should be growing from year to year with annual reviews along the way to continuously improve it. There is no hard and fast way of writing out a Partnership Agreement but face to face discussions among partners, specifying special issues and setting these down in writing before actually drafting them into the document are some worthwhile preliminary steps worth following. The document and any changes thereto, should be formally approved and signed by all the partners and dated.

The Partnership Agreement should begin with the name of the business as well as the nature of the business. The principle place of business should be to the address of the place of business. The date when the arrangement was made between the Partners and the term of its operation need to be expressly laid down in the agreement.

The amount of capital that the Partners will invest in the business will be held in a separate capital account and neither of the Partners will be able to withdraw any money from it. And, finally each individual capital account will be maintained in accordance with the profit sharing capabilities of the Partners as set forth in the agreement.

The income statement of the partnership shall be made individually in the names of each Partner and the profits/losses will be shared in accordance with the terms agreed to by each individual. Partnership profits or losses will be charged to the individual income accounts of the Partners. Partners are not entitled to draw any salary, but may draw upon their income accounts for any monies needed as defined in the partnership agreement.

The partnership may be voluntarily dissolved at any time with the mutual consent of the partners. In such an eventuality, the withdrawing partner should move reasonably swiftly to facilitate the liquidation. In case a partner was to die, the remaining partners will have the option to either liquidate the partnership or to buy out the share of the deceased partner.

CONCLUSION & SUGGESTION :

In my opinion Partnership is very important because in day to day activities we enter into partnership agreements and by making partners big goals are achieved with the help of joint and more number of people. The joint efforts of ail the member results in successful accomplishment of tasks and that task or job can be easily afforded. Division of work leads to increase in efficiency at work among different partners.

When some job is done by consent of all the members and if some profit is earned then it is shared among the different partners. And similar is the case when some loss occurs then that is also beard among all the members and its not that only one has to take responsibility or give compensation. So in my view Partnership is a good form of doing business than a company which is owned by a single person.

Partnership is one of the oldest forms of business relationships. Though limited liability companies have replaced partnership firms in complex businesses, partnerships are still preferred by professionals and small trading and business enterprises in India and abroad.

The Indian partnership act of 1S32 provides for a general form of partnership which is the most prevalent form in India, but, over time the general form of partnership has lost its charm because of the inherent disadvantages in it, the most important is the unlimited liability of all partners for business debts and legal consequences, regardless of their holding, as the firm is not a legal entity.

General partners are also jointly and severally liable for tortuous acts of copartners. Each partner has the exposure of their personal assets being appropriated and liquidated to meet partnership dues. These are statutory position, which cannot be altered by contract inter-se, though at times subterfuges are resorted to by unscrupulous partners to avoid personal liability.

General partnership holdings are not easy to transfer; typically all other partners have to agree. Yet partnership is preferred in India, because of the ease of formation and lack of compliances involved.

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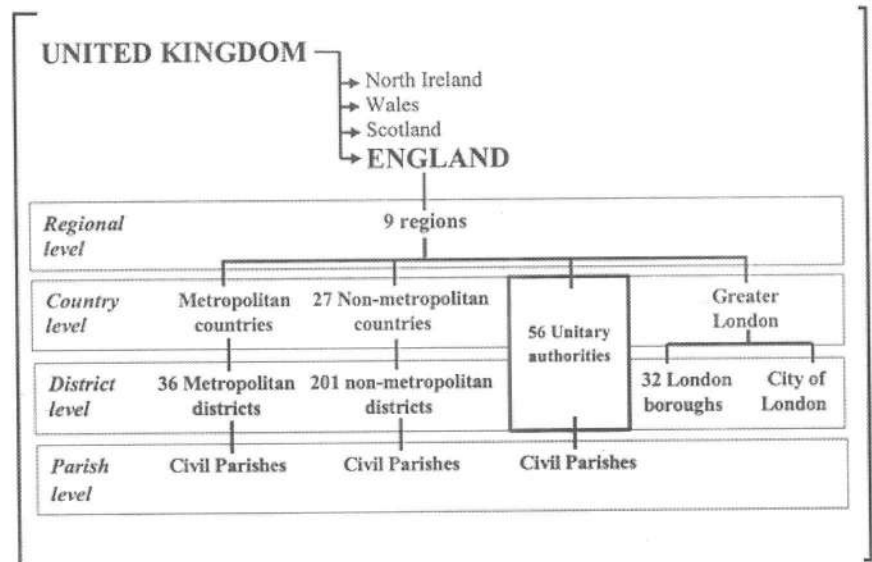
A COMPARATIVE STUDY BETWEEN UNITARY AND FEDERAL FORMS OF GOVERNMENT

Somnath Das

2nd Semester

INTRODUCTION

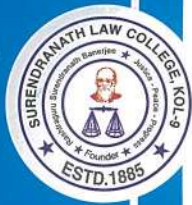
One of the main distinction among types of governments is between unitary and federal systems. Both systems can refer to democratic or monarchic governments, but they are intrinsically different. As the name suggests, the unitary government entails the centralization of power in the hands of the central government, which does not delegate tasks and responsibilities to other members of the state. Conversely, in a federal system, regions and provinces enjoy a higher degree of autonomy. In today's world, we see various examples of both systems working and ensuring stability and prosperity. For instance, the United States and Switzerland are two examples of the efficiency of the federal system (while in Sudan and Pakistan such system is not as efficient), whereas Italy and Norway have successful unitary governments. To date, most governments are unitary, while there are currently 27 federal systems.



UNITARY FORM OF GOVERNMENT

A unitary government can be both a democracy and a monarchy. In both cases, the power is concentrated in the hands of the central government, while provinces and regions do not enjoy large autonomy. The underlying principle of any unitary government is the idea of unity. If the power is in the hands of few (even if those few are elected by the population), it is easier to create cohesive and equal laws and norms that apply to all citizens (in all parts of the country) without discrimination.

Some believe that citizens do not have much say in unitary systems,



The link between local authorities and central government is usually very strong, although not all federal systems work in the same way. Of the 27 federations existing today, most are republics and democracies (i.e. United States, Switzerland, India, Brazil, etc.) but there are also some monarchies, such as Canada, Belgium and Australia.

SIMILARITIES BETWEEN UNITARY AND FEDERAL FORM OF GOVERNMENT

Although the unitary and federal government are very different and are based on contrasting principles, we can identify few common aspects between the two systems:

- 1) The unitary and the federal government can be both monarchies and democracies. Although the unitary system is more suitable for a monarchy (the power is concentrated in the hands of the ruling family), most modern monarchies (i.e. United Kingdom, Australia, Canada, etc.) employ a federal system;
- 2) In both cases, the central government maintains control over key issues. Even in federations, in fact, the central government is in charge of international relations and diplomacy, taxes, budget allocation and national security; and
- 3) Both systems can promote stability and prosperity. The unitary government does so by promoting equality and cohesion across the nation, while the federal government does so by promoting specific regulations that better capture local needs and that are more suitable for minority groups.

DIFFERENCE BETWEEN UNITARY GOVERNMENT AND FEDERAL GOVERNMENT

The debate on unitary and federal governments has been explored by scholars and academics and has been reinterpreted by Arend Lijphart who mainly focused on democratic systems and analysed the difference between Westminster and Consensus democracies.

The first term refers to the majoritarian model exemplified by the British parliamentary and governmental institutions. This system is based on the concentration of the executive power in the hands of one party, cabinet dominance, a majoritarian and disproportional system of elections, a unitary and centralized government, constitutional flexibility and the state's control over the central bank. Conversely, the second term refers to a different model of democracy characterized by executive power-sharing in broad coalitions, a multiparty system, proportional representations, federal and decentralized government, constitutional rigidity, and an independent central bank. And that is, therefore, more adapted for heterogeneous societies. In other words, Lijphart analysed the difference between unitary and federal democracies. If we broaden the scope of the comparison, we can identify more differences between the two government:

1) Efficiency of Unitary Government and Federal Government;

Some believe that a unitary and cohesive country is more

efficient and that a centralized government is able to make decisions and implement laws and regulations in a more effective manner. At the same time, others argue that a decentralized system can respond to the needs of all citizens in a more adequate way. Indeed, in unitary systems, the decision-making process is faster and (often) smoother, but, at the same time, there might be less transparency. Unitary governments do not have duplications (whereas federal systems do) and reduce bureaucratic and administrative processes to the minimum. Conversely, federal systems tend to take longer to make decisions, to adopt or reject new laws, and to implement political and social changes;

2) Participation of Unitary vs. Federal Government: In a unitary democracy (as well as in some modern monarchies), citizens have the possibility of electing their representatives and popular participation is allowed and promoted by the government itself. Yet, federal systems allow for a broader popular engagement. For instance, in most federal republics, citizens can elect their representatives at a local and state level but can also participate in the election of the president or head of the state;

3) "Involvement in the economy" of Unitary and Federal Government:

The degree of governmental involvement in the economy varies from country to country. In some cases, federal systems allow for more autonomy even in the economic sphere, while on other cases the central government uses its local subsidiaries to keep a closer look on private businesses. In general, private entrepreneurship tends to be more challenging in unitary states.

Unitary vs Federal Government: Comparison chart

Building on the differences outlined in the previous section, we can identify few other aspects that differentiate federal and unitary governments.

<p>Hierarchy</p>	<p>The power is in the hands of the central government, which shares it with its subsidiaries (local authorities) only when needed. In unitary systems, the judiciary may or may not be able to interfere in the governments activities and may or may not be able to overturn governments decisions.</p>	<p>In federal systems, there is a clear hierarchy of power from central to state to local level. Furthermore, the central government can never (or only in extreme situations) take the power away from local authorities. In federal systems, the judiciary can often interfere with the governments decisions and can overturn those deemed unconstitutional.</p>
<p>Diversity and inclusiveness</p>	<p>By promoting equal and comprehensive laws and regulations, unitary governments often fail to capture the uniqueness of social and ethnic minorities. In unitary systems, the needs of smaller communities are often overlooked or ignored.</p>	<p>Federal governments have the ability and the possibility of creating rules and regulations that capture the uniqueness of minority groups and local communities. A federal system can better serve diverse interests and needs.</p>



COMPARATIVE STUDY BETWEEN UNITARY AND FEDERAL FORM OF GOVERNMENT

Federal and unitary governments are two of the most common ways in which countries can be organized. While in a unitary system the power is concentrated in the hands of the central government, in a federal system power and authorities are shared among central, regional and local authorities. The two systems are based on different principles. The unitary government aims at creating a cohesive and unified country, whereas the federal system creates laws and regulations that better capture the needs and interests of local communities. Both federal and unitary governments can be either democracies or monarchies, although the unitary system is often associated with a more authoritarian type of governance, while the federal system is often associated with democratic ideals. Today, most countries have unitary governments but there are 27 federal governments all across the world, with the United States being the most famous example.

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THE ROLE OF PUBLIC OPINION IN A DEMOCRACY

Anirban Ghosal
2nd Semester

THE ROLE OF PUBLIC OPINION IN A DEMOCRACY

Public opinion is the aggregate of individual attitudes or beliefs held by the people. It can also be defined as the complex collection of opinions of different people and the sum of their views. Public opinion as a concept gained prominence with the rise of various political movements in the 18th century.

According to Lord Bryce, "Public opinion is commonly used to denote the aggregate of the views men hold regarding matters that affect or interests the community. Thus understood, it is a mixture of all sorts of different notions, beliefs, fancies, prejudices, aspirations."

Nowadays public opinion is regarded as a great social and political force. It is an accepted fact that political parties create, mould and direct public opinion in order to capture power. Any ruling party that neglects or overlooks public opinion cannot continue for long in power. In short, public opinion is the basis, if not the bastion of democracy.

NATURE OR FEATURES OF PUBLIC OPINION

1. Public opinion need not necessarily be a majority expressed universal and unanimous expression. Though a small section of people hold a different point of view still public opinion is valid if it is held by the largest measure of community.
2. It is not imperative that every part of the country should hold the same opinion as a public opinion. It is enough that by and large the entire community holds the same or similar impressions as public opinion.
3. It is the opinion held by a substantial body of citizens 'and is accepted by the fairly substantial, significant and overwhelming majority of the people.
4. It always aims at promotion of common good. The, subject-matter of public opinion must be of general interest concerning the welfare of all. The interests of a few individuals, or a small group, or an insignificant section of-the people, however powerful they might be, cannot constitute public opinion. It is not selfish but motivated by the welfare of all based on reason and conviction.
5. The public opinion is rational when the demands of the public opinion are based on reason, justice, good faith and fair play.
6. It is emotional when public opinion is spontaneous, based on impression, feelings, sentiments and passions stirred by the powerful orators.

ORIGIN OF THE CONCEPT OF PUBLIC OPINION

We do not know when exactly the term 'public opinion' was first use





but, similar terms were in use in ancient and medieval times. Ancient Romans spoke of 'consensus populi'. In the Middle Ages the saying 'vox populi vox Dei' (voice of the people is the voice of the God) became popular. Machiavelli also approved of this saying. The credit goes to Jean Jacques Rousseau for first using the term 'public opinion' during the French Revolution. It became popular as 'general will'. Subsequently it became popular and powerful in every democracy in general and in England and the U.S.A in particular. Public opinion played an important role in the revolutions of England and America in democratizing the operation of political systems.

HOW PUBLIC OPINION IS FORMED

The process of formulation of public opinion is complex. The public opinion takes its birth generally with conversation, gossip or some suggestions thrown by some thinkers while writing. Politicians, journalists and people engaged in active political affairs pass their judgement on the current events and trends in the political realm. After ascertaining the facts they put forward their judgement either in favour of or against the issue. These thoughts or judgements are communicated to the masses by means of mass communication such as newspapers, radio, T.V and literature. A considerable section of public read or hears these arguments, analyze them and after that they accept them totally or reject them totally. Public opinion can be easily be moulded by slogans, appeals and propaganda among masses.

FACTORS OR CONDITIONS FAVOUR THE FORMATION OF SOUND PUBLIC OPINION

1. An educated society is needed. People should have the capacity, interest and the freedom of thinking. Literacy is different from education. Educational institutions are most suitable instruments of imparting information, understanding and fellowship among the individuals of different sections of the society.
2. People should be politically alert. A keen and consistent interest in the matters of public importance is a contributory factor necessary for the formation of sound public opinion.
3. The active political participation of 'political elite' is conducive for the formation of sound public opinion.
4. Articulation of free and fair public opinion is possible largely through interaction among the various sections of the people.
5. The sound public opinion depends mostly upon the quality and character of political leaders.
6. The people must come forward to suggest the solutions for the conflict resolution of national problems.
7. There should be common interests.
8. There must be deep rooted democracy which protects the civil liberties.
9. The society should not be a traditional tribal one but must be modern society which faces economic, social and political problems in the developmental process.

DIFFERENT AGENCIES FOR MOULDING PUBLIC OPINION

The following are the important agencies of public opinion:-

1. **Political parties and associations** Each political party with the ultimate aim of capturing power, places facts, figures and comments before the public so that the public becomes convinced about the correctness of its stand on public issues. The political parties explain to the people the problem facing the nation. While the ruling party explains the policy of the government, the opposition places before the public the mistakes of the government. Associations also play a conspicuous role in the growth of public opinion. Different associations of interest groups or pressure groups, after articulating their sectional interests, make the public aware of the policies formulated by the government. The peasant organizations, trade unions, chambers of commerce and industry have become quite active in influencing the public.
2. **Public platform** Public meetings are forms of discussion. They provide opportunities to both the supporters and opponents of the government to speak freely with the people. Every speaker puts forth his views before the people can convince them that his stand is correct. It is felt that a speaker can conveniently touch public sentiments and feelings according to his way of expression and oratory. He can bring life and change the whole atmosphere and opinion by his way of expressing the problem in a lucid and clear way. The public gets the advantage of listening to different people representing divergent views and attitudes on matters of public importance and state policy.
3. **The press** The press is the most important agency for the formation and expression of public opinion. It provides news and information on matters of national and international importance. It publishes statements of leaders and the proceedings of legislatures and public meetings. It criticizes the policies and programmes of the government if they are defective. It offers constructive suggestions for improving administration. It ventilates the grievances of the people. It publishes the opinion of the public on current issues on editorial page. It acts as an organ of expression of public opinion and also the moulder of public opinion.
4. **Radio, T.V and cinema** The radio moulds public opinion by broadcasting news. It invites public leaders, arranges talks and discussions on matters of national importance and in recent years, television has become the most potent media of publicity and propaganda. It has been able to reach the rural folks too and is playing a vital role in educating the illiterates also.
5. **Legislature** The discussion among the groups in the legislature have immense educational value in promoting public opinion. The speeches of the members belonging to the ruling as well as opposition parties and their activities generate considerable public interest, person closely following them will be in a position



to know facts and judge the caliber of the government and of the opposition. The legislators are considered as "mirrors and moulders of public opinion".

