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Reference Material for Five Years

Bachelor of Law (Hons.)

Code: 038

Semester-IX

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Five Years Bachelor of Law (Hons.)

Code: 035

Semester – IX

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LEGAL ETHICS & COURT CRAFT (501)

Unit – I

TOPIC I: SUPREME COURT RULES, 1966

Supreme Court of India came into existence on 28th of January, 1950, two days after India became a Republic. The inauguration took place in the Chamber of Princes in the Parliament building which also housed India's Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes, that the Federal Court of India had sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises.

Commencement of Work

After its inauguration on January 28, 1950, the Supreme Court commenced its sittings in a part of the Parliament House. The Court moved into the present building in 1958. The building is shaped to project the image of scales of justice. The Central Wing of the building is the Centre Beam of the Scales. In 1979, two New Wings - the East Wing and the West Wing - were added to the complex. In all there are 15 Court Rooms in the various wings of the building. The Chief Justice's Court is the largest of the Courts located in the Centre of the Central Wing.

Composition

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and 7 puisne Judges - leaving it to Parliament to increase this number. In the early years, all the Judges of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to cumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the Judges has increased, they sit in smaller Benches of two and three - coming together in larger Benches of 5 and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India comprises the Chief Justice of India and not more than 25 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age

of 65 years. In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for atleast five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President of India, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.

The Constitution of India seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehavior or incapacity. A person who has been a Judge of the Supreme Court is debarred from practising in any court of law or before any other authority in India.

The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules, 1966 are framed under Article 145 of the Constitution of India to regulate the practice and procedure of the Supreme Court.

SUPREME COURT RULES, 1966 [AMENDMENT DATED 11-12-1974]

In exercise of the powers conferred by Article 145 of the Constitution, and all other powers enabling it in this behalf, the Supreme Court hereby makes, with the approval of the President, the following rules further to amend the Supreme Court Rules, 1966, namely :—

b) These rules may be called the Supreme Court (Amendment) Rules, 1974.

c) They shall come into force on the date of their publication in the Official Gazette.*

d) In the Supreme Court Rules, 1966—

1. In Order IV, for Rule 5, the following rule shall be substituted, namely:—

"5. No advocate shall be qualified to be registered as an advocate on record unless—

5. his name is, and has been borne on the roll of any State Bar Council for a period of not less than three years on the date of commencement of his training as provided hereinafter ;

1. ingthin a radius of 16 Kilometers from the Court House and gives an undertaking to employ, within one month of his being registered as advocate on record, a registered clerk ; and

2. he pays a registration fee of twenty-five rupees."

(2) In Order XXXIX—

(i) for Rule 7, the following rule shall be substituted, namely:—

"7. A petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of Section 18 and Section 19 of the Act, by any candidate at such election, or—

1. in the case of Presidential election, by twenty or more electors joined together as petitioners ;

2. in the case of Vice-Presidential election, by ten or more electors joined together as petitioners." ;

(ii) in Rule 26, after the words "any other candidate or", the words "in the case of Presidential election, another twenty electors, and in the case of Vice-Presidential election", shall be inserted

(iii) in Rule 33, after the words "any candidate or", the words "in the case of Presidential election, twenty electors, and in the case of Vice-Presidential election", shall be inserted ;

(iv) after Rule 35, the following rules shall be inserted, namely:—

"35-A. Soon after the conclusion of the hearing of the petition, the Registrar shall submit a statement to the Court showing the court-fee and other expenses incurred by each party to the petition and the total number of days of hearing of the petition.

35-B. At the time of passing the final order under Rule 35, the Court shall also make an order fixing the total amount of costs payable and shall further direct by and to whom the said costs shall be paid." .

TOPIC II- HIGH COURT RULES

Introduction

Delhi High Court (Original Side) Rules, 1967 In exercise of powers conferred by Sections 122 and 129 of the Code of Civil Procedure, 1908 and Section 7 of the Delhi High Court Act, 1966 (Act 26 of 1966) and all other powers enabling it, the Delhi High Court hereby makes the following Rules, after previous publication with respect to practice and procedure for the exercise of its ordinary original civil jurisdiction. Ch. I, CHAPTER I General R. 1 1. Short title—These Rules may be called the "Delhi High Court (Original Side) Rules, 1967". R. 2

1. Commencement

These Rules shall come into force with effect from such date1 as may be notified. R. 3 3. Application—All proceedings on the original side of the Court instituted or transferred pursuant to provisions of the Delhi High Court Act of 1966 or any other law shall unless otherwise ordered by the Court be governed by these Rules. R. 4 4. Definitions—In these Rules, unless the context otherwise requires: (a) „Advocate" means a person who is entitled to practice the profession of law under the Advocates Act, 1961 (Act No. 25 of 1961); (b) „Chief Justice" means the Chief Justice of the High Court and includes appointed under the Constitution to perform the duties of the Chief Justice; (c) „Code" means the Code of Civil Procedure, 1908 (V of 1908) as amended from time to time; (d) „Constitution" means the Constitution of India; (e) „The Court" or „This Court" means the Delhi High Court; (f) „First hearing" includes the hearing of a suit for settlement of issues and any adjournment thereof; (g) „Interlocutory application" means an application in any suit, appeal or proceeding, already instituted in the Court, not being a proceeding for execution of a decree or order;

a) „Judge" means the Judge of the Court;

b) „Registrar" means the Registrar of the Court and includes any other officer of the Court to whom the power and functions of the Registrar under these Rules may be delegated or assigned;

c) „Registry" means the Registry of this Court;

1. „Taxing Officer" means the Taxing Officer appointed under Section 6 of the Court-fees Act and includes the Officer of the Court whose duty is to tax costs of proceedings in the Court;

1. All other expressions used herein shall have the meaning ascribed to them by the Code or the General Clauses Act, 1897 (10 of 1897), as the case may be.

Rules of Delhi High Court

2. Steps to be taken in the Registry—Where by these rules or by any order of the Court, any step is required to be taken in connection with any suit, appeal or proceeding before the Court,

that step shall unless the context otherwise requires be taken in the Registry.

a. Period how calculated—Where a particular number of days is prescribed by these Rules or by or under any other law or is fixed by the Court for doing any act, in computing the time, the

day from which the said period is to be reckoned shall be excluded, and if the last day expires on

a day when the office of the Court is closed, that day and any succeeding days on which the Court remains closed shall also be excluded.

- Forms to be used—the forms set out in the Court with such modifications or variations as The

circumstances of each case may require, shall be used for the purpose therein mentioned.

Where no form required for any purpose is prescribed, a form approved by the Registrar, may be used.

(a)How decree, order, writ etc. to run—Every decree, order, writ-summons, warrant or other mandatory process shall in the name of the Chief Justice and shall be signed by the Registrar or any other officer specifically authorised in that behalf with the day, month and year of signing and shall be sealed with the seal of the Court.

(b) Official Seal—The official seal to be used in the Court shall be such of the Chief Justice may from time to time direct and shall be kept in the custody of the Registrar.

(d) Custody of the Records—The Registrar shall have the custody of the records of the Court and no record or document filed in any cause or matter shall be allowed to be taken out of the custody of the Court without the leave of the Court.

(e) Hours of Sitting—Unless otherwise ordered by the Chief Justice, the Court shall hold its sittings on all working days from 10.00 A.M. to 1.00 P.M. and from 1.45 P.M. to 3.45 P.M.

(f) Office Hours—The Offices of the Court shall remain open daily from 9.30 A.M. to 4.30 P.M. 2[Any urgent matter filed before 12 noon shall be put before the Court for hearing on the following working day. In exceptional cases, it may be received thereafter for hearing on the following day with the specific permission of the Hon‟ble Judge-in-Charge (Original Side)].

(g) Process and copying fee—In all proceedings on the Original Side of the Court process fee and copying fee shall be charged in accordance with the rules in force immediately before the appointed day fixed under Section 3 of the Delhi High Court Act of 1966.

(d) Court's power to dispense with Compliance with the Rules—The Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these Rules and may give such directions in matters of practice and procedure as it may consider just and expedient.

(e) Application for the above purpose—An application to be executed from compliance with the requirements of any of the rules shall, in the first instance, be placed before the Registrar, who may without interfering or dispensing with any mandatory requirements of the rules, make appropriate order thereon, or, if in his opinion, it is desirable that the application should be dealt with the Court, direct the applicant, if the other party has entered appearance, to serve a copy thereof on the said party, and thereafter place the same before the Court on a convenient day for orders.

(f) Courts power to enlarge or abridge time—The Court may enlarge or abridge the time appointed by these Rules or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms, if any as the justice of the case may require, and any enlargement

may be ordered, although the application therefor is not made until after the expiration of the time appointed or allowed.

17. The Court at any time, either of its own motion or on the application of any party, make such orders as may be necessary or reasonable in respect of any of the matters mentioned in Chapter XXI of these Rules.

18. Inherent power of the Court not affected—Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

19. Miscellaneous—Except to the extent otherwise provided in these rules, the provisions of the Civil Procedure Code shall apply to all proceedings on original side. COMMENTS Where a suit was filed by Bank on the Original Side at Delhi High Court for recovery of certain sums based on cash credit facilities and customer had deposited the title deeds in respect of House property situate at Mathura as collateral security. The suit was liable to be dismissed for want of jurisdiction, as the provisions of Section 16 CPC would apply. Rule 19 of the Original Side Rules specifically provides that wherever the Rules are silent, the CPC will apply. State Bank of India v. O. P. Gupta and others, AIR 1983 Delhi 214 : 1983 (4) DRJ 83 : 1983 (23) DLT 198. It is not correct to say that because by the application of Rule 19, the orders which are appealable are restricted to those mentioned in Order 43 Rule 1 of CPC. There is a conflict between Section 10(1) of Delhi High Court Act and Rule 19 of the Rules as the two provisions deal with different matters. Section 10(1) deals with the forum of appeal whereas Rule 19 of the Rules read with Order 43 Rule 1 of CPC indicates the orders which are appealable. Thus by the application of Rule 19 which in terms also applies the Code to the ordinary original civil jurisdiction of this Court, an appeal under Section 10(1) of the Act would be competent only if it falls within Section 104 or Order 43 Rule 1 of the Code.

1. Vide Notification No. F. Gen. 4(47) the Rules came into force w.e.f. 10-7-1967.

* Vide Notification No. 704/G/Gen.II/DHC dated 16-12-1981, the Court sitting hours were changed from 10.30 A.M. to 4 P.M. with lunch break from 1.15 P.M. to 1.45 P.M. (w.e.f. 4-1-1982).

(7) Substituted for the words "Any urgent matter filed before 12.30 P.M. shall be put up before the Court on the following working day" by Notification No. 46/Rules/DHC dated 11.4.2002.

UNIT – II

TOPIC 1: LIMITATION ACT, 1963

The Limitation Act, 1963 – An Overview

(b) Applicable from 1.1.1964

(c) Applicable to whole of India except J&K.

Meaning: - Limitation means, the time at the end of which, no action at law or suit can be maintained. It is a restriction of the right of action to certain periods of time, after the accruing of cause of action, beyond which, except in certain specified cases, it will not be allowed. Legal remedy can be exercised only up to certain period and not subsequently.

1. Concerned Enactments

(d) Arbitration Act 1940, effective up to 24-01-1996

(e) Indian Contract Act 1872

(f) Arbitration and conciliation Act, 1996,

Main Provisions

Description of Suits Period of Time from which Limitation period being to run For compensation for Three years when the time breach of a promise specified arrives to do anything at a specified time.

- For specific performance Three years the date fixed for of a contract. Performance, or, if no such date is fixed when the plaintiff has noticed that performance is refused.

- For compensation for the Three years When the contract breach of any contract, is broken express or implied not herein specifically provided for.

- Any other application for Three Years when the right to which no period of limitation apply accrues is provided elsewhere.

Section 3 – Bar of Limitation

Every suit instituted, appeal, and application made after the prescribed period, shall be dismissed.

Section 4 – when court is closed:-

When prescribed period expires on a day when court is closed, application can be made on the date when the court reopens.

Section 5 – extension of Prescribed Period in Certain Cases:-

Prescribed Period can be extended if applicant satisfies the court with sufficient cause

Sufficient Cause:-

- Illness
- Bona-fide mistake
- Wrong proceedings
- Taken in good faith
- Proceedings in wrong court through bona-fide mistake
- Ignorance of facts
- Mistaken advice of layer
- Bona-fide mistake in calculation

Insufficient Grounds

(a)Ignorance of Law

(b) Poverty

(c) Negligence of pleader or clerk Section – 6 – Legal Disability

If a person is having legal disability like Minor, Insane or Idiot, prescribed period is to be reckoned after the disability is ceased (over).

Section – 9 –Continuous running of time

Once time has began to run, no subsequent disability to institute a suit or make an application stop it.

Means once time has began to run, no subsequent disability will stop it.

e.g. on the date from which prescribed period is to be reckoned, a person was OK, time will start to run & if subsequently he becomes legally disabled, time will not stop.

Section 12 Exclusion of time in Legal Proceedings

- The day from which such period is to be reckoned, shall be excluded.
- The time requisite for obtaining a copy of judgment shall be excluded. Section 16–Effect of death on or before the accrual of the right to sue

The limitation period shall be computed from the day when there is a legal representative of deceased capable to sue.

Section -18 Effect of Acknowledgment in Writing

Before expiry of prescribed limitation period, if an acknowledgment of liability has been made in writing signed by the party against whom such property or right has been claimed, a fresh period of limitation shall be computed from the date of Acknowledgement. Time is reset a zero from the date of Acknowledgment. e.g. Post dated cheque is an acknowledgement.

Topic II: INDIAN REGISTRATION ACT, 1908

Introduction

The provisions relating to the registration of documents are now scattered about in seven enactments. This will make the law more easily ascertainable. It will further clear the Statute-book of three entire Acts and will enable two more Acts to be entirely removed from it on the coming into force of the Code of CivilProcedure, 1908, and of the Indian Limitation Bill, now before Council. The opportunity has been taken to incorporate alterations of a formal character intended merely to improve and simplify the language of the existing Act. The numbering of the sections of the Act of 1877 has been preserved. It has been found that the mere process of consolidation might result in the law being changed in some respects. To avoid this some few amendments appear to be necessary.

Purpose of the Act

The purpose of the Registration Act, amongst other things, is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property, and to perpetuate documents which may afterwards be of legal importance, and also to prevent fraud. Registration lends inviolability and importance to certain classes of documents.

Registration Procedure in The Act

The scheme of the Act is to consolidate the law relating to registration and to provide for the establishment of its registration. It lays down what documents require compulsory registration. S. 23 of the Act provides the time for presenting the documents for registration.

It provides limitation for getting a document registered. S.25 provides for condonation of delay in presenting documents for registration. S. 34 specifically provides for that enquiry, that can be held before the registration by the Registering Officer: Central WarehousingIt is well settled that an instrument which creates a right or interest in the rents, profits, benefits and income from an

immovable properly, is a document which is compulsorily registrable. Thus, a document creating an assignment of a debt will not require registration, but a document assigning rents will require registration. If the power of attorney in question is to be treated as creating an equitable assignment of rents, it will require registration and if not registered, will be void and unenforceable. The power of attorney does not create or recognize any right in or relating to any immovable property or benefit arising there from in favor of the bank. It merely authorizes the bank to act as the company's agent to perform the acts stated therein.

The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case; primarily, the Court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent (case under Stamp Act, 1899).

Provisions Regarding Lease Documentation

The rent note is an agreement to lease which falls under wider definition of lease under the Registration Act. The rent note or agreement to lease may be in counter-part signed by both the parties or it may be in correspondence or in acts or conduct. If there is no present demise, the agreement may be effected by an unregistered instrument or even orally. If there is present demise, the rent note operates as a transfer by way of lease and if the term does not exceed one year, registration is not necessary, but if the term exceeds one year, registration is necessary not under S. 107, T.P. Act but under the Registration Act. An instrument signed by either the lessor or lessee alone would operate as an agreement to lease or a rent note. A rent note signed by the lessee alone is not a lease but would be a lease under the Registration Act and the question of its registration has to be decided under that Act.

Conclusion

The registrations act illustrates about the procedure of registering, what documentations should be registered and how it should be done. The registration of Will documents, powers and duties of the registrations department. It also explains about the penalties and punishment for not

following the procedure and not completing things on time. This Acts brings a good administration system among government offices and the court system that everything should be managed with in time and in a proper procedure in order to avoid future confusions.

UNIT III: BENCH & BAR RELATIONS

- **RECIPROCITY AS PARTNERS IN ADMINISTRATION OF JUSTICE**

Introduction

The body of persons which operates the machinery through which justice is administered, composed mainly of the Judges and the Advocates who help them in discharging their difficult duties, has existed and functioned both in ancient and modern times. Its broad purpose throughout has been to realise all those goals which are labelled "Justice" according to the law which has to be administered in a society whether it is ancient or modern, capitalistic or socialistic, feudal or industrial. Concepts of justice, however, have changed vastly in the course of time. And, as between different States in modern times too, Justice, as embodied in the law, has different contents and connotations. Such differences as we find between different States as regards the functions of the Bench and Bar are, I suggest, mainly due to the some what differing basic concepts of justice found in the laws of different States. These concepts have been produced and moulded by the operations of complex and interconnected, constantly acting and counter-acting, sets of factors in the course of our histories

Indian Scenario

In this country, at any rate, there has been considerable hard thinking about the basic structure and the operations of our machinery for the administration of justice. Bench and Bar are the two arms of the same machinery and unless they work harmoniously, justice cannot be properly administered through the courts of law. But lapses occur from both' sides, which tend to stiffen their relationship. The lawyers in the discharge of their duties have sometimes to use expressions which may not be palatable to the court but they are never used either with the intention of offering any insult or causing any interruption to the proceedings of the court.

Duties of Bar Towards the Bench

It may be noted that good behaviour of lawyers goes a long way in their attempt to acquire justice from the court for their clients. Not only the scholarship of a lawyer plays an important role in achieving success in the court rather his good conduct also helps and plays effectively in this direction. The statements of the lawyers influences the court, so they are under moral and legal obligation to be sober, fair and cordial in their dealings with the court. It does not mean that the lawyers have to surrender to the improper behaviour of the judge. The lawyers have legal right to object the improper behaviour of the judge and they are entitled to enlighten their grievances to the higher authorities of the court. Thus, while the lawyers have to maintain the dignity and decorum of the court, they have not to do or behave as such, which may bring down the reputation of the court in the mind of the litigants as well as general public of the society. In this context, the Bar Council of India has framed certain rules for observance by the lawyers towards the court, their colleagues and clients.

Duties of Bench towards The Bar

On the other hand, the behaviour of the judge towards the lawyers also plays an important role in the due administration of justice. It is the behaviour of the judge with the lawyers, which makes the atmosphere of the court quite cordial and congenial. A judge has to be impartial in his dealings with advocates. The judge should not only be free from bias or interest in any case rather he should not be guided by the obstinacy and snobbery in his conduct with advocates. It is so because the life, liberty, reputation and property of the citizens are greatly influenced by the decision of the judge. The judge has to play a very temperate and sober role in the dispensation of justice to the society, which he can fulfil by observing sober, cordial and impartial behaviour, towards the lawyers at large.

Inter Relationship between Bench And Bar

It is pertinent to note that the relationship between the advocate and judge is quite delicate. On the one hand, it is important to allow an advocate to be firm and resolute in the pursuance of his case while on the other, the judge must maintain his authority in the court. Of course, an advocate should avoid rule, insolent or insulting behaviour but a judge should not be over-sensitive to the remarks made against him.

The second important duty of a judge towards the Bar, is to respect and safeguard its privileges. The counsel has a right to insist for a courteous and patient hearing from a judge till he is respectfully and relevantly arguing his case before him. This right of the counsel deserves due respect from the Judge.

The third important duty which a judge owes to the counsel is patient hearing of the case. The judge has no business to form a forehand opinion before the case is heard by him.

The last but not the least duty which a judge owes to the counsels is to avoid confrontation with the lawyers in the process of argument and examination of witnesses. The judge should not' interrupt the counsel till he is arguing relevantly and purposefully. Till the lawyer is presenting his case in an orderly way, there should be patient hearing and co-operation from the side of the judge, as otherwise it would lead to miscarriage of justice.

Case Laws Defining Relationship Between Bar and Bench

The opinion of our Supreme Court in the context of Bench- Bar Relations, has been clearly laid down in P.D. Gupta v. Ram Murti and Others (AIR 1998 SC 283) as follows:

"A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting judges. Nobody should be able to raise a finger about the conduct of a lawyer. Actually judges and lawyers are complementary to each other. The primary duty of the lawyer is to inform the court as to the law and facts of the case and to aid the court to do justice by arriving at the correct conclusions. Good and strong advocacy by the counsel is necessary for the good administration of justice. Consequently, the counsel must have freedom to present his case fully and properly and should not be interrupted by the judges unless the interruption is necessary."

In *Mahant Hakumat Rai v. Emperor*(AIR 1943 Lahore 14.) the Lahore High Court had held that "Without failing in respect to Bench, it is the duty of the members of the Bar to assert their just rights to be heard by the tribunal before which they are practising. They should be fearless and

independent in the discharge of their duties, and would be perfectly right in protesting against irregular procedure on the part of any judge; and if the advocate is improperly checked or found fault with, he should vindicate the independence of the Bar. He would be perfectly justified in insisting on getting a proper hearing and he would be perfectly right to object to any interruption with the course of his argument such as to disturb him in doing his duty to his client. Plenary powers vested in the Presiding Officer of the Court, apart from the fact that they have rarely been used against members of the legal profession so far, should only be used to vindicate the honour of the court or to satisfy the necessities of public justice and not as a matter of course." It may, however, be noted that the presence of professional etiquette coupled with recognition by judiciary of the importance of an independent Bar, will work together to minimise the possibility of confrontation between the Bench and the Bar.

Conclusion

A free and fearless Bar is not to be preferred to an independent judiciary, nor an independent judiciary to a free Bar. Neither has a primacy over the other. Both are indispensable to a free society. The freedom of the Bar presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. One of the potent means for assuring judges of their independence is responsible, well- behaved, cultured and, learned Bar. Finally, reciprocal adjustment of conduct by the Bench and the Bar is the keystone to the smooth functioning of courts in general interest of the society.

TOPIC II: PROFESSIONAL MISCONDUCT

Introduction

Advocacy is a noble profession and an advocate is the most accountable, privileged and erudite person of the society and his act are role model for the society, which are necessary to be regulated. Professional misconduct is the behaviour outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession. Professional misconduct refers to disgraceful or dishonourable conduct not befitting an advocat. Chapter V of the Advocate Act, 1961, deals with the conduct of Advocates. It describes provisions relating to punishment for professional and other misconducts. Section 35(1) of the Advocate Act, 1961,

says, where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to it disciplinary committee. Generally legal profession is not a trade or business, it's a gracious, noble, and decontaminated profession of the society. Members belonging to this profession should not encourage deceitfulness and corruption, but they have to strive to secure justice to their clients. The credibility and reputation of the profession depends upon the manner in which the members of the profession conduct themselves. It's a symbol of healthy relationship between Bar and Bench.

The Advocates Act, 1961 as well Indian Bar Council are silent in providing exact definition for professional misconduct because of its wide scope, though under Advocates Act, 1961 to take disciplinary action punishments are prescribed when the credibility and reputation on the profession comes under a clout on account of acts of omission and commission by any member of the profession.

Meaning and Definition

Profession is a vocation requiring some significant body of knowledge that is applied with high degree of consistency in the service of some relevant segment of society, by Hodge and Johnson.

Noratanman Courasia v. M. R. Murali the Supreme Court explored the amplitude and extent of the words "professional misconduct" in Section 35 of the Advocates Act. The facts of the case involved an advocate (appearing as a litigant in the capacity of the respondent, and not an advocate in a rent control proceeding) assaulted and kicked the complainant and asked him to refrain from proceeding with the case. The main issue in this case was whether the act of the advocate amounted to misconduct, the action against which could be initiated in the Bar Council, even though he was not acting in the capacity of an advocate. It was upheld by the Supreme Court that a lawyer is obliged to observe the norms of behavior expected of him, which make him worthy of the confidence of the community in him as an officer of the Court. Therefore, inspite of the fact that he was not acting in his capacity as an advocate, his behavior was unfit for an advocate, and the Bar Council was justified in proceeding with the disciplinary proceedings against him.

Provisions in Advocates act 1961

The advocates act 1961 is a comprehensive legislation that regulates the legal practice and legal education in India. It envisages for the establishment of Bar Council of India and State Bar Councils with various disciplinary committees to deal with misconduct of the advocates. It also provides for the provisions relating to the admission and enrolment of advocates and advocates right to practice. Chapter V containing sections 35 to 44 deals with the conduct of the advocates. It provides for punishment for advocates for professional and other misconduct and disciplinary powers of the Bar council of India. In order to attract the application of section 35 of the advocates act the misconduct need not be professional misconduct alone. The expression used in the section is Professional or other misconduct. So even conduct unconnected with the profession may account to a misconduct as for example, conviction for a crime, though the crime was not commited in the professional capacity. At the same time it is to be noted that a mere conviction is not sufficient to find an advocate guilty of misconduct, the court must look in to the nature of the act on which the conviction is based to decide whether the advocate is or is not an unfit person to be removed from or to be allowed to remain in the profession.

Misconduct is of infinite variety, the expression professional or other misconduct must be understood in their plain and natural meaning and there is no justification in restricting their natural meaning. The term misconduct usually implies an act done willfully with a wrong intention and as applied to professional people it includes unprofessional acts even though such acts are not inherently wrongful.

The Code of Conduct Prescribed For Advocate Section 49 of the advocate's act 1961 empowers the Bar Council of India to frame rules regulating standards of professional conduct. Accordingly various duties are prescribed for the advocates some of them are highlighted below.

No advertising or soliciting work, it is against an advocate's code of ethics to solicit or advertise work and amounts to a misconduct on the part of the advocate. Both direct and indirect advertising is prohibited. An advocate may not advertise his services through circulars, advertisements, touts, personal communication or interviews not warranted by personal relations. Similarly, the following forms of indirect advertising are prohibited:

• by issuing circulars or election manifestos by a lawyer with his name, profession and address printed on the manifestos, thereby appealing to the members of the profession practising in the lower courts who are in a position to recommend clients to counsel practising in the HC.

• canvassing for votes by touring in the province or sending out his clerk or agents to the various districts, which must necessarily mean directly approaching advocates practicing in subordinate courts. Further, the signboard or nameplate displayed by an advocate should be of reasonable size. It should not refer to details of an affiliated by the advocate i.e. that he is or has been president or member of a bar council or of any association, or he has been a Judge or an Advocate-General, or that he specializes in a particular kind of work, or that he is or was associated with any person or organization or with any particular cause or matter.

Not to demand fees for training; An advocate is restrained from demanding any fees for imparting training to enable any person to qualify for enrolment.

Not use name/services for unauthorized practice; An advocate may not allow his professional services or his name to be associated with, or be used for any unauthorized practice of law by any lay agency.

Not to enter appearance without consent of the advocate already engaged: an advocate is prohibited from entering appearance in a case where there is already another advocate engaged for a party except with the consent of such advocate. However if such consent is not produced, the advocate must state the reasons for not producing it, and may appear subsequently, only with the permission of the court.

Duty to opposite party:- While conducting a case, a lawyer has a duty to be fair not only to his client but also to the court, and to the opposite party. An advocate for a party must communicate or negotiate with the other parties regarding the subject matter of controversy, only through the opposite party's advocate. If an advocate has made any legitimate promises to the opposite party, he should fulfill the same, even if the promise was not reduced to writing or enforceable under the rules of the court.

Duties of an advocate towards his client: The relationship between a lawyer and a client is highly fiduciary and it is the duty of an advocate fearlessly to uphold the interests of the client by fair

and honourable means without regard to any unpleasant consequences to himself or any other person.

The above are only few important code of conduct to be observed by an advocate practicing in India. According to Justice Abbot Parry, there are seven important qualities that a lawyer should possess, he call these qualities as seven lamps of advocacy, they are; Honesty, Courage, Industry, Wit, eloquence, Judgement, and Fellowship. Apart from that the panchsheel of the bar are Honesty, Industry, Justice, Service and Philisophy and Panchsheel of the bench according to Sri ram Kishore Rande are, Impartiality, Independence, Integrity and Industry, Judicial activism and Prayer. Among the various duties of the advocates like, duties to client, court, public, colleagues and self, selected points can be picked up and arranged according to the due and relative importance and are called as ten commandments of advocates they are;

a) Duties to client

- Protection of the interest of the client
- Proper estimation of the value of legal advices and services b) Duties to court
- Honesty and respect

1. Preparation of the case c) Duties to Public
2. Service
3. Loyalty to law and justice d) Duties to colleagues
4. Fellowship
5. Fairness

e) Duties to self

9) Systematic study

10) Prudence and deligence

The rules laid down by the Bar Council of India forms the code of conduct for advocates and in broad sense any violation of such rules or code of conduct can be termed as professional misconduct. The scope of the term has been still widened by the Supreme Court in various

decisions.