6. Libraries and literature Libraries are the treasures of knowledge. They contain not only newspapers but also periodical literature like the journals, magazines, weeklies, etc. and a number of books on various subjects. They play their role in the making and unmaking of public opinion.

IMPORTANCE OR ROLE OF PUBLIC OPINION

1. Controls the government It is remarked that an alert and enlightened public opinion is the first essential of democrat It makes and breaks the government. No government, whatever its nature may be, can dare to go against the public opinion as it can remove it. In brief it acts as the watch-dog of administration.
2. Influences governmental policies Public opinion does not allow the government to pass those laws which are against the interests of the people. The government has to frame its policies, programmes and laws in accordance with the wishes of the people. Sometimes the government is forced to alter or abolish its policies and laws in a manner which is popular with the people.
3. Makes law successful The success or failure of laws of the government depends upon the opinion of the people. If laws are based upon people's wishes, their implementation becomes very easy. Hence, for the successful implementation of the laws and developmental activities, the government has to take into account the opinion of the people.
4. Protects Liberty Public opinion is the only means to check against the despotic tendencies of the government. It keeps the rulers on the right track and protects the liberty of the people. Where there is strong and enlightened public opinion, there the liberty of the individual is safeguarded.
5. Reflects the need of the people Public opinion reflects the needs, problems and aspirations of the people living in the different parts of the country. The government should be alive to the public opinion and act accordingly.
6. Social forces Public opinion is a strong social force in the modern democratic states. The legislators cannot win in elections again if they ignore public opinion.

FAMILY LAW-II
[COMMENT ON THE NATURE
OF MUSLIM MARRIAGE]

Priyabrota Das
2nd Semester

INTRODUCTION

Marriage, i.e., *Nikah* in pre-Islamic Arabia, meant different forms of sex relationship between a man and a woman established on certain terms. In pre-Islamic days, women were treated as chattels, and were not given any right to inheritance and were absolutely dependent. It was **Prophet Mohammad** who brought about a complete change in the position of women. The improvement was vast and striking and their position is now unique as regards their legal status. **Prophet Mohammad** placed women on a footing of almost perfect equality with men in the exercise of all legal powers and functions, which stand in hold relief when compared with the state of law amongst the ancient Arabs of the pre-Islamic days. Under the Muslim law marriage is considered as civil contract. After marriage, woman does not lose her individuality. She remains a distinct member of the community; her existence of personality is not merged into that of her husband. The contract of marriage gives no power to anyone over her person or property beyond what the law defines. Woman remains the absolute owner of her individual rights; even after marriage, she can alienate or transfer her property in any way she pleases without any extraneous control of her husband. She can enter into binding contracts with her husband and proceed against him in law courts, if necessary. The woman enjoys this position through the injunctions of *Quran*.

DEFINITION OF MARRIAGE (NIKAH) : -

The Arabic word *Nikah* (marriage) literally means the union of the sexes and in law this term means "*marriage*". In **Baillie's Digest**, marriage has been defined to be "*a contract for the purpose of legalizing sexual intercourse, and procreation of children*".

In **Hedaya** it is defined as, "*Nikah in its primitive sense, means carnal conjunction. Some have said that it signifies conjunction generally. In the language of law it implies a particular contract used for the purpose of legalizing generation*".

Ashabalt says : "*Marriage is a contract underlying a permanent relationship based on mutual consent on the part of a man and woman*".

The **Prophet of Islam** is reported to have said : -

"Marriage is my Sunna and those who do not follow this way of life are not my followers",
and that-

"There is no monkery in Islam".

In *Shoharat Singh v. Jafri Begum [Qureshi (MA) : Marriage and Matrimonial Remedies, (1978) p. 43J* the Privy Council said that





Nikah (marriage) under the Muslim law is a religious ceremony. The sanctity attached to the institution of marriage in the Islamic system has neither been comprehended nor sufficiently appreciated by outsiders. Marriage is recognized in Islam as the basis of society. It is a contract but it is also a sacred covenant. Marriage as an institution leads to uplift of man and is a means for the continuance of the human race. The main aim of the institution of marriage is to protect the society from foulness and unchastity. It has also been said that marriage is so holy a sacrament, that in this world it is an act of *Ibadat* or worship, for it preserves mankind free from pollution.

*There is a consensus of Muslim jurists that marriage is **Smmat Muwakkida**. A **Sunnat Muwakkida** is defined, "the person who complies with it, is rewarded in the next world, and he who does not, commits a sin".*

According to **Ameer Ali**, marriage is an institution ordained for the protection of the society and in order that human beings may guard themselves from foulness and unchastity.

According to **Justice Mahmood**, "Marriage among Mohammedan is not a sacrament, but purely a civil contract".

Thus, marriage, according to Muslim Law, is a contract for the purposes of legalization of intercourse, procreation of children and regulation of social life in the interest of society by creating : -

- (i) the rights and duties between the parties themselves, and
- (ii) between each of them and the children born from the union.

According to **Tyabji** : "Marriage brings about a relation based on and arising from a permanent contract for intercourse and procreation of children, between a man and a woman, who are referred to as 'parties to one marriage' and who after being married, become husband and wife."

Objects of Marriage:- A glossary on **Tarmizi** sets out five objects of marriage -

- (1) the restraint of sexual passion;
- (2) the ordering of domestic life;
- (3) the increase of the family;
- (4) the discipline of the same in the care and responsibility of wife and children; and
- (5) the upbringing of virtuous children.

Hedaya speaks of the ends of marriage as (i) cohabitation, (ii) society and (iii) equal friendship.

The Prophet said : "Men marry women for their piety, or their property, or their beauty, but you should marry for piety". (**Tarmizi**).

NATURE OF MUSLIM MARRIAGE

There is divergence of opinion with regard to the nature of Muslim marriage. Some jurists are of the opinion that Muslim marriage is purely a civil contract while others say that it is a religious sacrament in nature. In order to better appreciate the nature of Muslim marriage it would be proper to consider it in its different notions.

Muslim marriage, by some text writers and jurists, is treated

as a mere civil contract and not a sacrament. This observation seems to be based on the fact that marriage, under Muslim law, has similar characteristics as a contract.

For instance : -

1. As marriage requires proposal (*Ijab*) from one party and acceptance (*Qubul*) from the other so is the contract. Moreover, there can be no marriage without free consent and such consent should not be obtained by means of coercion, fraud and undue influence.
2. Just as in case of contract, entered into by a guardian, non attaining majority, so can a marriage contract in Muslim law, be set aside by a minor on attaining the age of puberty
3. The parties to a Muslim marriage may enter into any ante-nuptial or postnuptial agreement which is enforced by law provided it is reasonable and not opposed to the policy of Islam. Same is the case with a contract.
4. The terms of a marriage contract may also be altered within legal limits to suit individual cases.
5. Although discouraged both by the holy Quran and Hadith, yet like any other contract, there is also provision for the breach of marriage contract.

The analogy of marriage contract with contract of sale as pointed out by Justice Mahmood in the leading case of *Abdul Kadir v. Salima* [(1886) 8 All 149.] and Justice Mitter in Subrunnisa's case also emphasize the contractual aspect of Muslim marriage.

Describing the nature of Muslim marriage, Justice Mahmood observed : -

"Marriage among Muhammedans is not a sacrament, but purely a civil contract; and though it is solemnized generally with the recitation of certain verses from the Quran, yet the Muhammedan law does not positively prescribe any service peculiar to the occasion. That it is a civil contract is manifest from the various ways and circumstances in and under which marriages are contracted or presumed to have been contracted. And though a civil contract, it is not positively prescribed to be reduced to writing, but the validity operation of the whole are made to depend upon the declaration or proposal of the one, and the acceptance or consent of the other contracting parties, or of their natural and legal guardian before competent and sufficient witnesses; as also upon the restrictions imposed, and certain of the conditions required to be abided by according to the peculiarity of the case " [*Abdul Kadir v. Salima, (1886) 8 All. 149.*].

From the above observation Justice Mahmood could not be held to have taken the view that Muslim marriage is nothing but purely a civil contract. Yet its obiter dicta carries the legal sanctity of ratio decidendi. When he approves of Baillie's view that marriage is also form the solace of life, he is himself highlighting another aspect of marriage, that is, its social aspects.

The dower (mahr) in Muslim marriage should not be confused with consideration in the context of civil contract. Justice Mahmood



has himself cautioned when he says in the same case : -

"Dower, under the Mohammedan law, is a sum of money or other property promised by the husband to be paid or delivered to the wife in consideration of marriage. "

In *Hedaya* it is laid down, "The payment of dower is enjoined by the law merely as a token of respect for its object (the woman), wherefore the mention of absolutely essential to the validity of a marriage, and, for the same reason, a marriage is also valid, although the man were to engage in the contract on the special condition that there should be no dower. "

Thus we see that the similarities of a Muslim marriage to a contract are so pronounced that some jurists have treated entirely as a civil contract.

Another view is that marriage is not purely a civil contract but a religious sacrament too. Though sacramental nature of marriage is considered as an orthodox view but it is also supported by the Judiciary. *Anis Begum v. Mohammad Istafa [(1933) 55 APP 743]* is a leading case on the point where C.J. Sir Shah Sulaiman has tried to put a more balanced view of the Muslim marriage by holding it both a civil contract and a religious sacrament.

While reviewing the **Abdul Kadir's** case, Justice Sulaiman in *Anis Begum's* case observed : "It may not be out of place to mention that **Maulvi Samiullah (D. J. Raibareilly)** collected some authorities showing that marriage is not regarded as a mere civil contract but as a religious sacrament. Though the learned C.J. does not himself say that marriage is a sacrament, but from the context in which he said, it is clear that he supported the view of **Maulvi Samiullah**.

Taking religious aspect into account Muslim marriage is an *ibadat* (devotional act).

The **Prophet** is reported to have said that marriage is essential for every physically fit Muslim who could afford it. The *Prophet* says "O assembly of youths, whoever among you is able to have, he should marry, for it is a restraint to the looks and he who is not able let him keep fast".

Moreover, the following traditions may also be considered : - "He who marries completes half of his religion it now rests with him to complete the other half by leading a virtuous life in constant fear of God."

"There is no monkery in Islam

"There are three persons whom the Almighty himself has undertaken to help, first, he who seeks but his freedom, second, he who marries; and third, he who fights in the cause of God".

".....Whoever marries a woman in order that he may retain his eyes-God putteth a blessedness in her for him, and in him for her. The *Prophet* is reported by some of the writers to say that marriage is equal to *Jehad* (holy war); it is sinful not to contract a marriage; it is a *Sunnah*; and it is obligatory on those who are physically fit".

"There is no act of worship except marriage and faith, which has

continued from the days of Adam and which will continue in paradise as well".

Prophet again stated that -

"I keep fast and break it. I pray and I sleep and I am married, so whoever inclines to any other way than my Sunnah, he is not of me

This is because marriage elevates the moral and spiritual standard of man. *Nikah* is my precept. Those of you who are unmarried, are the unworthy of the deed.

Mohammad Ali says that the contract of marriage is sanctified by a sermon before the parties announce their acceptance. He says that the *Khutbali* or sermon at marriage helps the publicity of the marriage and serves the double purpose of sanctifying the marriage contract and informing the parties of their responsibilities. This creates a sort of feeling in true Muslim to observe the sacred marriage tie in its spirit and essence and not to make a mockery of it.

If marriage is nothing but a civil contract, then keeping in view the above traditions we could say : "He who enters into a civil contract completes half of his religion, the Almighty Himself has undertaken to help the person who enters into a civil contract; civil contract is equal to *jeliad*; it is obligatory on every physically fit Muslim to enter into a civil contract; and so on. All these inferences are patent absurdities.

It means Muslim marriage is something more than a civil contract. In the words of Baillie, marriage is "for the solace of life.... it is therefore lawful in extreme old age after hope of offspring has ceased, and even in the last or death-illness."

Justice Mahmood's observation i.e., marriage is a civil contract cannot be appreciated only because that upto some extent marriage resembles with civil contract. After observing minutely it will be found that besides some similarities there are so many basic differences between the two. For instance :

Muslim marriage is not merely a civil contract, because : -

(i) unlike civil contract, it cannot be made contingent on future event; and

(ii) unlike civil contracts, it cannot be for a limited time (mum marriage is an exception);

(iii) unlike civil contract, the analogy, of lien cannot be applied to a marriage contract. Secondly, the contract of sale of goods may be cancelled by unpaid seller. He may resell the goods by rescinding such contract, whereas in a contract of marriage, the wife is not entitled to divorce her husband or to remain with a third person if a part of his dower remain unpaid. Thirdly, taking into account the view of Justice Mitter that marriage among Muslim is nothing but a contract for sale of goods there are buyer and seller in a contract of sale and the subject- matter is goods; whereas, in a contract of marriage, the wife herself is to receive dower and not her parents then who is seller and what has been sold. Let us suppose that woman is seller and woman's personality is the thing to be sold. This



is against the basic principles of natural justice for, no one is entitled to sell his or her personality.

One may conclude the nature of Muslim marriage by the observation of **M.C. J. Jung** : "*Marriage is an institution of Ibadat clothed in the legal form of contract regulating sexual intercourse; but its continuance is dependent upon the maintenance of conjugal affection*". In the ultimate analysis it can be said that the marriage in Islam is neither purely a civil contract nor as a sacrament. It is devoid of none but the blending of the two.

A Muslim marriage differs from marriage under English law. A marriage English law is no doubt also a civil contract but it differs from a Muslim in that it is essentially a monogamous institution. It was observed in *Hyde v. Hyde [(1866) L and D. 130]* that an English marriage is "*the voluntary union of one man one woman to the exclusion of others.*" This rule of exclusion applies to the as well as to the female; while under Muslim law, only the female is subject to the rule, male being at liberty to take as many as four wives at a time. Again English Law recognizes the doctrine of covertures, whereas Muslim Law does not.

IMPLICATION OF THE EXPRESSION "EQUALITY BEFORE LAW AND EQUAL PROTECTION OF LAW"

Manisha Shome

4th Semester

Article 14 of the Constitution of India says that State shall not deny to any person before the law or the equal protection laws within the territory of India.

- I. Article 14 of constitution of India states Equality before law which means that no one is above the law of the land. Thus it has slightly negative connotation. It means that law does not discriminate on the basis of birth, position, gender or other personal attributes. Thus, privileged, underprivileged and unprivileged are equal before law.
- II. Article 14 of constitution of India states *equal protection of law* which means every person will be **protected** equally. Here what makes the difference is the word "protection". that means, law will provide protection (facilities) to every person according to their situation in the scenario, that further establishes the ground for reservation or quota system, to bring up the suppressed group. For example, a well earning person don't need subsidies but a lower middle class family needs it. So, government provides subsidy to lower middle class people to help them lower their financial burden. Hence it is called the protection by law, to help suppressed people stand on the same platform as others.

The concepts of 'Equality before Law' and 'Equal Protection of Law' are comprised in Article 14 - Right to Equality in the Indian Constitution. While the originating concept is the same, i.e., every citizen of India is equal in all aspects, however, the two above-mentioned concepts are slightly and only subjectively different in their nature.

It has been widely agreed that "Equal protection by law" is a corollary of "Equality before Law". According to Patanjali Sastri, C.J.

"Equality before Law" ~ Basically, the State cannot deny anybody equality before the law. This is more of a restriction on the State, i.e., it will treat you or I in the same manner as it treats Ministers, or Bollywood celebs. No distinction on the basis of caste, creed, religion, etc. will be shown by the State in determining our rights and status before the State.

"Equal protection of Laws" ~ This is a more positive concept implying equality of treatment in equal circumstances. Equals must be treated alike is the underlying factor.

Equality before Law and Equal Protection of Laws

The Constitution of India makes provision for fundamental rights which are basic rights that every person should enjoy. These rights





include Right to Equality, Right to Life and Personal Liberty, Freedom of Speech, Freedom of Profession and Trade, Freedom of Association, Freedom of Assembly, Right to constitutional remedies and so on. The phrases "Equality before law" and "equal protection of laws" are two phrases used in Article 14, which is the Right to Equality.

Equality before Law

The phrase means that all are equal in the eyes of the law. No one is above the law. This concept is derived from the theory of Rule of Law. According to Rule of Law, a person can only be punished for violating a law which has been laid down and nothing else.

Equality before the law means there should be no discrimination of one person from another. All should be treated equally irrespective of place of birth, gender, religion, race, caste, wealth, social status and so on.

For instance, both men and women have the right to work and both the right to equal pay for equal work.

All persons who commit a particular crime are given the same punishment. There cannot be a distinction between a male criminal and a female one. Or a rich criminal and a poor one, if both have committed the same crime.

India is a hub of people from different walks of life. There are social inequalities and biases already that already exist in the country. Bias based on religion, caste, gender... The Right to equality puts all persons on the same par. This right ensures everyone that the People in power will not discriminate between them. It gives an assurance that all will receive equal status and opportunities.

Equal Protection of Laws

The phrase "equal protection of laws" means that people in similar circumstances should be treated equally which also means, those who are not equal circumstances should not be treated equally.

For example, a poor man cannot be expected to pay the same income tax as a rich man. But persons with the same income bracket, being in similar circumstances, will pay the same tax.

All adults are equal and are punished equally. But a child who commits murder cannot be punished like an adult who commits the same crime. Since the adult and the child are not equal and should be treated unequally.

When persons in similar circumstances/equals are treated equally, and those in different circumstances/unequals are treated in an unequal manner, we strive to attain EQUITY, which is an objective much higher than equality.

Classification and Class Legislation

Absolute equality where everyone is treated in an identical manner amounts to turning a blind eye to the social and educational inequalities that already exist in the society.

Right to equality does not mean that everyone is treated in an equal manner having no regard to their situations. In fact, if everyone is treated in an identical manner, it violates the right to equality. So, to find out which two groups should be treated unequally, a

classification can be made. Any classification made should be made on a reasonable basis.

For example, a classification between a classification between teachers who are trained and others who are not. This classification is made to make applicable any monetary benefits on trained teachers. A classification of physically challenged persons and persons who are not physically handicapped which is made to confer certain rights on them.

Classification should not amount to a class legislation. Class legislation means a law that is applicable only to certain persons or class of persons. For example, if a law makes the classification based only on a class of persons who belong to a particular religion or race or gender will be unreasonable and violate the right to equality.

Reasonable Classification

The legislature can treat two sets of persons differently if their classification is made on a reasonable basis. A reasonable classification must be founded on *intelligible differentia* which means that persons or things that are grouped together make a well-defined, distinct class and can be distinguished from those that are left out of the group. Further, this basis of classification should have a rational nexus to the object sought to be achieved by the legislation in question.

For example, the maternity benefit law applies to working women on the way to maternity, not others. Because the object of the maternity benefit law is to give certain privileges only to women who become mothers at the time of their need. Hence, the classification of women and men is based on an *intelligible differentia*.

Another illustration is of tax laws. Classifications may be made for the purpose of taxing or not taxing certain classes of property. Charities, libraries are exempted from certain tax whereas other properties are not.

LEADING CASES

(1) [National Legal Services Authority v. Union of India]. (15 April 2014, SC)

is a landmark decision by the Supreme Court of India, which declared transgender people to be a 'third gender'¹, affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to transgender people, and gave them the right to self-identification of their gender as male, female or third-gender. This judgement is a major step towards gender equality in India. Moreover, the court also held that because transgender people were treated as socially and economically backward classes, they will be granted reservations in admissions to educational institutions and jobs.

Parties

The National Legal Services Authority of India (NALSA) was the primary petitioner. It had been constituted with the primary objective of providing free legal aid services to the disadvantaged sections of Indian society.



Bench

The case was heard before a two-judge bench of the Supreme Court, composed of Justice K.S. Panicker Radhakrishnan and Justice Arian Kumar Sikri.

Judgment

The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it be male, female or third-gender:

Legal Recognition for Third Gender : In recognizing the third gender category, the Court recognizes that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc. is discriminatory to the third gender.

Public Health and Sanitation : Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide them separate public toilets and other facilities. Further, they have been directed to operate separate HIV/Sero-surveillance measures for transgender people.

Socio-Economic Rights : Centre and State Governments have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.

Stigma and Public Awareness : These are the broadest directions - Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies and social stigma.

The Court notes that these declarations are to be read in light of the Ministry of Social Justice and Empowerment Expert Committee Report on Issues Relating to transgender people.

(2) [*State, of Madras v. Channakam Dorairninn*] AIR (1951) SC 226
It is a landmark decision of the Supreme Court of India. This judgement led to the First Amendment of the Constitution of India. It was the first major judgement regarding reservations in Republic of India. In its ruling the Supreme Court upheld the Madras High Court judgement, which in turn had struck down the Communal Government Order (G.O) passed in 1927 in the Madras Presidency. The Communal G.O had provided caste based reservation in government jobs and college seats. The Supreme Court's verdict held that providing such reservations was in violation of Article 16 (2) of the Indian Constitution.

(3) [*State of West Bensial v. Anwar Ali Sarkar*] AIR(1952) SC 75

It is one of the landmark cases of the judicial scenario in India. The said case dealt with West Bengal Special Courts Act, Construction of the said Act, Article 14 of constitution of India, empowerment of State government of discretion, Reference to preamble test of equality before law, necessity for speedier trial, and reasonable ground for discrimination.

State of Bengal appealed in Supreme Court of India to overrule the judgement given by High Court of Calcutta. The issue raised by the petitioner was constitutional validity of West Bengal Special Courts Act (X of 1950) which was entitled as "An Act to provide for the speedier trial of certain offences". The applicant challenged it on the grounds of Article 14. Also, section 5(1) of the act was constitutionally challenged as it was submitted that the said section gives arbitrary power and authority to the state government to refer any 'case' or 'class of cases' to Special Courts without a reasonable classification. The issue also included inclusion of any individual 'case' besides the 'class of cases'.

The Supreme court however, dismissed the appeal and held the act bad on the grounds that the Act do give arbitrary power to the state government and it may happen that they may use this power being prejudiced or under sway of emotion or in their own interest and hence, the act does violates equality before law and equal protection of laws.

(4) [Indra Sawhnev & Others Vs. Union Of India] AIR (2000) SC 498

When our own Constitution was framed the framer of the constitution made a special provision with intention to provide equal opportunity in the public employment to all the citizens within INDIA. The same was inserted in the Art. 16 of the Indian Constitution. But considering the backward classes a special provision was inserted in the same Art. In clause 4 i.e., in Art. 16(4). This section empowers the State to make a special provision for those backward classes who in the opinion of the State are not adequately represented in the service under the State.

CONCLUSION

Equality Before Law means every person is equal in the eyes of law and no one is entitled of special privileges.

Equal Protection of Law means that law provides equal opportunities to all those who are in similar circumstances or situations. This concept is slightly positive in connotation.

Both Equality before law and Equal protection of law aim to establish the "Equality of Status and Opportunity" as embodied in the Preamble of the Constitution. Further, because all persons are not, by nature, attainment or circumstances in the same positions; article 14 provides that state can treat different persons in differently if circumstances justify such treatment. This is called *Doctrine of Reasonable classification* and it says that protective discrimination is also a facet of equality.

To conclude, let's sum up.



1. Equality before law means absence of discrimination
2. Equal protection of laws means equal treatment of persons in equal circumstances.
3. To attain equity, reasonable classification is permitted.
4. Reasonable classification should not amount to class legislation.

THE RATIONAL OF CRIMINAL CONSPIRACY : A REVIEW

Lubdha Baag

4th Semester

INTRODUCTION

A Criminal Conspiracy is the agreement of two or more persons to do an illegal act, to do a legal act by illegal means. In other words, a joint evil intent is necessary to constitute crimes. Criminal Conspiracy is a partnership in crime, and each conspiracy consists of a joint and mutual agency for a prosecution of a common plan. A conspiracy being an agreement, it necessarily follows that there must be at least two persons. One person alone cannot conspire. A conspiracy being an agreement, it necessarily follows that there must be at least two persons. One person alone cannot conspire. Section 120(A) of the Indian Penal Code, 1860 defines Criminal Conspiracy and Section 120(B) prescribes punishment for Criminal Conspiracy.

Conspiracy is perhaps the most amorphous area in Anglo-American criminal law. Its terms are vaguer and more elastic than any conception of conspiracy to be found in the continental European codes or their imitators. In most civil-law countries, the punishment of agreements to commit offenses, irrespective of whether the criminal purpose was attempted or executed, is largely confined to political offenses against the state. In the United States, state statutory law has been greatly influenced by the Model Penal Code (1962), provided by the American Law Institute, an independent organization composed of leading lawyers, judges, and law professors whose purpose is to clarify, modernize, and otherwise improve the law. The U.S. Congress, however, has not adopted the Model Penal Code as federal law. Thus, in many states, statutory law limits the conspiracy offense to that of furthering criminal objectives.

CRIMINAL CONSPIRACY

Section 120 A of Indian Penal Code Defines Criminal Conspiracy -
"When two or more persons agree to do, or cause to be done-

- (1) An illegal act, or
- (2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Though Conspiracy was initially was considered as only a civil wrong, but later on it was brought under the ambit of Indian Criminal Law. Conspiracy was not an offence under the Indian Penal Code (IPC) until the Criminal Law Amendment Act of 1913 was passed which added the sections 120-A and 120-B to the IPC.

However, the following definition has been suggested by the Law





Commission of India for Criminal Conspiracy-

When two or more persons agree to commit an offense punishable with death, imprisonment for life, or imprisonment of either description for a term of two years or upwards, or to cause such an offense to be committed, the agreement is designated a criminal conspiracy.

CRIMINAL CONSPIRACY (SECTION-120A) : A DETAILED VIEW

According to the section, whenever there is an agreement between two or more persons to do or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is a criminal conspiracy. The basic thing on which the criminality lies under this section is the 'agreement' which naturally requires at least two persons.

The main thing on which criminality lies under this section is the "agreement", which requires at least two persons. Here 'Agreement' is not merely the stage of intention which is not culpable, but is much more than that.

It is a plan or a design to bring in action. The plot is an act in itself. It is not necessary that all the members of the conspiracy must be aware of each detail of the conspiracy. But there has to be a common design amongst them and each conspirator must at his stage of the design carry it into effect. By and large each of them will know the important details of the conspiracy even though each may not be aware of each of the minutest details.

However, every conspirator will be aware of the major and important details of the conspiracy if not the minutest details.

If there is a conspiracy of committing a murder amongst some persons, each of the conspirators will have to be aware of the major detail of the conspiracy in order to execute the plan properly. Major details here would be, who is to be murdered and how, when he is to be murdered and by whom, even though the other minute details might not be known to each of them.

To be liable of the offence of criminal conspiracy the agreement must be to do or cause to be done an "illegal" act, or an act which is not illegal by "illegal" means. The expression 'illegal' has been defined in section 43 of the Code and whenever this expression has been used in the Code, it will have this meaning only.

According to section 43 the word 'illegal' is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action. Therefore, for criminal conspiracy the agreement may be to commit an offence, or to commit an act that is prohibited by law, or to commit an act which furnishes ground for a civil action.

For example, the agreement may be to commit murder which is an offence, or to commit breach of duty to provide food or shelter to someone to whom such legal duty is owed which is prohibited by law, or to effectuate a breach of contract between two persons which furnishes ground for a civil action. If the agreement is not to do or

cause to be done an illegal act but an act that is not illegal, then it has to be done by illegal means.

Further provided that no agreement except an agreement to commit an offence, shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

It is immaterial whether his illegal act is the ultimate object of such agreement or is merely incidental to that object. In other words, the conspirator is guilty of criminal conspiracy; whether the illegal act is the ultimate object of the agreement or it is merely incidental to the object of the agreement. The law does not treat these cases differently.

Example:

- A and B made a plan to murder C; letters passed between them as to the movement of C. Here both A and B are liable for indictment to a charge of criminal conspiracy under this section since there was an agreement between A and B to do an illegal act, i.e., to commit the murder of C.
- Police Constable, to kill an under trial extra judicially at a certain time and place and claim it as an encounter. Both D, a Police Inspector, agrees and plans with X, a of them have committed Criminal Conspiracy in order to commit Murder.
- X & Y, two private citizens, agree and plan to attempt to evict an illegal hawker from a public thoroughfare and in so doing employ force on the hawker, voluntarily causes grievous hurt. Here, even though the object of their act is not criminal, they uses illegal means in furtherance of it and have engaged in Criminal Conspiracy within the meaning of this section.
- 'A' the wife of "B' had illicit connection with 'C', who wanted to murder 'B\ Instead of telling B that C waned to murder him, told C that B would go to lonely place on a particular day & time. C murdered B at that particular place, date and tune. Thus A and C both are guilty of the offence of criminal conspiracy. C is also guilty of adultery and murder.

ESSENTIAL INGREDIENTS

The ingredients of Section 120A (Criminal Conspiracy), of Indian Penal Code are as follows :

- 1) There should be two or more persons
- 2) There should be Agreement between them
- 3) Agreement must be to or cause to be done, an illegal act; or
- 4) The act may not be illegal but is done by illegal means.

The expression 'illegal' has been defined in Sec.43 of the code. According to this section, the word illegal is applicable to everything:

- i) Which is an offence
- ii) Which is prohibited by law
- iii) Which is furnishes ground for a civil action
- iv) Act is done by illegal means.



CASE LAWS

Mohd. Usman v State 1981: In this case the accused persons were selling explosive substances without valid license for a very long time. The SC held that they were guilty of criminal conspiracy, as they had been doing this for a very long time, which could not have been possible without an agreement between them, and this agreement was proved by necessary implication.

In the case of *State (NCT of Delhi) v. Navjot Sandhu*, AIR 2005 SC 3820, it was held that: "A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused in the offence of criminal conspiracy".

In the case of *State of Maharashtra & Ors. v. Som Nath Thapa & Ors.*, (1996) 4 SCC 659, it was observed that: "for a person to conspire with another, he must have knowledge of what the co-conspirators were wanting to achieve and thereafter having the intent to further the illegal act takes recourse to a course of conduct to achieve the illegal end or facilitate its accomplishment."

In *Subramaniam Swamy v. A Raja* (2012) 9 SCC 257, it was held that "suspicion cannot take the place of legal proof and existence of a meeting between the accused persons is not by itself sufficient to infer the existence of criminal conspiracy."

But the use of the offence of criminal conspiracy in contemporary times by investigating agencies and courts is not in accordance with the above stated well-settled principles of law. This has resulted in dilution of the law relating to criminal conspiracy.

In many cases today, the concept of 'deemed presumption' is applied, which is otherwise not available under the IPC. Undoubtedly, criminal conspiracies are hatched in secrecy and can only be perceived by actions of the participants; however that should not in any way dilute the standard of proof of "beyond reasonable doubt" that must be met by the prosecution.

It has never been easy to get direct evidence for proving an offence under Section 120-A, which defines criminal conspiracy. Considering this fact, Section 10 of the Indian Evidence Act comes into play.

This section can be divided into two parts: firstly where there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong. Only when this condition precedent is satisfied, the second part of the section comes into operation i.e. anything said, done or written by any one of such persons in reference to the common intention after the time when such intention was first entertained by any one of them is a relevant fact against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy.

It is therefore necessary that a prima facie case of conspiracy has to be established for application of Section 10. The second part of section permits the use of evidence which otherwise could not be used against the accused person. *Sardar Sardul Singh Caveeshar v. State of Maharashtra* [(1964) 2 SCR 378], is an authority on this issue.