Instances of Misconduct

Legal Practioners act 1879 has not defined the word Misconduct. The word Unprofessional conduct is used in the act. Even the Advocates Act 1961 has not defined the term misconduct because of the wide scope and application of the term. Hence to understand the instances of misconduct we have to rely on decided cases. Some of the instances of Professional misconduct are Dereliction of duty, Professional negligence, Misappropriation, Changing sides, etc.

Contempt of Court as Misconduct

In the recent case of B. M. Verma v. Uttrakhand Regulatory Commission court noted that, it was given the wide powers available with a Court exercising contempt jurisdiction. In the case of Court of Its Own Motion v. State dealing with the contempt proceedings involving two senior advocates, observed that 'given the wide powers available with a Court exercising contempt jurisdiction, it cannot afford to be hypersensitive and therefore, a trivial misdemeanor would not warrant contempt action. Circumspection is all the more necessary because as observed by the SC in SC Bar Association v. Union of India the Court is in effect the jury, the judge and the hangman; while in M.R. Parashar H. L. Sehgal it was observed that the Court is also a prosecutor Anil Kumar Sarkar v. Hirak Ghosh, reiterates this.

Misbehavior as Misconduct

Vinay chandra mishra, in re; In this case a senior advocate in on being asked a question in the court started to shout at the judge and said that no question could have been put to him. He threatened to get the judge transferred or see that impeachment motion is brought against him in Parliament. He further said that he has turned up many Judges and created a good scene in the Court. He asked the judge to follow the practice of this Court. He wanted to convey that admission is as a course and no arguments are heard, at this stage. But this act was not only the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. The concerned judge wrote a letter informing the incident to the chief justice of India. A show cause notice was issued to him.

Whether the advocate had committed a professional misconduct? Is he guilty of the offence of the criminal contempt of the Court for having interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U.P. HC Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him. Thus the contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks and he shall stand suspended from practising as an advocate for a period of three years.

Strike As Misconduct

Ex-capt. Harish uppal V. Union of India, Several Petitions raise the question whether lawyers have a right to strike and/or give a call for boycotts of Court/s. The petitioners submitted that strike as a mean for collective bargaining is recognised only in industrial disputes. He submitted that lawyers who are officers of the Court cannot use strikes as a means to blackmail the Courts or the clients. He submitted that the Courts must take action against the Committee members for giving such calls on the basis that they have committed contempt of court. He submitted that the law is that a lawyer who has accepted a Vakalat on behalf of a client must attend Court and if he does not attend Court it would amount to professional misconduct and also contempt of court. He submitted that Court should now frame rules whereby the Courts regulate the right of lawyers to appear before the Court. He submitted that Courts should frame rules whereby any lawyer who mis-conducts himself and commits contempt of court by going on strike or boycotting a Court will not be allowed to practice in that Court. He further submitted that abstention from work for the redressal of a grievance should never be resorted to where other remedies for seeking redressal are available. He submitted that all attempts should be made to seek redressal from the concerned authorities. He submitted that where such redressal is not available or not forthcoming, the direction of the protest can be against that authority and should not be misdirected, e.g., in cases of alleged police brutalities Courts and litigants should not be targeted in respect of actions for which they are in no way responsible. He agreed that no force or coercion should be employed against lawyers who are not in agreement with the “strike call” and

want to discharge their professional duties. Respondent submitted that lawyers had a right to go on strike or give a call for boycott. He further submitted that there are many occasions when lawyers require to go, on strike or gave a call for boycott. He submitted that this Court laying down that going on strike amounts to misconduct is of no consequence as the Bar Councils have been vested with the power to decide whether or not an Advocate has committed misconduct. He submitted that this Court cannot penalise any Advocate for misconduct as the power to discipline is now exclusively with the Bar Councils. He submitted that it is for the Bar Councils to decide whether strike should be resorted to or not. Petitioner further relied on the case of Lt. Col. S.J. Chaudhary v. State (Delhi Administration, the HC had directed that a criminal trial go on from day to day. Before this Court it was urged that the Advocates were not willing to attend day to day as the trial was likely to be prolonged. It was held that it is the duty of every advocate who accepts a brief in a criminal case to attend the trial day to day. It was held that a lawyer would be committing breach of professional duties if he fails to so attend. In the case of K. John Koshy and Ors. v. Dr. Tarakeshwar Prasad Shaw, one of the questions was whether the Court should refuse to hear a matter and pass an Order when counsel for both the sides were absent because of a strike call by the Bar Association. This Court held that the Court could not refuse to hear the matter as otherwise it would tantamount to Court becoming a privy to the strike. Considering the sanctity of the legal profession the court had relied on words said in case of "In Indian Council of Legal Aid and Advice v. Bar Council of India, the SC observed thus : "It is generally believed that members of the legal profession have certain social obligations, e.g., to render "pro bono publico" service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour and, therefor, an advocate must strictly and scrupulously abide by the Code of Conduct behoving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession." In Re: Sanjeev Datta, the SC has stated thus: "The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is

different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behavior. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practice it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible." In the case of SC Bar Association v. Union of India, it has been held that professional misconduct may also amount to Contempt of Court. It has further been held as follows: "An Advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court.

Introduction-

The practice of the law is not a business open to all who wish to engage in it; it is a personal *right or privilege… it is in the nature of a franchise from the State….'*

Legal privilege is essentially a right that exists for the sole benefit of the client. It ensures full and frank communication between clients and lawyers without any fear of disclosure or incrimination. This privilege is fundamental to the justice system… The law is a complex web of interests, relationships and rules. At the heart of this privilege lies the concept that people must be able to speak candidly with their lawyers and so enable their interests to be fully represented. Every developed legal system provides special protection to communications

between lawyers and their clients.1 Such protection is generally not available to communications with other classes of professional adviser.2 In English law this special protection is known as legal professional privilege, which extends to cover a broader range of communications and documents generated in the context of litigation.

1.1 Definition

There is no statutory definition of client-lawyer or legal professional privilege in India. From the wording of sections 126 and 129 of the Indian Evidence Act, 1872, which set out the main rules against disclosure,

1) the protection against disclosure by an Advocate1 that is accorded to:

(a) Only

a) all communications made by or on behalf of a client to his2 Advocate and any advice given by the Advocate to his client in the course of and for the purpose of that Advocate's engagement3 and

b) the contents or condition of any document which an Advocate has become acquainted with in the course of and for the purpose of his engagement4,

and

(a) the protection that is accorded to every person against being compelled to disclose any confidential communication with his legal professional adviser, save where that person voluntarily gives evidence as a witness and where the disclosure of confidential evidence is necessary to explain the evidence already given by him.5

The plain language of Sections 126 and 129 of The Evidence Act does not indicate that 'in-house lawyers' or 'salaried legal advisers' fall within their purview. Notably, the legislature has specifically used the words "barrister, attorney, pleader, or vakil" in Section 126 and not chosen to amend the same; and used a broader term "legal professional adviser" in Section 129.

The distinction between a "barrister", "vakil", "attorney" and a "pleader" no longer exists since Section 29 of the 1961 Act specifically provides that there shall be only one class of persons entitled to practise the profession of law, namely 'Advocates'.

However, on an interpretation of the Advocates Act and the Bar Council Rules, in-house counsel would not come within the definition of 'advocate' since and 'advocate under Section 2(1)(a) of

the Advocates Act means an advocate entered in any roll under the provisions of the Advocates Act. The legal position in India with regard to practice of law currently is: (a) only an advocate is exclusively entitled to practice the profession of law and (b) a person who is in full time employment of an employer ceases to be an advocate.

2. Sources

The law of India has for the most part its origin in English judgments and Indian Acts of Parliament that were enacted at a time when India was still a colony of Britain. The lawrelating to legal professional privilege is found mainly in Sections 126 – 129 of the Indian Evidence Act, enacted in 1872 (i.e. more than half a century before India gained her independence). It is based on a draft prepared by Sir James Fitz-James that sought to reduce the then prevailing English law of evidence into a code suitably modified to cater to circumstances in India. After Independence in 1947, English judgments remain of considerable persuasive authority and it is settled law that the courts in India may look to English decisions in matters concerning the interpretation of the Evidence Act6. The law in India relating to legal professional privilege will therefore seem instantaneously familiar in many respects to English and common law lawyers, but the similarities with English law are in fact more illusory than real. The relevant provisions of the Evidence Act are:

Section 126: No barrister, attorney, pleader, or vakil7 shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted, in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure:

(d) any such communication made in furtherance of any illegal purpose;

(e) any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney, or vakil was or was not directed to such fact by or on behalf of his client.

Explanation: The obligation stated in this section continues after the employment has ceased.

Section 127: The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

***Section 128*:** If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader, attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

Section 129: No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser unless he offers himself as a witness, in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no other.

The code of conduct applicable to Advocates is found in the **Bar Council of India Rules,** Part VI, Chapter II, Section II. At first sight, it appears surprisingly silent on any duty of confidentiality owed by Advocates to their clients. However, Paragraph 16 of this Section provides:

An Advocate shall not, directly or indirectly, commit a breach of the obligations imposed by section 126 of the Indian Evidence Act.

The Evidence Act applies to judicial proceedings in India but not to affidavits or arbitrations.8 It may therefore be thought from a literal reading of Paragraph 16 that disciplinary proceedings under the code of conduct would be attracted only where an Advocate breaches section 126 of the Evidence Act i.e. where the Evidence Act applies in the first place. However, from an Advocate's point of view, it would be safer to read Paragraph 16 as effectively reproducing the obligations in section 126 of the Evidence Act, so that the duty of confidentiality exists even when the Evidence Act does not strictly apply.

3. Scope/Limits

3.1 General observations

In determining the scope of legal professional privilege in India, it is important to treat the Advocate's position as separate from that of the client: The level of protection accorded to confidential information and material in India accordingly depends on whether that information or material is sought to be extracted from an Advocate or from his client.

Disclosure by an Advocate

The protection accorded by section 126 of the Evidence Act against disclosure by an Advocate extends only in respect of actions committed before the engagement of the Advocate. Accordingly, there is no such protection in respect of:

2. any communication made in furtherance of any illegal purpose or

3. any fact observed by the Advocate in the course of his engagement showing that any crime or fraud has been committed since the commencement of that engagement.

Communications must be made confidentially in the context of a Client – Advocate relationship and with a view to obtaining legal advice in order to obtain protection. A record of a client's appointment and time of attendance have been held not to be privileged.

The rule is: "Once privileged, always privileged." The privilege therefore extends after the lawyer's engagement has come to an end, but not to communications made or advice received thereafter.

The provisions of Section 126 of the Indian Evidence Act apply to interpreters and agents of the Advocate, who are under the same prohibition and are entitled to the same immunity as the Advocate engaged in the matter.9 The agents of the Advocate are effectively treated as one with the Advocate. Accordingly, privileged information coming into the hands of an Advocate's clerk does not amount to publication for the purpose of a suit in defamation.10

Privileged communications and information in the hands of the Advocate may be disclosed with the consent of the client. The consent has to be expressly given to the Advocate

Disclosure by the Client

However, where a client voluntarily gives evidence as a witness, he or she may be compelled to disclose any confidential communication with the Advocate which in the Court's opinion is necessary to explain the evidence that the client has already given but for no other purpose.1

3.2 Between lawyers

Communications between lawyers are generally admissible and in practice are relied upon as evidence. An admission however is irrelevant if it was made either upon an express condition that evidence of it was not to be given or in circumstances that the court can infer that the parties agreed that evidence of it must not be given.

Section 23 provides:

In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

Explanation-Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under Section126.

3.3 Third parties

Legal professional privilege in India is limited to communications, documents, and advice passing between client and Advocates (and their agents). Unlike the position in England, no privilege is available for communications made by parties or their Advocates and third parties for the specific purpose of pending or contemplated litigation.

4. In-House Lawyers

In-house lawyers may not practise as Advocates during the period of their employment.16 They would seem to clearly fall outside the ambit of Section 126, with its emphasis on a Client-Advocate relationship and the existence of communications, documents and advice made and given in the course of an Advocate's engagement and for the purpose of that engagement.

Section 126 of the Evidence Act refers only to (former) categories of professional, and not employed, lawyers and envisions protection from disclosure only in the context of a Client-Advocate relationship.

Rationale of Privilege

- Right to a client to obtain legal advice in confidence
- To encourage full and frank communication between attorneys and their clients.

Weaknesses of Indian Law

• Section 126: Does not include patent agent,while Section 129 the expression 'legal professional adviser' may not include a patent agent, and the provision restricts privilege to the client only.

- *Wilden Pump Engineering Co. v. Fusfield*:

Patent agent not regarded as a variety of lawyer, and held to be out of the common law privilege under English law – Civil Evidence Act S 15 and Patents Act S 104

• *Dormeuil Trademark:* Privilege does not extend to trade mark agents.

Weaknesses Continued

• Communications between clients-third parties and lawyer-third parties, such as technical experts and expert witnesses:

– Not privileged if the communication came into existence for the purpose of obtaining advice from the lawyer (legal advice privilege)

– Privileged if the communications occur subsequent to the decision to commence litigation (litigation privilege)

– Indian law likely to adopt this distinction based on English common law.

Weaknesses Continued

• Foreign law privilege

– Under English law of privilege, communications between clients and their foreign lawyers, or with their foreign clients, will be protected based on *lex fori* (*Re: Duncan*).

– The new recognition is that privilege is not merely a right to refuse material at trial, but a fundamental right

– hence different principles might apply today.

– Difficult conflict of law issues arise.

– The position in India is unclear, although the use of 'barrister' [General Clauses Act Section 3 (4)] may provide a clue.

Weakness Continued

• In-house Counsel – under Part VI, Chapter II, Section VII, Rule 49 of the Bar Council of India Rules:

– Advocate cannot be a full-salaried employee

• In-house counsel in *Municipal Corporation v. Vijay Metal Works*, Section 126 and 129 of the Evidence Act provided same protection on his legal advice as a barrister or attorney. Although, in the *Akzo Nobel* judgment, the ECJ appears to have taken a contrary view.

B. Classification

A single privilege It can now authoritatively be stated that legal professional privilege is a single integral privilege whose sub-heads are legal advice privilege and litigation privilege.

As is clear from the decisions of the House of Lords in *Waugh v British Railways Board*,40 *Re L*,41 and *Th ree Rivers 6*,42 the relevant distinction is between:

• Legal advice privilege—communications between *lawyer and client* for the purpose of giving or receiving legal advice, in both the litigation and the non-litigation context.

• Litigation privilege—communications between a client or his lawyer and *third parties* for the purposes of litigation.

E. Th e Basic Features of Legal Professional Privilege

Th e essential prerequisites of a claim for legal professional privilege were summarized by Lord Scott in *Th ree Rivers 6* under the following heads-----

1. **Confidentiality**
2. **Absolute nature of the privilege**
3 the predominant public interest
4 **Substantive and procedural right**

Conclusion—

The rules relating to privilege in India are more than a century old and are clearly inadequate to provide the levels of protection that may ordinarily be expected in modern relationships with lawyers. The categories of lawyers expressly referred to in the Evidence Act are no longer relevant. The wording would clearly need to be changed if in-house lawyers were to properly fall within its ambit. The absence of any protection for communications with third parties and the impact that this has on the ability of clients and their Advocates to freely communicate with potential witnesses and experts in the preparation of a case is obvious.

Certain categories of intellectual property advisers are not covered

- Third parties not covered
- Communications between clients and foreign advisers are not clearly protected
- The scope of 'client' not clear in the context of corporations
- Privilege should cover Technical and legal matters.

UNIT IV- LEGAL ETHICS

I. ETHICS IN PRESENT ERA

Introduction

Though federal in structure, the unitary character of India under its Constitution has influenced the country to have a unified bar. The pre-constitutional legal framework had to undergo a transformation in the backdrop of the struggle by the people of India to achieve its freedom from the colonial rulers and the eventual adoption of a democratic, republican Constitution.

The Indian legal profession is one of the largest in the world, with over 1.4 million enrolled advocates nationwide. The estimated total value of the Indian legal market as of 2010 was approximately USD 1.25 billion. The legal profession, evolving as it has done from colonial

India, has undergone a huge transformation since its independence. The efforts of the members of the bar to achieve excellence in all spheres of their practise through stiff competition is not only apparent in their every dealing with newer challenges due to technological and other developments, but also in the recognition earned by them in a globalized world. Historically, the members of the bar have provided leadership at a national as well as international level. The current potential is much higher.

Role Of Bar Council Of India and State Bar Councils

i. Rules on Professional Standards

The Bar Council of India lays down rules pertaining to standards of conduct and professional etiquette to be maintained by lawyers in court, with clients and opponents, and towards fellow advocates. Disciplinary proceedings against those who violate the rules are initiated by the Disciplinary Committee of State Bar Councils, and the Bar Council of India acts as an appellate authority for the same.

ii. Legal Education

The Bar Council of India is responsible for the promotion of legal education and lays down the standards of legal education in consultation with universities. The Bar Council approves centres of legal education, and also prescribes types and standards of courses of study, eligibility for admission, infrastructure requirements and course structures. The Bar Council also visits and inspects these centres of legal education as part of its statutory functions.

The Bar Council was also responsible for kick-starting the next level of evolution in legal education in the country through the founding of the first National Law School of India University in Bangalore. The establishment of this premier law school has brought about a paradigm shift in teaching of and research of law. Students from the National Law Schools set up in different parts of the country have shone at the international stage through winning prestigious moots such as the Philip C. Jessup International Law Moot Competition and the Willem C. Vis International Arbitration Moot Court Competition. Alumni of the National Law Schools have gone on to join top law firms in the world, and also important bodies such as the United Nations,

the Permanent Court of International Arbitration, the World Bank and the World Trade Organization, to name a few.

The Bar Council of India also initiated the All India Bar Examination from the year 2010, which is a compulsory examination for all law graduates seeking enrolment as advocates. This has been undertaken by the Bar Council to raise the standards of the bar, and encourage legal education

iii. The Bar Council of India Trust

The Bar Council of India Trust is a public charitable trust which aims to further legal research and education. The Trust publishes a quarterly journal known called the 'Indian Bar Review'. It also conducts a national moot court competition, and various seminars and workshops as part of its continuing Legal Education Programme. A Fellowship and Placement Scheme for junior lawyers to render financial assistance to the best candidates was initiated and is being continued by the Trust.

iv. Bar Associations

Apart from the Bar Council of India and the State Bar Councils, almost every court in the country has Bar Associations of advocates that operate at a less formal level. These bar associations look after the welfare of advocates, represent their interests, and conduct numerous social and cultural activities of the bar, or even different sections of the bar. The Supreme Court Bar Association and the Supreme Court Advocates-on-Record Association is an example of two of the associations that thrive side by side.

Classes Of Practitioners

(i) Individuals: Senior Advocates and Advocates

Advocates are divided into two classes – Senior advocates and other advocates. Lawyers can be designated as senior advocates by the Supreme Court or any of the 21 High Courts. Advocates are designated as Senior advocates with their consent, if the Supreme Court or High Court is of opinion that by virtue of their ability (standing at the Bar or special knowledge or experience in law) they are deserving of that distinction. Only 1% of the lawyers constitute this elite group of

senior lawyers who wield exemplary influence in the profession. Senior advocates enjoy priority of audience. A senior advocate designated by one court is recognized as a senior in other courts as well. It is only the Senior Advocates who have a combined seniority roll maintained by the Bar Council of India. Senior advocates have certain restrictions placed upon them by the Advocates Act, 1961 and the Bar Council of India. They cannot appear without a separate "briefing" advocate (or, in the Supreme Court, an Advocate on Record). Seniors are foreclosed from drafting pleadings and conveyances or taking evidence (Bar Council of India Rules 2009, Part 6, Ch. 1). A Senior advocate is not allowed to accept any brief directly from a client. The reasons for these restrictions are to enhance opportunities for the younger members of the bar, as well as enable the senior members of the bar to spend their time profitably on research and academia.

(ii) Law Firms – From a Solicitors Practise to the Modern Corporate Sector

Law firms were always present in India, but were restricted mainly to the Metropolitan cities of Bombay, Calcutta and Madras before India's Independence in 1947. These cities had firms of solicitors, as well as attorneys. The dual-system of classification between solicitors and attorneys was abolished in 1970 with uniform enrolment as advocates, but in Bombay and Calcutta the system of dual license is still followed, and examinations are still conducted for persons who wish to qualify as solicitors, upon the completion of a three year training period in a solicitor's office as an 'article clerk' and the passing of a solicitors' exam.

With the opening up of the economy, there are law firms in almost every city in India. Major law firms have their presence in every State and city with a High Court, as well as in commercial centres throughout the country. The law firm segment has been the most touched by globalization and has seen tremendous growth, contributing heavily to transactional and litigation work. They also attract the best talent from law schools in India.

The impact of globalization necessitated recognition of Limited Liability Partnerships (LLPs) to enable the law firms to meet the new challenges. In 2008, the Limited Liability Partnerships Act was passed which recognizes law firms with more than 20 partners and enables them to limit their liability.

(iii) The Focus on Litigation Practice

Despite the emergence of the National Law Schools and rising standards in legal education, there are still not enough litigating lawyers to keep up with the demands of India's burgeoning population. There is a lot of potential for the further growth of the bar. The concentration of advocates and law firms is mostly in the big cities. In towns, urban areas and in villages the advocates are mostly involved in private practise. There are also some distinctive features of the Indian legal profession which perhaps are quite surprisingly similar to those of the pre-independence era and perhaps make it unique, which Marc Galanter finds in his article entitled 'The Indian Legal Profession in the Age of Globalization' (2012). These features form the core structure of the legal profession in India:

(a) Individualistic approach - Lawyers mostly practise by themselves i.e. they have their own chamber/office assisted by clerks and a few juniors depending upon their seniority. And in case of the law firms, most of them are not oriented towards litigation.

(b) Most of the lawyers are oriented towards courts. So if an advocate practises at Delhi High Court, most of his time will be dedicated to this particular court. Even though these days, some of the lawyers have started flocking to other courts, but such cases are restricted to a few lawyers only.

(c) Courtroom advocacy continues to remain the central point of the profession. More focus is laid on the oral arguments made before the court than written submissions. It reflects the dominance of the English barrister model in the Indian bar and, with the kind of prevalent remuneration structure, it only reinforces its dominance.

The Shift Away from Litigation to Corporate Law Firms

The trend in recent times has seen the law graduates from prestigious law schools gravitating towards the law firms and companies, rather than litigation. The reasons for this may be because young lawyers in litigation do not earn as much at the outset, as compared to their counterparts in law firms who are paid handsomely. Furthermore, the gestation period for a litigating lawyer is quite long when compared to careers at law firms and companies.

Ethics

In India the legal profession, to this date, is considered a noble profession and thereby still assessed by standards of legal ethics that may seem outdated in many other jurisdictions abroad, but are considered a very important part of the legal profession in India, despite the change in thinking that liberalisation has inevitably brought. The Bar Council of India still maintains strict standards with respect to the legal community. An example of this is Rule 36 of the Bar Council of India Rules whereby the Indian Law firms/ lawyers are not allowed to advertise their practise in the market. The judiciary has acknowledged the substance of this restriction in various cases. That is not to say that the Bar Council of India has been completely blind to the realities of liberalisation, as would be evident from its decision to amend Rule 36 and add a proviso allowing advocates to maintain websites about themselves or their law firms in order to disseminate information, in order to enable people to make informed choices.

The Bar Council of India is progressively reviewing the ethical standards with the demands of our time, in order to strike the best balance. Recently, the Bar Council in a seminar on 'Professional Ethics' considered whether to reform standards of ethics and professional conduct in India in order to better reflect the standards of the International Bar Association, of which it is a member, and standards under the UIA Rules. Champerty and contingency fee arrangements have always been illegal in India, and there is nothing to suggest that there is any reason for changing such thinking in the near future.

Foreign Law Firms

A seeming resistance to the entry of foreign law firms by the members of the bar is primarily founded on reciprocity. The Indian Bar is not insulated from the impact of globalization nor is it averse to competition. The expectation is only that the foreign law firms are welcome in India on a similar reciprocal recognition of Indian lawyers and law firms by other countries. The professional services sector in India has already opened its doors to the foreign accountancy

firms, engineering multinationals and architecture firms. The legal profession cannot remain too far away.

India being a signatory to the General Agreement on Trade in Services (GATS), which is an organ of the World Trade Organization (WTO), it is anticipated that it may soon appreciate its obligation to open up the services sector to Member Nations. Legal Services are included in the list of recognized services under GATS, which obligates India to open the markets to the foreign law firms and foreign lawyers. Many members such as the US, EU, Australia, Singapore, Japan, China, Switzerland, New Zealand and Brazil have requested that India show its commitment to its obligations under the GATS. These requests have also been reflected in the process of plurilateral requests which are mostly for FLC's in only corporate and international law. There is no such request to practice domestic law in Indian courts. These requests are only for their engagement in a consultative capacity. There are requests for commercial association between foreign and local lawyers and firms on certain terms and conditions.

Conclusion

The Indian legal profession has grown over a short period of less than 50 years to become the world's largest branch of the profession. Within India, it is one of the most influential professions having an involvement in the governance of the country. It sufficiently reflects the diversity of Indian society, its social hierarchies and realities, and yet performs efficiently in delivering justice to litigants through Courts, despite the massive pressures that Courts and legal institutions function, given how unimaginably overburdened they always are. The unitary structure of the Indian bar comes across as a boon in this regard.

Due to globalization, the effects of the world economy are being felt, with foreign law firms seeking entry into the Indian space and Indian law firms handling transactions with global implications. At the same time, the core practise of law still revolves around the courts in India, and the majority of the bar is involved in practise before the courts. This produces a melting pot of ideas and opinions, and the result is a bar which is evolving through reforms in legal education and ethics and at the same time, is fortified by traditions that have stood the test of time. It is inevitable that as the nature of legal services sought by the consumers of legal service change,

with the inevitabilities of liberalisation, the profession in India will evolve and rise to the challenges that they raise. Continuing Legal Education (CLE) initiatives will need to be fostered. There is no doubt that the legal profession in India will always work closely with all stakeholders concerned to improve access to justice for all and help realise our Constitutional ideals for people from all walks of life.

B. ETHICS AND STATUTORY SANCTIONS

"Ethics is basis of a civilized and organized society. Ethics is a system, a philosophy of conduct of principles practiced by a person or group of persons. Every profession has its code of conduct, pertaining to right and wrong in conduct based on the principles of morality." The need and necessity of ethics in the legal profession, relevant theories explaining its value and relevance in legal profession will be the core issue of discussion under this module.

In addition, duties of lawyers towards his clients, court, public, his fellow attorneys, self, society, etc., will also be undertaken for discussion. Indian code of ethics will be discussed in comparison with that of American Code and other countries will be taken up for discussion.

An advocate should practice law for the purpose of administering justice and making a living afterwards. The module will also include role played by a lawyer in the administration of justice. The discussion will also cover issues like an advocate's duty towards legal reform, duty to provide legal aid, etc.

Legal Profession Is Regulated By Advocates Act, 1961

The Advocates Act of 1961 amended and consolidated the law relating to legal practitioners and provided for the constitution of the State Bar Councils and an All-India Bar - the Bar Council of India as its apex body. The Bar Council of India is comprised of the Attorney General of India and the Solicitor General of India as its ex officio members, as well as one member elected from each of the State Bar Councils. The members of the State Bar Councils are elected for a period of five years. Some main functions of the Bar Council of India are:

(1) To lay down standards of professional conduct and etiquette for advocates;

(2) To lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;

(3) To promote and support law reforms

(4) To promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(5) To organise legal aid to the poor in the prescribed manner;

(6) To recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate in India.

The Bar Council of India is led by a Chairman and a Vice-Chairman, who are elected from amongst the members of the Council for a period of two years.

Each of the States in India has a State Bar Council. Each of the State Bar Councils has a varying number of members depending upon the numerical strength of advocates on its rolls, who are elected to the membership of the State Bar Council in accordance with the system of proportional representation by means of a single transferable vote amongst advocates on the electoral roll of the respective State Bar Council. In the case of an electorate not exceeding five thousand members, the State Bar Council shall consist of 15 members, while in the case of an electorate exceeding five thousand but not more than ten thousand, the strength of the Council shall be twenty members. If the electorate exceeds ten thousand, the strength of the Council shall be twenty five members. Additionally, each of the State Bar Councils counts their respective Advocate Generals as ex officio members. Each State Bar Council is headed by a Chairman, who is assisted by a Vice-Chairman and Secretary.