CONVICTION OF A SINGLE PERSON FOR CRIMIAL CONSPIRACY:

An important question arises whether a single individual can be held guilty of this offence. For criminal conspiracy, there 'must' be at-least two persons. Thus the section only says that agreement must be between two or more persons and not that the connection must be of at-least two persons.

ILLUSTRATION : Where the prosecution case is that, four : persons had entered into an agreement to commit murder of 'Z' and out of these four one is 'D' without a shadow of doubt. The other three might be A,B and C or might not be A,B and C because the evidence against them is doubtely. In such case, since two things are certain the member of conspirators was four and one of these four was definitely "D' thus D alone is guilty of criminal conspiracy.

In another case *B.H. Narasimha Rao v Govt. of A.P* 1995 the accused was charged for committing an offence in conspiracy with seven other who were al acquitted. It was held that the accused could not be convicted under section 120-B on the mere ground that he was head of a section of he branch where the fraud was alleged to have been committed.

PUNISHMENT FOR CRIMINAL CONSPIRACY

Section 120B of Indian Penal Code prescribes punishment for criminal conspiracy.

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

CONCLUSION

Conspiracy, a crime special to common law jurisdictions and largely unknown, except in modest forms, in continental European countries, is one of the most controversial of all substantive crimes. It affords great advantages to law enforcement, since it avoids multiple trials, permits prosecution of preparatory activity at an early stage, facilitates prosecution against organized criminality, and extends a number of evidentiary and procedural advantages to the prosecution. At the same time, it constitutes what Justice Jackson in *Krulewitch* termed an "elastic, sprawling and pervasive offense" (445) that departs from traditional requirements of liability: (1) the crime of conspiracy is vaguely defined and its contours are often unpredictable; (2) it permits conviction on acts largely mental in character; its essential feature, an agreement, is often diluted to something approaching suspicion of agreement; and (4) it affords a



highly tenuous basis for holding the defendant for substantive crimes committed by others. Moreover, the procedural advantages to the prosecution impose corresponding disadvantages on the defendant, disadvantages thought inappropriate and unfair when other crimes are charged.

The balance has been struck on the side of retaining the offense with modest revisions, despite long-standing criticism (Johnson). The crime of conspiracy will in all likelihood remain an integral part of the prosecutor's arsenal. Whether it will be kept within tolerable bounds depends on how sensitively and critically prosecutors employ it, courts administer and interpret it, and legislators act to preclude its excesses.

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POWERS & FUNCTIONS OF UNITED NATIONS SECRETARIAT

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6th Semester

INTRODUCTION

The United Nations Secretariat (French: *le Secretariat des Nations unies*) is one of the six major organs of the United Nations, with the others being (a) the General Assembly; (b) the Security Council; (c) the Economic and Social Council; (d) the defunct Trusteeship Council; and (e) the International Court of Justice. The Secretariat is the United Nations' executive arm. The Secretariat has an important role in setting the agenda for the UN's deliberative and decision making bodies of the UN (the General Assembly, Economic and Social Council, and Security Council), and the implementation of the decision of these bodies. The Secretary-General, who is appointed by the General Assembly, is the head of the secretariat.

The mandate of the secretariat is a wide one. Dag Hammarskjöld, the United Nations' second Secretary-General, described its power as follows: "The United Nations is what member nations made it, but within the limits set by government action and government cooperation, much depends on what the Secretariat makes it... [it] has capacity. It can introduce new ideas. It can, in proper forms, take initiatives. It can put before member governments findings which will influence their actions". The United Nations Department of Political Affairs, which has a role analogous to a ministry of foreign affairs, is a part of the secretariat. So is the department of United Nations Peace Keeping Operations. The secretariat is the main source of economic and political analysis for the General Assembly and Security Council; it administers operations initiated by UN's deliberative organs, operates political missions, prepares assessments that precede peacekeeping operations, appoints the heads of peacekeeping operations, conducts surveys and research, communicates with non-state actors such as media and non government organizations, and is responsible for publishing all of the treaties and international agreements.

SECRETARY-GENERAL

The Secretary-General's duties include helping resolve international disputes, administering peacekeeping operations, organizing international conferences, gathering information on the implementation of Security Council decisions, and consulting with member governments regarding various initiatives. Key Secretariat offices in this area include the Office of the Coordinator of Humanitarian Affairs and the Department of Peacekeeping Operations. The Secretary-General may bring to the attention of the Security Council any matter that, in his or her opinion, may threaten international peace and security.





ORGANIZATION

The Secretariat is divided into offices and departments. The hierarchy within each is as follows :

Office : A minimum of 20 high level professionals under the supervision of a D-2 Staff Member (Division Head), or in few cases an Assistant Secretary General or Under Secretary General.

Division : A minimum of 15 high level professionals under the supervision of a D-2 staff member (Division Head).

Service : A minimum of 8 high level professionals under the supervision of a D-1 (General Administrator) staff member.

Section : A minimum of 4 professionals under the supervisions of a P-4 (8-12 years experience) or a P-5 (13-17 years experience) staff member.

Unit : A minimum of 4 positions under the supervision of a chief offices.

- Executive Office of the Secretary-General (EOSG)
- United Nations Office of Internal Oversight Services (OIOS)
- United Nations Office of Legal Affairs (OLA)
- United Nations Office for Disarmament Affairs (ODA)
- United Nations Office for the Coordination of Humanitarian Affairs (OCHA)
- United Nations Office of the United Nations High Commissioner for Human Rights (OHCHR)
- United Nations High Commissioner for Refugees (UNHCR)
- United Nations Office on Drugs and Crime (UNODC)
- United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (OHRLLS)
- United Nations Office for Outer Space Affairs (UNOOSA) Departmentes (OHRLLS)
- United Nations Office for Outer Space Affairs (UNOOSA) Departments
- United Nations Department of Political Affairs (DPA)
- United Nations Department of Peacekeeping Operations (DPKO)
- United Nations Department of Economic and Social Affairs (DESA)
- United Nations Department of Field Support (DFS)
- United Nations Department of Management (DM)*
- United Nations Department of General Assembly and Conference Management (DGACM)
- United Nations Department of Public Information (DPI)
- United Nations Department of Safety and Security (DSS) Offices Away from Headquarters :
- United Nations Office at Geneva (UNOG)
- United Nations Office at Nairobi (UNON)
- United Nations Office at Vienna (UNOV)

UN Regional Commissions :

- Bangkok, Economic and Social Commission for Asia and the Pacific
- Beirut, Economic and Social Commission for Western Asia
- Addis Ababa, Economic Commission for Africa
- Geneva, Economic Commission for Europe
- Santiago, Economic Commission for Latin America and the Caribbean.

STAFFING

The Secretariat has 44,000 international civil servants. Eligibility for civil service is based on a UN-administered examination offered worldwide, in addition to a competitive application process. Qualifications for membership include "the highest standards of efficiency, competence, and integrity", according to the UN Charter. Staff-members are appointed by the Secretary-General alone and are assigned to the organs of the United Nations. Staff members are appointed by the Secretary-General alone and are assigned to the organs of the United Nations. Staff members are appointed on a temporary or permanent basis, under the discretion of the Secretary-General during staff recruitment, geographical variety is an especially prominent selection factor in order to accurately reflect the scope of member states present in the UN. The charter states that staff members are responsible "only to the organization" and are prohibited from any action or influence that would suggest affiliation with government or organization outside the UN.

Headquartered in New York, the Secretariat functions through duty stations in Addis Ababa, Bangkok, Beirut, Geneva, Nairobi, Santiago and Vienna, in addition to offices all over the world.

One study finds the following factors play a role in the selection of staff for the Secretariat: a desire to achieve a minimum number of officials from each state; population size; and assessment of dues. The most overrepresented states in the Secretariat are small, rich democracies. The Nordic states stand out, in particular, when it comes to overrepresentation.

STATUS OF WOMEN IN THE SECRETARIAT

Representation of women in the United Nations (UN), particularly at managerial and decision-making positions at the D-I level and above, has been a United Nations General Assembly concern and goal since 1970. Since 1984, the UN Secretariat, in order to achieve early Gender Equality, issued several five years "Action Plans", including Strategic Plans, to improve the status of women in the Secretariat. These plans, however, did not have the desired impact, and progress in achieving gender parity remained slow.

In December 1994, the UN General Assembly's "disappointment" that its Gender Equality target were not met urged the Secretary to prioritize the recruitment and promotion of women to reach representation in D1 and above posts by 2000. In Feb 2004, gender target for the secretariat was once again revised to 2015. In 2009, the plans, and GA resolutions, the representation of women in the Secretariat remained well below parity at 29.2 percent.



REPRESENTATION OF WOMEN AT DECISION MAKING LEVELS

The representation of women in the UN secretariat, at the D1 in 2000, was 30.3 percent. Instead of increasing, in the next representation of women in the secretariat decreased to December: 2011, the representation of women in the Secretariat level was 27.4 percent, an increase of .6 percent over a two-year period. At the current rate of progress, it is estimated that gender parity at the D-I to higher levels will be achieved after 102 years. At D2 level the representation of women in 2011 was 24.4 percent.

THE POWERS AND FUNCTIONS OF THE UNITED NATIONS SECRETARIAT

The Secretariat is another organ of the United Nations. It is the administrative wing of the organization. The Secretariat is headquartered in New York, in United States of America and its administrative head is officially called the Secretary-General.

POWERS AND FUNCTIONS OF THE SECRETARIAT

Administrative Work : It is the responsibility of the Secretariat to perform every administrative work of the United Nations. It undertakes the day-to-day running of the affairs of the organization. This includes, but is not limited to the preparation of the agenda for meetings of the organization.

Annual Reports : One of the functions of the Secretariat is to prepare the organization's annual report. The annual report is a detailed chronicle of the activities of the organization in the previous twelve months.

Annual Budget : Another function of the Secretariat is to prepare the annual budget of the organization. It is the budget that determines how money would be raised to implement the various activities of the Secretariat in the ensuing year.

Programmes Implementation : After other organs of the United Nations have formulated their programmes and policies, it is the Secretariat that implements them. So another function of the Secretariat is to implement programmes and policies.

Research Work : The Secretariat undertakes research into issues such as human rights, disarmament, diseases and development. Based on the research, a report is sent to the appropriate organ or agency for the necessary action to be taken.

SPECIAL MEASURES OF SECRETARIAT'S POWERS AND FUNCTIONS FOR THE ACHIEVEMENT OF GENDER EQUALITY

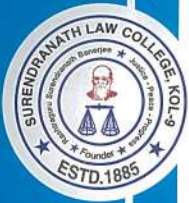
To ensure that the Gender Equality target mandated by the General Assembly are met, the Secretariat, in September 1999, promulgated Administrative Instruction(AI) on "Special Measures for the Achievement Of Gender Equality" (ST/AI/1999/9) Gender Equality A/I echoes the goals of, and is in conformity with, mandate of Articles 8 and 101 of the Charter of the United Nations, and of the *Convention on the Elimination of All Forms of Women (CEDAW)*.

On 4 September 2012, in his Annual Reports to Assembly, titled "Improvement of the status of women in Nations system", Secretary-General Ban Ki-moon stated that the Special Measures was to ensure

"gender balance in promotion", and that Special measures would remain in effect "goal of gender parity is achieved", and sustained for a time. The Secretary General in his Recommendations to the GA that the "A United Nations Secretariat, pursuant to the decision Policy Committee chaired by the Secretary-General" is effective implementation of special measures for measures include mandatory selection of equally or better qualified women candidates".

CONCLUSION

Since its creation, the Secretariat has undergone extensive reforms. On 21 Marh, 2005, Secretary-General Kofi Annan proposed several reforms for the Secretariat. He announced his intentions to appoint a Scientific Adviser, create a peace-building support office, establish a cabinet-style decision-making mechanism, and strengthen the mediation function. He also asked the General Assembly to appropriate funds for a one-time staff buyout; to work with him in revising budgetary and human resources rules; to grant the Secretary-General more managerial authority and flexibility; to strengthen the Office of Internal Oversight Services; and "to review all mandates older than five years to see whether the activities concerned are still genuinely needed or whether the resources assigned to them can be reallocated in response to new and emerging challenges".



A PROJECT ON FUNDAMENTAL DUTIES

Rohan Kumar Dey

4th Semester

INTRODUCTION:-

Rights and Duties are like two sides of a coin, absolutely inseparable. Whenever and wherever we have any rights, we must have corresponding duties. Whether it be the home, the society or the country, in every sphere of life we have rights and duties that go hand in hand. We have rights in the same measure as we have duties.

The Fundamental Duties are a novel feature of the Indian Constitution in recent times. Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country. Some of the fundamental duties enshrined in article 51A have been incorporated in separate laws. There has been some rather disproportionate emphasis on the rights of citizens as against their duties even though the traditions and temper of Indian thought through the ages laid greater emphasis on duties. Actually, rights and duties are the two sides of the same coin. For every right, there is a corresponding duty. Rights flow only from duties well performed. Duty is an inalienable part of right: What is duty for one is another person's right and respect human life and not to injure another person. If everyone performs his/her duty, everybody's rights would be automatically protected.

Fundamental duties are given in part IV of the Indian constitution under art. 51A .

ORIGIN AND SCOPE OF FUNDAMENTAL DUTIES

ORIGIN:-

The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee that was constituted by the government earlier that year. Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years. We have borrowed these duties from the constitution of Japan.

SCOPE:-

Fundamental duties are obligatory in nature. But there is no provision in the constitution for direct enforcement of these duties. There is no sanction either to prevent their violation. However the importance of fundamental duties can be gauged from the following facts:

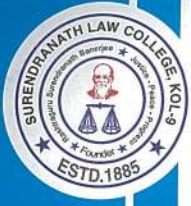
- a. As rights and duties are the two side of the same coin, it is expected that one should observe one's duties in order to seek the enforcement of one's fundamental rights, in the context if a person approaches the court for the enforcement of any of his fundamental rights, the court may refuse to take a lenient view of him if it comes to know that the concerned individual has no respect for what is expected of him by the state as a citizen of the country.
- b. They can be used for interpreting ambiguous statutes. The court may look at the fundamental duties while interpreting equivocal statutes which admit of two constructions.
- c. While determining the constitutionality of any law, if court finds that it seeks to give effect to any of the duties, it may consider such law to be 'reasonable', and thereby, save such law from unconstitutionality.

FUNDAMENTAL DUTIES IN INDIA-

Article 51A : Under this article of our Constitution every citizen has been obligated to perform certain duties called the *Fundamental Duties*. These duties are defined as the *moral obligations of all citizens* to help promote a spirit of patriotism and to uphold the unity of India.

The following are the Eleven Fundamental Duties of every citizen of India:

- (a) To abide by the Constitution and respect the National Flag and the National Anthem;
The first and the foremost duty assigned to every citizen of India is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. These are the very physical foundations of our citizenship. All of us are supposed to maintain the dignity of the Constitution by not indulging in any activities in violation of the letter or spirit of the Constitution. Ours is a vast country with many languages, sub-cultures and religious and ethnic diversities, but the essential unit of the country is epitomized in the one Constitution, one flag, one people and one citizenship. We are all governed and guided by this Constitution irrespective of caste, religion, race, sex, etc. The Constitution is the result of the many commitments, promises and pledges made by nationalist leaders to the people of India. Also, it embodies efforts of reconciliation, accommodation and compromise. All of us and the Fundamental Rights of each of us are protected by it. Similarly, the National Flag and the National Anthem are symbols of our history, sovereignty, unity and pride. If a citizen of India by any overt or covert act shows disrespect to the Constitution, the National Anthem or the National Flag, it would be not only an anti-social and antinational activity but it would also spell doom to all our rights and very existence as citizens of a sovereign nation. Each citizen must therefore not only refrain from any such activity but also do his best to



prevent any miscreant trying to show disrespect to our national symbols. Every nation is proud of its citizens because of their dedication, sincerity and patriotism. We, the citizens of India, have to be equally proud of our nation, our Constitution, our National Flag and our National Anthem. We must put the nation above our narrow personal interests and then only we will be able to protect our hard-earned freedom and sovereignty.

- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom;

The citizens of India must cherish and follow the noble ideals which inspired the national struggle for freedom. The battle of freedom was a long one where thousands of people sacrificed their lives for our freedom. It becomes our duty to remember the sacrifices made by our forefathers for the cause of the country. But, what is much more important is to remember, imbibe and follow the ideals which pervaded our unique struggle. It was not a struggle merely for political freedom of India. It was for the social and economic emancipation of the people all over the world. Its ideals were those of building a just society and a united nation of freedom equality, non-violence, brotherhood and world peace. If we, the citizens of India remain conscious of and committed to these ideals, we will be able to rise above the various fissiparous tendencies raising their ugly heads now and then, here and there.

- (c) To uphold and protect the sovereignty, unity and integrity of India; It imposes a Fundamental Duty on every citizen of India that he shall not do anything derogatory of upholding or protecting the sovereignty, unity or integrity of India. It is a duty prohibitory in nature addressed to traitors and spies.

- (d) To defend the country and render national service when called upon to do so;

In modern nation-States, it is considered axiomatic that every citizen is bound to be ready to defend the country against war or external aggression. The present day wars are not fought on the battlefield only nor are they won only by the armed forces; the citizens at large play a most vital role in a variety of ways. Sometimes, civilians may be required also to take up arms in defence of the country.

- (e) To promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;

The duty to promote harmony and the spirit of common brotherhood amongst all the people of India essentially flows from the basic value of fraternity enshrined in the Preamble to the Constitution. India is a country of different castes, languages, religions and many cultural streams but we are one people with one Constitution, One flag and One

citizenship. Spirit of brotherhood should come very normally among the citizens of a country like India where the norm has been to consider the entire world as one family. The Constitution also casts upon us the Fundamental Duty of ensuring that all practices derogatory to the dignity of women are renounced. This again should come normally to a country where it is an aphorism that Gods reside where women are worshipped. It is for us to rise above the later day degenerations and aberrations which tarnished the image of our society.

- (f) To value and preserve the rich heritage of our composite culture; To preserve the rich heritage of our composite culture is another Fundamental Duty of every Indian citizen. Our cultural heritage is one of the noblest and the richest. Also, it is part of the heritage of the earth. What we have inherited from the past, we must preserve and pass on to the future generations. In fact, each generation leaves its footprints on the sands of time. We must hold precious and dear what our fore-fathers have created and their successive generations bequeathed to us as symbols of their artistic excellence and achievements. Generations to come always draw inspiration from past history which stimulates them to aim at ever greater heights of achievement and excellence. It becomes the ardent duty of every citizen to ensure that these monuments and pieces of art are not in any way damaged, disfigured, scratched or subjected to vandalism or greed of unscrupulous traders and smugglers.
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures; In the face of the menace of the increasing pollution and environmental degradation, it is the duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The rising air, water and noise pollution and large-scale denudation of forest are causing immense harm to all human life on earth. The mindless and wanton deforestation in the name of needs of development is causing havoc in the form of natural calamities and imbalances. By protecting our forest cover, planting new trees, cleaning rivers, conserving water resources, reforesting wastelands, hills and mountains and controlling pollution in cities, villages and industrial units, we can help save the future of our fellow citizens and of planet earth itself. What is needed is a concerted effort at, an awareness campaign and a planned strategy to move forward through voluntary citizen initiatives. Governmental steps alone cannot help bring about a pollution-free atmosphere to live now and in the future.



- (h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
it is the bounden duty of every citizen to preserve and promote a scientific temper and a spirit of inquiry to keep pace with the fast changing world. Also, the Constitution ordains that science and technology must be tempered with a sense of humanism because ultimately the end of all progress is the human being and the quality of life and relationships that is developed.
- (i) To safeguard public property and to abjure violence;
It is most unfortunate that in a country which preaches non-violence to the rest of the world, we see from time to time spectacles of senseless violence and destruction of public property indulged in by a few of its citizens. This is why it became necessary to prescribe the responsibility "to safeguard public property and abjure violence" as a fundamental citizenship duty.
- (j) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of Endeavour and achievement."
The drive for excellence in all spheres of individual and collective activity is the demand of times and a basic requirement in a highly competitive world. Nothing but the best would have survival potential in tomorrow's world. This would include respect for professional obligations and excellence. Whatever work we take up either as individual citizens or as groups, our effort should be directed to achieving the goal of excellence. Also, special emphasis is called for in the area of collective activity.
- (k) To provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be.

VALUE AND SIGNIFICANCE OF FUNDAMENTAL DUTIES IN INDIA

- a) They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.
- b) They serve as a warning against the anti-national and antisocial activities like burning the national flag, destroying public property and so on.
They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are no mere spectators but active participants in the realisation of national goals.
- d) They help the courts in examining and determining the constitutional validity of a law. In 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a

fundamental duty, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

- e) They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfill any of them.

The importance of fundamental duties is that they define the moral obligations of all citizens to help in the promotion of the spirit of patriotism and to uphold the unity of India.

JUDICIAL DYNAMICS

1. M.C.MEHTA (2) V. UNION OF INDIA (1983) 1 SCC 471

The Supreme Court has held that under art.51-A(g) it is the duty of the central government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of natural environment in all the educational institution of the country. It directed central government to get textbook written on that subject and distribute them to the educational institute free of cost. In order to arouse amongst the people ,the consciousness of cleanliness of environment, it suggested the desirability of organizing - keep the city clean week, keep the town clean, keep the village clean week in every city, town and village throughout India at least once in a year.

2. AIIMS STUDENT UNION V. AIIMS AIR 2001 SC 3262

In this case importance of fundamental duties enshrined in art 51A has been shown while striking down the institutional reservation of 33% in AIIMS coupled with 50% reservation disciplinewise as violative of art.14 of the Constitution, the Supreme Court said that they are equally important like fundamental rights. Tough fundamental duties are not made enforceable like fundamental rights but it cannot overlook as "duties" in Part IV is prefixed by to same word "fundamental" which was prefixed by the founding fathers of the constitution to "right" in Part III. Every citizen of India is fundamentally obliged to develop the scientific temper and humanism. Though art. 51A does not cast any fundamental duty on the state. The fact remains that the duty every citizen is the collective duty of the state. Any reservation apart from being substantive on the constitutional anvil must also be reasonable to be permissible. In assessing the reasonability one of the factors to be taken into consideration would be whether the character and quantum of reservation would stall or accelerate in achieving ultimate goal of excellence enabling nation constantly rising to higher level.

It was also held that fundamental duties though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice of people's wish as manifested through art.51A can serve as a guide not only for resolving the issues but also for constructing or moulding the relief to be given by courts.

3. ARUNA ROY V. UNION OF INDIA AIR 2002 SC 3176

In this case the validity of National Curriculum Framework for School



Education was challenged on the ground that it was violative of art.28 of the constitution and antisecular. It provides imparting of value development education relating to basics of all religions. The court held that the NCFSE does not mention of imparting "religious instruction" as prohibited under art.28. What sought to be imparted is incorporated in art.51A(e) which provides "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities ; to renounces practices derogatory to the "dignity of woman". And to see that universal values such as truth related conduct, peace, love and non-violence be the foundation of education. Accordingly, the court held that such education is neither violative of art. 28 of the constitution nor is against the concept of secularism.

4. GOVERNMENT OF INDIA V. GEORGE PHILIP AIR 2007 SC 705

In this case the respondent has challenged his compulsory retirement from service. He was granted leave by the department to pursue advanced research training. He was granted leave by the department to pursue advance research training. He was granted leave for two years. He over stayed in a foreign country inspite of repeated reminders come and join his duty after the expiry of his leave. An inquiry was instituted against him and the charge of overstaying in a foreign country was proved. He was compulsorily retired from service. The tribunal and the high court granted him remedy of joining his service without back wages. The Supreme Court set aside the order of the high court. The Supreme court held that art.51A(j) imposed a duty on citizen to strive towards excellence in all sphere and it cannot be achieved unless employees maintain discipline and devotion to duty. The courts should not pass orders which instead of achieving underlying spirit and object of part IV A of the Constitution has tendency to negate or destroy the same. Overstay of leave and absence from duty by government employee and granting him six month's time to join duty amount to not only giving him premium to indiscipline but wholly subversive of work cultures in organization.

5. DR. DASARATHI VS. STATE OF ANDHRA PRADESH (AIR: 1985 AP 136)

It was held that under article 51A (j) of the Constitution, we all owe a duty to ourselves to strive towards excellence in all spheres of individual and collective activity so that this nation may constantly rise to higher levels of Endeavour and achievement. When the State undertakes to promote excellence, it can do so only through the methods which our Constitution permits to adopt. Rewarding of sycophancy only helps to retard the growth of efficiency and excellence.

CONCLUSION

Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and

coming forward to give their best to the country. Some of the fundamental duties enshrined in article 51A have been incorporated in separate laws. For instance, the first duty includes respect for the National Flag and the National Anthem. Disrespect is punishable by law. To value and preserve the rich heritage of the mosaic that is India should help to weld our people into one nation but much more than article 51A will be needed to treat all human beings equally, to respect each religion and to confine it to the private sphere and not make it a bone of contention between different communities of this land.

The most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is important to orient the individual citizen to be conscious of his social and citizenship responsibilities and so shape the society that we all become solicitous and considerate of the inalienable rights of our fellow citizens. Therefore, awareness of our citizenship duties is as important as awareness of our rights. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man does not live for himself alone. He lives for the good of others as well as of himself. It is this knowledge of what is right and wrong that makes a man responsible to himself and to the society and this knowledge is inculcated by imbibing and clearly understanding one's citizenship duties. The fundamental duties are the foundations of human dignity and national character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty, at all costs and risks, is the essence of civilized life.

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A CRITICAL STUDY ON PROTECTION OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Munira Alam

8th Semester

The term sustainability was first coined in **19110** by the **International Union for Conservation of Nature and Natural Resources(IUCN)**. In 1987 the 'Brundtland Report' (the report of the **United Nations Commission on Environment and Development**) established the concept of sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" [1] In examining the major environmental problems facing the world and the appropriate responses to them, the Brundtland Report established the frame work under which the twin requirements of environmental protection and economic development could be integrated. Sustainable development rapidly became the key principle underpinning official environmental policy at both national and international levels. However, there is considerable disagreement among scholars on conceptual grounds and on its functionality.[2] It is a very important fact that many scholars and practitioners define sustainability as an integrated concept that takes into consideration three elements: economic development, ecological conservation (sustainability) and social justice (equity) [2-12]. In addition to the Brundtland definition, other definitions have been proposed and have gained acceptance. The 'Caring for the Earth definition' brings into consideration the capacity of ecosystems:"Improving the quality of life while living within the carrying capacity of supporting ecosystems". The World Business Council for Sustainable Development (WBCSD) proposed the concept of eco-efficiency [13], and Wuppertal Institute and associates emphasized Factor Four [14], Furthermore, international academic journals present forums on industrial ecology. In meetings of researchers, the Industrial Transformation project is on-going in the field of International Human Dimension Programon global climate change. Also, there is the Zero Emission Initiative at United Nations University .The **1992 'Earth Summit' in Rio de Janeiro, Brazil, the United Nation Conference on Environment and Development (UNCED) [16]**, generated not only formal endorsement for the concept of sustainable development by over 150 national governments, but also, a wide range of general and particular policy initiatives under the sustainable development heading. Agenda 21 [17] emerged from the **UNCED**, which called for development at the local level. Agenda 21 called for the creation of the **UN Commission on Sustainable Development(CSD)** to ensure effective follow-up

of UNCED, enhance international cooperation, and examine progress in implementing Agenda 21 at the local, national, regional and international levels. The 2002 **World Summit on Sustainable Development's (WSSD) Johannesburg Plan of Implementation (JPOI)** [18] states that partnerships, as voluntary multistakeholder initiatives, contribute to the implementation of inter-governmental commitments in Agenda 21, the Program for the Further Implementation of Agenda 21 and the JPOI. Partnerships serve as a complement but not as a substitute for these commitments. The JPOI also designated the UN CSD to serve as the focal point for discussion on partnerships that promote sustainable development. This is only a short history of the recent efforts made for sustainable development. The study aims at analyzing not only the scientific and technological aspects causing damage to the environment but also judicial trends in the growth of environmental jurisprudence since 2000 and the case laws relating to environment as deliberated and decided by the Supreme Court and various High Courts will be taken up for examination. In this study the concept relating to "Environment, Environmentalism, Ecology, Ecosystem, Nature and Scope of Environment, National and International Documents on Environmental Law, General and Specific Laws relating to **Environmental Protection** and the role of Supreme Court of India in the **Protection of Environment and Ecological Development** will also be discussed. Environmental law is a comparatively new branch of law and has evolved mainly over the last thirty years. It is, therefore, as yet in a formative stage and is undergoing a process of rapid development inspired by a quantum leap in our understanding of the environmental challenge. By reason of its comparatively recent emergence, urgency in protecting and preserving environment necessitates the study. Over the past several decades, growing public awareness of threats to the environment, informed by warnings of scientists, has led to demands that law protect the natural surroundings on which human well-being depends. Under growing pressure from national and international public opinion, governments began to demonstrate concern over the general state of the environment during the 1960s and introduced legislation to combat pollution of inland waters, ocean, and air, and to safeguard certain cities or areas. Simultaneously, they established special administrative organs, ministries or environmental agencies, to preserve more effectively the quality of life of their citizens. Developments in international environmental law paralleled this evolution within states, reflecting a growing consensus to accord priority to resolving environmental problems. Therefore, the above conditions lead the researcher to discuss **Environmental Protection and Ecological Development**. The Perspectives of Supreme Court of India with great interest keeping the significance and gravity of Environmental pollution and to take effective measures for the protection of environment and ecological development in India. The topic in this research work provides wide



range of challenges to environmental protection and ecological development and the perspectives of this study enlightens and scrutinizes the cultural, spiritual, national, international dimensions of Environmental Law and policies for the protection of environment and ecological development.

PROTECTION OF ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

The Protection of Environment is needed for Sustainable Development. **The Industrial** pollution, degradation of forests, depletion of ozone layer, the greenhouse gases results in global warming and climate which will have an adverse impact on environment and human health. There is a need for conservation of Biodiversity, protection of wetlands and prevention of environmental pollution, promotion of ecological balance enables sustainable development. There are several provisions provided in Indian Constitution for Protection of environment. There are certain legislations enacted viz. **Environment Protection Act, Wild Life Preservation Act, Biodiversity Conservation Act, Water and Air Pollution Prevention Acts** etc. The Judiciary is playing a vital role in **Protection of Environment**. Through Judicial Activism the Supreme Court can issue directions under writ Jurisdiction under **Article 32 of Indian Constitution**. The **United Nation Organization** passed several UN conventions like **Ramsar Convention on Protection of Wetlands**, and UN convention on Biodiversity etc. **World Environment Day** is being celebrated across the world on **5th June** every year.

Global Warming and Climate change

Global warming is the term used to describe a gradual increase in the average temperature of the Earth's atmosphere and its oceans, a change that is believed to be permanently changing the Earth's climate. Even though it is an ongoing debate, it is proved by the scientists that the planet is warming. Global warming is for real. The average global temperatures are higher than they have ever been during the past millennium, and the levels of CO in the atmosphere have crossed all previous records. The climate is changing. The earth is warming up, and there is now overwhelming scientific consensus that it is happening, and human-induced. With global warming on the increase and species and their habitats on the decrease, chances for ecosystems to adapt naturally are diminishing. Many are agreed that climate change may be one of the greatest threats facing the planet. Recent years show increasing temperatures in various regions, and increasing extremities in weather patterns. Climate Change resulting from increased greenhouse gases concentrations has the potential to harm societies and eco-systems. In particular, agriculture, forestry, water resources, human health, costal settlements and natural eco-systems will need to adapt to a changing climate or face diminishing functions. The changing climate patterns, and especially increased frequency and severity of extreme events, will increase vulnerability to the natural disasters, both slower on set ones such as drought and rapid onset disaster such as flood and cyclones.