C. ETHICS AND PROFESSIONAL DUTY

Legal ethics is a term used to describe a code of conduct governing proper professional behavior, which establishes the nature of obligations owed to individuals and to society. In order to maintain a license to practice law, attorneys agree to uphold the Rules of Professional Conduct, adopted by the American Bar Association (ABA) in 1983. The ABA's rules have been adopted by the bar associations of all U.S. states except California, which has a similar code but with a different format (see California Rules of Professional Conduct for details).

If your attorney has violated any of these rules, or you have reason to believe your attorney has not acted in a professional manner, you should consider filing a complaint with the corresponding state bar association. For more serious violations, particularly when poor counsel results in an unfavorable outcome for your case, you might consider filing a legal malpractice lawsuit.

Meaning

Commingling: Act of mingling funds of one's beneficiary, client, employer, or ward with his or her own funds; generally considered a breach of the attorney's fiduciary responsibility.

Fiduciary: One often in a position of authority who obligates himself to act on behalf of another (as in managing money or property) and assumes a duty to act in good faith and with care, candor, and loyalty in fulfilling the obligation.

Confidentiality: The relation between lawyer and client which guarantees any information shared by the client is treated as private and as such cannot be divulged to third parties without the client's consent.

Common Violations of Legal Ethics

The ABA's Rules of Professional Conduct are numerous, some less obvious than others. In fact, lawyers often violate some of these rules on accident (such as commingling funds). The following are some of the more common legal ethics breaches:

Neglect and Lack of Communication: Attorneys must respond to and remain in reasonable contact with their clients, keeping them properly informed and fully explaining matters that are crucial to their respective cases.

Commingling: Attorneys must keep their clients' trust accounts separate from their personal or other accounts. Violations of this sort usually are due to negligence or mismanagement.

Solicitation: Attorneys may not be misleading, fraudulent, or deceptive in their advertising (for instance, lawyers may not use statistics or client testimonials, and must refrain from guaranteeing specific outcomes for cases).

Malpractice: Although these claims are very difficult to prove, lawyers may be sued if no reasonable attorney would have made the same errors (and those errors caused injury)

TOPIC D: CONFLICTS BETWEEN INTEREST AND DUTY

As DINKER in his Legal Ethics observes,

"A lawyer will be constantly confronted with conflicting loyalties which he may have to reconcile. He is answerable not only to his client whose interests it is his primary duty to serve and promote, but also to the Court of which he is an officer and further to his colleagues at the Bar and to the traditions of the Profession."

Conflict of interest occurs where the same lawyer is representing both sides in a lawsuit, or previously represented one side. It can also mean that the lawyer has material interest in the outcome of the matter he is pursuing and he may benefit if there is an adverse outcome for his client. Lawyers are encouraged to avoid such situations since in adversarial system of justice, a conflict of interest violates the right of the client to the undivided loyalty of his lawyer. Conflicts may also occur if the lawyer's ability to represent a client is materially limited by the lawyer's loyalty to another client, a personal relationship, or other reasons.

A conflict of interest is therefore, a compromising influence that is likely to negatively affect the advice which a lawyer would otherwise give to a particular client or the way in which he will

pursue the matter of his client. It is likely to affect adversely either the lawyer's judgement concerning a client or prospective client, or the lawyer's loyalty in respect of a client or prospective client, or the lawyer's safeguarding of interests of a client or prospective client. The reason why avoiding conflicts of interest is considered to be of utmost importance is that if this is not done, the lawyer's loyalty and independence of judgement as far as that client is concerned will be called into question, and this will undermine the very basis of their relationship, making effective representation impossible.

Conflict may arise with respect to the interests of the lawyer himself, or interests of another existing client. Apart from that, an advocate has an ethical duty not to accept any engagement in a trial in which he may have to give testimony, although there is no rule of evidence disqualifying counsel from giving evidence in a suit in which he is engaged.

Specific manifestation – duty in case of conflict of interest

A lawyer who finds himself in a position of conflict must inform the client of his conflicting duties, and either obtain from that client an agreement that he should not perform his full duties of disclosure or he may be recused of his duty to act for this client. It is of utmost importance that the position of conflict be explained to the client if the case is taken up at all.

An advocate who has at any time advised a party in connection with the institution of a suit, appeal or other matter or has acted for a party, must not act, appear or plead for the opposite party, unless the express consent given of all concerned is obtained, after full disclosure of facts. Thus, the only exception to the ethical ineligibility of a lawyer to represent clients due to conflicts of interest is created when the client himself/themselves grant their express consent to their continued representation by the concerned advocate. However, the client must necessarily be informed of all aspects of the conflict that can be disclosed without breaching confidentiality requirements.

Proposed Rule of Conflict in the Draft Code of Ethics proposed by Bar Council of India

Sections 38-48 of the draft code delineates conflict rules for advocates, banning lawyers acting for two or more conflicted parties unless they have the express permission.

Section 39 of the Draft Code of Ethics require that an advocate shall not advise or represent both sides of a dispute and, except after adequate disclosure to and with the consent of the clients, preferably after receiving an independent legal advice, shall not act or continue to act in a matter

when there is a conflicting interest, which gives rise to substantial risk that the advocate's representation of the client would be materially and adversely affected by the advocate's duties to another current client, a former client, or a third person including, but not limited to, the duties and loyalties of the advocate or a partner or professional associate of the advocate of the law firm in which such advocate is a partner or associate, to another client, whether involved in the particular matter or not, including the obligation to communicate information.

It is not clear here as to what is to be considered substantial risk of the advocate's representation of the client being materially and adversely affected.

Section 40 on the other hand, requires an advocate to inform the clients before accepting briefs from more than one client in the same matter that Before the advocate accepts a brief from more than one client in the same matter the exact nature of the conflict, and that no information received in connection with the matter from one can be treated as confidential so far as any of the others is concerned and that, if a dispute develops that cannot be resolved, the advocate cannot continue to act for both or all of them with respect to the matter and may have to withdraw completely.

According to Section 42, where a lawyer holds brief from two opposing parties, if a contentious issue arises between clients on a joint retainer, the advocate, although not necessarily precluded from advising them on other non-contentious matters, would be in breach of this Code if the advocate attempted to advise them on the contentious issue.

Exceptions under the Draft Code of Ethics

Section 43 specifies that an advocate may only act in a matter which is adverse to the interests of a current client if

the matter is unrelated to any matter in which the advocate is acting for the current client; and no conflicting interest is present

Conclusion

The Draft Code of Ethics is a very important step in the direction of establishing clear and effective rules in Indian Bars with respect to conflict of interest and how advocates are expected to act in situations of conflict. Once this draft is approved and becomes operative, a long standing void will be filled.

TOPIC: E- DUTY TO COURT

RULES ON AN ADVOCATE'S DUTY TOWARDS THE COURT

1. Act in a dignified manner

During the presentation of his case and also while acting before a court, an advocate should act in a dignified manner. He should at all times conduct himself with self-respect. However, whenever there is proper ground for serious complaint against a judicial officer, the advocate has a right and duty to submit his grievance to proper authorities.

2. Respect the court

An advocate should always show respect towards the court. An advocate has to bear in mind that the dignity and respect maintained towards judicial office is essential for the survival of a free community.

3. Not communicate in private

An advocate should not communicate in private to a judge with regard to any matter pending before the judge or any other judge. An advocate should not influence the decision of a court in any matter using illegal or improper means such as coercion, bribe etc.

4. Refuse to act in an illegal manner towards the opposition

An advocate should refuse to act in an illegal or improper manner towards the opposing counsel or the opposing parties. He shall also use his best efforts to restrain and prevent his client from acting in any illegal, improper manner or use unfair practices in any mater towards the judiciary, opposing counsel or the opposing parties.

5. Refuse to represent clients who insist on unfair means

An advocate shall refuse to represent any client who insists on using unfair or improper means. An advocate shall excise his own judgment in such matters. He shall not blindly follow the instructions of the client. He shall be dignified in use of his language in correspondence and during arguments in court. He

shall not scandalously damage the reputation of the parties on false grounds during pleadings. He shall not use unparliamentary language during arguments in the court.

6. Appear in proper dress code

An advocate should appear in court at all times only in the dress prescribed under the Bar Council of India Rules and his appearance should always be presentable.

7. Refuse to appear in front of relations

An advocate should not enter appearance, act, plead or practice in any way before a judicial authority if the sole or any member of the bench is related to the advocate as father, grandfather, son, grandson, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law daughter-in-law or sister-in-law.

8. Not to wear bands or gowns in public places

An advocate should not wear bands or gowns in public places other than in courts, except on such ceremonial occasions and at such places as the Bar Council of India or as the court may prescribe.

9. Not represent establishments of which he is a member

An advocate should not appear in or before any judicial authority, for or against any establishment if he is a member of the management of the establishment. This rule does not apply to a member appearing as "amicus curiae" or without a fee on behalf of the Bar Council, Incorporated Law Society or a Bar Association.

10. Not appear in matters of pecuniary interest

An advocate should not act or plead in any matter in which he has financial interests. For instance, he should not act in a bankruptcy petition when he is also a creditor of the bankrupt. He should also not accept a brief from a company of which he is a Director.

11. Not stand as surety for client

An advocate should not stand as a surety, or certify the soundness of a surety that his client requires for the purpose of any legal proceedings.

TOPIC : F- DUTY OF AN ADVOCATE'S DUTY TOWARDS THE CLIENT

1. Bound to accept briefs

An advocate is bound to accept any brief in the courts or tribunals or before any other authority in or before which he proposes to practise. He should levy fees which is at par with the fees collected by fellow advocates of his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

2. Not withdraw from service

An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can withdraw only if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Upon withdrawal, he shall refund such part of the fee that has not accrued to the client.

3. Not appear in matters where he himself is a witness

An advocate should not accept a brief or appear in a case in which he himself is a witness. If he has a reason to believe that in due course of events he will be a witness, then he should not continue to appear for the client. He should retire from the case without jeopardising his client's interests.

4. Full and frank disclosure to client

An advocate should, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosure to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgement in either engaging him or continuing the engagement.

5. Uphold interest of the client

It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means. An advocate shall do so without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused. An advocate should always remember that his loyalty is to the law, which requires that no man should be punished without adequate evidence.

6. Not suppress material or evidence

An advocate appearing for the prosecution of a criminal trial should conduct the proceedings in a manner that it does not lead to conviction of the innocent. An advocate shall by no means suppress any material or evidence, which shall prove the innocence of the accused.

7. Not disclose the communications between client and himself

An advocate should not by any means, directly or indirectly, disclose the communications made by his client to him. He also shall not disclose the advice given by him in the proceedings. However, he is liable to disclose if it violates Section 126 of the Indian Evidence Act, 1872.

8. An advocate should not be a party to stir up or instigate litigation.

9. An advocate should not act on the instructions of any person other than his client or the client's authorised agent.

10. Not charge depending on success of matters

An advocate should not charge for his services depending on the success of the matter undertaken. He also shall not charge for his services as a percentage of the amount or property received after the success of the matter.

11. Not receive interest in actionable claim

An advocate should not trade or agree to receive any share or interest in any actionable claim. Nothing in this rule shall apply to stock, shares and debentures of government securities, or to any instruments,

which are, for the time being, by law or custom, negotiable or to any mercantile document of title to goods.

12. Not bid or purchase property arising of legal proceeding

An advocate should not by any means bid for, or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in any legal proceeding in which he was in any way professionally engaged. However, it does not prevent an advocate from bidding for or purchasing for his client any property on behalf of the client provided the Advocate is expressly authorised in writing in this behalf.

13. Not bid or transfer property arising of legal proceeding

An advocate should not by any means bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer (either in his own name or in any other name for his own benefit or for the benefit of any other person), any property which is the subject matter of any suit, appeal or other proceedings in which he is in any way professionally engaged.

14. Not adjust fees against personal liability

An advocate should not adjust fee payable to him by his client against his own personal liability to the client, which does not arise in the course of his employment as an advocate.

15.An advocate should not misuse or takes advantage of the confidence reposed in him by his client.

16.Keep proper accounts

An advocate should always keep accounts of the clients' money entrusted to him. The accounts should show the amounts received from the client or on his behalf. The account should show along with the expenses incurred for him and the deductions made on account of fees with respective dates and all other necessary particulars.

17. Divert money from accounts

An advocate should mention in his accounts whether any monies received by him from the client are on account of fees or expenses during the course of any proceeding or opinion. He shall not divert any part

of the amounts received for expenses as fees without written instruction from the client.

18. Intimate the client on amounts

Where any amount is received or given to him on behalf of his client, the advocate must without any delay intimate the client of the fact of such receipt.

19. Adjust fees after termination of proceedings

An advocate shall after the termination of proceedings, be at liberty to adjust the fees due to him from the account of the client. The balance in the account can be the amount paid by the client or an amount that has come in that proceeding. Any amount left after the deduction of the fees and expenses from the account must be returned to the client.

20. Provide copy of accounts

An advocate must provide the client with the copy of the client's account maintained by him on demand, provided that the necessary copying charge is paid.

21. An advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

22. Not lend money to his client

An advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client. An advocate cannot be held guilty for a breach of this rule, if in the course of a pending suit or proceeding, and without any arrangement with the client in respect of the same, the advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit or proceeding.

23. Not appear for opposite parties

An advocate who has advised a party in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party in the same matter.

TOPIC: G- DUTY OF ADVOCATE'S DUTY TO OPPONENTS

1. Not to negotiate directly with opposing party

An advocate shall not in any way communicate or negotiate or call for settlement upon the subject matter of controversy with any party represented by an advocate except through the advocate representing the parties.

2. Carry out legitimate promises made

An advocate shall do his best to carry out all legitimate promises made to the opposite party even though not reduced to writing or enforceable under the rules of the Court.

RULES ON AN ADVOCATE'S DUTY TOWARDS FELLOW ADVOCATES

1. Not advertise or solicit work

An advocate shall not solicit work or advertise in any manner. He shall not promote himself by circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned.

2. Sign-board and Name-plate

An advocate's sign-board or name-plate should be of a reasonable size. The sign-board or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.

3. Not promote unauthorized practice of law

An advocate shall not permit his professional services or his name to be used for promoting or starting

any unauthorised practice of law.

4. **An advocate shall not accept a fee less than the fee, which can be taxed under rules when the client is able to pay more.**

5. **Consent of fellow advocate to appear**

An advocate should not appear in any matter where another advocate has filed a vakalt or memo for the same party. However, the advocate can take the consent of the other advocate for appearing.

In case, an advocate is not able to present the consent of the advocate who has filed the matter for the same party, then he should apply to the court for appearance. He shall in such application mention the reason as to why he could not obtain such consent. He shall appear only after obtaining the permission of the Court.

TOPIC : H-DUTY TOWARDS COLLEAGUE

Gone are the days when legal profession used to be socially considered as a noble profession. The image attached to the legal profession, once held high in the eyes of the people, is now under increasing attack, mostly by the lawyers themselves. Common men used to look up to the lawyers as an expert of law as well as a social engineer, standing for the cause of humanity and voicing against various social, political and economic injustice. Social image of the lawyers was
thus to be equated with those of a real hero, who would always be on toe for guarding mass conscience. Lawyers were seen as successful vocal leaders of many social movements against exploitation, social, economic and political. People's confidence and respect for the legal profession was so high that a lawyer in a family would surely add to its social reputation. However, the social image of lawyers is very much in crisis these days and that should alarm not only the profession but also the society, at large.

Duty towards the Colleagues : Lawyers have certain professional responsibilities towards his colleagues, no matter whether they are associates, senior or junior, or lawyers of the opposite litigating party. Lawyers should always be respectful to each other and should maintain a healthy working environment both in the chamber and in the court premises. It is against professional ethics to criticize the efficiency of

other colleague lawyers or to speak ill about them in public.

It must be stated that it is not an easy job for lawyers to perform all four categories of duties equally efficiently at the same time. However, a good professional lawyer would know how to strike a balance among various kinds of duties. Each category of the duties is important for lawyers and failure to perform any one of them would surely erode social trust on the legal profession. Therefore, it is crucial that lawyers should be in continuous vigilance of their own behaviour to protect the social image of the legal profession, as a whole.

TOPIC : I DUTY TOWARDS SOCIETY AND OBLIGATION TO RENDER LEGAL AID

The preamble of the Constitution of India assures justice, social economic and political to all citizens of the country. The Articles 14 & 16 of the Constitution of India impose an implicit responsibility on the State to ensure that none is deprived of legal assistance for reasons of economic or other disabilities so that equal justice is provided to all citizens of the country. Article 39-A mandates that the State shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The principle contained in Article 39-A are fundamental and cast duty on the State to secure that the operation of the legal system promotes justice to all citizens and particularly the poor and the marginalized. However, despite this Constitutional mandate, poor remain deprived of appropriate legal assistance for a long time after independence. The Supreme Court in Husssainara Kathoon vs Home Secretary, State of Bihar (AIR 1979 SC 1369) commented on the sad plight of poor in the following words:

"We may also take this opportunity of impressing upon the Government of India as also the State Governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contact with legal system have always been on the wrong side of the law. They have always come across

'law for the poor' rather than 'law of the poor'.

The law is regarded by them as something mysterious and forbidding - always taking something away from them and not as a positive and constructive social device for changing the socio-economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services. We may remind the government of the famous words of Mr. Justice Brennan - "Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us was not to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it mot, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.

The Supreme Court in this case strongly recommended that the Government of India and the State Governments should devise and introduced a comprehensive legal service programme in the country which is not only a mandate of equal justice implicit in Article 14 and the Right of Life and Liberty conferred by Article 21 but also the compulsion of the constitutional directive embodied in Article 39-A.

Enactment of an Act for providing free legal aid

In pursuant to the aforesaid Constitutional mandate and directions of the Supreme Court, the Legal Services Authorities Act, 1987 was enacted for providing free legal aid in deserving cases. The Act in Section 12 prescribes a criteria for giving legal service. The legal service is defined by Section 2 (c) of the Act to include the rendering of any service in the conduct of any case or other legal proceedings before any Court or other Authority of Tribunal and the giving of advice on any legal matter. The Act further creates various authorities at national state and district levels for promoting the cause of legal services to the poor and for providing legal services to persons who satisfy the criteria laid down under the Act as also to undertake preventive and strategic legal aid programmes. The legal services has manifold facets

and is required at various stages, for obtaining guidance, for resolving disputes in Courts, Tribunals or other judicial columns.

Role of Advocates

Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions, which its members are expected to upkeep and uphold. Law is an Hon'ble profession and an Advocate is an Officer of justice and friend of the Court. He is an integral part for the administration of justice. From the ancient times, the legal obligations of the Advocates to conduct the case of a poor litigant without reward when so required by the Court has been recognized not only in our country and in England but also in US and other Countries. However, in practice, Counsels have been assigned only in criminal cases of serious nature and a few civil cases.

The critical position enjoyed by an Advocate in administration of justice in fact imposes a responsibility upon him to ensure that justice is made available to all. Rule 46 of Bar Council if India Rules in part-VI relating to a standard professional conduct and etiquette reminds Advocates of the obligation they owes to the society.

The Rule reads as under:

"Every Advocate shall in the practice of the profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even tough he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an Advocate owes to society."

To ensure justice to poor and marginalized sections of the society, an Advocate is required to provide them legal assistance even when they are not in position either to pay him at all or adequately pay him for his services. In fact the least duty expected of an Advocate is to play his role sincerely in implementing the various legal aid schemes available under the Legal Services Authorities Act, 1987 - be it legal aid to poor and other marginalized sections of the society or promotion of legal literacy or facilitating resolution of disputes through Lok Adalats. The role of the Advocates in implementation of these schemes becomes

pivotal due to the fact that legal profession being monopolistic, the various schemes of legal aid under the Act can only be put into operation through Advocates.

Assignment of a competent Advocate to take up the case of a poor litigant is the most crucial component in providing effective and purposeful legal aid to the weaker sections of the society.

The Advocate is paid by the concerned Legal Services Authority but this payment is generally quite low as compared to the normal fee charged by the Advocate. As such, well established Advocates are generally reluctant to undertake assignment as an Advocate under the scheme of legal aid under the Legal Services Authorities Act. The result is that newly enrolled Advocates or Advocates, who do not have enough cases with them alone opt for taking up such cases with the result that the poor and marginalized person get only substandard legal assistance, which is a serious handicap in successfully implementing the legal aid scheme for weaker sections of the society. The reluctance of senior Advocates in doing service to the community is becoming a serious constraint in the success of the legal aid scheme in India. The Supreme Court in the case of Kishore Chand vs State of H.P. (AIR 1990 SC 2140) commented on this situation as under:-

"Though Article 39-A of the Constitution provides fundamental rights to equal justice and free legal aid and though the State provides amicus curiae to defend the indigent accused, he would be meted out with unequal defence if, as is common knowledge the youngster from the Bar who has either a little experience or no experience is assigned to defend him. It is high time that senior counsel practicing in the Court concerned, volunteer to defend such indigent accused as a part of their professional duty."

The situation in India is in contrast to the situation existing in Britain. Michael Zander, who studied the legal system of Britain to suggest law reforms records with satisfaction in his book "A Master of Justice" that in Britain, a large number of competent senior Barristers are busy in acting as amicus curiae in courts and in providing legal aid to the poor for which they are paid by the State.

The Advocates in India need to take a lesson from their British counterparts in this respect and need to inculcate the spirit of dedication to the cause of justice and for community service so that legal aid movement could succeed in India. Indeed, failure to make justice available to poor may threaten the very

existence of the democracy and the rule of law. The members of the legal profession would do well to bear in mind the famous words said by Leeman Abbot years ago in relation to affluent America-

"If ever a time shall come when in this city only the rich can enjoy law as a doubtful luxury, when the poor who need it most cannot have it, when only a golden key will unlock the door to the court-room, the seeds of revolution will be sown' the fire-brand of revolution will be lighted and put into the hands of men and they will almost be justified in the revolution which will follow".

There have been many instances where Advocates in India have taken the causes of poor and downtrodden without any reward and have ensured justice to them. Unfortunately, there have also been instances where lawyers assigned by public funds have not faithfully played their role
in implementation of the legal aid schemes which has cast a serious doubt on the very credibility of a scheme of legal aid available to weaker sections of society in India. The dark side of the legal aid scheme and how the lawyers are swindling the unsuspecting and ever gullible poor litigants as well as petty criminals and first time convicts, most of whom are so because of compelling circumstances, was reported by the Indian Express in a news item under the caption "Free Legal Aid for a Fee". The paper reported how Advocates were abusing the scheme and funds of free legal aid. The modus operandi reported was that the lawyers engaged by the Legal Aid Committee were fleecing money from the parties on whose behalf they had been engaged and holding their cases to ransom by delaying tactics. In the process, many innocent persons were also being compelled to pay large amounts to the lawyers, who are supposed to get their fee from the Legal Aid Committee and to be giving a service for the cause of justice. The phenomenon is not new and has been in existence since the establishment of the institution of free legal aid and has been flourishing since then. Lawyers can always be innovative as any other professionals, in fact much more than that. After all they provide escape routes in people of any hue in trouble. They know how to break laws and get away with it. Free legal aid undoubtedly is beneficial to poor people and has been instituted with noble purpose. Yet it has become a good ground for breeding corruption. Free legal aid for a fee is common practice. Once a lawyer is engaged through legal aid, obviously the party or his men would come to the lawyer for consultations and it is then that they are asked to fish out some money which they naturally cannot refuse. One factor that may be contributing to

this is that the remuneration paid to lawyers by Legal Aid Committee is very low and sometimes even does not meet the incidental expenses what to speak of compensating the labour put in by the lawyer. Beyond that the greed to pocket some easy money out of the helplessness of the victim is always there. But what speaks worst about the system is the fact that entrustment of the cases to Advocates under the scheme has become a case of distribution of largesse amongst the favourites, which is guided by factors other than the capacity of the lawyer to deliver the results. In the circumstances, the quality of legal service provided to poor and downtrodden sections of the society is seriously compromised to the detriment of justice to them. The result is that whole purpose of the scheme gets defeated.

Considering that Administration of Justice is a central function of Advocates, it is incumbent upon them to play a purposeful role in implementation of various legal aid schemes provided under the Legal Services Authorities Act, 1987. The Advocates, as a class and senior Advocates in particular have a solemn duty to ensure justice to all citizens and particularly to poor and marginalized sections of the society and they should rise up to meet the challenge effectively and
successfully. The consequences of failure of legal aid schemes are too serious to be ignored. There is no doubt that legal community in India will rise to the occasion and meet the challenge successfully and effectively. Justice to poor alone is the lasting guarantee of continued existence of Rule of Law and democracy in the country.

LAND & REAL ESTATE LAWS (505)

UNIT 1

Land is precious for any country and used by people for productivity and as a source of food, for place to live, for wood, for place to work. In India, before colonial rule the land used to be in the hands of the community as a whole. However during the British Raj, this was changed.

Lord Carnwallies had introduced Permanent Land Settlement for Bengal, Bihar and Orissa in 1793. According to this the tax farmers appointed by the British rulers was converted as various Land Lords. Under this rule they had to pay fixed commission to East India Company. Thus these intermediaries were formed and called as Jagirdar / Jamindar.

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Land reforms & Land Distribution:

In India, there was a practice of land holdings from historic times and it was distributed in a highly unequal manner and have always been used as a source of social power. To get secure access to land for the poor and landless, policies of land reform were implemented to benefit poorer section of society since independence. After that a number of land reforms have been done by the government such as abolition

of 'Zamindari' or middlemen as revenue collectors, imposing ceiling on landholdings and awarding of the surplus land's rights to landless, and tenancy reforms (Mearns, 1998). Land reform is described as redistribution of land from the rich to the poor. More broadly, it comprises of regulation of ownership, operation, leasing, sales, and inheritance of land (indeed, the redistribution of land itself requires legal changes). In an agricultural economy such as India with great dearth, and an unequal distribution, of land, coupled with a large mass of the rural population below the poverty line, there are enthralling financial and political opinions for land reform. Purpose of land reforms is efficient use of scarce land resource, redistributing agricultural land in favour of the less privileged class in general & cultivating class in particular.

Historical review of Land Reforms in India:

Land program in post-Independence India has evolved through different phases. During the Mughal period, before the arrival of the British there were numerous changes in the system of land taxation or revenue. Peasants continued to enjoy customary rights over land they occupied and generally could not be evicted unless they failed to pay the required land revenue (land tax) to the state. The task of collecting land revenue was assigned to a class of agents called zamindars (Bhaumik, 1993).

When the East India Company (EIC) established in the Seventeenth Century, the agricultural structure underwent fundamental change. The EIC first purchased the right to receive the collected land revenue and later, under the Permanent Settlement introduced in 1793, declared the Zamindars to be proprietors of land in exchange for the payment of land revenue fixed in perpetuity. Zamindars, or those to whom they sold their proprietary rights, typically delegated revenue collection to a series of middlemen. The increasing layers of intermediaries meant that there was considerable increase in rent extracted from the tillers and failure to pay this increased amount resulted in large-scale evictions, widespread disturbance, and declining agricultural production (Bhaumik, 1993). The British sought to stabilize the situation through legislated tenancy reform.

The Bengal Rent Act of 1859 placed restrictions on the power of landlords' to increase rent or evict tenants. However, the Act only protected fixed-rent tenants and did not protect bargadars or agricultural labourers. But it only protected those fixed-rent tenants who could prove they had cultivated the land for 12 consecutive years. Constant cultivation was difficult to prove due to poor records and the Act resulted in an increase in evictions by Zamindars to prevent tenants from possessing land for the required time period (Bhaumik, 1993). The 1885 Bengal Tenancy Act also sought to protect long-standing tenants, and was similarly ineffective. During this period, another form of landholder emerged in Bengal. The Jotedars were a rich class of peasants who reclaimed and gained control of large quantities of uncultivated forests and wetlands outside the territory governed by the Permanent Settlement (Bhaumik, 1993). The Jotedars refined some of this land through the direct supervision of hired labour or servants. Nevertheless, the bulk of the Jotedars' land, like much of the land in Bengal, was cultivated by Bargadars.