Forest Conservation

The role of forests in the national economy and in ecology was emphasized in the 1988 National Forest Policy, which focused on ensuring environmental stability, restoring the ecological balance, and preserving the remaining forests. Other objectives of the policy were meeting the need for fuel wood, fodder, and small timber for rural and tribal people while recognizing the need to actively involve local people in the management of forest resources. Also in 1988, the **Forest Conservation Act of 1980** was amended to facilitate stricter conservation measures. The **2009 Indian National Forest Policy** document emphasizes the need to combine India's effort at forest conservation with sustainable forest management. India defines forest management as one where the economic needs of local communities are not ignored; rather forests are sustained while meeting nation's economic needs and local issues through scientific forestry.

Protection of Wetlands

Wetlands are complex ecosystems and encompass a wide range of inland, coastal and marine habitats. They share the characteristics of both wet and dry environments and show immense diversity based on their genesis, geographical location, hydrological regimes and substrate factors. They include flood plains, swamps, marshes, fishponds, tidal marshes natural and manmade wetlands. Among the most productive life support, wetlands have immense socioeconomic and ecological importance for mankind. They are crucial to the survival of natural biodiversity. They provide suitable habitats for endangered and rare species of birds and animals, endemic plants, insects besides sustaining migratory birds. India has a wealth of wetland ecosystems distributed in different geographical regions. India is also a signatory to the Ramsar **Convention on Wetlands** and the **Convention of Biological Diversity**; Apart from government regulation, development of better monitoring methods is needed to increase the knowledge of the physical and biological characteristics of each wetland resource, and to gain, from this knowledge, a better understanding of wetland dynamics and their controlling processes. India being one of the mega diverse nations of the world should strive to conserve the ecological character of these ecosystems along with the biodiversity of the flora and fauna associated with these ecosystems. The **Convention on Wetlands, signed in Ramsar, Iran, in 1971**, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 158 Contracting Parties to the Convention, with 1758 wetland sites, totaling 161 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance. Ramsar Convention is the only global environment treaty dealing with a particular ecosystem. The Ramsar Convention on Wetlands was developed as a means to call international attention to the rate at which wetland habitats were disappearing, .due to lack of understanding of their important functions, values, goods and services. Governments which have



joined the Convention are expressing their willingness to make a commitment for helping to reverse that history of wetland loss and degradation. In addition, many wetlands are international systems lying across the boundaries of two or more countries, or are part of river basins that include more than one country. Conservation of Biodiversity is the need of the hour. The Biological Diversity Act, 2002 is a federal legislation enacted by the Parliament of India for preservation of biological diversity in India, and provides mechanism for equitable sharing of benefits arising out of use of traditional biological resources and knowledge. The Act was enacted to meet the obligations under **Convention on Biological Diversity (CBD)**, to which India is a party. **The National Biodiversity Authority (NBA)** was established in 2003 to implement India's **Biological Diversity Act 2002**. The NBA is a Statutory, Autonomous Body and it performs facilitative, regulatory and advisory function for the Government of India on issues of conservation, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources.

Wildlife Conservation

Wildlife conservation is the practice of protecting *endangered plant and animal species* and their *habitats*. Among the goals of wildlife conservation are to ensure that nature will be around for future generations to enjoy and to recognize the importance of wildlife and wilderness lands to humans. Many nations have *government agencies* dedicated to wildlife conservation, which help to implement policies designed to protect wildlife. Numerous independent non-profit organizations also promote various wildlife conservation causes. Wildlife conservation has become an increasingly important practice due to the negative effects of human activity on wildlife.

Wildlife Conservation Act 2002 was enacted to protect wildlife in India. The main objective of **Project Tiger** is to ensure a viable population of tiger in India for scientific, economic, aesthetic, cultural and ecological values and to preserve for all time, areas of biological importance as a natural heritage for the benefit, education and enjoyment of the people. Project Elephant (PE), a centrally sponsored scheme, was launched in February 1992 to provide financial and technical support to major elephant bearing States in the country for protection of elephants, their habitats and corridors.

Ozone Depletion

Ozone depletion describes two distinct but related phenomena observed since the late 1970s: a steady decline of about 4% per decade in the total volume of ozone in Earth's stratosphere (the ozone layer), and a much larger springtime decrease in stratospheric ozone over Earth's polar regions. The latter phenomenon is referred to as the ozone hole. In addition to these well-known stratospheric phenomena, there are also springtime polar tropospheric ozone depletion events. The details of polar ozone hole formation differ from that of mid-latitude thinning, but the most important process in both is catalytic destruction of ozone by atomic halogens. The main source of these halogen atoms in the stratosphere is photo

dissociation of man-made halocarbon refrigerants (CFCs, freons, halons). These compounds are transported into the stratosphere after being emitted at the surface. Both types of ozone depletion were observed to increase as emissions of halo-carbons increased. CFCs and other contributory substances are referred to as ozone-depleting substances (ODS). This is used to protect the ozone layer which protect humans from ultra-violet rays of Sun.

Environmental Impact Assessment

An **Environmental Impact Assessment (EIA)** is an assessment of the possible impacts that a proposed project may have on the environment, consisting of the environmental, social and economic aspects. The purpose of the assessment is to ensure that decision makers consider the environmental impacts when deciding whether or not to proceed with a project. The **International Association for Impact Assessment (IAIA)** defines an environmental impact assessment as "the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made." **EIAs** are unique in that they do not require adherence to a predetermined environmental outcome, but rather they require decision makers to account for environmental values in their decisions and to justify those decisions in light of detailed environmental studies and public comments on the potential environmental impacts.

Environment and Indian Constitution

The Indian Constitution guarantees justice, liberty and equality to all citizens of the country. In Maneka Gandhi's case the court gave a new dimension to Article 21. It held that the right to 'live' is not merely confined to physical existence but it include within its ambit the right to live with human dignity. The same view was reflected by Court in Francis Coralie V. Union Territory of Delhi said that the right to live is not restricted to mere animal existence. **Article 21** also constitute right to get pollution free water and air. **Article 48 of Directive Principles of State Policy** directs that the State to take steps to organize agriculture and animal husbandry on modern and scientific lines. Again **Article 48-A** requires the State to take steps to protect and improve the environment and to safeguard the forests and wildlife of the country.

M.C. Mehta (II) V. Union of India

In this case the Supreme Court, relying on **Article 48-A** gave direction to Central and State Governments and various local bodies and Boards under the various statutes to take appropriate steps for the prevention and control of pollution of water. **Article 51-A** says that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living.

Role of Judiciary in Environmental Protection

One of the most innovative parts of the Constitution is that right to



enforce the fundamental rights by moving Supreme Court is itself a fundamental right under **Article 32** of the Constitution. Writ jurisdiction is conferred on Supreme Court under **Article 32** and High Courts under **Article 226** of the Constitution. Under these provisions Supreme Court and High Courts have the power to issue any sections or orders writ, including writs in the nature of **Habeas Corpus, Mandamus, Prohibition, Quo-Warrant and Certiorari**, whichever is appropriate High Court is wider in scope than that of Supreme Court. However, it may be pointed out that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Moreover, the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. The Supreme Court and also various High Courts have taken innumerable measures in a series of their landmark judgements. Over the years the apex Court has been paying special attention for the **Protection of Environment** by giving effective directions to all the persons concerned with the matter by invoking its powers under the **Article 32**. An analysis of the various decisions of the Supreme Court reveals that the Apex Court has exercised its writ jurisdiction when there was leakage of hazardous gases like Chlorine from the **Shri Ram Industries**, throwing of waste material of alcohol plants into the adjoining *nala* resulting in spreading of obnoxious cells being released apart from mosquito breeding, discharge of highly toxic affluent by the tanneries, safety and insurance for the benefit of workers at the cost of employer, to entertain public grievances relating to environment in the nature of public inters litigation for banning of harmful drugs, pollution of holy Ganga by municipal sewage and industrial effluents, illegal mining of effecting ecology, pollution of waters in river polar in Tamil Nadu due to discharge of untreated affulents, assuring sustainable development detrimental to the forest growth, damage to the **Taj Mahal**, other diseases reminding the enforcement agencies to do the job. The Environment pollution is not confined only to any particular country or particular region. It is widening and crossing over the state and political boundaries affecting land, water, air, space, perversely. Realising the degraded consequences of the environmental pollution and its future impact on living being the battle legal, political and scientific, has started in all forums of international, regional and national organizations. The **National Green Tribunal** was established on **18.10.2010** under the **National Green Tribunal Act 2010** for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. The Tribunal shall not be bound by the procedure laid down under the

Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other four places of sitting of the Tribunal.

Legislations on Environment

Environmental quality has deteriorated during past two decades. This is because of the gap between the intent of the policy and the actual achievement. India's environmental problems are mainly due to its high population and limited natural resources. Protection of the environment poses a fundamental challenge to the nations desire to industrialize faster. Various efforts are being made to control India's environmental problems. The government has recognized the need for planned land and water resource management and the protection of environmental resources is included in the constitution **since 1976**. The constitution, **42th amendment act of 1977** obligates the Government to protect and improve environment for the good of society as a whole. It also makes an environmental protection an obligation of the state and individual citizen and reads, "The state shall Endeavour to protect and improve the environmental and to safeguard forests and wildlife of the country." **Article 51-A (9)** states "It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures." A lot of Acts like **Biodiversity Conservation Act, Environment Protection Act, Wildlife Preservation Act, Water Pollution Prevention Act, Air Pollution Prevention Act** etc. are enacted from time to time for environment preservation.

Sustainable Development

Economic development also refer as generally refers to the sustained, concerted actions of policy makers and communities that promote the standard of living and economic health of a specific area. Economic development can also be referred to as the quantitative and qualitative changes in the economy. Such actions can involve multiple areas including development of human capital, critical, regional competitiveness, environmental, sustainability, social, inclusion, health, safety, literacy, and other initiatives. Economic development differs from economic growth. Economic development is a policy intervention endeavour with aims of economic and social well-being of people, economic growth is a phenomenon of market productivity and rise in GDP. Consequently, as economist Amartya Sen points out: "economic growth is one aspect of the process of economic development. We should handover Quality Air, land and environment to future generations. **World Environment Day is being celebrated across the world on 5th June every year.** *Dr. P.J. Sudhakar is Addl. Director General (M & C), PIB, Bhopal.

CONCLUSION

Throughout the centuries in India, there has been respect for the environment and this has been reflected in the lives of people and also embodied in our cultures and religion. However in recent times



there has been an exponential expansion in environmental degradation mainly because of industrial growth and overpopulation. Throughout the years, indiscriminate exploitation of natural resources has severely affected the environment and as a consequence there has been extensive deforestation, depletion of wildlife and other adverse environmental consequence. It has to be stated at the outset that corpus of environmental jurisprudence includes the laws that has been created by statutory instruments as well and judicial pronouncements, concerning the varied aspects of environmental protection and sustainable development. Environmental jurisprudence in India has assumed a place of seminal importance by devising important principles geared towards the attainment of environmental protection and justice and thus has attained an independent and holistic identity free form the outdated British notion of environmental jurisprudence. In the Post-Independence Period Indian environmental law was mainly restricted to claims of tortuous nature such as nuisance or negligence. There was no environment specific legislation to address the problems of environmental degradation. Most of the scholars trace the growth of Indian environmental jurisprudence to the United Nations Conference **on the Human Environment held at Stockholm in 1972. India was a participant to** this conference and this conference underlined the need of India and other states to adopt environmental measures which would be essential to deal with the environmental hazards that Articles 48A and 51A(g) of the Constitution enshrined these environmental protection measures that would be an inevitable consequence of development. In light of India's international obligations arising from the Stockholm Conference, the Forty-Second Amendment to the Indian Constitution in 1976 introduced explicit principles of environmental protection. Article 48A, part of the Directive Principles of State Policy, obligated the State to protect and improve the environment. On the other hand, Article 51A (g) obligated citizens to undertake the same responsibilities. This constitutional recognition of environmental protection was also followed by a number of important legislations geared to deal with specific environmental problems. The Water (Prevention and Control of Pollution) Act of 1974 was the first example of a legislation specifically geared towards environmental protection. Other major enactments which followed is included here which are, The Forest (Conservation) Act, 1981, The Air (Prevention and Control of Pollution) Act and 1986 (The Environment (Protection) Act. India has a prominent environmental heritage which can be attributable to its biodiversity. However industrial and been successful in achieving this goal. It has used principles of international environmental law and constitutional provisions as tools for the furtherance of the cause of the environment. It is indeed economic development as well as indiscretions in the part of certain industries as well as the lax attitude of the state in certain circumstances has had an adverse effect on the environment as well

as a number of communities who are dependent on them. Hence there was an imperative need for the judiciary to step onto the plate and take an activist stance to prevent further depletion of the valuable biodiversity of the country. As the researcher has elucidated in the paper the Courts have not an overstatement to claim the environmental jurisprudence in this country can to a great extent be attributable to the acts of the judiciary in the last two decades. It is interesting to note that the apex Court has also acknowledged the crucial link between the environment and the rights of communities as well. The Supreme Court has recognized the nexus between environmental protection and human rights in *Andhra Pradesh Pollution Control Board v MV Naydu*. The Hon'ble court observed that environmental concerns under **Article 32 and 226** are of equal significance to Human Rights concerns as both can be traced back to the protection of right to life and liberty under **Article 21** of the Constitution. Thus it would not be inaccurate to conclude that the Courts have been instrumental in establishing a holistic framework of environmental law geared towards achieving the ends of justice.

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INFRINGEMENT OF COPYRIGHT UNDER COPYRIGHT ACT 1957 AND REMEDIES AGAINST SUCH INFRINGEMENT

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6th Semester

INFRINGEMENT OF COPYRIGHT

i. *Infringement is the Foundation of Copyright Liability*

Section 51 of the Act defines the varieties of acts which infringe copyright and all other rights created by the Act. This Section is the foundation of copyright liability. According to Section 51 copyright of a work shall be infringed when any person without a proper licence from the owner: (a) does anything, the exclusive right to do which is conferred upon the owner by the Act; (b) permits to use any place for the performance of a copyrighted work in public for profit, unless he was not aware or had no reasonable grounds for believing that such performance would be an infringement of copyright; (c) makes infringing copies for sale or hire, or selling or letting them for hire; (d) distributes infringing copies either for the purposes of trade or to such an extent as to affect prejudicially, the owner of copyright; (e) by way of trade exhibits in public; (f) imports infringing copies, except for the private and domestic use of the importer. The explanation to the Section further provides that the reproduction of dramatic, literary or musical works in the form of cinematograph film shall be deemed to be an "infringing copy." Thus when any person carries on any activity which contravenes any rights afforded to the owner of copyright in a work, permits any place for the public performance of the work, makes infringing copies of the work for sale of hire, distributes, exhibits or imports infringing copies of the work for the purposes of trade or so as to prejudicially affect the owner of copyright in the work, infringes copyright. Any dealing in infringing copies too amounts to an infringement. A reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film is also deemed to be an infringing copy.

The **Copyright Act** provides both civil and criminal liabilities. Sections 63, 65 and 67 clearly prescribe that only persons who knowingly infringe copyright are committing penal offences. As regards civil liability, the Act provides that knowledge of infringement on the part of the defendant as a basis of liability. If a defendant permits for profit the use of any place for public performance of copyrighted work, he/she can under Section 51(a) (ii) show that he/she was unaware of subsisting copyright or that he/she had reasonable grounds to believe that such copyright did not subsist at the relevant time. If this is proved, the plaintiff is only entitled to injunction and account of profits but to no other remedy. But in all other cases defined by Section 51, and the chapter providing for civil

liability, the defendant who does anything to infringe copyright or deals in specified manner with infringing copies remains liable for damages for infringement. Thus, infringement is the foundation of copyright liability.

ii. Criteria for Determination of Infringement

The definition clause of the 1957 Act does not define infringement as such; but the definition of an "infringing copy" in Section 2(m) provides some standards and criteria for the determination that an infringement has occurred. Accordingly it means:

(I) In relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematograph film.

(ii) In relation to a cinematograph film, a copy of the film made on any medium by any means.

(iii) In relation to a sound recording, any other recording embodying the same sound recording, made by any means;

(iv) In relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the Act, the sound recording or a cinematograph film of such performance; if such reproduction, copy or sound recording is made or imported in contravention of the provision of the Act.