Rural tensions over the dilemma of Bargadars were common in the decades prior to and after Independence. In the 1940s, the Tebhaga movement called for a smaller crop share payment and also created the slogan, "He who tills the land, owns the land." The movement is given credit for shaping post-Independence land reform legislation in West Bengal (Datta, 1988). At the time of Independence, this matter was of great significance. In the decades following independence India passed a significant body of land reform legislation. The 1949 Constitution left the adoption and implementation of land and tenancy reforms to state governments. This led to a lot of dissimilarity in the implementation of these reforms across states and over time. After India Independence, the government took major step to eradicate the systems of Jamindaris and Jagirdari, to remove intermediaries between state and peasant.

This was the first legislature taken by almost all the states called as Abolition of Jamindari / Jagirdari systems Act.

The main objectives of the Land Reforms:

These are as follows:

To make redistribution of Land to make a socialistic pattern of society. Such an effort will reduce the inequalities in ownership of land.

To ensure land ceiling and take away the surplus land to be distributed among the small and marginal farmers.

To legitimize tenancy with the ceiling limit.

To register all the tenancy with the village Panchayats.

To establish relation between tenancy and ceiling.

To remove rural poverty.

Proliferating socialist development to lessen social inequality

Empowerment of women in the traditionally male driven society.

To increase productivity of agriculture.

To see that everyone can have a right on a piece of land.

Protection of tribal by not allowing outsiders to take their land.

Land reform legislation in India is categorized in to four main sections that include abolition of intermediaries who were rent collectors under the pre-Independence land revenue system, tenancy regulation that attempts to improve the contractual terms faced by tenants, including crop shares and security of tenure, a ceiling on landholdings with a view to redistributing surplus land to the landless and lastly, attempts to consolidate disparate landholdings.

Abolition of intermediaries is generally established to be effective land reforms that has been relatively successful. The record in terms of the other components is mixed and varies across states and over time. Landowners naturally resisted the implementation of these reforms by directly using their political influence and also by using various methods of evasion and coercion, which included registering their own land under names of different relatives to bypass the ceiling, and shuffling tenants around different plots of land, so that they would not acquire incumbency rights as stipulated in the tenancy law. The success of land reform was driven by the political will of particular state administrations, the prominent achievers being the left-wing administrations in Kerala and West Bengal.

Table: Land policy formulation through planning period

Plan Period	Major issue	Policy Thrust
First plan 1951-56	Area under cultivation to be increased.community development(CD)network to take care of the village commons.Vast uncultivated lands locked under large size of holdings.	Land reforms to bring in the fallow under cultivation and increase land use efficiency. Tenant to be given the rights to cultivated land. Aboition of intermediaries.
Second plan 1956-61	Concern about vast rainfed agriculture, low land productivity and thrust on inigated agriculture.	Soil conservation as an important programme. First phase of land reform implementation. Inigation development for the rainfed areas. Training and extension work for the technology through CD.
Third plan 1961-66	Food security concern dominated. Cultivable waste land to be brought under cultivation. Bringing the lagging regions under mainstream growth.	Area development as an approach. Intensive area development programme adopted for select districts. An integrated land policy approach was inherent. Soil surveys were taken up.
Fourth plan 1969-74	Emphasis on food security continued as minimum detary requirements to be met. Incentives were created for diversion of land towards food crops and enhancing the capacity of such land. Domination of large holding sizes and low allocation and technical efficiency.	Increased emphasis on inigation and soil conservation in dryland regions and technological change introduced. Higher cropping intensity the main conern. Second phase of land reforms with land celling acts and consolidation of holding. Institutional changes brought in.
Fifth plan 1974-79	Problems of degradation land management in inigated command areas surfaced. Drought-prone areas attracted attention.	Drought-prone are development. Desert are development programmes, and soil conservation started and further enhanced. New impetus to dry farming.
Sixth plan 1980-85	Underutilization of land resources. Drought prone areas continued to attract attention. Attention lagging areas on the background of green r evolution required cultivation.	land and water management programme under drouht-prone are programme in selected areas.
Seventh plan 1985-90	Soil erosion and land degradation surfaced as major issues. Land going out of cultivation. Deforestation and degradation of forest lands.	Soil and water conservation and averting land degradation. Specific attention to degraded lands. Wastelands development programmes. Long-term view of land management.
Eighth plan 1992-97	Dryland and rainfed areas requiring attention. Degradation of land inigated command areas. people's participation surfaced as major issue in land management at village level.	Emphasis on watershed approach. Soil conservation merged with watershed programmes. Agroclimatic regional planning approach incorporated.
Ninth plan 1997-2002	Land degradation increased significantly. integrating watershed development programme across various components. Rethinking on land reforms. Gap between potentials and actual crop fields need to be bridged. Need for a long-term policy document.	Bringing the underutilized land under cultivation management of wastelands. Maintenance of village commons. Decentralized land management system. Panchayat raj institutions to manage the village lands. Rethinking on land legislation.

Tenancy Systems of Land:

At the time of independence, there existed many types of proprietary land tenure in the country.

1. Ryotwari: It was started in Madras since 1772 and was later extended to other states. Under this system, the responsibility of paying land revenue to the Government was of the cultivator himself and there was no intermediary between him and the state. The Ryot had full right regarding sale, transfer and leasing of land and could not be evicted from the land as long as he pays the land revenue. But the settlement of land revenue under Ryotwari system was done on temporary basis and was periodic after

20, 30 or 40 years. It was extended to Bombay Presidency.
Mahalwari: This system was initiated by William Bentinck in Agra and Oudh and was later extended to Madhya Pradesh and Punjab. Under this system, the village communities held the village lands commonly and it was joint responsibility of these communities to make payments of the land revenue. The land ownership is held as joint ownership with the village body. The land can be cultivated by tenants who can pay cash / kind / share.
Jamindari: Lord Cornwallis gave birth to Zamindari system in India. He introduced this system for the first time in 1793 in West Bengal and was later adopted in other states as well. Under this system, the land was held by a person who was responsible for the payment of land revenue. They could obtain the land mostly free of charge from the government during the British rule and it is called estate. Landlords never cultivated the land they owned and rented them out to the cultivators. The amount of land revenue may either be fixed once one for all when it was called permanent settlement or settlement with regard to land revenue may only be temporary and may, therefore, be revised after every 30-40 years, as the practice may be. The Zamindari system is known as absentee landlordism. Under this system the whole village was under one landlord. The persons interested can work in the Jamindar's land as tenant / labourer based on the agreement with the jamindar. The jamindari system was known to be more exploitive, as the jaminder used to fix / hike the prices of land according to his desire.
Jagirdari: It is similar to Jamindari system. The jagirdar is powered to control the unproductive masses of village by engaging them in agricultural activities. Because land is controlled by state in India and the relationship between production and land tenure varies from state to state, the national policy recommendations resulted in differing tenancy reform laws in each state.
Tenancy is completely banned in some states but completely free in others. Punjab and Haryana have not forbidden tenancy whereas Karnataka has a near complete ban on tenancy. Some states have discussed ownership rights on tenant cultivators except for sharecroppers, whereas West Bengal chose to provide owner-like rights only to the sharecroppers. Tenancy reforms may have indirect effects in the form of reduced tenancy shares if poorly implemented. Most tenancy reform laws also contained provisions concerning the ability of tenants to surrender the land back to the landlord voluntarily. These provisions were used by landlords to wane the impact of the laws. In most states the surrender of land falls under the jurisdiction of the revenue authorities.
Impact of Land Reform in India:

Following ere the outcomes of Land Reforms in India.
Abolition of Jamindars and Jagirdars:

The powerful Jamindars and Jagirdars have become inexistent.
The abolition of intermediaries has stopped exploitation.
Transfer of land to peasants from intermediaries has reduced disparities.
The new proprietorship has given scope for innovation in Land Reforms.
The ex-jagirdars and ex-Jamindars have engaged themselves actively in other work thus contributing for National Growth.
The abolishment of these systems has increased to the new land owners thus adding revenue to the state governments.
Land Ceiling:

Land is a source of Income in rural India land and it provides employment opportunities. Therefore it is important for the marginal farmers, agricultural labourers, and small farmers. The concept 'ceiling on land holdings' denotes to the legally stipulated maximum size beyond which no individual farmer or farm household can hold any land. The objective of such ceiling is to promote economic growth with social justice.

Land Ceiling should be imposed on all kinds of lands such as Fallow, Uncultivable, irrigated and Cultivable land. All the mentioned are inclusive of ceiling Act. The ceiling act varies from state to state on ceiling on two crops a year land. However in most of the places the ceiling is 18 Acres.

Land possession and social power: It is observed that the land is not only the source of production but also for generating power in the community. In the Indian system, the land is often transferred from one generation to another generation. However all this lack the documentation of possession of land. In this framework, the government had made it mandatory to register all tenancy arrangements.

To summarize, Land reform is the major step of government to assist people living under adverse conditions. It is basically redistribution of land from those who have excess of land to those who do not possess with the objective of increasing the income and bargaining power of the rural poor. The purpose of land reform is to help weaker section of society and do justice in land distribution. Government land policies are implemented to make more rational use of the scarce land resources by affecting conditions of holdings, imposing ceilings and grounds on holdings so that cultivation can be done in the most economical manner.

INTRODUCTION

The Supreme Court of India has, in the fifty years since the commencement of the Constitution, made a significant contribution in interpreting constitutional provisions on the right to property, directive principles of state policy and the legislation on agrarian reforms keeping in view an inarticulate premise of land to the tiller. The Indian agrarian reform programme is older than the Constitution. ‘Land to the tiller’ was part of our freedom struggle. The Congress Agrarian Reforms Committee had prepared a detailed programme on agrarian reforms. The aim was to free the agrarian system from exploitative elements. The Permanent Settlement introduced by Lord Cornwallis in 1793 in the then territories of Bengal, Bihar and Orissa and subsequently extended to other areas needed to be annulled. All intermediary interests in estates between the actual cultivator and the State needed to be terminated. In the new agrarian structure envisaged by the committee, the cultivators would hold land directly under the State and would pay a fixed sum as land revenue. Tenants under private landlords would enjoy security of tenure and fixity of rent.

HISTORY OF AGRARIAN REFORM

In provinces where the Congress party had come to power under the Government of India Act, 1935, legislation on zamindari, talukdari, malgujari, jagirdari, and other intermediary tenures had been introduced. The Act did not contain guarantee of fundamental rights.

The demand made by the All Parties Conference at Lucknow for inclusion of fundamental rights in the new Constitution was rejected by the Simon Commission. The Joint Parliamentary Committee on the Government of India Bill, 1935 had rejected the idea, but felt it necessary to make a suitable provision in the Act of 1935 for protecting the interests of zamindars and other intermediary tenure holders. The protection was contained in sections 299 and 300 of the Government of India Act, 1935. Thus when the provinces introduced legislation for abolition of zamindaris, etc. they had to comply with the requirements of these sections. The inter-pretation of these provisions by the Federal Court and the Privy Council was there to support the view that the provincial legislatures by enacting suitable legislation were

competent to annul the Permanent Settlement Regulations of 1793. The Constituent Assembly while drafting a suitable provision on the protection of right to property as a fundamental right was aware of the working of sections 299 and 300 of the Government of India Act, 1935 and their interpretation by the Federal Court and the Privy Council in cases concerning legislation on land tenures.

Thus after a prolonged debate and discussion it adopted the provision contained in these sections as right to property in article 31 of the Constitution. But the makers of the Constitution made special provision in clauses (4) and (6) of article 31 to protect legislation on agrarian reforms that was either pending before the provincial legislative assemblies or was on the anvil.

Soon after the Constitution come into force, the erstwhile zamindars where zamindaris had been abolished filed writ petitions in various high courts. The High Court of Allahabad upheld the validity of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. Likewise, the High Court of Nagpur upheld the validity of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950.8 But the High Court of Patna declared the Bihar Land Reforms Act, 1950 as unconstitutional for it violated of article 14, the principle prescribed for payment of compensation to erstwhile zamindars had classified them in separate classes based on their annual net income. This judgement was rendered on 12 March 1951. 9 This provoked a prompt reaction from the government. It was decided to amend the Constitution so as to protect agrarian reform legislation beyond challenge.

Introducing the Constitution (First Amendment) Bill, 1951, B.R. Ambedkar, the then Union Law Minister stated in the Statement of Objects and Reasons: The validity of agrarian reform measures passed by the State legislatures in the last three years has, in spite of the provisions of clauses (4) and (6) of article 31, formed the subject matter of dilatory litigation, as a result of which the implementation of these important measures, affecting large numbers of people has been held up. The main objects of this bill are to insert provisions fully securing the constitutional validity of Zamindari abolition laws in general and certain specified Acts in particular. The bill when passed by Parliament became the Constitution (First Amendment) Act, 1951. It came into force with retrospective effect from the date of commencement of the Constitution. The amendment inserted articles 31A and 3IB and the Ninth Schedule to the Constitution. Article 31A was in the nature of an exception to article 31. Acquisition by the State of rights in estate shall not be deemed to be void on the ground of being inconsistent with any of the provisions of Part III. The expressions ‘estate’ and ‘rights in relation to an estate’ were also defined therein. Article 3IB provided for validation of Acts and Regulations included in the Ninth Schedule notwithstanding any judgement, decree or order of any court or tribunal to the contrary. The Ninth Schedule at that time contained a list of thirteen enactments. The Bihar Land Reforms Act, 1950 was included at serial number one in this list. The constitutional validity of the (First Amendment) was challenged in the Supreme Court on various grounds. A Constitution bench by a unanimous judgement and order dated 5 October 1951 upheld the validity of the impugned Act.12 Two broad propositions laid down in this judgement may be noted. The court held that an amendment of the Constitution under article 368 is not law within the meaning of article 13 and as such the prohibition in article 13(2) does not apply to an amendment which takes away or abridges a fundamental right. Accordingly, the abridgement of article 31 by newly inserted articles 31A and 3IB was upheld as valid. The court also held that the provision made in articles 31A and 3IB did not directly affect the jurisdiction of High Court and the Supreme Court and as such ratification of the impugned amendment by not less than one half of the states was not required. This shows the court’s anxiety to protect agrarian reform legislation against technical hurdles created by a narrow pedantic view of a constitutional provision.

CONSTITUTIONAL PROVISIONS ON AGRARIAN REFORM LEGISLATION

The programme of land reforms was one of the major considerations in the schemes of social and economic restructuring of Indian society. The constitution provides fundamental rights (Part-Ill) and Directive Principals of state policy (Part-IV). The programme of agrarian reform was formulated to implement the directive of securing social and economic justice to those who worked on land.

The constitution of India has included the Land reform in State subjects. The Entry 18 of the State List is related to land and rights over the land. The state governments are given the power to enact laws over matters related to land.

The Entry 20 in the concurrent list also mandates the Central Government to fulfil its role in Social and Economic Planning. The Planning Commission was established for suggestion of measures for land reforms in the country. The specific articles of the constitution that pertain to land reforms are as follows:

Article 23 under fundamental rights abolished Begar or forced unpaid labour in India.

Article 38 contains the directive to the state that "State shall strive to promote the welfare of people by securing and promoting as effectively as possible. A social order in which justice, social, economic and political shall reform the institution of national life. And that it shall in particular, strive to minimize the inequalities in income"

Article 39 says that "the state shall direct it policies towards securing the ownership and control of material resources of the community and distributed them as best to sub serve the common good and at the same time ensuring the operation of the economic system not resulting in the concentration of wealth and means of productions to the common detriment".

Article 48 directed the state to organize agriculture and animal husbandry on modern-scientific lines.

In the pursuance of these directives the land reforms laws aims at breaking the concentration of ownership of land by a few big land lords. The other articles are Articles 14, 19 (1) (f) and 31 and these are important as to the land reforms legislations.

Articles 14 "provide the state shall not deny to any person equality before law and equal protection of laws".

Article 19 which guarantees to all citizens a number of freedoms, including in clauses (i) (f) the right to acquire, hold and dispose of property which has been deleted by the by forty fourth amendment Act 1978).

Article 31 guaranteed right to property and contained six clauses of which clauses (4) and (6) were particularly designed to protect land reforms legislations.

Article 31 as originally enacted was in the following terms:

(1) No person shall be deprived of his property saved by authority of law.

(2) No property movable or immovable, including any interest in, or in any company owning and commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition unless the law provides, for compensation for the property taken possession of acquired and either fixes the amount of the compensation or specified the principles on which and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the legislation of a state shall have effect unless such law having been reserved for the consideration of the president has received his assent.

(4) If any bill pending at the commencement of the constitution in the legislature of the state has after it has been passed by such legislature been reserved for the consideration of the president and has received his assent then, with standing anything in this constitution the law so assented to shall not be called in

question in any court on the ground that it contravene the provisions of clauses (2).
(5) Nothing in clause (2) shall affect (a) the provisions to any existing law other than a law to which the provisions of clauses
(6) Apply or (b) the provision of any law which the state may hereafter make:
(i) For the propose of imposing or leaving any tax or penalty
(ii) For promoting public health or prevention of danger to life. In pursuance if any agreement entered into between the Dominion of Indian and the Government of any other country or otherwise with respect to property declared by law to be evacuee property.
(6) Any law of a state enacted not more than eighteen months before the commencement of this constitution may within three months from such commencement be submitted to the president for his certification and thereupon, if the president by public notification so certifies it shall not be called in question in any court on the ground that it contravened the provisions of clause (2) of this article or has contravened the provisions of such sections (2) of the section 299 of the Government of India Act, 1935. The provisions made in clauses (4) and (6) provide inadequate to protect the land reforms laws.

CONSTITUTIONAL AMENDMENT AND CASE LAWS

Hence the constitution (First Amendment) Act, 1951 amended article 31 and added new Articles 31 A and .31 B and also added the Ninth schedule to the constitution listing 13 states-land reforms acts and providing that these acts would not be void merely on the ground that they infringed any of the Fundamental rights. The article 31 A, except from the operation of any of the safeguards conferred by the fundamental rights, law providing for acquisition of any "estate" or any right therein, but a state law making such provision required to be submitted to the president for his assent.
In Shankari Prasad v. Union of India[1] the constitutional validity of the first amendment was challenged. The Supreme Court upheld the Validity of the said amendment and in State of Bihar v. Kameshwar Singh[2] the Supreme Court observed that the land reforms legislation of Bihar was in conformity with Directive principles of state policy in order to achieve social justice. Article 31 A brought in by the constitution (First Amendment) Act, 1951 was substituted by a more elaborate article by the constitution (Fourth Amendment) act 1955.
The new article had the effect of taking out the protection of the fundamental rights. All those legislation providing for and reforms measures, That is The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights that is legislation aimed at the abolition of Jagirdars, Zaminadars and other feudal tenures.
By taking over the management of any property by the state for a limited period either in the public interest or in order to secure the proper management of the property, such law is not void because in consistent with or takes away rights of property.
The constitution (Seventeenth Amendment) Act, 1964 inserted a further provision laying down that where law made provision for the acquisition of an estate, and where any land comprised in such estate was held by anyone under personal cultivation, the law had to provide a ceiling limit acquisition could be effected only by payment of compensation not less in amount than the market value. It also amended the definition of the term "estate" to include land under Ryotwari settlement of as well as land held or let for purpose of agriculture of ancillary purposes. The expression land has not been defined. It was to be deducted with reference to the meaning attached to the term "estate". The Supreme Court took a very liberal stand and proved itself as an active agent of social change. As the definition of an estate in the law relating to land tenures in the different local areas may differ, it is difficult to assign any meaning to the words "its local

equivalent" when the estate itself has no fixed meaning.
In Karimbil v. State of Kerala[3] the Supreme Court made it clear that the definition of the term estate was not satisfactory. The provision in Article 31 A (1) (a) is not adequate to protect all measures of land reforms and further amendment of the provision called for. Hence, the Constitution (Seventh Amendment) Act, 1964 by which the definition of estate was further explained to include any land held under Ryotwari settlement. Any land held or let for the purpose of agriculture or for purposes any ancillary thereto, including waste land, forest land, land for posture or sites of buildings and other structure occupied cultivators of land agricultural labourers and village artisans.
None of the amendments to give effect to the aspects of land reform could deter the landlords from approaching the Supreme Court for questioning. The Constitutional validity of these constitutional amendments on legislative and technical grounds alleged that these are not adopted exactly in the Constitution in conformity with the procedure laid down in Article 368.
In Waman Rao v. Union of India[4] the validity of the Constitution (First Amendment) Act, 1951, which brought into being in the Constitution Article 31-A and 31-B and the Ninth Schedule was questioned. The Supreme Court declared that neither article 31-A and 31-B nor the Ninth Schedule destroyed or damaged the basic structure of the Constitution section 31-B in regarding the variation of certain acts and regulations.
None of the Acts, and regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void or ever to have become void on the ground that such Act, Regulation or provision is inconsistent with and takes away or abridges by any of the rights conferred by any provision of this part, and not withstanding any judgement, decree or order of any court or tribunal to the country each of the said Acts, and regulations shall, subject to the power of any competent legislature to repeal or amend it, continue in force.
The Constitution (Twenty-fifth Amendment) Act, 1971 had inserted a new Article 31 C which provided no law officiating social and economic reforms in the terms of Directive Principles contained in Article 39 (B) and (C) shall deem to be void for an alleged inconsistency with Fundamental Rights contained in Article 14, 19 & 31.
Writ petitions were also filed challenging the validity of the Mysore Land Reforms Act 1961 (as amended by Act, 14 of) 1965 which fixed the ceilings on the land holdings and conferred the ownership of surplus land on tenants. The above writ petitions along with some other in challenging petitions were heard by special bench consisting of eleven judges of the Supreme Court. In this case, though the amending Articles were held valid but on different reasoning by majority.
Subba Rao C.J. held that:
The power of the parliament to amend the Constitution is derived from Article 245 and 248 and not from Article 368 there of which only deals with procedure for amendment is a legislative process.
Amendment is law within the meaning of Article 13 of the Constitution and therefore if it takes away or abridges the rights conferred by the part III, it is void.
iii. On the application of the doctrine of prospective over ruling that our decision has prospective operation and therefore the said amendments will continue to be valid.
As the Constitution (Seventh Amendment) Act, holds the validity of the Punjab and Karnataka Land Reforms Act 1961, it cannot be questioned on the ground that they offend article 13, 14 or 31 of the constitution. After this decision the Constitution (Twenty Fourth Amendment) Act, 1971 was passed. In article 13 after the clause (3) a new clause (4) has been inserted stating. "Nothing in this Article shall apply to any amendment of the Constitution made under article 368".

The Supreme Court manifested itself as an arm of social revolution and showed the need of protecting and preserving not only the land reforms measures against the challenges but also all the relevant amendments of the Constitution. Even though the first and seventeenth amendments were validated by the court by resorting to a novel doctrine of prospective overruling, by declaring that the said amendments and the law protected by them continued to be valid notwithstanding the abridgement of Fundamental Rights.

The Supreme Court contributed its due share in furthering the cause of agrarian reform. C.J. Subba Rao justified the need for protecting the amendments invalidated under the Golak Nath ruling primarily because of the concern for the land reform programmes and he observed that all these were done on the bases of the correctness of the decisions in Shakari Prasad's case and Sajjan Singh's case, namely that parliament had the power to amend the Fundamental Rights and the Acts, in regard to estates were outside judicial scrutiny on the ground that they infringed the said rights. The agrarian structure of our country has been revolutionized on the base of the said laws. The court held that the Fundamental Rights are outside the amendatory process if the amendments take away or abridge any of the rights and in Shankari Prasad's and Sajjan Singh's case conceded the power of the amendment over part III on an erroneous view of article 13 (2) and Article 368 and to that extent they were not good laws. The judgement proceeded on the following reasoning:

The Constitution incorporates an implied limitation that the fundamental Rights are out of the reach of the parliament.

Article 368 does not contain the power to amend it merely provides procedure for amending the Constitution.

The power to amend the Constitution should be found on the plenary legislative power of the parliament.

Amendments to the Constitution under article 368 or under other articles are made only by parliament by following the legislative process adopted by making in laws.

The contention that the power to amend is a sovereign power and that power is supreme to the legislative power, that does not permit any implied limitations and amendments made in exercise of that power involve political questions which are outside the scope of judicial review cannot be accepted.

The validity of the (Twenty Fourth Amendment) came up for discussion in Keshavanda Bharti v. State of Kerala.[5] Wherein a writ petition was field initially to challenge the validity of the Kerala Land Reforms Act, 1963 as amended in 1969. The court held that the 24 amendment was valid and parliament had power to amend any or all the provisions of the constitution including those relating to the fundamental rights. And also the court held that power to amendment is subject to certain inherent limitations, and that parliament cannot amend these provisions of the constitution which affect the basic structure or framework of constitution.

The Minerva Mills Ltd. v. Union of India[6] Supreme Court tested the directive principles as a whole with basic structure theory as propounded in Kesavananda Bharati Case. It is observed that "They (the Fundamental 73 Rights in part III and the Directive Principles of State Policy in Part IV) are like a twin formulas for achieving social revolution. The Indian Constitution is founded on the bedrock of the balance between Part III and Part IV and one should give absolute primacy to over the other is the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the basic structure of the Constitution. Those Rights are not an end to them but are means to an end. The end is specified in the Part III of the Constitution.

The Constitution (Forty Second Amendment) Act, 1976, Article 31- C was amended and its protection was extended to all the laws passed in the furtherance of any directive principles. All the Directive

Principles were granted supremacy over the Fundamental Rights contained in Articles 14 & 19. Section 31-C says "No law giving effect to the policy of state towards securing all or any of the principles laid down in part IV shall be deemed to be void on the ground that it is inconsistent which takes away or abridges any of the rights conferred by Article -14 or article 19. That it is giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such a policy. Now many Acts, passed by the parliament and the state legislature are constitutionally declared to be valid under Article 31 (b) although they may directly infringe the right to property. As a result of various amendments to the Constitution and by placing all land reforms laws in the Ninth Schedule of the Constitution, it has closed the door of challenging agrarian reform legislation in courts.

The Forty-fourth amendment made Right to property is no longer a fundamental right and article 300-A was added. The 44 Amendment removed the right to property from Part III of the chapter on Fundamental Rights by deleting article 19 (1) (f) and 31 and by inserting article 300-A. The reasons for 44″ amendment is as follows:

The special position sought to be given to fundamental rights, the right to property which has the occasion for more than one amendment of the constitution would cease to be a fundamental rights and become only a legal right. Necessary amendments for this purpose are being made to article 19 and article 31 is being deleted. It would be ensured that the removal of property from the list of fundamental rights would not affect the rights of minorities to establish and administer educational institutions of their choice.

Similarly, the right of persons holding land for personal cultivation and within the ceiling limit and to receive compensation at the market value would not be affected.

Property, while ceasing to be a fundamental right would however, is given express recognition as a legal right. Provision being made that no person shall be deprived of his property saves in accordance with law Amendment of right to property must be interpreted, if possible so as not to violate the doctrine of the basic structure of the constitution. The rights conformed by article 19 (1) (f) and article 31 red with the under noted entries were so closely interwoven with the whole fabric of our constitution. Those rights cannot be torn out without leaving a jagged hole and broken threads. The hole must be mended and the broken threads replaced so as to harmonize other parts of our constitution. There is no longer looks upon the right to acquire hold and dispose of property as part of the right to freedom. Further article 19(1)(f), which conferred on citizens the rights to acquire, hold and dispose of property formed part of a group of articles under the heading "Right to freedom".

Finally, by article 300-A which states that no person shall be deprived of his property save by authority of law. The deletion of article 19 (1) (f) and article 31 would at first suggest that in respect of property the distinction made between citizen and noncitizens, the article 19(1) (f) has been eliminated. And also the deletion of article 31 disrupts the scheme adopted by our constitution for the compulsory acquisition of property. The 44 amendment added the following new provisions of law as to property rights.

PRESENT CONSTITUTIONAL PROVISIONS AS TO PROPERTY RIGHTS

Article 31A says that notwithstanding anything contained in article 13, no law providing for:

The acquisition by the state of any estate or of any rights there in or the extinguishment or modification of any such rights, or

The taking over of the management of any property by the state for a limited period either in the public interest or in order to secure the proper management of the property, or

The amalgamation of two or more corporation either in the public interest or in order to secure the proper management of any of the corporations, or

The extinguishment or modification of any rights of manganese of corporations or of any voting rights of shareholders thereof, or

The extinguishment or modification of any rights acquiring by virtual of any agreement, lease or license for the purpose of searching for or winning any mineral or mineral oil or the premature termination or cancellation of any such agreement, lease or licence shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 and 19.

Provided that where such law is allow made by the legislature of a state, the provinces of this article shall not apply there to unless such law, having been reserved for the consideration of the president, has received has assent.

Provided further that where any law makes any provision for the acquisition by the state of any estate and where any land comprised there in is held by a person under his personal cultivation, it shall not be lawful for the state to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing there in or appurtenant there to, unless the law relating to the acquisition of such land, building or structure.

CONCLUSION

The constitution of India provides Fundamental Rights (Part-Ill) and Directive Principles of State Policy (Part-IV) for bringing social justice and upholding inherent human rights. The land reforms laws and policies have been framed so as to implement the directive principles for securing social and economic justice. These directives also contained in Articles 38 and 39 of the constitution. Article 38 contains the directive to the state that it shall strive to promote the welfare of the people by securing and promoting as effectively as possible. Article 39 says that the state shall direct it policies towards securing the ownership and control of material resources of the community and distributed them as best to sub-serve the common good. The Articles 14 and 19 (1) (f) provides that 'state shall not deny to any person equality before law or the equal protection of law'. Article 19 which guarantees to all citizens as number of freedoms like clause (1) (f) the right to acquire, hold and dispose of property of the land. Article 31 says that no person shall be 96 deprived of his property and save by the authority of law but this section was amended in 1951, by (first amendment to the constitution), substituting a more elaborate article so as to take out the protection of fundamental rights all those legislation's providing for land reforms measures.

In Waman Rao v. Union of India, Justice Subha Rao C.J. held that the power of the parliament to amend the Constitution is derived from Article 245 and 248 not from Article 368. ii. Amendment is the law within the meaning of Article 13. In Kesananda Bharati v. State of Kerala the Supreme Court of India held that the 24 amendment was valid and parliament had power to amend any or all the provisions of the Constitution even including fundamental rights. Again in Minerva Mills Ltd. v. Union of India .The same Supreme Court held that the parliament had the power to amend any provisions of the Constitution even including fundamental rights. The power should not be exercised so as to take away the 'basic structure' of the Constitution like liberty, equality, fraternity, secularism and social justice. And it also held that there must be balance between these aspects of the Constitution while framing the policies by the state. So directive principles are the embodiment of the ideals and aspirations of the people of India. It constitutes the goals towards which the people expect the state to march for their attainment. The Supreme Court also held in Golkanath v. State of Punjab that the (Part-Ill and Part-lV) of the Constitution contained and 97 integrated scheme and even a self-contained code to characterize the relationship between fundamental rights and directive principles. And it treated both equally important.

UNIT 2

URBANIZATION

Ur in India began to accelerate after independence, due to the country's adoption of a mixed economy, which gave rise to the development of the private sector. The population residing in urban areas in India, according to the 1901 census, was 11.4%, [1] increasing to 28.53% by the 2001 census, and is now currently 34% in 2017 according to The World Bank.[2] According to a survey by UN, in 2030 40.76% of country's population is expected to reside in urban areas.[3] As per World Bank, India, along with China, Indonesia, Nigeria, and the United States, will lead the world's urban population surge by 2050.[4]

Mumbai saw large-scale rural-urban migration in the 20th century.[see main] Mumbai, in 2018, accommodates 22.1 million people, and is the largest metropolis by population in India, followed by Delhi with 28 million inhabitants. Delhi witnessed the fastest rate of urbanisation in the world, with a 4.1% rise in population as per the censuses

Post-independence, India faced high rates of poverty, unemployment, and a stagnant economy. The first Prime Minister of India, Pandit Jawaharlal Nehru, focused on the domain of science and technology.[5] The mixed economy system was adopted, resulting in the growth of the Public sector in India crippling down the development of Indian economy leading to what is popularly known as Hindu rate of growth.[6] The South Asian region though predominantly rural (accounted for 69.9% rural population as of 2010), has recorded much higher annual growth of urban population. India, the leading country in South Asia has shown an unprecedented increase in the urban population in the last few decades and its urban population has increased about 14 fold from 1901 to 2011. This growth is mainly uneven but not skewed and not concentrated to a single city of the country. India shares most characteristic features of urbanization in the developing countries where the rate of urbanization is faster than the developed countries. For instance, in 1971 there were only about 150 cities whose population was more than one lakh, now this figure has reached to 500. The urban population of India has increased from 25.85 million in 1901 to 377.11 million in 2011.

The main causes of urbanisation in India are:

Expansion in government services, as a result of the Second World War

Migration of people during the partition of India[14][15][16]

The Industrial Revolution[citation needed]

Eleventh five-year plan that aimed at urbanisation for the economic development of India[17]

Economic opportunities are just one reason people move into cities

Infrastructure facilities in the urban areas[18]

Growth of private sector after 1990 .[19]

Growth of employment in cities is attracting people from rural areas as well as smaller cities to large towns. According to Mckinsey India's urban population will grow from 340 million in 2008 to 590 million in 2030.

Therefore, it is being driven by economic compulsions where people move out for economic advancements to areas offering better job opportunities.

It is also driven by land fragmentations, villages being erased due to roads and highway constructions, dam constructions and other activities.

Agriculture is the primary source of livelihood, but it's no more profitable: Indian rural economy is primarily based on agriculture. Indian agriculture sector accounts for 18 percent [20] of India's gross domestic product (GDP) and it is estimated that it provides employment to 50% of the countries workforce, but ground reality differs. Many farmers in different states of India are leaving farming,

primarily because of high input cost and low income from agriculture. Also on the other hand with usage of fertilizers, chemicals and hybrid seeds, land fertility is declining. This encourages many farmers to commit suicide. In 2014, the National Crime Records Bureau of India reported 5,650 farmer suicides. As per the figures given by central government in 2015, there were 12602 farmer suicides. This includes 8,007 farmers-cultivators and 4,595 agricultural labourers.[21] The farmer's suicide rate in India has ranged between 1.4 and 1.8 per 100,000 total populations, over a 10-year period through 2005. Thus people (including farmers) are migrating to cities.

Consequences of urbanization in India[edit]

Crowded housing and polluted waterway in Mumbai

Rapid rise in urban population, in India, is leading to many problems like increasing slums, decrease in standard of living in urban areas, also causing environmental damage.[22]

The Industrial Revolution of the 18th century caused countries like the United States and the United Kingdom to become superpowers, but conditions elsewhere are worsening. India's urban growth rate is 2.07%; seemingly insignificant compared to Rwanda, with 7.6%. India has around 300 million people living in metropolitan areas.[23] This has greatly increased housing issues: with overcrowded cities, many people are forced to live in unsafe conditions, such as illegal buildings. Water lines, roads and electricity are lacking in quality, resulting in a decline in living standards. It is also contributing to the issues presented by pollution.[citation needed]

Urbanization also results in a disparity in the market, owing to the large demands of the growing population and the primary sector struggling to cope.[24]

It could be argued that urbanization impacts the migrants themselves on multiple levels. Networks of friends and family become support systems during the initial transformation phase and the struggle to find work in a fast-paced environment. Their struggles may take months, or even years, to adjust to the new surrounds in order to find a stable job. Migrants are responsible for supporting both themselves in the city and the family left at home.

Some of the positive effects resulting from rural to urban migration occur in the agrarian communities from which migrants came. Family members left at home, usually the elderly and young, are eased out of financial pressures as their relatives work to provide higher standards of living for their dependants. Their quality of life is often additionally improved by the provisions that the migrant sends back.

On the other hand, rural to urban migration poses a big challenge for developing cities due to migrant populations flocking in. How will cities support it in terms of resources, land and space?

Cities offer solutions in terms of high rise buildings (affordable housing), metros (affordable transport), affordable schooling, established local clinics, water ATMs and many new initiatives. However, the problems include:

1. National Institution for Transforming India [NITI Ayog], has released report ‘Composite Water Management Index’ in June 2018 and stated that 21 cities (including Delhi, Mumbai, and Chennai) in

India would run out of groundwater by 2020.[25]
2. The latest database of Numbeo lists three Indian cities among the top 10 cities of the world for having worst traffic conditions. These cities include Mumbai, Pune and Kolkata.[26]
3. Population growth and rapid urbanization are combining to create huge challenges for Indian cities. According to McKinsey,[27] the country's cities are expected to grow from 340 million people in 2008 to a whopping 590 million in 2030 and this growth will be very rapid. Meeting demand for urban services in these cities will require US$1.1 trillion in capital investment over the next 20 years. Without the right design and planning, this massive urban growth could exacerbate existing problems of congestion, pollution, and traffic safety.
4. Delhi is now considered the most polluted city in the world, according to the Brookings Institution, while at least two-and-a-half million premature deaths are blamed on poor air quality across the country as a whole.
5. The Economic Survey Report of India 2017-18 estimated that percentage of agricultural workers of total work force would drop to 25.7 per cent by 2050 from 58.2 per cent in 2001. What is the cause of this decline? People migrating to cities and adding to the unemployment in cities. It is interesting to know that because of migration from rural pockets to urban (cities), unemployment in cities is increasing and in rural pockets it's decreasing. As per Centre for Monitoring Indian Economy (CMIE) overall unemployment rate of India as on 18 October 2018 is 6.9% , whereas for urban India its 7.5% and for rural India its 6.6%.

URBAN DEVELOPMENT INSTITUTION

DDA

The Delhi Development Authority (DDA) was created in 1957 under the provisions of the Delhi Development Act "to promote and secure the development of Delhi".[1] The DDA is responsible for planning, development and construction of Housing Projects, Commercial Lands, Land Management as well as providing public facilities like roads, bridges, drains, Underground water reservoir, Community Centers, Sports Centers, Green Belts etc. within the area of National Capital Territory of New Delhi, India.

The DDA master plan was formed in 1962 to ensure an organized and structured development of haphazard growth of Delhi. This included identification of new land that can be developed into residential properties and make self-contained colonies by providing ample commercial office and retail complexes as well. The DDA master plan was revised in 1982 to formulate the Master Plan 2001 and then re-revised in 2007 to form the Delhi Master Plan 2021. It lays down the basic infrastructure requirements for a city estimated to have a population of 128 lakhs (12.8 million).[2]

Housing[edit]

The development of housing projects by DDA commenced in 1967 with the construction of houses and providing the basic amenities like electricity, water supply, sewage disposal, and other infrastructure facilities. The new projects undertaken instigate with recognition of project sites, public announcement about the new DDA housing schemes in various categories through newspapers and other media advertisements, formal acceptance of the applications, a transparent draw system for short-listing of the applicants and finally allotment of the property.

Some popular DDA Housing Schemes of the past include New Pattern Registration Scheme that offers home registration along with the property purchase, Janta Housing Registration Scheme that offers house registrations for the economically weaker section category and Ambedkar Awas Yojana that allotted Janta, LIG & MIG (Lower and Middle Income group)category flats to the SC/ ST registrants. The

residential land is allotted to individual applicants, the farmers whose land is acquired for development and group housing societies through public auction.

1985 housing scheme[edit]

The 1985 housing scheme was a scheme for people with low annual income. The scheme stated that each person can participate by paying 3000 Rs draft on DDA account. The total cost of each house was 35000 Rs; recipients had to pay the balance of the amount within a few months. The scheme was subject to criticism due to delays and perceived unequal treatment of applicants. After years of dispute, a new policy was instituted in 2019 requiring submission of a 50,000 Rs draft to the Delhi Urban Shelter Improvement Board or alternatively an appreciated reimbursement of 9000 Rs was offered.[3] [4]

DDA Housing Scheme 2019[edit]

In March 2019, DDA launched a new housing scheme, for around 18.000 flats situated in Vasant Kunj and Narela, which got a lukewarm response from the general public in terms of applications received.[5] Most of the flats of this scheme situated at Narela were the surrendered flats of the earlier DDA Housing Scheme 2017. The results of the DDA Housing Scheme 2019 were announced on 23.07.2019.[6]

Land development[edit]

The Delhi Development Authority acquires land for development in Delhi. So far, over 64,354.88 acres (260.4350 km2) of land has been acquired with successful development projects on 59,504 acres (240.80 km2) and 30,713.95 acres (124.2949 km2) as residential land. Besides, the construction projects, DDA land development also includes providing a lush green belt and forest area for a clean and healthy environment by developing regional parks, neighborhood parks, district parks, play fields, and sports complexes. dda has the authority.

Commercial properties[edit]

DDA undertakes construction, development and maintenance of commercial properties like retail shops in local markets, shopping complexes, office complexes, makeshift industrial set ups, hospitals, community halls, clubs, educational institutions, religious segregation centres etc. These properties are disposed through auctions or tenders.

Sports complexes[edit]

Delhi Development Authority (DDA) aims to provide an entire network of sports facilities through sports complexes, play fields, multi-facility gymnasiums and fitness centres, golf courses etc. DDA provides the basic infrastructure facilities, coaching through the top sports persons in India, providing stipends and kits and other facilities to identify and train budding sports talent in Delhi.

Besides this DDA also conducts various talent hunt schemes through its Sports Complexes in Dwarka, Saket, Hari Nagar and other areas, including Yamuna Sports Complex and Siri Fort Sports Complex. DDA Dwarka Sports Complex along with DDA Saket Sports Complex plans to host State Level tournaments to provide a platform to professional and amateur sportspeople to showcase their talent.

There are two more sports complexes in East Delhi one is Chilla Sports Complex at Vasundhara Enclave and the second is Poorvi Delhi Khel Parisar at Dilshad Garden near GTB Hospital.

HUDA

Haryana Shahari Vikas Pradhikaran (HSVP), formerly Haryana Urban Development Authority (HUDA),[1] is the urban planning agency of

the state of Haryana in India except Gurugram and Faridabad which has Gurugram Metropolitan Development Authority and Faridabad Metropolitan Development Authority respectively. It was established in 1977. The Minister of Town and Country Planning Department, Haryana is the chairman of the authority. The headquarters of the authority is located in Panchkula, Haryana.

HSIIDC is a related government owned agency responsible for the industrial and infrastructure development in the Haryana state.[2][3] Haryana Financial Corporation provides financial assistance for setting up new industrial units and for the expansion and diversification of the existing industries.[4] Various universities, educational and training institutes, including the nation's first skills university Haryana Vishwakarma Skill University, provide the human resources to capitalise on the finances offered by the HFC and the infrastructure created by the HSIIDC. Among the related initiatives to boost growth, Haryana was the first state to introduce Labour Policy in 2005,[3][5] and Land Pooling Policy in 2017.[6]

History[edit]

HUDA was established in 1977 as a statutory body of the government in 1977 under the Haryana Urban Development Authority Act, 1977 for planned development of cities in Haryana.[7] On 1 June 2017, the cabinet of Government of Haryana headed by the Chief Minister Manohar Lal Khattar decided to rename it to the Haryana Shahari Vikas Pradhikaran (HSVP) because HUDA sounded similar to the surname of former chief Minister Bhupinder Singh Hooda.[1] Due to lack of co-ordination between Urban Estates Department and other departments of the Government of Haryana, the growth of estates started slowing down. Besides, as the Department had to follow the financial rules and regulations of Government, the arrangement of funds and sanction of estimates used to take a long time and the development works did not keep pace with the required standards of physical achievements. It was also felt that being a Government department, it was unable to raise resources from various lending institutions although there were many financial institutions in the country to finance urban development programmes. The Urban Estates Department was not effective in achieving its defined goals of planned urban development to the satisfaction of the public at large. Thus, in order to over come all these difficulties and to achieve the expeditious development of urban estates, it was felt that the Department of Urban Estates should be converted into such a body which could take up all the development activities itself and provide various facilities in the Urban Estates expeditiously and consequently the Haryana Urban Development Authority came into existence on 13-01-1977 under the Haryana Urban Development Authority Act, 1977 to take over work, responsibilities hitherto being handled by individual Government departments

Facilities[edit]

The authority is responsible for development and maintenance of the following:[8]

Residential areas
Commercial areas
Industrial areas
Institutional areas

Community buildings developed by HUDA in these areas include:[8]

Schools
Colleges
Hospitals
Police stations
Community centres
Gymkhana clubs

Old age homes
Fire stations
Cremation grounds
Public parks

Land Pooling Policy[edit]

Haryana Land Pooling Policy (HLPP), approved in January 2018, is used by the HSVP for acquiring land from the landlords for developing residential sectors. Landlords join the scheme voluntarily and at least 70% landowners must agree to pool their contiguous land, who receive INR50,000 per acre per year till the land is developed. After the land is developed, the landlords also will receive 33% of the developed residential plots in proportion to the land contributed by them to the pool, 33% will be sold by HSVP, 33% will be used for developing services such as roads and parks.[6]

NOIDA

Noida, short for New Okhla Industrial Development Authority, is a planned city[4] located in Gautam Buddh Nagar district of the Indian state of Uttar Pradesh. It is a satellite city of Delhi and is a part of the National Capital Region of India. As per provisional reports of Census of India, the population of Noida in 2011 was 642,381.[5] The city is managed by New Okhla Industrial Development Authority (NOIDA).[6] The district's administrative headquarters are in the nearby city of Greater Noida.

The city is a part of the Noida (Vidhan Sabha) constituency and Gautam Buddha Nagar (Lok Sabha) constituency. Minister of State for Culture and Tourism Mahesh Sharma is the present Lok Sabha MP of Gautam Buddha Nagar, while Pankaj Singh is the present MLA of Noida.[7][8]

Noida was ranked as the Best City in Uttar Pradesh and the Best City in Housing in all of India in "Best City Awards" conducted by ABP News in 2015.[9][10] Noida replaced Mumbai as the second-best realty destination, according to an analyst report.[11] Roads in Noida are lined by trees and it is considered to be India's greenest city with nearly 50% green cover, the highest of any city in India.[12][13] Noida is ranked 25th cleanest city among cities with less than 10 lakh people.[14]

History[edit]

Noida came into administrative existence on 17 April 1976 and celebrates 17 April as "Noida Day". It was set up as part of an urbanisation thrust during the controversial Emergency period (1975–1977). The city was created under the UP Industrial Area Development Act, 1976 by the initiatives of Sanjay Gandhi.[15] The city has the highest per capita income in the whole National Capital Region. Noida is classified as a special economic zone (SEZ).[16] The Noida Authority is among the richest civic bodies in the country.[17]

Geography[edit]

Noida is located in the Gautam Buddh Nagar district of Uttar Pradesh state India. Noida is about 25 kilometres (16 mi) southeast of New Delhi, 20 kilometres (12 mi) northwest of the district headquarters - Greater Noida and 457 kilometres (284 mi) northwest of the state capital, Lucknow. It is bound on the west and southwest by the Yamuna River, on the north and northwest by the city of Delhi, on the northeast by the cities of Delhi and Ghaziabad on the north-east, east and south-east by the Hindon River. Noida falls under the catchment area of the Yamuna River, and is located on the old river bed. The soil is rich and loamy

Demographics[edit]

As per provisional data of 2011 census, Noida had a population of 642,381 out of which the male population was 352,577 and the female population was 289,804. The literacy rate was 88.58 percent.

Male literacy was 92.90% and female literacy was 83.28%.[5]

Religion in Noida[18]

Religion	Percent
Hinduism	90.55%
Islam	7.40%
Sikhism	0.88%
Christianity	0.46%
Others	0.71%

There are people of almost all major religions, but the majority practice Hinduism. Many famous Hindu temples are located in the city, some of the more famous ones are the Hanuman temple in Sector 22, the Kalibari Temple in Sector 26, the ISKCON temple in Sector 33, Shree Jagannath Temple in Sector 34, Sai Baba Temple in Sector 61, Shiv Mandir in Sector 31, Shri Ram Mandir in Sector 36 and the Kuti Temple at Sec 163 Mohiyapur. A Shia Jama Masjid in Sector 50 and St. Gregorios Indian Orthodox Church in Sector 51, Mar Thoma Church in Sector 50 and St. Mary's Catholic Church in Sector 34 are also well known.

Administration[edit]

Authority[edit]

The city's infrastructure is looked after by the NOIDA Authority, a statutory authority set-up under Uttar Pradesh Industrial Area Development Act, 1976.[15] Authority's head is its Chairman, who is an IAS officer, the authority's daily matters, however, are looked after by its CEO, who is also an IAS officer. NOIDA Authority comes under the Infrastructure and Industrial Development Department of Uttar Pradesh Government. The Chairman of NOIDA Authority is Alok Tandon and CEO is Ritu Maheshwari.[19][20]

General Administration[edit]

The Gautam Budh Nagar district is a part of Meerut Division, headed by the Divisional Commissioner, who is an IAS officer of high seniority, the Commissioner is the head of local government institutions (including Municipal Corporations) in the division, is in-charge of infrastructure development in his division, and is also responsible for maintaining law and order in the division.[21][22][23][24][25] The District Magistrate, hence, reports to the Divisional Commissioner of Meerut. The current Divisional Commissioner of Meerut is Anita C. Meshram (IAS).[26]

Gautam Budh Nagar district administration is headed by the District Magistrate (DM) of Gautam Budh Nagar, who is an IAS officer. The DM is in charge of property records and revenue collection for the central government and oversee the national elections held in the city.[21][27][28][29][30]

The District Magistrate is assisted by one Chief Development Officer, three (3) Additional District Magistrates/ ADM (Executive, Finance & Revenue and Law & Order), and one City Magistrate. The district has divided into three Sub-divisions named Noida Sadar, Dadri and Jewar each headed by a Sub-Divisional Magistrate (SDM) who reports to the District Magistrate. The current DM of Gautam Buddha Nagar (Noida) since 30 March 2020 is Suhas Lalinakere Yathiraj (IAS).

Law Enforcement[edit]

Until January 2020, Gautam Budh Nagar district used to come under Meerut Police zone and Meerut Police range of Uttar Pradesh Police. Meerut zone is headed by an IPS officer in the rank of Additional Director General of Police (Additional DGP), whereas Meerut range is headed by an IPS officer in the rank of Inspector General of Police (IGP).

In January 2020, The Government of Uttar Pradesh, led by Yogi Adityanath announced that Gautam

Buddha Nagar (Noida) and Lucknow will have Commissionerate Police system[31], headed by a Commissioner of Police who shall directly report to the DGP of Uttar Pradesh Police. The Commissioner of Police (Additional DGP rank) is assisted by two Additional Commissioner of Police (Deputy IGP rank). Below them, there are seven (7) Deputy Commissioner of Police/ DCP (SP rank).
Noida[32] is divided into three (3) police zones ie Noida, Central Noida and Greater Noida, each of them under a zonal DCP (SP rank). Apart from these three Zonal DCPs, Noida Police has four (4) other DCP looking after Headquarters, Traffic, Crime and Women Safety. Below them, there are 16 Assistant Commissioner of Police/ ACP (Deputy SP rank).
The current Commissioner of Noida Police is Alok Singh, an Indian Police Service (IPS) officer of 1995 batch[33].
Infrastructure
Noida stands at 17th place when it comes to cleanliness among cities in India.[34] The creation of associated physical infrastructure is higher in Noida and Greater Noida.[35] Most of the land in Noida is not very fertile and the agricultural output is low. It is in the flood plains of the Yamuna River on one side and the Hindon River on the other. Many villages are visible from the Noida Expressway, beginning from the Mahamaya flyover to Greater Noida on both sides. One end of Taj expressway terminates on Noida Expressway near the Hindon River and the other at Agra. Up until the 1980s, these villages were flooded every 2–3 years, resulting in people temporarily moving to other places in Noida, and even as far as Mehrauli in Delhi. Noida is also famous for its tall buildings and comes 2nd in India after Mumbai in this parameter.
There is always a huge amount of revenue surplus each year as they are unable to spend the entire amount on development or on maintaining civic amenities. Lease rent and interest from builders are the biggest contributors to Noida's revenue. Besides, the authority gets huge revenues out of water and property transfer charges. "The Noida authority had deposited ₹3,500 crore as fixed deposits in various banks because of surplus funds. Noida has so much surplus funds with it that it can run the city even if it does not take any taxes from its allottees for 5 years in a row."[36]
A 300 m (980 ft) tall skyscraper named "Spira" is under construction in Noida
Rail/Air[edit]
Noida is not connected by railways directly, but there are railway stations nearby reachable by road, including Ghaziabad and Anand Vihar. However, New Delhi Railway Station and Old Delhi Railway station (both accessible through Metro) are the main railway stations ones used most often by commuters to reach Noida. The nearest airport is the Indira Gandhi International Airport in Delhi.
In June 2017, the Union Government sanctioned the construction of an international airport in Greater Noida (Jewar) to reduce the traffic of the one in New Delhi.[53]
Bus[edit]
Noida has a bus stand at Morna village in Sector 35. There are regular buses to nearby cities like New Delhi, Dehradun, Ghaziabad, Tappal, Khair, Aligarh Bulandshahr, Meerut, Muzaffarnagar, Haridwar etc. Uttar Pradesh Parivahan runs local buses in the city. However, there are plannings to shift the Bus Stand from Morna.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISATION, REHABILATATION AND RESETTLEMENT ACT, 2013
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is also called land acquisition act 2013 and was brought to replace Land Acquisition Act of 1894,

enacted during British era. However the act was mired into controversies mainly because of lack of specific definition of public purpose, thereby, extending even it to the extent of establishment of business-cum-leisure tourism infrastructure center like villas, golf course, hotels and banquet halls.

The new act seeks to establish a cohesive national law that dealt with the compensation, rehabilitation and resettlement issues arising out of process of land acquisition. The aims and objectives of the act are:

The acquisition process is carried out in consultation with local self government and gram sabhas, thereby, ensuring least disturbance is caused to the owners of the land and other affected families.

To ensure that fair compensation is provided to the affected families.

Make adequate provisions for the rehabilitation and resettlement.

In case of compulsory acquisition, endeavor should be made that the affected persons are made partners in development so as to ensure a smooth rehabilitation process for them post acquisition.

The act is applicable to all the land acquisition whether done by the central or state governments except the state of Jammu & Kashmir. The provisions of the Act does not apply to acquisitions under 13 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc. The Act is applicable when:

Government acquires land for its own use, hold and control, including land for Public sector undertakings.

Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose.

Government acquires land for immediate and declared use by private companies for public purpose.

Salient Provisions of the 2013 Act

Definition of Public Purpose

Section 2(1) of the act defines 'public purpose' as the project which involves land acquisition for strategic purposes or national security and defence of the country. For example-naval, military, air force, and armed forces of the Union, including central paramilitary forces etc. Other domain which falls under pubic purpose are-elaborate mention of infrastructure projects, projects for housing for lower income groups or landless or to persons residing in areas affected by natural calamities or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government.

Consent clause

When government acquires the land directly for 'public purpose' consent of the land owner is not required. However, when the government acquires the land for private companies, the consent of at least 80% of the project affected families shall be obtained through a prior informed process. In case of acquisition of land for public-private project then the consent of at least 70% of the affected families should be taken.

Emergency acquisition

Under this the land acquisition can be expedited if it relates to national defense, security and rehabilitation of affected people from natural disasters or emergencies.

Limits on acquisition

The act does not allow acquisition of land under multi cropped area. The act also mandates that in case of acquisition of multi cropped area under exceptional circumstances, an equivalent area of cultivable

wasteland shall be developed by the state for agricultural purposes. In case of acquisition of other agricultural land, total acquisition should not exceed the limit as specified by an appropriate authority. These limits shall not apply to linear projects which include projects for railways, highways, major district roads, power lines, and irrigation canals.

Compensation

It will be four times the market value of land in rural areas and twice in urban areas. The market value of the land will be set as higher of: minimum land value, if any, specified in the Indian Stamp Act, 1899 or; average of the sale price for similar type of land being acquired, ascertained from the highest fifty per cent of the sale deeds registered during the preceding three years in the nearest vicinity of the land being acquired.

Land Acquisition, Rehabilitation and Resettlement Authority

It is established to adjudicate matters arising out of the implementation of this law. It will be established by the state government as a "One Person" Land Acquisition, Rehabilitation and Resettlement Authority with powers of civil court. He must be either qualified to be a District Judge or must have seven years law practice experience.

Social Impact Assessment

Before the acquisition process starts the government has to carry out a social impact study along with consultation involving local authorities viz. Gram Sabha, Municipality. The purpose of the study is to make public the intended 'public purpose', the people affected, extent of acquisition etc. The report is submitted to an expert committee who can after due consideration can also disapprove the project. But he government can override the disapproval of the committee.

Provision for SC/STs

Their land will be acquired only under exceptional circumstances and that too with the prior consent of Gram Sabha or Autonomous District Councils in fifth schedule. Moreover, development plan have to be launched within 5 years to ensure their livelihood is not affected. Also, one-third compensation will be provided before acquisition and rest after the process is completed.

Land left unused after acquisition

Land acquired for one purpose cannot be used for another purpose under section 99. However if the land is rendered useless for the originally notified purpose, the appropriate government may use it for another purpose. If the land acquired is not utilized within a period of five years from the date of taking possession, it shall be redelivered to the original owner.