To constitute infringement the verbatim copy or an exact reproduction or dealing with the work is not necessary. A resemblance with the original in a large measure is sufficient. It is the degree of resemblance, which makes the infringing work a mere slavish copy of the original. A literal imitation with mirror variations undoubtedly constitutes infringement. Thus the rights get infringed if a substantial part of it is copied. But to determine this substantiality component in the different categories of work is not an easy task. It is judged from case to case. It is here that the judiciary assumes a significant role. The judiciary through various decisions has laid down certain guiding principles in this regard. To determine infringement one has to see whether the impugned rework is slavish imitation and copy of another person's work or it bears the impress of the authors' own labour and originality. The piracy in an alleged infringing copy can also be detected by making a careful examination to see whether any of the deviations and mistakes, in the original has been reproduced into the alleged infringing copyies. In **Sitanath Basak v. Mohini Mohan**, it was held that mere resemblance of a work by itself is not an evidence of piracy, when the subject matter dealt with is common. This case was an appeal against the order of the trial court injuncting the appellants from publishing a book, which allegedly infringed the copyright of the defendants, book. The appellant claimed that the similarity in the contents is only due to the commonality in the subject matter dealt with in both the books. Even though the Court acknowledged that similarities are bound to occur when a common subject matter is dealt with, it also looked into the degree of similarities and dissimilarities and concluded that the appellant has not only copied the ideas in the defendants book, but



also the form and manner of expression of ideas, thus infringing the copyright of the defendant. However, the criterion for determination of infringement is different in respect of each **genere** of protected work.

(a) Infringement of Literary, Dramatic, Musical or Artistic Work

Reproduction is the only test to determine the infringement of literary, dramatic, musical or artistic work. Thus a literal imitation of the copyrighted work with some variations here and there would undoubtedly constitute infringement. In other words the number of words, paragraphs or pages copied is not decisive; even a small amount copying may infringe copyright?. Some decisions apply the criterion of "external" features ("get up and the overall scope of publication") and "internal" features ("the general layout", "the manner of treatment" of subject matter, and "the amount of material contained in the book in question") as relevant to determination of infringement. The criterion of "colourable imitation" or "colourable variation" is also often used.

(b) Infringement of Copyright by Film Producers

The asymmetry between film producers and authors of other protected works becomes accentuated when the author of dramatic or literary work has established infringement. This is so also because of the fact that "a film has a much broader perspective, wider field and bigger background" and it is always possible for the film maker to give "a colour and complexion" which distinguishes in many ways the story or dramatic theme from the film. The Supreme Court of India, testify to the considerable difficulties in this area, however, adopted in **R.G. Anand v. Delux Films** 19 the doctrine of **dominant impact** even as regards this question. The test was formulated thus: "If the viewer after seeing the film gets a total impression that the film is by and large a copy of the original play, violation of copyright may be said to have been proved". There were a large number of similarities between the play and the film but the court held that similarities do not constitute infringement. As regards themes, the court found that the film dealt with the themes of provincialism, evils of a caste-ridden society and the evils of dowry whereas the play only dealt with the first theme. The court which heard the script of the play and saw the movie came to the conclusion that "from scene to scene, situation to situation, in climax and anti-climax, pathos and bathos, in texture and treatment and purpose and presentation is materially different from the play".

(c) Infringement of Copyright by Importation

Copyright in a work is infringed by anyone who imports into India any 'infringing copies' of the work. The only exception permitted is the importation of not more than one copy of the work for the private or domestic use of the importer. Infringing copy means in this context a copy or reproduction of the work made or imported in contravention of the provisions of the Act. The question that can arise, and has in

the past in fact arisen, is: can an exclusive licensee for publishing a copyright work in India prevent import of copies of the work lawfully made in any other country, say, by the owner of the copyright himself or by his assignee or licensee, on the ground that such importation would amount to an infringement of the copyright of the work? Does such import constitute an import of an 'infringing copy' and, as such, an infringement by importation?

To deter people from making unauthorized reproduction of copyright sound recording, it is now mandatory that the following particulars must be displayed on the sound recording and on any container thereof when the sound recording is published, namely (i) the name and address of the person who has made the sound recording (ii) the name and address of the owner of the copyright in such work and the year of its first publication. Contravention of these requirements is made punishable with imprisonment of up to three year and with a fine.

REMEDIES FOR INFRINGEMENT OF COPYRIGHT

Under the **Copyright Act 1957** both civil and criminal remedies are available against infringement of copyright. In the case of innocent infringements some of these remedies are not available.

(i) Civil Remedies

Sections 54 to 62 of the **Copyright Act** provide civil remedies. As per Section 55 of the Act in the case of infringement of copyright "the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right". Thus an owner of Copyright is entitled for all such civil remedies like injunction, damages, accounts and other remedy conferred by law.

a. Injunctions

The main remedy sought in most Copyright suits is an injunction to restrain the defendant from continuing to do acts which constitute infringement. It is the only remedy available against a defendant who proves that at the date of the infringement he was not aware and had no reasonable grounds for believing that copyright subsisted in the work (the innocent infringer). The plaintiff cannot recover damages in such cases, though the court may order the defendant to pay the plaintiff the whole or part of the profits made by him by the sale of the infringing copies as it may consider reasonable in the circumstances. The law relating to injunction is contained in the **Specific Relief Act, 1963**. Invariably in such actions a temporary injunction is sought to restrain the defendant from continuing to infringe the copyright of the plaintiff pending disposal of the case (*pendente lite*), since damages are rarely an adequate remedy for the injury suffered by the plaintiff. Also an ad interim injunction *ex-parte* pending service of notice of the suit is usually sought. As at this stage the parties have yet to adduce evidence in support of their respective claims, the court has to proceed on the *prima facie* situation, the probabilities of the case and the balance of convenience in granting or denying an



interim injunction. The principles laid down in English precedents are frequently relied upon and followed in India. The law governing interlocutory injunctions is contained in the Civil Procedure Code, 1908, Order 39, Rules 1 and 2. It is, however, expressly provided that the remedy of injunction is not available to restrain the construction of a building or other structure which infringes, or which if completed would infringe, the copyright in some other work after the construction has been commenced, or so as to require the building to the extent constructed to be demolished.

b. Damages and Account of Profits

Besides the injunction, Section 55 of the **Copyright Act** provides remedies of damages and accounts. However, the remedy of injunction can be joined either with that of damages or accounts, but the remedies of accounts and damages can in no case be joined. Thus in a suit for infringement of copyright, the publishers of a book sought relief of injunction against the producers and distributors of the picture which filmed the theme of the book to restrain the screening of the picture any further. The publishers claimed the relief of accounts as well as of damages. No complaint was filed by the publishers about adequacy of damages and the decree of damages became final.

c. Other Remedies (Anton Piller Orders, Mareva Injunctions etc.)

Besides the above stated remedies, Section 55 of the Act recognises other remedies "as are or may be conferred by law for infringement of a copyright", like, **Anton Piller Orders, Mareva Injunctions** etc. In England the High Court has jurisdiction on an application made to the court by a plaintiff *ex parte* and in *camera* to make a mandatory order requiring a defendant to permit the plaintiff and his representative to enter the defendant's premises, as specified in the order, to inspect articles and documents relevant to the proceedings and to remove them or take copies of them and even to take proceeds of the infringing articles³⁹. This form of an order originally made under the court's inherent jurisdiction by Lord Denning in **Anton Piller KG v. Manufacturing Processes Ltd.** has now received recognition in the TRIPs Agreement. The order is not a search warrant. It has repeatedly been clarified by Lord Denning in **Anton Piller KG** that the order is not a research warrant; the order only authorizes an inspection by permission of the defendant. Entry without his permission would be a trespass. The defendant is, however, ordered by the court in *personam* to give his permission with the result that, if he does not do so, he is in contempt of court, but the plaintiff is still not entitled to enter in the absence of permission.

d. Specific Remedy in the Case of Threat

The above stated remedies are available in the case of infringement of copyright. Besides this there are certain remedies available in the case of groundless threat of legal proceedings under Section 60 of the **Copyright Act 1957**. The provisions of Section 60 make it clear that

if a person is threatened with any alleged infringement of copyright and if, in fact, the actions of the persons threatened do not constitute any infringement of the legal rights of the person who makes such threats, he can file a declaratory suit and obtain an injunction against the continuance of such threats. He can also obtain damages which he may have sustained by reason of such threats. These provisions are designed to protect a person against any wrongful threats relating to infringement of copyright and the only relief which can be asked for is an injunction against the continuance of such threats and damages occasioned by reason of such threats. The proviso to this Section makes this provision amply clear because it provides that this Section will have no application if a person, who has made such threats, commences and prosecutes with due diligence an action for infringement of the copyright claimed by him. Once a suit is filed for infringement of the copyright by the person who has given the threat, the suit under Section 60 becomes infructuous as the Section ceases to apply in such a situation.

e. Jurisdiction of Court

Now question arises in which court the suits or other civil proceedings are to be instituted in the case of infringement of copyright? A suit or other civil proceedings relating to infringement of copyright can be initiated in the 'District Court' having jurisdiction under Section 62(1) which enables the copyright owner to sue for infringement in the District Court within whose jurisdiction he actually and voluntarily resides or carries on his business or personally works for gain and not necessarily where the infringement occurred. This is a special jurisdictional provision for the protection of copyright owners which was not available to a trademark owner or patent owner. But now in the **Trade Marks Act 1999** a similar provision has been incorporated.

It is legally permissible for a trade mark owner to claim protection for his trade mark under the trademarks legislation but also copyright protection for the words or device in his trade mark label. It has, therefore, become common practice to get trade mark labels registered in the copyright register. In infringement actions where protection both under the **Copyright Act** as well as the **Trade Marks Act/passing off** action is sought, the issue relating to jurisdiction has resulted in conflicting decisions which will be investigated in detail during my research.

(ii) Criminal Remedies

a. Statutory Scheme

Sections 63 to 70 of the **Copyright Act 1957** deal with the criminal remedies. The Act makes it an offence for any person knowingly to infringe (a) the copyright in a work or (b) any other right conferred by the Act (e.g., broadcast reproduction right; author's special rights), or knowingly to abet such infringement. It is, however, clarified-that the construction of a building or other structural work which infringes or which, if completed would infringe the copyright in some other work is not an offence under the Act. The Act now provides for



minimum punishment, though the court is given power to impose a lesser punishment for adequate and special reasons to be mentioned in the judgement. The punishment increases for the second or further conviction. Further, it is an offence knowingly to make, or be in possession of any 'plate' for the purpose of making 'infringing copies' of any work in which copyright subsists. The Act also provides for offences in relation to the register of copyrights kept under the Act and for false representations made for the purpose of deceiving or influencing any authority of officer. The Amendment Act has also widened the powers of the police. It empowers any police officer, not below the rank of a sub-inspector, if he is satisfied that an offence of infringement of copyright in any work 'has been, is being, or is likely to be' committed, to seize without warrant, all infringing copies of the work 'wherever found'. He is thereupon required to produce before a magistrate all copies and plates so seized as soon as practicable. The court trying the offence is empowered to order, whether the accused is convicted or not, that all copies of the work or all plates in the possession of the accused, which appear to the court to be infringing copies or plates for making infringing copies, be delivered up to the owner of the copyright.

b. Judicial Approach

There have been very few prosecutions under the Act and the cases that have gone to Appellate Courts show that the High Court's do not view criminal prosecution for infringement of copyright with due seriousness as is reflected in judgements of Delhi High Court and Bombay High Court in ***Siaram Silk Mills v. States*** and ***Gulfam Exports and Others v. Sayed Hamides*** respectively. In ***Sitaram Silk Mills***, based on the complaint of the owner of the copyright a prosecution was initiated for copyright infringement under Section 63 of the Copyright Act and the trade mark infringement under Sections 78 and 79 of the **Trade Marks Act 1958** read with Sections 420, 489 and 486 of IPC. A search was conducted in pursuance of the directions of the magistrate and infringing goods were seized. The magistrate also took cognizance of the offence. However, a petition was filed before the High Court under Section 482 of Cr. P.C. for compromise of the criminal case. The court after identifying the party's role observed thus: "In view of the above no useful purpose would be served by permitting the above complaint and proceedings to continue. Accordingly, the petition is allowed. The above noted FIR and the proceedings emanating the reform are quashed, subject to the payment of Rs. 10,000/- as costs to the Legal Aid and Advice Board, Patialal House. Petition stands disposed of.

(iii) Administrative Remedies

In order to prevent importation of infringing copies in India, the Copyright Act 1957 makes available an effective and quick administrative remedy to the owner of copyright. Section 53(1) of the Act empowers the Registrar of Copyrights to make an order prohibiting the importation into India of copies of a copyrighted

work made outside India which, if made in India, would infringe copyright in the work, on the application of the owners of copyright in such work, or his duly authorised agent, after making such inquiry as he deems fit.

POWERS OF PROPER OFFICER UNDER THE CUSTOMS ACT

Under section 110 of the Customs Act 1962, if the proper officer has reason to believe that any goods are liable to confiscation under the Act, he may seize such goods. However, where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods that he shall not remove, part with, or otherwise deal with the goods except with the prior permission of such officer. It is mandatory to give a notice of the seizure of the goods to the owner of goods within six months, otherwise the goods shall be returned to the person from whose possession they were seized. However, the period of six months may be extended by another period of six months if sufficient cause is shown. Under section 111(d), any goods which are imported or attempted to be imported or are brought within the Indian custom waters for the purpose of being imported, country to any prohibition imposed by law shall be liable to confiscation. The pirated copyright goods are covered under this provision. All infringing copies confiscated under Customs Act shall not vest in the government, but shall be delivered to the owner of the copyright in the work. However, importation of one infringing copy of the work is allowed for the private and domestic use of the importer. The remedy available to copyright owner under section 53 is different from and in addition to the civil remedy available for the infringement of copyright under section 55. The remedy available under section 53 of the Act is quasijudicial in nature as an appeal can be made to the Copyright Board against the order of Registrar under section 72 of the Copyright Act.



GENERAL EXCEPTIONS TO CRIMINAL LIABILITY

Dibya Shankha Das

4th Semester

INTRODUCTION

The criminal law outlines different punishments for various crimes. But a person may not always be punished for a crime that he/she has committed. The Indian Penal Code, 1860 recognizes defenses in chapter four under the heading 'General Exceptions.' Sections 76 to 106 of the IPC cover these defenses. The law offers certain defenses that exculpate criminal liability. These defenses are based on the premise that though the person committed the offense, he cannot be held liable. This is because, at the time of the commission of the offense, either the prevailing circumstances were such that the act of the person was justified or his condition was such that he could not form the requisite mens rea for the crime. **The defenses are generally classified under two heads-justifiable and excusable.** Thus, for committing a wrong, a person must be responsible for doing a wrongful act without having any justification or excuse for it.

A justified act is a one which otherwise, under normal conditions, would have been wrongful but the circumstances under which the act was committed make it tolerable and acceptable. The person fulfills all the ingredients of the offence but his conduct is held to be right under the circumstances. An excusable act is the one in which though the person has caused harm, it is held that a person should be excused because he cannot be blamed for the act. **For example** - if a person of unsound mind commits a crime, he cannot be held responsible for being mentally sick. In case of an excusable defense, the actor is not punished as he lacks the necessary mens rea for the offence either by reason of an honest mistake of fact, infancy, insanity or intoxication. There must be a disability to cause the condition that excuses the conduct. A conduct is punishable not because the person acted in that manner but because he chose to act in that manner. **Excusable defenses are invoked when one cannot infer the bad character of a person from the act that he has committed.** The different defenses features in IPC and in what category they fall have been discussed in this project. The next section expresses my views on attempt to classify these general exceptions.