Criticisms of the Law

The key criticism of the above law is as follows:

Complex procedure for acquisition

Social impact assessment study along with approval from the expert committee etc is a long and infeasible process, according to many business leaders. It is primarily because committee clearances in India are inextricably intertwined with red-tapism and bureaucratic hassles. Also improper land records in India compounded the problem. Therefore by the time all the clearances are actually obtained, the project may lose its relevance or the project cost may significantly rise, so many businesses may simply decide to give it up.

High cost of acquisition

The law has made the compensation too high, thus, stifling investment sentiment in the country. Consequently various infrastructure projects failed to take off.

Consent of affected families

Act stipulates to take the consent of affected families also for land acquisition. The term 'affected families' has been defined very capaciously, so it would be a challenging task to find all affected families and to obtain their consent for acquiring land.

Exemption to 13 acts

The government gave exemption to 13 acts only for a year i.e. upto 1st January 2015.After one year the government has to bring amendments to withdraw this exemption but the government was not able to do so. Thus, unless it is done the legislation cannot be implemented effectively.

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015

The 2015 bill was amended twice and second amendment bill was passed by the Lok Sabha but got stuck in the Rajya Sabha. But before this amendment bill was brought, the government promulgated an ordinance in December, 2014. Apart from bringing other changes, it was dome primarily to include those 13 acts under the legislation which were exempted under land acquisition act 2013 as discussed above. The ordinance route was resorted as the government was not able to bring the necessary amendment due to frequent disruptions in parliament and lack of majority of the government in the Rajya Sabha. The changes brought by the 2015 second amendment bill as passed by the Lok Sabha are discussed below:

Exemption from certain provisions of LARR act, 2013

First, mandatory consent clause of 80% people in case of private projects and 70% in case of PPP projects is not applicable to the newly defined five categories of land use in the 2015 bill. They are: (i) defense, (ii) rural infrastructure, (iii) affordable housing (iv) industrial corridors (v) infrastructure projects including Public Private Partnership (PPP) projects where the government owns the land. Second, the government may also permit to exempt above categories of land use from Social Impact Assessment clause and from the restrictions of acquisition of multi cropped land clause of LARR act 2013.

Earlier exempted 13 acts brought land acquisition bill, 2015

The Bill brings the compensation, rehabilitation, and resettlement provisions of these 13 laws in consonance with the LARR Act, 2013.

Return of unutilized land

Under the LARR Act, 2013, if the acquired land remains unutilized for five years then it has to be returned to the original owners. New provision says that the period after which unutilized land will need to be returned will be: (i) five years, or (ii) any period specified at the time of setting up the project, whichever is later.

Land acquisition for private hospitals and private educational institutions

LARR act, 2013 allowed acquisition of land for private hospitals and educational institutions. However the new bill has removed this clause.

Title of private 'company' changed to private 'entity

LARR act 2013 was applicable to the private companies as defines in the companies' act 1956 or under the Societies Registration Act, 1860. Now the bill substituted private entity in place of private company. A 'private entity' is an entity other than a government entity, and includes a proprietorship, partnership, company, corporation, non-profit organization, or other entity.

Changes to rehabilitation and resettlement

LARR 2013 calls for employment for at least one member of the family. But the amendments change this provision to ensure compulsory employment to at least one member of such an 'affected family of a farm laborer'.

Offences by the government

Under the 2013 Act, if an offence is committed by a government department, the head of the department will be held guilty unless he can show that he had exercised due diligence to prevent the commission of the offence. The Bill removes this section. It adds a provision to state that if an offence is committed by a government employee, he can be prosecuted only with the prior sanction of the government.

Changes to Land Acquisition, Rehabilitation and Resettlement Authority

The Act provides for the establishment of a Land Acquisition, Rehabilitation and Resettlement (LARR) Authority which may be approached in case a person is not satisfied with an award under the Act. The amendments state that the LARR Authority must hold its hearing in the district where the land acquisition is taking place, after receiving a reference from the Collector and giving notice of this reference to all concerned parties.

Change in the time taken for acquiring land

Under the 2013 Act, the minimum time required to complete the acquisition process is 50 months. The changes proposed in the Bill reduce this time to 42 months.

Discussion

The amendment of LARR Act, 2013 was based on the premise that it would help stalled infrastructure projects. However, according to economic survey data 2015, out of more than 80 % projects stalled only 8% of them were due to issues in land acquisition. Rest were stuck due to lack of funds or other bottlenecks operating in the economy. Therefore, the amendments brought were criticized to be hasty and without any proper consultations.

Second, it is important to understand that the land is not purchased but acquired which shows that the owner is not willing to part away from his land. So doing away with the consent clause defies all logic especially when the five categories of land use defined can be extended to comprise any projects under the sun. There is no rationale that why some projects require consent and other does not require consent. Critics argue that this amendments seems to be more pro-corporate rather than pro-people

Third, the social impact assessment clause which was the most important tool to make the citizens understand about the overall modalities of the implementation has been repealed. It is way beyond understanding even though the government can override the disapproval of the expert committee overseeing SIA for any land acquisition. The concerns of the delay due to SIA requires hitting the root of the problem that is cutting red tapism etc. rather than eliminating SIA, the solution to informed consent of land acquisition process. Fourth, the threshold of the accountability of the government employees has been raised by requiring the prior sanction of the government.

There is no doubt that the process of land acquisition should be smooth so as to ensure smooth setting up of development and infrastructure projects. But it is important to look into the valid concerns of the public especially farmers otherwise it will lead to protests and increased dissatisfaction among the public.

UNIT 3

REAL ESTATE (DEVELOPMENT AND REGULATION) BILL, 2013

Highlights of the Bill

The Bill regulates transactions between buyers and promoters of residential real estate projects. It establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs).

Residential real estate projects, with some exceptions, need to be registered with RERAs. Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these

projects also need to register with RERAs.
On registration, the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project.
70% of the amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount to less than 70%.
The Bill establishes state level tribunals called Real Estate Appellate Tribunals. Decisions of RERAs can be appealed in these tribunals.
Key Issues and Analysis
One may question Parliament's jurisdiction to make laws related to real estate as "land" is in the State List of the Constitution. However, it may be argued that the primary aim of this Bill is to regulate contracts and transfer of property, both of which are in the Concurrent List.
Some states have enacted laws to regulate real estate projects. The Bill differs from these state laws on several grounds. It will override the provisions of these state laws in case of any inconsistencies.
The Bill mandates that 70% of the amount collected from buyers of a project be used only for construction of that project. In certain cases, the cost of construction could be less than 70% and the cost of land more than 30% of the total amount collected. This implies that part of the funds collected could remain unutilized, necessitating some financing from other sources. This could raise the project cost.
The Standing Committee examining the Bill has made several recommendations. These include: (a) the Bill should also regulate commercial real estate, (b) smaller projects should also be covered, and (c) all real estate agents must be required to register.
The real estate sector has some other issues such as a lengthy process for project approvals, lack of clear land titles, and prevalence of black money. Some of these fall under the State List.
OBLIGATIONS OF THE PROMOTER/BUILDER

That the Promoter shall be obliged to make all information including the approved plans public on its web page so provided by the Authorities. The Promoter shall not indulge in any kind of misleading advertising of the project. In case the Promoter is found to have misled the customer/purchaser, the purchaser shall have the right to withdraw from the Project and all amounts deposited by him towards booking of the property shall be completely refunded to him. The major obligations of the promoter under the current Bill is to adhere to the proposed and approved plans by Competent Authority, provide all documents such as plans, payment schedules, information about the project being linked to the municipal amenities, obtain completion certificate, execution of conveyance deed for transfer of title, maintain the building till the time that the Allottees do not take over the maintenance etc.

The Promoter shall not collect any amounts from the Allottees towards booking of the properties till the Agreement for Sale is entered into. The Promoter would be required to sign an undertaking stating therein that he has title in the land, it is free from all encumbrances, timelines for the project shall be adhered to, setting out the time line and that the Promoter shall be obliged to deposit 70% of the amount realised from the Allottees from time to time in a separate account to be maintained in a scheduled Bank within 15 days of its realization and utilize the same for that project only. The Promoters shall therefore not be able to circulate their monies for completion of their other projects thus ensuring timely completion of the projects. The Promoter shall be required to decare its list of Real Estate Agents as well.

If for any reason the Promoter/builder is unable to complete the project, it shall be liable to refund the amounts to the Allottees alongwith interest in terms of clause 15 (2) of the Bill and penalty if any as imposed by the Competent Authority. This shall however be without prejudice to its right to other remedies. That upon completion of the project and after obtaining completion certificate or occupation certificate as the case may be the Promoter shall handover the maintenance of the building/plot to the Allottees. The original title certificates and the building plans shall also be handed over to the association of the Allottees. If within a year of handing over of the property there are any structural defects or deficiencies noticed , the Promoter shall be obliged to rectify the same without further charge and within a reasonable time. In case of failure to do the same the Allottees shall be entitled to compensation/damages as may be determined by the Competent Authority.

OBLIGATIONS OF THE ALLOTTEES

The Allottee shall be obliged to pay the amounts due towards the consideration of purchase of the pot/building/apartment as agreed upon and in case of any delay in payment the same shall be payable alongwith interest thereon as agreed between the parties. The proportionate share of Municipal taxes, water electricity charges , ground rent, registration charges etc. shall also be payable by the Allottee.

REGULATORY AUTHORITY

Under the Bill it has been provided that the Government shall establish an authority which shall be known as the Real Estate Regulatory Authority whose prime function would be to regulate the real estate development and to promote the real estate sector. The Authority shall have the Power to set up a Dispute Resolution Mechanism for amicable settlement of dispute through Mediation, conciliation etc and shall appoint such officers as it may deem appropriate for the said purpose.

The Authority may upon a complaint made or on a suo moto complaint summon the Promoter, Allottee or any person connected with such complaint and seek explanation in regard to the complaint so made. While doing so the Authority shall have the same powers as a Civil Court under the Code of Civil Procedure 1908. The authority shall also have the power to execute the orders passed by it in case the party fails to comply.

There is no specific format prescribed under the Bill for making complaints before the Authority however it has been provided that the Authority shall on a later date prescribe the format , fee etc for complaints, applications etc.

Having been bestowed with the powers of a Civil Court the Legislative has exclude the Civil Courts from interfering in such matters unless there is a specific reference from the Authorities itself.

APPELLATE TRIBUNAL

Any appeal from an order of the Regulatory Authority could be preferred before the Appellate Tribunal within a period of 30 days in the format so prescribed from the date of receiving the order by the

concerned party or the Competent Authority or State Government. Any delay in preferring the appeal could be condoned upon showing good cause for such delay. The said appeal is required to be disposed off by the Appellate Authority within 90 days failing which they shall have to record reasons for not doing so. The said Appellate Authority would not be bound by the provisions of the CPC or the Evidence Act and could formulate its own rules. However the Powers of the Appellate Authority would be akin to that of a Civil Court under the CPC both in terms of deciding the appeal and execution of the order/decree. The Appellate Authority would however be at liberty to refer the order/decree for execution to a Civil Court of appropriate jurisdiction as if the said order/decree had been passed by the said Civil Court.

PROSECUTION AND PENALTIES

The Bill provides for prosecution and penalties in case there is a default by the Promoter on the following counts:

If the promoter wilfully neglects to obtain the Registration Certificate he shall be punishable with imprisonment which may extend to 3 years or penalty which may extend to 10% of the total estimated cost of the project or both
If the promoter contravenes any other provision of the Act he may have to pay penalty which could extend to 5% of the total estimated cost of the project
If the promoter wilfully disobeys the orders/directions passed by the Authority he shall be liable to pay a penalty of Rs. 1 lakh per day which may extend to 5% of the total estimated cost of the project
If the promoter wilfully disobeys the orders/directions passed by the Tribunal he shall be punishable with imprisonment upto one year or a penalty of which may extend to 10% of the total estimated cost of the project or both

In case of a Company all persons responsible for the day to day activities of the Company and in-charge of the affairs of the Company shall be prosecuted unless he is able to prove that the default was not within his knowledge. The Court before which the case is being prosecuted shall have the power to compound the offence.

The aforementioned rules, regulations procedures and proceedings as set out in the draft Bill available in the public domain shall be codified by the Legislature and enacted in all the States and it shall then be the responsibility of the State to regulate the Real Estate Sector and prevent malpractices of the Builders/Promoters. The ACT which shall come into being soon shall bring more clarity with regard to the various forms, formats, applications, fees for applying for various approvals by the Promoters, formats for filing complaints before the Regulatory Authority and appeal before the Appellate Authority, and rules relating to the exercise of power by the Regulatory Authorities in States and the Appellate Tribunal. The enactment of the Bill is most awaited by the promoters and investors as only thereafter would it be clear whether the attempt to regulate the Real Estate Sector has a positive or a negative impact on the real estate market.
DELHI APARTMENT OWNERSHIP ACT, 2009

The construction of multi-storied apartment buildings in Delhi has been a constant affair throughout the region's history post-independence. Being the national capital, Delhi has attracted people from both within the country and abroad, primarily because of the lucrative business and investment opportunities on offer in this region. This has resulted in a strong demand for living in apartment buildings and complexes.

In the past, the regular construction of apartments in Delhi used to cause avoidable litigation, as the rights and obligations of the apartment owners and associations weren't set in stone, legally. So in the year 1986, the Delhi apartment ownership Act was drafted and passed by the parliament.

The Act clarifies the rights and obligations of apartment owners, such as in relation to inheritance, restrictions on transfers like mortgage and sale, and the right to common areas and facilities.

Understanding the Terms used in the Act
Administrator : An Administrator is an authority appointed to the union territory of Delhi, by the President of India, as mandated by the Article 239 of the constitution.

Authority : An authority is one who is established or constituted under a law.
Bye-Laws : Bye-laws are laws made under the Delhi Apartment Ownership Act, 1986.

Common Areas and Facilities : Common Areas and Facilities constitutes the land on which the multi-storied apartment building is located, the gardens, basements, cellars, parking areas, and any other such creations, and all the structural elements like lobbies, corridors, fire escapes, and beams and columns.

Common Expenses and Common Profits : Common expenses are sums of money, lawfully assessed against the apartment owners, which go into administration, repair, and maintenance or for modifying common areas and facilities.

After the deduction of the common expenses, what's left after balancing all the incomes and profits are the common profits.
The Key Features Of The Act

Applicability of the Act

The Delhi Apartment Ownership Act, 1986 is applicable to all multi-storied apartment buildings, with at least two stories and four units, constructed by any group housing co-operative society, person, or authority, before or after the commencement of the Act.
The Act is applicable to the whole of the union territory of Delhi.

Bye-Laws to be framed as per administrator's Model Laws

The bye-laws framed by any association of apartment owners should be exactly in accordance with the model bye-laws framed by the Administrator. In case the association wishes to make any changes, the members of the association require a prior approval from the Administrator.

Apartments to be heritable and transferable

According to the Act, every apartment, including its common areas and facilities, will be a transferable and heritable immovable property. The apartment owner can transfer his apartment and his share of the non-partitioned common areas and facilities by way of lease, mortgage, sale, exchange, or gift.
Common Areas and Facilities to be used by all apartment owners for intended purposes

All common areas and facilities will be available for use by all apartment owners. The common areas and facilities will not be divided or partitioned. Each apartment owner will use it for the purpose that it's intended for, without hindering or encroaching upon another apartment owner's right to use the space.

The Common Profits and Expenses to be shared in a certain proportion

The profits will be distributed, and the expenses charged, to all the apartment owners in proportion of the percentage of the undivided interest they hold in the common areas and facilities.

Sometimes it so happens that the apartment owner isn't an occupant of his or her apartment. In this case, the person currently occupying that apartment needs to pay his or her share of the common expenses.

Certain Works Are Prohibited

No apartment owner can make such changes to the structure of the apartment as would lead to the reduction in the property value and affect the safety and soundness of the property. To do so, one would have to acquire consent from all the apartment owners of the association.
Excavating a cellar or additional basement, or adding any material structure is the kind of works that are prohibited.

What the Act means for the people involved?

An apartment owner can easily transfer, purchase, or gift multi-storied residential and commercial apartments, co-operative group housing society apartments, and private apartments.

Earlier, the apartments in Delhi were monopolized by such parties as the Registrar of the Group Housing Society, Delhi Development Authority (DDA), and the builders. With the implementation of this Act, this monopoly comes to an end. All of the rights are now given to the associations of apartment owners.

UNIT 4

DELHI RENT CONTROL ACT
INTRO TO DELHI RENT CONTROL LEGISLATION IN DELHI 1958 AND 1966

INTRODUCTION

Rent Delhi's Rent Control Bill was approved by both Houses of Parliament and approved by the President on December 31, 1958. It came into force on February 9, 1959 as the Delhi Rent Control Act 1958. It extends to areas within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and the Delhi Municipal Corporation for urban areas. Courts are legally bound to read the provisions of the law harmoniously to balance the rights of the landlord and the obligations of the tenant.

Rent control measures are needed when demand for rental property exceeds supply and tenants are exploited by landlords. These rent control laws (RCAs), including the Rent Delhi Rent Control Act 1958, are intended to serve two main purposes: protect the tenant from paying more than the standard rent and protect the tenant from unilateral eviction.

A LANDLORD PERSPECTIVE

Delhi Rent Control Act 1958 is largely considered tenant-friendly and does not help the landlords cause. Low return rates have almost made the lease a welfare activity for the landlord, and the unwillingness to repair and maintain the property often causes the building to collapse1. Therefore, the quality of the housing is badly hit. Prospective landlords prevent new stock supply from entering the rental market.

LIMITING RENT REVISION

Under Section 6A of the Act, the standard rent, or, if the standard rent is not determined by the provisions of this Act in respect of any premises, the tenancy agreed between the landlord and tenant may be increased by ten per cent every three years. The 1958 Act does not have the mechanism to bring historical rent to the current market rate and permanently gives the tenant the luxury of paying less than Rs 3,500 per month. The law clearly states that all those who pay less will have protection. An amendment in 1988 allowed landlords to increase rent by 10 percent every three years. As a result, a tenant paying a rent of Rs 10 in 1988 hits the ceiling of Rs 3,500 after 184 years. Even paying someone Rs 1,000 in 1988 will cross over in 2027.

If the landlord has spent any improvements, additions or structural alterations on the premises, no expenditure on furnishings, or any necessary or general rent for such premises, and no improvements, additions or modifications have been made to account for determining the premises rent, he may legally increase the standard rent annually.

DIFFICULTY IN EVICTING TENANT

The second debilitating effect of the law is the difficulty the landlord faces in removing the tenant. The conditions under which a landlord can evict a tenant are strict and strictly monitored and can rarely rob the landlord's property. The Delhi Act has provisions that allow tenants to rely on the tenant after death, which cancels the tenant's landlord's impossibility.

Another drawback of the rule is the mismatch between the tenant's ability to pay rent and the type of accommodation available. Rent control measures have significant administrative costs and extensive approach to law enforcement. Tenants dare by law to make withdrawals and alterations in buildings without the owner's permission.

THE HIGH COST OF MAINTAINING THE PROPERTY

Under the regulatory regime, rents continue to remain low, while operating costs continue to rise. The situation is even more serious in the case of older tenants who have frozen rents at a historically low level. In the case of these old features, the need for maintenance is high. Old housing stock suffers premature decay and decline because the landlord finds it difficult to manage.

REMOVAL FROM COMMERCIAL PREMISES IS PERMITTED

The Delhi Rent Control Act, 1958 limits the expulsion of tenants from commercial premises because of the commercial space in the city at that time. But that was a long time ago. Now this scenario has undergone a sea change and a large number of buildings and courtyards are now rented out for non-residential and commercial purposes.

The Supreme Court has held that the High Court has failed to meet this provision, reversing the full bench ruling of the Delhi High Court, which refused to change the law in favor of landlords as it has been in force for more than 45 years2. The 1958 Act has outlived its purpose. To eliminate this disorder and reduce the differential approach to the law, the Supreme Court bench of Justice BN Agarwal and GS Singhvi said landlords can now demand the removal of tenants from proven residential and commercial premises based on individual needs.

TENANTS PERSPECTIVE

Many RCAs are products of World War I, requiring stringent rent control for soldiers in accessible accommodation.[1] Delhi Rent Control Act 1958 has become a tool for harassing landlords over the next four decades; in the interests of tenants and even if it works well for them.

LANDLORDS EXPLOITED STUDENTS

While many agree that the 1958 law favors tenants, a section of the tenant community appeals that the unfunded status of the law allows landlords to exploit it. This section is for outstation students studying in colleges in Delhi. These students who are miles away from home have no choice but to ignore the demands of the most defenseless tenants and their landlords.

PROTECTION AGAINST EVICTION

A tenant cannot arbitrarily ask his landlord to vacate his premises. Non-payment or discretionary withdrawals are the only two technical defaults by the tenant, which allows a landlord to take back his property. Under the Status of Rent Control Act, tenants of a legal tenant are entitled to the same protection against eviction as is fair to tenants.

However, eviction can now be sought and sought on bonafide requirements and can be claimed not only for the property owner but also for his or her dependent family. Tenants claim that landlords, desperate to evacuate their property, resort to illegal means, such as paying the reverse ‘pagree’ (interest free security deposit), to evict them or to help organized gangs or locals. Police forcibly removed.

The Delhi Central Business District and its peripheral areas are governed by the Delhi Rent Control (DRC) Act, 1948. Landlords under the Ancient Rent Control Act have a limit on their right to increase monthly rent, which is 10 percent less every three years.

After the partition, Delhi saw a huge influx of migrants, which pushed the government to resettle thousands of people. The government is cautious about the social acceptance of all these migrants and fears of rejecting and removing tenants without prior notice from landlords.

To deal with this issue, 8 Delhi and Ajmer-Mewara Rent Control Act, 1948, thereafter 8 Delhi Rent Control Act, 1958, established. Under these laws, tenants are entitled to protect from premature eviction. The motivation behind the law is the protection of economically weaker sections that cannot afford a home or apply for loans because of low credit scores.

Under this law, the government limits the rent, distorts the tenants, and makes it common interest among investors to buy a property in Delhi.4 In 1988, the Act was amended, giving an exemption from rent control legislation of more than Rs 3,500 per month. To this day, the law continues with the same old rules, meaning that landlords now do not have the right to amend the lease. Furthermore, they cannot even evict the tenant unless they are in extreme circumstances.

COURT PETITIONS FOR SEVERAL YEARS

The total number of appeals or petitions before the district and the number of additional judges of the Delhi High Court (HC) is over 10,000. Approximately 27.9 percent of all civil cases related to rent control are under the DRC Act, which has not been amended for more than three decades. In 2010, a group of three lawyers and activists challenged the image of the old provisions of the law.

In January this year, a group of landowners approached the Delhi HC bench challenging the constitutionality of the law. This appeal argues that the property is regulated by the tenant, regardless of the market rent, but was ultimately rejected by the court. The Repeal Committee of the Delhi Rent Control Act pledges to take these appeals to the Supreme Court later this year, where they hope some justice will be given to landlords.

OVERCOMING THE CHALLENGES FACED BY THE DRCA

Homeowners in areas covered by the DRCA are on the fence of renting out their property due to the lack of consideration they can get under the law. The situation is ubiquitous. Residential and commercial pockets of the Central District, where more than 10 percent of litigation in district courts is under the DRC Act.

The law allows landlords to increase monthly rentals by 10 percent every three years. This is in stark contrast to the average increase in rents in these areas over the years. When the Act was last amended, the realization of this rate failed to yield a substantial return on investment for the landlord, since the actual monthly rent was around Rs 10 to a maximum of Rs 1,000 in 1988. The law states that assets will be covered under the DRC Act until the average rent reaches 3,500. Here is an analysis of how many years the property will take to get a monthly rental 3,500, which in most cases runs for more than 50 years.

Rent as on 1988 (in Rs)	Years until monthly rent amount to Rs 3,500
10	184.38
50	133.71
100	111.09
200	90.09
300	77.31
400	68.25
500	61.23
600	55.5
700	50.64
800	46.44
900	42.72
1000	39.42

Source: Petitioners appeal to the Court, January 2019

CONSEQUENCES OF THE ANCIENT RENT ACT IN RENT DELHI

The DRC law reduces the quality of housing because landlords are not interested in maintaining properties or improving the quality of amenities, which ultimately leads to lower returns5.[2] These laws not only limit supply but also drive out legitimate seekers of rented housing, which resolves tenants for unregistered and unauthorized arrangements.

Deepak Chawla, DCRE Properties, South Delhi said landlords are not motivated to make any improvement in property because of the low return under the provisions of the DRC Act and the PAGD system. But,

This year, the Delhi government has allowedthe legislation to increase the rent by 25 per cent to fund the building's landlords, especially the pagdi system and repair works, as most of these buildings are without safety standards. The rules governing DRC law are generally favorable to the tenant, although some states may take the consequences of the rent control authorities of other states. For example, the Tamil Nadu government has now come up with ways to balance rent control legislation.

The state is expected to increase the rental market in this state to handle eviction disputes. Withdrawing rent control increases property owner confidence by targeting positive rental returns and thereby helping to unlock the potential of the rental housing market.

There have been petitions in HCs of Maharashtra, Tamil Nadu and Karnataka, calling for the repeal of such anti- rent control laws. While some of these appeals have come to fruition, Delhi may not be far away from establishing a favorable tenancy law for parties, tenants and landlords

CONCLUSION

The biggest downfall of the Delhi Rent Control Act is that the income from the property is stagnant as the income of the property is stagnant .This has led to the emergence of methods such as key money. Therefore, the law has reduced access to low-income communities for renters, not only because of the black market in rented houses, but because they cannot pay large deposits for rented premises.

Widespread disagreement between the interests of landlords and tenants has led to an increase in litigation under the Act. A large number of criminal cases are in disputes over rental properties.

The 1995 Act replaces the old law of 1958, which protected immigrant people from the arbitrary rent increase of wealthy landlords. While property values have skyrocketed, landlords who adhere to rent control regulations continue to receive lower rents. The 1995 law was passed by both Houses of Parliament and was approved by the President, but after the tenants' street protests, the government lost the will to notify it.

DELHI RENT CONTROL ACT

2. Definitions. -

In this Act, unless the context otherwise requires-

(A) Basic rent", in relation to premises let out before the 2nd day of June, 1944, means the basic rent of such premises as determined in accordance with the provisions of the Second Schedule;

(b) "Controller" means a Controller appointed under sub-section (1) of section 35 and includes an additional Controller appointed under sub-section (2) of that section;

(c) "Fair rate" means the fair rate fixed under section 31 and includes the rate as revised under section 32;

(d) "Hotel or lodging house" means a building or part of a building where lodging with or without board or other services is provided for a monetary consideration;

(e) "Landlord" means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent to be entitled to receive the rent, if the premises were let to a tenant;

(f) "Lawful increase" means an increase in rent permitted under the provisions of this Act;

(g) "Manager of a hotel" includes any person in charge of the management of the hotel;

(h) "Owner of a lodging house" means a person who receives or is entitled to receive whether on this own account or on behalf of himself and others or as an agent or a trustee for any other person, any monetary consideration from any person on account of board, and lodging or other services provided in the lodging house;

(i) "premises" means any building or part of a building which is, or is intended to be, let separately for

use as a residence or for commercial use or for any other purpose, and includes.-
(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;
(ii) any furniture supplied by the landlord for use in such building or par of the building;
but does not include a room in a hotel or lodging house;
(j) "prescribed" means prescribed by rules made under this Act;
(k) "standard rent", in relation to any premises, means the standard rent referred to in section 6 or where the standard rent has been increased under section 7, such increased rent;
[(l) (Note: Subs. by Act 18 of 1976, sec.2, for clause (1) (w.r.e.f . 1-12-1975)) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes-
(i) a sub-tenant;
(ii) any person continuing in possession after the termination of his tenancy; and
(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and to this clause, such of the aforesaid person's-
(a) spouse,
(b) son or daughter, or, where there are both son and daughter, both of them,
(c) parents,
(d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include,-
any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso of section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);
(B) any person to whom a license, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.
Explanation1.-The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:-
(a) firstly, his surviving spouse;
(b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death;
(c) thirdly, his parents, if there is no surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and
(d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.
Explanation II.-If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.
Explanation III.- For the removal of doubts, it is hereby declared that, -
(a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguished shall not affect the right of any other

succession of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be;
(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, develop on any of his heirs];
(m). "urban area" has the same meaning as in the Delhi Municipal Corporation Act, 1957 (66 of 1957).
GROUNDS OF EVICTION
14. Protection of tenant against eviction. –
(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenet:
Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-
(a) That the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a landlord in the manner provided in section 106 of the Transfers of
Property Act, 1882 (4 of 1882);
(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise without obtaining the consent in writing of the landlord;
(c) That the tenant has used the premises for purpose other than that for which they were let-
(i) If the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or
(ii) If the premises have been let before the said date without obtaining his corisent;
(d) That the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;
(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof , or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation;
Explanation.- For the purpose of this clause, “premises let for residential purpose” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;
(f) That the premises have become unsafe or unfit for human habitation and are required bona fide by the landlord for carrying out repairs which cannot be carried out without the premises being vacated;
(g) That the premises are required bona fide by the landlord for the purpose building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;
(h) That the tenant has, whether before or after the commencement of this Act, (Note: The word “built” omitted by Act 57 of 1988, sec.8 (w.e.f. 1-12-1988)) acquired vacant possession of, or been allotted, a residence;
[(hh) (Note: Ins. by Act 57 of 1988, sec.8 (w.e.f. 1-12-1988)) That the tenant has, after the

commencement of the Delhi Rent Control (Amendment) Act, 1988, built a residence and ten years have elapsed there-after;]

(i) That the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment;

(j) That the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises;

(k) That the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;

(i) That the landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Development Authority or the Municipal Corporation of Delhi in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated.

(2) No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1) if the tenant makes payment or deposit as required by section 15:

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months.

(3) No order for the recovery of possession in any proceeding under sub-section (1) shall be binding on any sub-tenant referred to in section 17 who has given notice of his sub-tenancy to the landlord under the provisions of that section, unless the sub-tenant is made a party to the proceeding and the order for eviction is made binding on him.

(4) For the purpose of clause (b) of the proviso to sub-section (1), any premises which have been let for being used for the purpose of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to the person.

(5) No application for the recovery of possession of any premises shall lie under sub-section (1) on the ground specified in clause (c) of the proviso thereto, unless the landlord has given to the tenant a notice in the prescribed manner requiring him to stop the misuse of the premises and the tenant has refused or failed to comply with such requirement within one month of the date of service of the notice; and no order for eviction against the tenant shall be made in such a case, unless the Controller is satisfied that the misuse of the premises is of such a nature that it is a public nuisance or that it causes damage to the premises or is otherwise detrimental to the interest of the landlord.

(6) Where a landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under sub-section (1), on the ground specified in clause (e) of the proviso thereto, unless a period of five years have elapsed from the date of the acquisition.

(7) Where an order for the recovery of possession of any premises is made on the ground specified in clause(c) of the proviso to sub-section (1), the landlord shall not be entitled to obtain possession thereof before the expiration of a period of six months from the date of the order.

(8) No order for the recovery or possession of any premises shall be made on the ground specified in

clause (g) of the proviso to sub-section (1), unless the Controller is satisfied that the proposed reconstruction will not radically after the purpose for which the premises were let or such ramidically alteration is in the public interest, and that the plans and estimates of such reconstruction have been properly prepared and that necessary fund for the purpose are available with the landlord.

(9) No order for the recovery of possession of any premises shall be made on the ground specified in clause (I) of the proviso to sub-section (1), if the Controller is of opinion that there is any bona fide dispute as to whether the tenant has ceased to be in the service or employment of the landlord.

(10) No order for the recovery of possession of any premises shall be made on the ground specified in clause ,(i) of the proviso to sub-second (1) if the tenant, within such time as may be specified in this behalf by the Controller, carries out repairs to the damage caused to the satisfaction of the Controller or pays to the landlord such amount by way of compensation as the Controller may direct .

(11) No order for the recovery of possession of any premises shall be made on the ground specified in clause(k) of the proviso of sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.

COMMENTS

(i) Payment of rent or monetary consideration by sub-tenant to tenant may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let; M/s Bharat Sales Ltd. v. Life Insurance Corporation of India, AIR 1998 SC 1240.

(ii) It is settled principle of law that if a tenanted premises is a house then it means that letting was for residing and house means a dwelling place. If tenant gives address of his house for commercial communication or correspondence, then it would not mean commercial user; Shri Kishan Lal v. Shri Rajan Chand Khanna, AIR 1993 Del 1.

iii) The law is well settled that the landlord is entitled to assess the need and requirement for himself and hisother family members. Neither the court nor the tenant can dictate to him the mode and manner in which he should live or to prescribe for him a residential standard of their own; Devi Ram v. Ram Kapoor, 76 (1998) DLT 637.

(iv) Sub-section (11) of section 14 enables the Controller to give an another opportunity to the tenant to avoid an order of eviction. Where the authority concerned requires stoppage of misuser then an order to that effect has to be passed, but where the authority merely demands compensation for misuser then only in such a case would the Controller be justified in passing an order for payment of compensation alone; Dr. K. Madan v. Smt. Krishnawati, AIR 1997 SC 579.

14A. Right to recover immediate possession of premises to accrue to certain persons. –

(1) Where a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority is required, by, or in pursuance of, any general or special order made by that Government or authority, to vacate such residential accommodation, or in default, to incur certain obligations, on the ground that he owns, in the Union territory of Delhi, a residential accommodation either in his own name or in the name of his wife or dependent child, there shall accrue, on and from the date of such order, to such landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary, a right to recover immediately possession of any premises let out by him:

Provided that nothing in this section shall be construed as conferring a right on a landlord owning, in the Union territory of Delhi, two or more dwelling houses whether in his own name or in the name of his wife or dependent child to recover the possession of more than one dwelling house and it shall be lawful for such landlord to indicate the dwelling house, possession of which hi intends to recover.

(2) Notwithstanding anything contained elsewhere in this Act or in any there law for the time being in force or in any contract, custom or usage to the contrary, where the landlord exercises the right of recovery conferred on him by sub-section (1), no compensation shall be payable by him to the tenant or any person claiming through or under him and no claim for such compensation shall be entertained by any court, tribunal or other authority:

Provided that where the landlord had received,-

(a) any rent in advance from the tenant, he shall, within a period of ninety days from the date of recovery of possession of the premises by him, refund to the tenant such amount as represents the rent payable for the unexpired portion of the contract, agreement or lease;

(b) any other payment, he shall, within the period aforesaid, refund to the tenant a sum which shall bear the same proportion to the total amount received as the unexpired portion of the contract or agreement, or lease bears to the total period of contract or agreement or lease:

Provided further that, if any default is made in making any refund as aforesaid, the landlord shall be liable to pay simple interest at the rate of six per cent. per annum on the amount which he has omitted or failed to refund

14B. Right to recover immediate possession of premises to accrue to members of the armed forces, etc. –

(1) Where the landlord-

(a) is a released or retired person from any armed forces and the premises let out by him are required for his own residence; or

(b) is a dependent of a member of any armed forces who had been killed in action and the premises let out by such member are required for the residence of the family of such member, such person or, as the case may be, the dependant may, within one year from the date of his release or retirement from such armed forces or, as the case may be, the date of death of such member, or within a period of one year from the date of commencement of the Delhi Rent Control (Amendment) Act, 1988, whichever is later, apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord is a member of any of the armed forces and has a period of less than one year preceding the date of his retirement and the premises let out by him are required for his own residence after his retirement, he may, at any time, within a period of one year before the date of his retirement, apply to the Controller for recovering the immediate possession of such premises.

(3) Where the landlord referred to in sub-section (1) or sub-section (2) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of only one of the premises chosen by him.

Explanation.-For the purpose of this section, "armed forces" means an armed force of the Union constituted under an Act of Parliament and includes a member of the police force constituted under section 3 of the Delhi Police Act, 1978 (34 of 1978).

14C. Right to recover immediate possession of premises to accrue to Central Government and Delhi Administration employees. –

(1) Where the landlord is a retired employee of the Central Government or of the Delhi Administration, and the premises let out by him are required for his own residence, such employee may, within one year from the date of his retirement or within a period of one year from the date of commencement of the

Delhi Rent Control (Amendment) Act, 1988, whichever is later apply to the Controller for recovering the immediate possession of such premises.
(2) Where the landlord is an employee of the Central Government or of the Delhi Administration and has a period of less than one year preceding the date of his retirement and the premises let out by him are required by him for his own residence after his retirement, he may, at any time within a period of one year before the date of his retirement, apply to the Controller for recovering the immediate possession of such premises.
(3) Where the landlord referred to in sub-section (1) or sub-section (2) has let out more than one premises, it shall be open to him to make an application under that sub-section in respect of only one of the premises chosen by him.
14D. Right to recover immediate possession of premises to accrue to a widow. –
(1) Where the landlord is a widow and the premises let out by her, or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.
(2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to her to make an application under that sub-section in respect of any one of the premises chosen by her.
DISPUTE SETTLEMENT MECHANISM
35. Appointment of Controllers and Additional Controllers. –
(1) The Central Government may, by notification in the Official Gazette, appoint as many Controllers as it thinks fit, and define the local limits within which, or the hotels and lodging houses in respect of which, each Controller shall exercise the powers conferred, and perform the duties imposed, on Controllers by or under this Act.
(2) The Central Government may also, by notification in the Official Gazette, appoint as many additional Controllers as it thinks fit and an additional Controller shall perform such of the functions of the Controller as may, subject to the control of the Central Government, be assigned to him in writing by the Controller and in the discharge of these functions, an additional Controller shall have and shall exercise the same powers and discharge the same duties as the Controller.
(3) A person not be qualified for appointment as a Controller or an additional Controller, unless he has for at least five years held a judicial office in India or has for at least seven years been practicing as an advocate or a pleader in India.
36. Powers of Controller. –
(1) the Controller may-
(a) Transfer any proceeding pending before him for disposal to any additional Controller, or
(b) Withdraw any proceeding pending before any additional Controller any dispose it of him or transfer the proceeding for disposal to any other additional Controller.
(2) The Controller shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-
(a) Summoning and enforcing the attendance of any person and examining him on oath;
(b) Requiring the discovery and production of documents;
(c) Issuing commissions for the examination of witnesses;
(d) Any other matter which may be prescribed,
And any proceeding before the Controller shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860), and the Controller shall be deemed to be a civil court within the meaning of section 480 and section 482 of the Code of Criminal Procedure,

1898 (5 of 1898).

(3) For the purposes of holding any inquiry or discharging any duty under this Act, the Controller may,-

(a) After giving not less than twenty-four hours' notice in writing, enter and inspect or authorise any officer subordinate to him to enter and inspect any premises at any time between sunrise and sunset; or

(b) By written order, require any person to produce for his inspection all such accounts, book or other documents relevant to the inquiry at such time and at such place as may be specified in the order.

(4) The Controller may, if he thinks fit, appoint one or more person having special knowledge of the matter under consideration as an assessor or assessors to advise him in the proceeding before him.

37. Procedure to be followed by Controller.-

(1) No order which prejudicially affects any person shall be made by the Controller under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objection, if any, and any evidence he may produce in support of the same have been considered by the Controller.

(2) Subject to any rules that may be made under this Act, the Controller, shall, while holding an inquiry in any proceeding before him, follow as far as may be the practice and procedure of a Court of Small Causes, including the recording of evidence.

(3) In all proceedings before him, the Controller shall consider the question of costs and award such costs to or against any party as the Controller considers reasonable.

38. Appeal to the Tribunal. –

(1) An appeal shall lie from every order of the Controller made under this Act [only on questions of law] to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette:

Provided that no appeal shall lie from an order of the Controller made under section 21.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order made by the Controller:

Provided that the Tribunal may entertain the appeal after the expiry of the said period of thirty days, if it (3) The Tribunal shall have all the power vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when hearing an appeal.

(4) Without prejudice to the provisions of sub-section (3), the Tribunal may, on an application made to it or otherwise, by order transfer any proceeding pending before any Controller or additional Controller to another Controller or additional Controller and the Controller or additional Controller to whom the proceeding is so transferred may, subject to any special directions in the order of transfer, dispose of the proceeding.

(5) A person shall not be qualified for appointment to the Tribunal, unless he is, or has been a district judge or has for at least ten years held a judicial office in India.

38A. Additional Rent Control Tribunals. –

(1) For the expeditious disposal of appeals and applications under section 38, the Central Government may, by notification in the Official Gazette, constitute as many Additional Rent Control Tribunals as it deem fit and appoint to each such Additional Rent Control Tribunal (hereinafter referred to as the Additional Tribunal) on person qualified for appointment to the Tribunal in accordance with the provisions of sub-section (5) of that section.

(2) Notwithstanding anything contained in section 38, the Tribunal, may, by order in writing, –

(a) Specify the appeals or classes of appeals under sub-section (1) of that section which may be preferred

to an disposed of by each Additional Tribunal and the classes of cases in which each Additional Tribunal may exercise the powers of the Tribunal under sub-section (4) of that section;
(b) Transfer any appeal or proceeding pending before it for disposal to, any Additional Tribunal; or
(c) Withdraw any appeal or proceeding pending before any Additional Tribunal and dispose it of itself or transfer the appeal or proceeding for disposal to any other Additional Tribunal.
(3) The Provisions of sub-section (2) and (3) of section 38 shall apply in relation to an Additional Tribunal as they apply in relation to the Tribunal.
38B. Power of High Court to transfer appeals, etc. –
The High Court may also, on an application made to it or otherwise, by order, transfer –
(a) any appeal or proceeding pending before the Tribunal to any Additional Tribunal; or
(b) any appeal or proceeding pending before any Additional Tribunal to the Tribunal or in any other Additional Tribunal.
39. Section 39 omitted by Act 57 of 1988, sec.17 (w.e.f. 1-12-1988).
39. Section 39 omitted by Act 57 of 1988, sec.17 (w.e.f. 1-12-1988).
40. Amendment of orders. –
Clerical or arithmetical mistakes in any order passed by a Controller or [the Tribunal or an Additional Tribunal] or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Controller or [the Tribunal on an Additional Tribunal] on am application received in this behalf from any of the parties or otherwise.
41. Controller to exercise powers of a magistrate for recovery of fine. –
Any fine imposed by a Controller under this Act shall be paid by the person find witnessed such time as may be the Controller and the Controller may, for good and sufficient reason, extend the time, and in default of such payment, the amount shall be recoverable as a fine under the provisions of the Code of Criminal Procedure, 1898, and the Controller shall be deemed to be a magistrate under the said code for the purposes of such recovery.

SOCIO-ECONOMIC OFFENCES (507-F)

Unit – I: HOARDING AND PROFITEERING

a. Laws relating to maintenance of essential supplies

The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 was enacted on 12th February, 1980 and enforced on 5th October, 1979. The act aims to prevent un-ethical trade practices which include black-marketing and hoarding of essential commodities, the act lays provisions for punishment against such persons who commit either of these.

The act empowers state government or central government or an officer not below the rank of Joint

secretary representing centre or state government in case has a reason to believe that a person is committing an against provisions of the Act shall make an order for detaining such person. Act shall directly apply to such person committing, aiding or abetting an offence under provisions of the Essential Commodities Act, 1955 or any other law dealing with distribution, production or supply of essential commodities; any person who make profits by defeating provisions of the act. The Act also gives similar power of taking action to district magistrates and commissioner of police. An order made by an officer under sub section (2) of section 3 shall be brought into the notice of government along with relevant details; the order shall remain into force for not more than twelve days after making it within which State Government shall approve the order. The State government shall within seven days report to Central Government along with grounds of order where-after detention order under sub section (2) of section 3 shall be carried. No order of detention shall be invalid merely on the ground that detention was carried outside territorial jurisdiction of the government making order.

Section 4 of the Act relates to absconding persons, once a person is found to avoid order of detention or is absconding, the Government or officer shall draft a report in writing to Metropolitan Magistrate or Judicial magistrate first Class who shall order against such person

under section 82, 83, 84 and 85 of Code of Criminal Procedure which shall apply against the person and his property. Provisions of section 4 are also applicable once the authorities have an apprehension of absconding of person against whom orders of detention have been made.

Incase a person is notified to present himself before court of law he shall do so on the date and time specified incase of failure to make an appearance such person shall be punished with imprisonment extending one year and with fine or both. Offences under the act shall be cognizable. Person detained shall be made aware of the ground of detention and shall be given an opportunity of fair representation.

Section 9 of the Act deals with appointment of an advisory board consisting of three persons who is, are qualified or had been Judge of a High Court, along with one another member who is, or has been Judge of High Court. The state government is imposed with a duty to refer the deatined person before advisory board along with the representation of grounds of detention, whereafter the advisory board shall look into all aspects of the matter brought in front of it. The advisory board after giving an opportunity to person detained shall draft a report which shall be acted upon by the Government. The report shall either ask the government to revoke detention orders or shall further continue the detention. Maximum period of detention shall be six months from the date of detention. The order of detention may be revoked under provisions of section 21 of the General Clauses Act, 1897 only after confirmation from State or Central Government. Person detained may be temporarily released after imposing necessary conditions on release of such person one such condition may be filing of bond along with sureties. Incase a person breaches conditions of release his bond shall be forfeited. The Act protects all acts and actions taken in good faith under the provisions of the Act.

Thus the Act is an effort to bring into hold of law person who inorder to suffice there greed keep essential commodities out of the reach for other people.

TOPIC: B- Laws on Maintenance of Standards of Weights And Measures

The Standard of Weights and Measures Act, 1976 was enacted to establish standards of weights and measures, to regulate inter-state trade or commerce in weights, measures and other goods

which are sold or distributed by weight, measure or number, and to provide for matters connected therewith or incidental thereto. The Act extends to the whole of India.

Sale and Distribution of Goods in Packaged Form

When commodities are sold or distributed in packaged form in the course of inter-State trade or commerce, it is essential that every package must have a:

i. Plain and conspicuous declaration thereon showing the identity of the commodity in the package,
ii. The net quantity in terms of the standard units of weights and measures and if in nos., the accurate number therein,
iii. The unit sale price of the commodity and the sale price of that particular package of that commodity.
iv. The names of the manufacturer, and also of the packer or distributor, should also be mentioned on the package.

In this regard the Packaged Commodities Rules were framed in 1977. These Rules extend to the whole of India and apply to commodities in the packaged form which are, or are intended or likely to be sold, distributed or delivered or offered or displayed for sale, distribution or delivery or which are stored for sale, or for distribution or delivery in the course of inter-state trade and commerce.

Exemptions

The rules do not apply to:

i. Packages for the exclusive use of any industry as a raw material, or for the purpose of servicing any industry. Mine or quarry provided:
ii. Their net contents are more than 5 kg. Or 5 ltrs. And they are not displayed for sale at retail outlets;
iii. It is not yarn sold to handloom weavers;

iv. It is not a component, part or material used for servicing any vehicle covered under the Motor Vehicles Act, 1939; and
v. The package does not contain any commodity sold by number or length and displayed for sale at retail outlet;
vi. Commodities (excluding any drug or medicine) whose net weight is 20 gms or less or 20 mililitres or less, if sold by weight or measure;
vii. Any package containing fast food items packed by restaurant / hotel and the like; Drugs covered under the Drugs (price control) order, 1995, Agricultural farm products in packages of above 50 kg.

Further, the Central Government may, on an application being made, permit manufacturer / packer to pack for sale the following types of pre-packed commodities for a reasonable period, relaxing any or all the provisions of these rules:

i. Introductory packs;
ii. Innovation packs;
iii. Trial packs;
iv. Promotional packs;
v. Packages on which corrective action is to be taken after a compounding or a court decision or other genuine reasons.

Packages For Retail Sale

i. Packaged commodities meant for retail sale, distribution or delivery shall contain items only in standard quantities as specified in the Third Schedule to the Rules.
ii. Every package shall bear thereon or on a label securely affixed thereto, a definite, plain and conspicuous declaration giving the name and address of the manufacturer or where the manufacturer is not the packer, the name and address of the manufacturer and packer, the name and net quantity of the commodity in weight, measure or number, as the case may be, the month and year in which the commodity is manufactured is manufactured or

pre-packed, the retail sale price of the package. Where size of the commodity is relevant, the dimensions thereof shall also be given in the package.

iii. Besides, every package shall bear conspicuously the name and address of the manufacturer; where the manufacturer is not the packer, the package shall bear the name and address of the manufacturer and the packer; and where the commodity is manufactured outside India but is packed in India, the package shall also contain the name and complete address of the packer in India.

iv. Certain commodities have been exempted from the printing of the declaration of sale price. These are -uncanned package of vegetables, fruits, fish or meat.

v. With effect from 1.1.1996, in case of soft drinks, ready to serve fruit beverages, or the like, the retail sale price shall be printed either on the crown cap, or on the bottle or on both.

vi. The Rules specify the size of letter, etc. of the principal display panel on packages so that the details provided thereon can be easily examined by the customer.

vii. Any manufacturer or packer of Vanaspati, ghee and butter oil, shall declare the net quantity by weight with its equivalent in volume or vice versa w.e.f. 1.7.1995.

WHOLESALE PACKAGES

Every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration giving the name of the manufacturer or of the packer, the identity of the commodity contained in the package and the total number of retail packages contained in that wholesale package or the net quantity in terms of the standard units of weight, measure or number of the commodity

Packages For Export

Every package for export shall have conspicuous declaration that it is intended for export and the name and address of the manufacturer or packer, provided the importer has no objection to such indications.
In addition, the identity of the commodity contained and its net weight, measure or number shall also be declared on the package.

Where an export package contains two or more individually packaged or labeled pieces of the same or different commodities, the number and description of such individual packages and the net weight, measure or number of commodities in each, shall also be clearly displayed.
Every country and an export package shall not be sold in India unless the manufacturer or packer has repacked or re-labeled the commodity for domestic sale.

Packed Commodities Imported into India

All pre-packed commodities imported into India shall carry:

1. Name and address of the importer,
2. Generic or common name of the commodity packed,
3. Net quantity in terms of standard unit of weight and measure without applying standard sizes prescribed under Third Schedule,
4. Month and year of packing in which the commodity is manufactured or packed or imported, and retail sale price.
5. Importer shall be responsible for making these mandatory declarations in either of the following manners:

i. printed on a label securely affixed to the package; or
ii. made on an additional wrapper and imported package may be kept inside the additional wrapper; or
iii. printed on the package itself; or
iv. made on a card or tape affixed firmly to the package or container and bearing the required information.

Price Tags and Stickers

i. No manufacturer, packer, wholesales or retail detailer shall sell any packaged commodity at a price exceeding its retail sale price.

ii. Where any tax payable in relation to a packaged commodity is revised, it shall not be sold at a price exceeding the revised retail sale price, communicated by the manufacturer or packer.

iii. The manufacturer or packer shall communicate by at least two advertisements in the newspaper, such price revision- whether increase or decrease of any pre-packed commodity.

iv. The revised retail price shall be charged in relation to packages which were pre-packed in the month in which such tax has been revised or fresh tax has been imposed or in a month following thereto.

v. Where the revised prices are lower than the price marked on the package, the commodity shall be sold at the revised price irrespective of the month of packing.

vi. The retail sale price of any packed commodity indicated on the package or a label affixed thereto, shall not be obliterated, smuggled or altered by any person.

vii. No additional label should be stuck on a package even with manufacturer's logo or trademark. However, affixing of a price sticker to indicate a retail sale price less than the MRP declared by the manufacturer is not a violation of the Rules, provided that the declaration made by the manufacturer is not obliterated.

The manufacturer or packer shall not alter the price on a wrapper once printed and used for packaging.

1	Use of non- weights or measures, or standard numeration.	Imprisonment upto 6 months, or fine upto Rs. 1000/- or both. For second or subsequent offence, imprisonment upto 2 years and also fine.
2	Quotation, etc in non-standard weights and measures	Fine upto Rs. 2000/-. For the second or subsequent offence, imprisonment for a term upto 3-years and also fine.
3	Sale, etc of un-verified weights and measures	Fine upto Rs. 10,000/-. For the second or subsequent offence imprisonment upto 7 years and also fine.

4	Sale etc. of packaged goods not conforming to provisions of Sec. 39	Fine upto Rs. 5000/- . For second or subsequent offence imprisonment upto 5 years and also fine.
5	Contravention of any other provision of the Act	5 Fine upto Rs. 2000/-

UNIT – II: ADULTRATION

TOPIC: A-Prevention of Food Adulteration

The Ministry of Health and Family Welfare is responsible for ensuring safe food to the consumers. Keeping this in view, a legislation called "Prevention of Food Adulteration Act, 1954" was enacted. The objective envisaged in this legislation was to ensure pure and wholesome food to the consumers and also to prevent fraud or deception. The Act has been amended thrice in 1964, 1976 and in 1986 with the objective of plugging the loopholes and making the punishments more stringent and empowering Consumers and Voluntary Organisations to play a more effective role in its implementation.

The subject of the Prevention of Food Adulteration is in the concurrent list of the constitution. However, in general, the enforcement of the Act is done by the State/U.T Governments. The Central Government primarily plays an advisory role in its implementation besides carrying out various statutory functions/duties assigned to it under the various provisions of the Act.

The laws regulating the quality of food have been in force in the country since 1899. Until 1954, several States formulated their own food laws. But there was a considerable variance in the rules and specifications of the food, which interfered with inter-provincial trade. The Central Advisory Board appointed by the Government of India in 1937 and the Food Adulteration Committee appointed in 1943, reviewed the subject of Food Adulteration and recommended for Central legislation. The Constitution of India provided the powers to Central Government for making such legislation as the subjects of Food and Drugs Adulteration are included in the concurrent list. The Government of India, therefore, enacted a Central Legislation called the Prevention of

Food adulteration Act (PFA) in the year 1954 which came into effect from 15 June, 1955. The Act repealed all laws, existing at that time in States concerning food adulteration.

In India, a three-tier system is in vogue for ensuring food quality and food safety. They are:

- Government of India;
- State/UT Governments;
- Local Bodies.

The Prevention of Food Adulteration Act is a Central legislation. Rules and Standards framed under the Act are uniformly applicable throughout the country. Besides, framing of rules and standards, the following activities are undertaken by the Ministry of Health and Family Welfare.

- Keeping close liaison with State/local bodies for uniform implementation of food laws.
- Monitoring of activities of the States by collecting periodical reports on working of food laws, getting the reports of food poisoning cases and visiting the States from time to time.
- Arranging periodical training programme for Senior Officer/Inspector/Analysts.
- Creating consumer awareness about the programme by holding exhibitions/seminars/training programmes and publishing pamphlet'.
- Approving labels of Infant Milk Substitute and Infant food, so as to safeguard the health of infants.
- Coordinating with international bodies like ISO/FAO/WHO and Codex.
- Carrying out survey-cum-monitoring activities on food contaminants like colours.
- Giving administrative/financial/technical support to four Central Food Laboratories situated in Kolkata, Ghaziabad, Mysore and Pune and providing technical guidance to the food laboratories set up by the States/Local Bodies.
- Holding activities connected with National Monitoring Agency vested with powers to decide policy issues on food irradiation.
- Formulation of Manual on food analysis method.

The Ministry of Health and Family Welfare is designated as the National Codex Contact Point in India to examine and formulate India's views on the agenda for the various meeting of Codex Alimentarius Commission, a joint venture of FAO/WHO dealing with International Food Standards and its subsidiary committees. The Ministry of Health and Family Welfare constituted a National Codex Committee (NCC) and an Assistant Director General (PFA) has been working as Liaison Officer for NCC. The NCC has further constituted 24 Shadow Committees corresponding to various Codex commodities committees for preparation and finalization of India's stand.

India has been regularly attending the various sessions of the Codex Alimentarius Commission and various Codex Commodity Committees to put forward her views and defend these views.

TOPIC: B - Control of Spurious Drugs

Globally, every country is the victim of substandard or spurious drugs, which result in life threatening issues, financial loss of consumer and manufacturer and loss in trust on health system. The aim of this enumerative review was to probe the extent on poor quality drugs with their consequences on public health and the preventive measures taken by the Indian pharmaceutical regulatory system. Government and non-government studies, literature and news were gathered from journals and authentic websites. All data from 2000 to 2013 were compiled and interpreted to reveal the real story of poor quality drugs in India. For minimizing spurious/falsely-labelled/falsified/counterfeit drugs or not of standard quality drugs, there is urgent requirement of more stringent regulation and legal action against the problem. However, India has taken some preventive steps in the country to fight against the poor quality drugs for protecting and promoting the public health.