Classification of general exceptions

Excusable Act - Excusable General Exceptions

- Mistake of fact (Section 76 and 79)
- Accident (Section 80)
- Infancy (Section 82, 83)

- Insanity (Section 84)
- Intoxication

Justified Act

- Judicial Act (Section 77 and 78)
- Necessity (Section 81)
- Consent (Section 87 - 89 and 92)
- Duress (Section 94)
- Communication (Section 93)
- Trifles (Section 95)
- Private Defense (Section 96-106)

DEFINING AND EXPLAINING THE EXCUSABLE GENERAL EXCEPTIONS

Mistake of fact (section 76 and 79)

The two sections exclude a person from criminal liability when they are ignorant of the existence of relevant facts or have mistaken them and commit a wrongful act for which he neither could foresee nor intended the unlawful consequence. It is important that the mistake must be reasonable and must pertain to the fact of the case and not the law. This is derived from the legal maxim "***ignorantia facti doth excusat, ignorantia juris non excusat***".

- Section 76 excuses a person from criminal liability who, in to good faith, commits an act which he believes he is bound to do so under law, due to mistake of fact.
- Section 79 excuses a person from criminal liability who, in to good faith, commits an act which he believes he is justified to do, due to mistake of fact.
- Section 76 - A person believes that he is under a legal compulsion to do such an act.
- Section 79- A person acts because he thinks there is a legal justification for the act he has committed.

Example in case of - bound by law

A soldier firing on a mob under the lawful orders of his superior - This is an act where the soldier is bound by law to do so.

Example in case of justified by law

An officer of court is supposed to arrest X but accidentally arrests Z believing him to be X - this is a mistake of fact.

It is always to be kept in mind that mistake relating to the facts in various case laws should be a mistake of fact, not a mistake of law. The mistake of law is never excusable in any court of law because everyone is always expected to know the law of the land.

In case - Regina vs. Prince,

Facts: Defendant was convicted of taking an unmarried girl under 16 years out of the possession and against the will of her father. The jury found that the girl had told the defendant she was 18, the defendant honestly believed the statement, and his belief was reasonable.

Defendant's argument: The statute has a requirement read into it that the prosecution must prove that the defendant believed the girl he had taken was over 16.

State's argument: The statute does not require this proof. The act of taking a girl out is wrong in and of itself - that is the ***mens rea***. It



does not matter that he thought the girl was older. Just like it would not matter whether he knew or did not know whether she is under 16. However, it would have mattered if he did not know the girl was in the custody of her father.

Holding: Conviction affirmed.

Reasoning: The court interpreted the statute to require a strict liability application. The Common Law does not allow defenses to strict liability.

In Chirangi vs. State,

Facts- The accused one day took an axe and went with his son(deceased) to a nearby hillock (a small hill), known as "budra mata" in order to gather some leaves and killed him, the appellant in a moment of delusion considered that his target was a tiger and not his son, and he accordingly assailed it with an axe. The accused thought, by the reason of fact that he was justified in destroying deceased, whom he thought was a dangerous animal.

Holding - The court accordingly held that in the circumstances the accused was protected by the provisions of section 79 of the Indian penal code and was hence acquitted of the charge of murdering his son, under section 302 IPC.

Accident (Section 80)

Nothing is an offence if it is committed:-

1. By accident
2. Without criminal intention or knowledge
3. While doing a lawful act
4. In a lawful manner
5. By lawful means
6. Where due care and caution is exercised.

Accident means an unintentional act or an unexpected act. It is something that happens out of the ordinary course of things. It is necessary to prove that the act was done without any criminal intention, with no mens rea. An act that was intended by or known to the doer cannot be an accident. The act must be a lawful act, in a lawful manner by lawful means. Proper care and caution must be exercised.

LEADING CASE - THE STATE GOVERNMENT VS. RANGASWAMI

Facts - During the forenoon of the 9th July 1950, when the respondent Jemadar Menon, Subedar Chaitnath, Subedar Thadius and J.S.O. Verma were playing cards in J.S.O.'s quarter No. 11, the respondent went to relieve himself. On his return shortly afterwards, he reported that the hyena which had been roaming about in the vicinity on the previous day had come back; and he indicated to his companions a moving object near a tree about 200 feet from them. They all believed that it was a tiger or hyena, and Jemadar Menon went to the bungalows of Ordnance Officers Gulabsingh and Gurmukh Singh and told them that there was a tiger near the J.C.O.'s quarters.

The Ordnance Officers went there with their guns; and as Gulabsingh was not a good 'shikari', he gave his loaded gun to the respondent

who went towards the object from one direction, while Gurmukh Singh and Chaitnath approached it from the opposite direction. Shortly afterwards, the respondent fired at the object from a distance of 158 feet; and, to the horror of all, this was followed by the cry of a human being in pain. When the respondent and others went to the place where he was prostrate, they found that he was in a precarious condition; and Major M.T. Chati, Station Commander, on arrival saw that he was dead. He accordingly sent the report to the Police Station where it was received by K.K. Baxi, station officer.

Respondent's submission - The respondent in examination admitted that he had fired at the object with Gulab Singh's gun because he was under the Impression that it was the same hyena which had been seen in the vicinity of his quarters on the previous day. He also pointed out that at the time of the shooting he was falling, and in defence he added that he had not expected a human being to be at the place in question and that the object at which he aimed had had a brown covering, in short, his case was that Kachrya's death was due to an accident.

Prosecution's submission - The prosecution evidence, including that of the station officer K.K. Baxi showed that at the material time drizzling was in progress, the sky was overcast with clouds, there was no sunshine and visibility was poor. There were bushes around the place where Kachrya was shot and he was wearing a gunny-Dug at that time. In fact, the gunny-bag article D, which had been found beneath the corpse, was bloodstained and contained a tear which indicated that the bullet had passed through it.

Judgment by Bombay High Court - the respondent was rightly acquitted in respect of an offence under Section 304A of the Indian Penal Code. The facts to which the court referred show unmistakably that the amount of care and circumspection taken by him was that which a prudent and reasonable man would consider to be adequate upon all the circumstances of the case. The whole affair was a pure accident and he was protected by the provisions of Section 80 of the Indian Penal Code. The fact that he used an unlicensed gun would not deprive him of the benefit of that immunity; and in *King Emperor vs. Timmappa* [3 Bom LR 678], a Division Bench held that shooting with an unlicensed gun does not debar an accused from claiming immunity under that section, of the Indian Penal Code. The appeal against the acquittal is accordingly dismissed and the order of the trial Magistrate is upheld. The court is also of the opinion that there is no reason why the sentence awarded under Section 19(e) of the Indian Arms Act should be enhanced. The respondent was technically liable under that provision but no more; and all that he had done was to borrow for a few minutes a gun in order to kill, as he thought, a wild animal which might have attacked him and his comrades. The application for enhancement of the sentence is also dismissed.

Infancy (Section 82 and 83)

According to **Section 82** of **IPC**, nothing is an offence where -

- Act is done by a child



- Under seven years of age

There is Absolute incapacity for the crime under seven years of age. Presumption of law- Doli Incapax, i.e., a child has no discretion to distinguish right from wrong, thus criminal intention does not arise.

According to **Section 83** of **IPC**, nothing is an offence where

- Act is done by a child between 7-12 years of age
- Has no sufficient maturity of understanding
- To judge the nature and consequences of his conduct is no offence.

Malitia Supplet Oetatem - Malice Supplies Age

If proven to have sufficient maturity of understanding, liability arises.

Illustrations:

(i) A child of 9 years of age took a necklace valued at Rs. 2/8/- from another boy and immediately sold it to another for five annas, the child was discharged under this section, but the accused was convicted of receiving stolen property for the court considered convict displaying sufficient intelligence to hold him guilty.

(ii) The accused, a girl of 10 years of age, a servant of the complainant, picked up his button worth eight annas and gave it to her mother. She was convicted and sentenced to a month's imprisonment. But the High Court quashed the conviction holding that there was no finding by the Magistrate that the accused had attained maturity of understanding sufficient to judge the nature of her act.

In case of *Krishna Bhaswan vs. State of Bihar*, Patna High Court upheld that if a child who is accused of an offence during the trial, has attained the age of 7 years or at the time of decision the child has attained the age of 7 years can be convicted if he is able to understand the nature of the offence.

Insanity (Section 84)

It includes act done -

- Due to unsoundness of mind- no free will- born idiot, temporary failure, madman, unconscious, intoxicated.
- Incapable of knowing the nature of the act, or that it is wrong or contrary to law.

The point to be emphasized on is that if a person is taking insanity as a defense, then he has to prove legal insanity along with the medical insanity.

Tests:

- At the time of commission of offence
- State of mind before and after

Only organic or natural incapability, not uncontrollable impulses, weak intellect, or eccentric behavior.

LEADING CASE - *Surendra Mishra vs. State of Jharkhand*,

Facts - According to the prosecution, on 11th of August, 2000 the deceased Chandrashekhar Choubey was going in a car driven by Vidyut Kumar Modi and when reached Chas Nala crossing, he asked the driver to stop the car and call Shasdhar Mukherjee, the owner of Sulekha Auto Parts. As directed, the driver called said Shasdhar

Mukherjee and the deceased started talking to him from inside the car. According to the prosecution all of a sudden the appellant, Surendra Mishra, the owner of the Medical Hall came there with a country-made pistol, pushed Shashdar Mukherjee aside and fired at point-blank range at the deceased. The driver fled away from the place of occurrence and informed the family members of the deceased, leaving the deceased in the car itself. Vinod Kumar Choubey along with the driver came back and rushed the deceased to the Chas Nala Colliery Hospital, where he was declared dead.

On the basis of the aforesaid report a case under Section 302 of the Indian Penal Code and Section 27 of the Arms Act was registered against the appellant. After usual investigation police submitted the charge-sheet and ultimately the appellant was put on trial for commission of the offence under Section 302 of the Indian Penal Code and Section 27 of the Arms Act.

The trial court held him guilty on both the counts and sentenced him to undergo imprisonment for life under Section 302 of the Indian Penal Code but no separate sentence was awarded under Section 27 of the Arms Act. His conviction and sentence has been upheld by the High Court in appeal and hence the appellant is before Supreme Court with the leave of the Court.

Appellant's submission- Only plea of the appellant was that by virtue of unsoundness of mind, the act done by him comes within general exception under Section 84 of the Indian Penal Code and, therefore, he cannot be held guilty for the act done by him.

Prosecution's submission - In the present case the prosecution has proved beyond all reasonable doubt that immediately after the appellant had shot- dead the deceased, threatened his driver, Vidyut Kumar Modi of dire consequences. Not only that, he ran away from the place of occurrence and threw the country-made pistol, the weapon of crime, in the well in order to conceal himself from the crime. However, it was recovered later on.

The aforesaid conduct of the appellant subsequent to the commission of the offence clearly goes to suggest that he knew that whatever he had done was wrong and illegal. Further, he was running a medical shop and came to the place of occurrence and shot dead the deceased. Had the appellant been a person of unsound mind, it may not have been possible for him to run a medical shop.

We are of the opinion that the appellant though suffered from certain mental instability even before and after the incident but from that one cannot infer on a balance of preponderance of probabilities that the appellant at the time of the commission of the offence did not know the nature of his act; that it was either wrong or contrary to law. Hence, the plea of the appellant does not come within the exception contemplated under Section 84 of the Indian Penal Code and therefore the appeal was dismissed.

Judgment - It was held that an accused who seeks exoneration from criminal liability of an act under section 84 is to prove legal insanity and not medical insanity because Expression "unsoundness of mind"



has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not *ipso facto* exempted from criminal liability. The mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behavior or the behavior is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code.

Next thing which needs consideration is as to on whom the onus lies to prove unsoundness of mind

In law, the presumption is that every person is sane to the extent that he knows the natural consequences of his act. The burden of proof in the face of Section 105 of the Evidence Act is on the accused. Though the burden is on the accused but he is not required to prove the same beyond all reasonable doubt, but merely satisfy the preponderance of probabilities.

Even if the accused establishes unsoundness of mind, Section 84 of the Indian Penal Code will not come to its rescue, in case it is found that the accused knew that what he was doing was wrong or that it was contrary to law. In order to ascertain that, it is imperative to take into consideration the circumstances and the behavior proceeding, attending and following the crime. Behaviour of an accused pertaining to a desire for concealment of the weapon of offence and conduct to avoid detection of crime go a long way to ascertain as to whether, he knew the consequences of the act done by him.

Intoxication (Section 85 and 86)

According to Section 85 of the IPC, nothing is an offence which includes :

- Act of a person
 - Incapable of judgement
 - Due to intoxication
 - Caused without his knowledge or against his will
- According to Section 85 of the IPC,
- Offence requiring a particular intent or knowledge
 - Committed by an intoxication person
 - Presumption of knowledge, unless proves intoxicated without his knowledge or against his will is never excusable in the court of law.

The major difference between section 85 and 86 is that in sec 85, a person is intoxicated involuntarily and in section 86, a person is intoxicated voluntarily. That's why under section 85, defense is provided to the accused. In section 86, and person is held guilty of the offence. The **correct test** is whether by reason of drunkenness, the accused was incapable of forming an intention of committing the offence.

The correct test is whether by reason of drunkenness, the accused was incapable of forming an intention of committing the offence.

In case of *Jethu Ram vs State of MP*, where accused drank liquor at the persuasion of his father to alleviate his pain, it cannot be said that administration of liquor to him was against his will and therefore, he could not claim any benefit under section 85. "Will" is the faculty of our mind which guides or controls our actions. So where the mind goes with the act, it can be said that a person had acted in accordance with his will.

Leading Case *Basdev vs State of Pepsu*

In this case, Basdev (retired military personnel) and a boy (aged 15 years) had gone to attend a wedding. At there, Basev boozed quite a lot and he became very drunk and intoxicated. However, the evidence showed that although at times he staggered and was incoherent in his talk, he was still capable of moving himself independently and talking coherently as well. He asked the boy to step aside a little so that he may occupy a convenient seat. The boy refused. On that Basdev whipped out a pistol and shot the boy in the abdomen which proved fatal.

It was also in evidence that after shooting the boy, Basdev had made attempt to get away and when he was caught hold off by the witnesses, he had requested them to be forgiven. There was also no evidence that when he was taken to the police station, he had to be specially supported. Keeping all these facts in view, the court held that he was not so much under the influence of the drink that his mind was so obscured by the drink that there was incapacity to him to form the required intention.

The court observed that so far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from attending circumstances of the case paying due regard to the degree of intoxication.

The court laid down some important propositions with regard to the effect of voluntary intoxication on criminal liability :

- The absence of understanding of the nature and consequence of an act, whether produced by drunkenness or otherwise, is a defence to the crime charged.
- Drunkenness is ordinarily neither a defence nor an excuse for crime.
- If due to excessive drunkenness actual insanity supervenes, it furnishes a complete defence to a criminal charge.
- However, there may be cases falling short of insanity. In such cases and when the crime is such that the intention of the party committing it is one of its constituent elements, there should be evidence to show that he had become "incapable of forming the specific intent essential to constitute the crime".
- Where the evidence does not prove such incapacity and merely establishes that the mind of the accused was so affected by drink that he more readily gave way to some



violent passion, that would not rebut the presumption that accused intended the natural consequences of his acts.

In the present case, the accused had not gone so deep in drinking, and from the fact it could be found that he knew what he was about to do.

Decision : In view of the decision in this case, it cannot be said that the accused was incapable of forming a specific intent. Thus, he is liable to be convicted for murder.

CONCLUSION

After finishing the project it can be concluded that there are certain back draws to the biggest of creations on the field of law. There are several exceptions which should be kept in mind before making any judgment. So I have gone through all the exceptions and hence could see the huge field of decision and the troubles attached to the work.

I have gained a lot of knowledge through this project and would like to do more researches on the topic.

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HISTORY

In 1882, the Presidency School, which formed the nucleus of the present Institution, was handed over to Sir Surendranath Banerjea on 1st January 1884. He raised it to the status of a college affiliated to the F.A. standard and named it **"THE PRESIDENCY INSTITUTION"**. Within a year the institution was converted into a full fledged, first grade college under the name "RIPON COLLEGE". Its activity was further extended through the opening of the Post-Graduate Department of Law in 1884, which was later affiliated to the Calcutta University in the year 1885. Dr. Rajendra Prasad, the first President of India, Harendra Kumar Mukherjee, the Ex Governor of West Bengal, Justice Bijan Kumar Mukherjee, the Ex-Chief Justice of the Supreme Court of India and many other luminaries and eminent personalities.



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