With a population of more than 1.24 billion, right to health is a fundamental right in India and has been recognized in the national constitution and statutory laws as well as in international laws. Globally, about 2 billion people, one third of the global population lack access to essential medicines. As medicine are life saving entities and thus are more essential for the treatment, while they account for 20-60% of care cost and 50-90% of this cost is being paid by the patient, particularly in low and middle income countries. India is a developing country where more than 40% of the population survives on less than US $1 a day and if a patient needs medicines he has to pay more than half of this. There are some schemes by Indian Government for distribution of free generic medicines for certain categories of patients. However, people accept, prefer and buy counterfeit or substandard products over genuine or branded products due their cheap price, easy accessibility and availability in the market. Consumer does not know about the manufacturer or the quality of the product and many time they are unaware of expired, degraded or substandard products which ultimately results in failure of the treatment and with antibiotics this lead to antimicrobial resistance. Substandard product arises correspondingly due to lack of expertise, unfair manufacturing practices or insubstantial infrastructure; whereas counterfeit is the product of black marketer. The problem of poor quality is already very serious and steadily growing and is likely to cause much more damage in the near future. As such poor quality drug does not bear

any universal definition as it may vary from country to country. In general poor quality drug are the spurious/falsely-labeled/falsified/counterfeit (SFFC) drugs that can cause treatment failure or even death. Accordingly, International medical products anticounterfeiting taskforce (IMPACT) of World Health Organization (WHO) defines SFFC medicines as "medicines which are deliberately and fraudulently mislabelled with respect to identity and/or source, and also which may include products with correct ingredients or with the wrong ingredients, without active ingredients, with insufficient or too much active ingredient, or with fake packaging". In India, as per Drug and Cosmetic (D and C) act, 1940, under section 17, 17A and 17B poor quality drug comprises of misbranded, spurious and adulterated drugs, respectively. With the 2008 amendment of D and C act, Indian drug regulatory authority that is Central Drugs Standard Control Organization (CDSCO) has categorised not of standard quality (NSQ) products in three categories A, B and C that is helpful in categorising the products during quality evaluation. Category A incorporates spurious and adulterated drug products; which conceal the real identity of the product or formulation and be similar to some well-known brand. These products may or may not contain active ingredients and generally manufactured by unlicensed antisocial people or sometimes by licensed manufacturers. Products that consist of adulterant/substituted product or incorporate some filth material are known as adulterated drugs. Category B include grossly substandard drugs in which product fails the disintegration or dissolution test and where active ingredient assay get below 70% and 5% of permitted limit for thermo labile and thermos table product, respectively for tablets or capsules. In case of parenteral preparation, failing sterility, pyrogen/end toxin test or inappropriate toxicity, and fungus presence in any liquid preparation hold such products in this substandard category. Category C involved products with minor defects like emulsion cracking, change in formulation colour, small variation in net content, and sedimentation in clear liquid preparation, failing of weight variation test, spot or discoloration on product, uneven coating, and presence of foreign matter and labeling errors.

SFFC drugs: A Pandemic Threat

Poor quality drug or substandard product encounters a major stringent issue for the global health system and it cannot be ignored. In most streamlined regions of the globe like Japan, Canada, Australia, New Zealand, the United States of America and most of the European Union, hardly

1% of the market value products are counterfeit, developing countries like Africa, Latin America and many parts of Asia may markedly be the seller and producer of SFFC medicines. Russia, China, India, Brazil, Mexico, Pakistan, Southeast Asian and Middle Eastern countries are considered as the chief operators in distribution and manufacturing of counterfeit drugs. A decade ago, it was examined by WHO that 10% of the global medicines were counterfeit. However, contrary to its previous communicated data WHO-IMPACT pointed out that data was not much authentic. It means no absolute extent is reported. Now, it is questionable that what are the causes and influences of this problem. In turn, one reason is poverty and other is ignorance and these could contribute to the demand for counterfeit and substandard drugs. Moreover, ignorance of poor quality, unregistered medicines, lenient penalties, inadequate enforcement of laws are some of the significant causes which provoke the situation.

Day by day, public trust in health system may deteriorate as the consumption of substandard drugs by patients increase due to availability and lack of detection of SFFC or NSQ medicine in the market. Consumption of SFFC medicines can be responsible for failure of treatment or even death. Unbelievably, 0.20 to 0.30 million people die every year in China just because of counterfeit and substandard drug product. No such data is available in India, yet many patients are dying every year. According to a report revealed by International Policy Network, globally
0.70 million deaths were reported for malaria and tuberculosis because of counterfeit drugs. This data reveals the loop holes in the regulatory system and the cautions for avoiding the poor quality medicines.

In this evaluative review, an attempt has been made to know the correct extent of the SFFC or NSQ drugs in India and to make awareness among the public, medical practitioners and pharmacists. Data was acquired from governmental and non-governmental studies, literature, news, journals and authentic web sites. All the data was compared and interpreted to reveal the real story of poor quality drugs in India.

SFFC or NSQ drugs in India:

India is the largest manufacturer of generic drugs and probably 12-25% of the medicines supplied globally are contaminated, substandard and counterfeit. Being the world's largest

manufacturers of active pharmaceutical ingredients and finished products, it is likely that India along with China could be the major contributors to spurious medications as per Patrick Lukulay, vice president of US Pharmacopoeial Convention's global health programs. In a report, it has been declared by the European Commission that 75% of the global cases of SFFC medicines originate from India. Indian Government officials initiated an investigation to scrutinize the drugs product which are supplying by India to Nigeria when India was accused along with other 29 Asian countries as the main originator of counterfeit drugs. On one side, India extensively interacts with the African countries in providing quality medicine at affordable prices, while on other side predictive blames were imposed on India and China for exporting the fake or substandard quality of antimalarial, antibiotics and contraceptives drug product to Uganda and Tanzania. In turn, India and China is denying for such blames. At present, Indian drug regulatory authority has taken various steps against the causes and they have put all their efforts to improve the drug regulation in the country.

India is considered as the main originator and distributor of SFFC drugs. However, no authentic evidences exist against the country according the data provided by the government and non government agencies of India. Many researchers have investigated only individual drugs or narrow range of drug preparations and formulations. Currently, no large randomized studies of drugs quality have been done in India.

In the year 2000, it has been stated that around 35.0, 23.1 and 13.3% global sales of counterfeit medicines come from India, Nigeria and Pakistan, respectively and counterfeiting includes all therapeutic classes of drug and mainly antibiotics. A decade ago, Indian government officials estimated that 9% of the drug products were of substandard quality. Although according to Indian press media, 30-40% of the total marketed drugs are considered as spurious, but this data is without any scientific confirmation. Under laboratory analysis in a survey accomplished in 2007 by South East Asia Region Pharmaceutical (SEARPharm) Forum, a group of Pharmaceutical Associations of International Pharmaceutical Federation (FIP) and WHO, 10 743 samples were collected from 234 retail outlets. About 3.1% were estimated as spurious and 0.3% were out of pharmacopoeial standard. In 2007, 294 fixed drug combinations (FDCs) products were unlawfully available in the market since these were not approved by the Drugs Controller

General of India (DCGI). In 2008, out of 1 83 020 chemist shops, 8418 chemist licenses were suspended or cancelled by the State Drugs Control Organizations on behalf of their trade with spurious drugs. According to CDSCO, estimation of the data during 2003-2008 indicates 6.3- 7.5% of the samples were of substandard quality and 0.16-0.35% were encountered as spurious. In 2009, CDSCO reported that in 1995-96, 10.64 and 0.30% tested samples out of 32 770 were substandard and spurious, respectively, while in 2007-2008, 6.42 and 0.16% tested sample out of 42 354 were substandard and spurious, respectively. It was good achievement by the drug authority.

Nevertheless, in 2009, 24 136 samples of 62 brands of drugs product were collected in a nationwide survey to find those products which are covertly manufactured and thus to explore the extent of spurious drug in India. Samples were drawn from over 100 pharmacy outlets from various regions of India, which were belong to nine therapeutic categories of 30 manufacturers. Survey affirmed that only 11 products (0.046%) were spurious. Supplementary information revealed by the State Drugs Control Departments declared 1146 (4.75%) products were of substandard quality. These kinds of inspections and surveys by the government officials are some driving steps for the public safety. However, stringent actions are yet to be taken for the betterment of public health. Overlaying the effects of inferior manufacturing standards, deterioration with inactive or toxic fillers, relabeling of time expired drugs and degradation during storage are closely associated with drug quality, which must be checked regularly by fast and efficient techniques.

Manufacturing of spurious and substandard quality drug products is a fraudulent activity and their availability in the market is the life threatening issue for the public health. In 2008, a pilot study performed in two major cities of India, Delhi and Chennai to explore the extent of substandard and counterfeit drugs available in market, under which it was estimated that 12 and 5% samples from Delhi and Chennai, respectively, were of substandard quality. In 2007-08 maximum instances were from Maharashtra and in 2008-09 Kerala was the leading manufacturer of the spurious and substandard drugs. In 2007 four deaths were reported in Maharashtra related to spurious drugs. While more serious results came in news when it was reported that 300 infant

died in 2012 in Kashmir because of ceftriaxone substandard quality product which was used to treat pneumonia.

No absolute and entire data is reported for substandard and spurious drugs after 2010 by CDSCO, non government organizations or any individual research. For last 3 years, Government has noticed several cases of spurious and substandard drugs importation. In 2009, at Chennai sea port, CDSCO officials caught 3 cases of unregistered bulk drugs originating from China. Cases related to the substandard quality drug product importation in India showed 35, 35, 34 cases for 3 consecutive years 2009-2010, 2010-2011 and 2011-2012, respectively. On a surprise inspection by the CDSCO officials, 85 sales outlets out of 130 were trafficking with the banned drugs in Delhi and Bhiwandi city. It is highly recommended to investigate individually every drug product that is available in the domestic market

UNIT – III: CORRUPTION

TOPIC: A- Practice and Dimensions of corruption

Last year "Lokpal", Anti-Corruption, Civil Society has been buzz word among media, social networking and youth, owing to humungous nature of corruption scandals like 2G, Common Wealth, Antrix Devas Deal etc that have surfaced. Corruption exists in every system in India, right from obtaining birth certificate to death certificate. It takes heavy toll on our economic progress, and it is a complex phenomenon which has to be addressed from different angles. Corruption is just a symptom of larger complex co morbidity which is caused by many factors including inefficiencies, lack of governance, weak institutions etc. So fight against corruption should including addressing flaws along with going behind corrupt individuals.

Social and Economic Inequality

India is country of 1 billion populations, even after 60 years of Independence; the economic and social Inequality still exists. We still host 41% of world poor and most number of malnutrition children in World. There is still discrimination based on caste, religion and gender. So how does inequality give raise to corruption? As inequality increases, one strata (may be base on caste/economic/religion) of people gain prominence over other in political, social, economic,

media and judicial system. They will try to influence policy decisions by bribing top government officials favoring them. This makes goods and services like education, health available for poor scare, and to overcome that, they will involve in petty corruption things. This is what we see, daily in our activities like small officers (like clerks, attendees etc) in government officers demanding bribe to provide services. This 20 years of economic reforms is leading us to crony capitalism, this can be corroborated by recent 2G/Coal scams, where big industrialists manipulated laws, causing huge loss to exchequer leaving benefits to only one section of society. So let us try to reduce economic inequality, so that temptation to bribe people and give bribe is been reduced.

Democracy and People

Close to 150 MP's who were elected to Parliament have serious corruption charges. People who face serious corruption charges still win elections with huge margin. We need to ask our self, Do people who elect those leaders are not responsible for corruption? Corruption was never a major election issue because people tend to have short memory and we completely ignorant about its impact on our economic progress. In a democratic country like India, where high inequality exists People are getting attracted to sell their votes for free schemes. It has become a ritual to give freebies (indirect corruption) like Laptops, grinders, fans, TVs, cell phones etc as part of Election manifesto without providing basic requirements like schools, drinking water, electricity and roads. Mindless freebies will not only increase fiscal deficit but makes people lazy and shortsighted impacting there voting pattern. We can say ours is largest democracy, but still way behind participative democracy. The Panchayat Raj system is very weak to encourage active grass root level participation of people. Educated people don't show interest in voting. Also it is wrong to assume Democracy is not about just voting and elections. True democracy is achieved when people are aware of Government policies, its impact and provide continuous feedback to politicians in policy decision. NGO's can educate people on how to choose candidates during elections. Recently Election commission has taken bold steps to stem money flow during elections. It can be empowered to check malpractices, augment power implement Election code to weed out corrupt practices.

Natural Resources and Corruption

India is blessed with significant Natural resources. And research strongly supports that it tends to increase Corruption. Most of the big corruption cases, directly or indirectly involve Natural Resources. The recent scams in illegal mining in Karnataka and Goa, allocation of Coal fields, distribution of 2G spectrum etc corroborate this point. The income that is generated through natural resources is not being invested back in Human Capital that is the reason in spite of having abundant mineral resources; states like Bihar, Chattisgarh, Oddisha perform poorly in Human Development Indexes. The whole process of Natural Resource allocation has to be re- looked and fault lines has to be corrected to ensure, it is fair and transparent.

Sisyphus Syndrome

India ranks 166 out of 183 in starting a business by a private entity as per World Bank report. The project approval process of Government is mired with complex rules and bureaucracy hassles. We don't have timeliness fixed for clearing projects and approval goes back and forth between various Government departments. This not only overruns the cost of project leading economic wastage but also fosters corruption to bribe administrative officials who are involved in decision process. And finally an investor/entrepreneur had to bribe officials to expedite his approval process. To overcome this fault line in our system, we need to ensure that simplification of rules/regulations and ensure more transparency.

Educational System

We have acute shortage of good quality of Universities and Colleges. But demand overwhelms the supply. This wedge between demand and supply, has given rise to private sector exploiting people through donations and capitation fees. Being a lucrative business Colleges/Schools get approvals and recognition through corrupt means (Medical Council of India scam, and Tandon commission recommendation of de-reorganization of 44 deemed universities). Students who go through this process will imbibe shortcuts to make money in future instead of believing in hard work and meritocracy, to recover educational costs spent. Moral Science, Social Service, RTI

and Ethics don't find place in our curriculum. Career success should not mean making money but professional satisfaction. Good Education system can spearhead fight against corruption.

Can existing Investigative and Judiciary systems work

Computer and Auditor General CAG is a constitutional body whose role is to audit government expenditure. In spite of being an independent organization its impact on corruption has been tangential. Firstly CAG has no authority to call Government officers/department for clarification, it can just mention a paragraph in it report of lapses occurred. Secondly they don't have authority to sanction. Everything has to go through Public Accounts Committee (PAC). The response of Government officials/Departments has been poor on clarifications and remedial steps seeked. PAC had failed in apprising Parliament and Government in audit reports. Central Vigilance Commission CVC was setup to check corruption in Central Government organizations. Upon receiving complaints CVC can direct vigilance officers or CBI to take up investigation. It has neither investigative powers, nor its reports are obligatory to Government departments. This severely defeats the objective of setting up CVC. Central Bureau of Investigation

CBI is country's major Investigative agency. We have some of the best officers working for it. It has severe shortage of manpower and autonomy. As of 2010 December 21% of posts are vacant, which includes 52% law offices, 65% technical officers, and 21% executive. Close to 10,000 cases of CBI are pending in court out of which 23% are pending for more than 10 years. It needs to take permission from Government to prosecute any officer above Joint Secretary, which generally involves time consuming process reducing steam in investigation. It is severely manipulated by Government to cater its political needs. Making CBI more independent can be right way forward. Judicial Justice delayed is equivalent to Justice Denied. With delay in getting justice, the ordinary public has lost hope in Judiciary, so instead of fighting any injustice, we tend to believe corrupt practices are better than going through than following legal rules. With current estimate, it is said that It will take over 350 years to clear pending cases. India ranks lowest among world in number of judges per million populations, with each judge on average handling close to 4000 cases. The best legal brains in Supreme Court are wasted on unnecessary cases like Bail petitions to politicians. We have to Supreme Court only for constitutionally and

very high profile cases. Judicial reforms are long pending, unless these reforms are implemented, we keep on pilling up cases and cases with no solutions.

Role of Media

Media forms fifth pillar of our Democracy. It forms significant role in shaping up people thoughts and minds by educating on day to day issues in Country in an unbiased manner. People's memory is very short on corruption, media can play active role in keeping the issues alive. It should encourage Investigative Journalism, Sting operations, Opinion polls and Public Debates in unearthing corrupt practices. This puts pressure on Government to ensure transparency in its operations.

Conclusion

There is no one panacea to solve corruption, it has to be addressed at all levels from social, economic inequality, empowering people, and strengthening existing democratic and investigative institutions. We cannot eliminate corruption; but only reduce the corruption by fixing bugs in existing systems.

TOPIC: B- Anti Corruption Laws

Corruption laws in India Public servants in India can be penalized for corruption under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988. The Benami Transactions (Prohibition) Act, 1988 prohibits benami transactions. The Prevention of Money Laundering Act, 2002 penalises public servants for the offence of money laundering. India is also a signatory (not ratified) to the UN Convention against Corruption since 2005. The Convention covers a wide range of acts of corruption and also proposes certain preventive policies. Key Features of the Acts related to corruption Indian Penal Code, 1860:

i. The IPC defines "public servant" as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act.

ii. Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of upto two years or with fine or both. If the property is purchased, it shall be confiscated.

iii. Section 409 pertains to criminal breach of trust by a public servant. The public servant shall be punished with life imprisonment or with imprisonment of upto 10 years and a fine. The Prevention of Corruption Act, 1988

iv. In addition to the categories included in the IPC, the definition of "public servant" includes office bearers of cooperative societies receiving financial aid from the government, employees of universities, Public Service Commission and banks.

v. If a public servant takes gratification other than his legal remuneration in respect of an official act or to influence public servants is liable to minimum punishment of six months and maximum punishment of five years and fine. The Act also penalizes a public servant for taking gratification to influence the public by illegal means and for exercising his personal influence with a public servant.

vi. If a public servant accepts a valuable thing without paying for it or paying inadequately from a person with whom he is involved in a business transaction in his official capacity, he shall be penalized with minimum punishment of six months and maximum punishment of five years and fine. It is necessary to obtain prior sanction from the central or state government in order to prosecute a public servant.

The Benami Transactions (Prohibition) Act, 1988

The Act prohibits any benami transaction (purchase of property in false name of another person who does not pay for the property) except when a person purchases property in his wife's or unmarried daughter's name.

i. Any person who enters into a benami transaction shall be punishable with imprisonment of upto three years and/or a fine.

ii. All properties that are held to be benami can be acquired by a prescribed authority and no money shall be paid for such acquisition.

The Prevention of Money Laundering Act, 2002

i. The Act states that an offence of money laundering has been committed if a person is a party to any process connected with the proceeds of crime and projects such proceeds as untainted property. “Proceeds of crime” means any property obtained by a person as a result of criminal activity related to certain offences listed in the schedule to the Act. A person can be charged with the offence of money laundering only if he has been charged with committing a scheduled offence.

ii. The penalty for committing the offence of money laundering is rigorous imprisonment for three to seven years and a fine of upto Rs 5 lakh. If a person is convicted of an offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 the term of imprisonment can extend upto 10 years.

iii. The Adjudicating Authority, appointed by the central government, shall decide whether any of the property attached or seized is involved in money laundering. An Appellate Tribunal shall hear appeals against the orders of the Adjudicating Authority and any other authority under the Act.

iv. Every banking company, financial institution and intermediary shall maintain a record of all transactions of a specified nature and value, and verify and maintain records of all its customers, and furnish such information to the specified authorities.

Process followed to investigate and prosecute corrupt public servants

i. The three main authorities involved in inquiring, investigating and prosecuting corruption cases are the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI) and the state Anti-Corruption Bureau (ACB). Cases related to money laundering by public servants are investigated and prosecuted by the Directorate of Enforcement and the Financial Intelligence Unit, which are under the Ministry of Finance.

ii. The CBI and state ACBs investigate cases related to corruption under the Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860. The CBI’s jurisdiction is the central government and Union Territories while the state ACBs investigates cases within the states. States can refer cases to the CBI.

iii. The CVC is a statutory body that supervises corruption cases in government departments. The CBI is under its supervision. The CVC can refer cases either to the Central Vigilance Officer (CVO) in each department or to the CBI. The CVC or the CVO recommends the action to be taken against a public servant but the decision to take any disciplinary action against a civil servant rests on the department authority.

iv. Prosecution can be initiated by an investigating agency only after it has the prior sanction of the central or state government. Government appointed prosecutors undertake the prosecution proceeding in the courts.

v. All cases under the Prevention of Corruption Act, 1988 are tried by Special Judges who are appointed by the central or state government.

UNIT – IV: INVESTIGATION AND PROSECUTION

TOPIC: A- Central Vigilance Commission (CVC)

Central Vigilance Commission (CVC) is an apex Indian governmental body created in 1964 to address governmental corruption. It has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under the Central Government of India, advising various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work.

It was set up by the Government of India in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by Shri K. Santhanam Committee, to advise and guide Central Government agencies in the field of vigilance. Nittoor Srinivasa Rau, was selected as the first Chief Vigilance Commissioner of India.

The Annual Report of the CVC not only gives the details of the work done by it but also brings out the system failures which leads to corruption in various Departments/Organisations, system improvements, various preventive measures and cases in which the Commission's advises were ignored etc.

The Commission shall consist of:

- A Central Vigilance Commissioner - Chairperson;
- Not more than two Vigilance Commissioners - Members;

The current Central Vigilance Commissioner is Mr. K.V. Chowdary, and among the two Vigilance Commissioners, one is Mr. Rajiv and the other is Shri T.M. Bhasin.

ROLE

The CVC is not an investigating agency.

The only investigation carried out by the CVC is that of examining Civil Works of the Government which is done through the Chief Technical Officer.

Corruption investigations against government officials can proceed only after the government permits them. The CVC publishes a list of cases where permissions are pending, some of which may be more than a year old.

The Ordinance of 1998 conferred statutory status to the CVC and the powers to exercise superintendence over functioning of the Delhi Special Police Establishment, and also to review the progress of the investigations pertaining to alleged offences under the Prevention of Corruption Act, 1988 conducted by them. In 1998 the Government introduced the CVC Bill in the Lok Sabha in order to replace the Ordinance, though it was not successful. The Bill was re- introduced in 1999 and remained with the Parliament till September 2003, when it became an Act after being duly passed in both the Houses of Parliament. The CVC has also been publishing a list of corrupt government officials against which it has recommended punitive action.

Appointment

The Central Vigilance Commissioner and the Vigilance Commissioners are appointed by the President after obtaining the recommendation of a Committee consisting of:

- The Prime Minister of India (Chairperson)
- The Minister of Home Affairs
- The Leader of the second largest party in the Lok Sabha or majority group leader in parliament.

Removal

The Central Vigilance Commissioner or any Vigilance Commissioner can be removed from his office only by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought to be removed. The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court until the

President has passed orders on receipt of the report of the Supreme Court on such reference. The President may, by order, remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be:

- is adjudged an insolvent; or
- has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- engages during his term of office in any paid employment outside the duties of his office; or
- is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

Organization

The CVC is headed by a Central Vigilance Commissioner who is assisted by two Vigilance Commissioners.

The Central Vigilance Commission has its own Secretariat, Chief Technical Examiners' Wing (CTE) and a wing of Commissioners for Departmental Inquiries (CDI).

As on 21 March 2012, CVC has a staff strength of 257 against sanctioned strength of 299 (including the post of CVC and 2 VCs)[1]

Secretariat

The Secretariat consists of a Secretary of the rank of Additional Secretary to the Govt of India, one officer of the rank of Joint Secretary to the Govt of India, ten officers of the rank of Director/Deputy Secretary, four Under Secretaries and office staff.

Chief Technical Examiners' Wing (CTE)

The Chief Technical Examiner's Organisation constitutes the technical wing of the Central Vigilance Commission and has two Engineers of the rank of Chief Engineers (designated as Chief Technical Examiners) with supporting engineering staff. Following are the main functions of this organisation:

- Technical audit of construction works of Governmental organisations from a vigilance angle
- Investigating specific cases of complaints relating to construction works

- Assisting the CBI in their investigations involving technical matters and for evaluation of properties in Delhi and
- Assisting the Commission and Chief Vigilance Officers in vigilance cases involving technical matters.

Commissioners for Departmental Inquiries (CDI)

There are fourteen posts of Commissioners for Departmental Inquiries (CDI) in the Commission, 11 in the rank of Director and 03 in the rank of Deputy Secretary. The CDIs function as Inquiry Officers to conduct inquiries in departmental proceedings initiated against public servants.

The Directorate General of Vigilance

The Directorate General of Vigilance, Income Tax is the apex body under the Central Board of Direct Taxes for the vigilance matters. The Directorate General interfaces with the Central Vigilance Commission, the Central Bureau of Investigation, field formations of CBDT who are also having their Vigilance wings and others in all the matters relating to Vigilance, preliminary investigation of complaints, obtaining CVC/CVO's first stage advice, wherever required, assistance to Ministry in issuance of charge sheets, monitoring the charge sheet issued by the Disciplinary authorities in the field, monitoring of progress in inquiry proceedings, processing of enquiry reports, obtaining CVC/CVO's second stage advice, wherever required and communication thereof to Disciplinary authorities and monitoring compliance/implementation of the advice.

TOPIC: B – Central Bureau of Investigation

What is known today as the CBI was originally set up as the Special Police Establishment (SPE) in 1941 to investigate cases of bribery and corruption involving the employees of the War and Supply Department of the Government of India during the Second World War.

Even after the war was over, the need to continue the agency to investigate corruption charges involving government servants was felt. The Delhi Special Police Establishment Act was passed in 1946 to give the organisation a statutory base. Its jurisdiction was extended to cover cases of corruption involving employees of all departments of the Government of India.

The role of the SPE was gradually extended and by 1963, it was authorised to investigate offences under 97 Sections of the Indian Penal Code, offences under the Prevention of Corruption Act and 16 other Central Acts.

Presently, the CBI Consists of the Following Divisions :

(i) Anti-Corruption Division

(ii) Economic Offences Division

(iii) Special Crimes Division

(iv) Legal Division

(v) Coordination Division

(vi) Administration Division

(vii) Policy and Organisation Division

(viii) Technical Division

(ix) Central Forensic Science Laboratory

The legal powers of investigation of the CBI are derived from the Delhi Special Police Establishment Act, 1946 (DPSE Act).

The organisation can investigate only such offences as are notified by the central government under Section 3 of the DPSE Act. The powers, duties, privileges and liabilities of the members of the organisation are the same as those of the police officers of the union territories in relation to the notified offences.

While exercising such powers, members of the CBI of and above the rank of Sub- Inspectors are deemed to be officers in charge of the police station.

The Central Government is authorised to extend the powers and jurisdiction of the members of CBI to any area, including railway areas, for the investigation of offences notified under Section 3 of the District Special Police Establishment Act, subject to the consent of the government of the concerned state.

Even though the CBI has been in existence for so long, it is still governed by the old Delhi Special Police Establishment Act of 1946 section 4 (1) of this Act vests the superintendence over the organisation in the Central Government. An important development in this regard occurred in December, 1997 when the Supreme Court delivered its judgement in Writ Petitions (Criminal) Nos. 340-343 of 1993, commonly known as the Havala Case.

The Court directed that the responsibility of exercising superintendence over the CBI should be entrusted to the Central Vigilance Commission (CVC) and that the CVC should be given a statutory status. The judgement of the apex court is yet to be implemented. The CVC Bill has not yet been passed.

The Single Directive

The term 'Single Directive' is commonly associated with the role and functioning of the CBI. The Single Directive was a set of executive instructions issued by the Central Government, prohibiting the CBI from undertaking any inquiry or investigation against any officer of the rank of Joint Secretary and above in the Central Government including those in the public sector undertakings and nationalised banks without the prior sanction of the head of the department.

The Supreme Court's judgment in the Havala Case had declared the single directive null and void. The Court found it unacceptable in law on two grounds. It required a police agency to seek permission from the executive to initiate investigation into a criminal offence.

Intelligence bureau (IB)

Amongst the existing intelligence agencies, the IB is probably the oldest in the world. It was established as the Central Special Branch by an order of the Secretary of State for India in London on December 23, 1887.

Following the recommendations of the 1902-03 Indian Police Commission, the organisation was renamed as the Central Criminal Intelligence Department. Gradually, the security tasks of the organisation started overshadowing its responsibilities in respect of criminal work.

The word 'criminal' was therefore dropped from its name in 1918 and its present nomenclature (IB) was adopted in 1920.

The IB's role is vast and extensive covering a broad range of issues and has to deal with many problems, like terrorism, subversion and insurgency on the one hand and espionage and attempts to undermine the democratic fabric of the country by external agencies on the other.

Its main task is to collect intelligence about the subversive and terrorist activities of people and organisations, disseminate such information in time to the concerned authorities and adopt strategies to counter threats to internal security of the country and its institutions

TOPIC: C- Criminal Investigation Department

The **Crime Investigation Department (CID)** is the investigation and intelligence wing of the Indian State Police.

Formation and Organization

The CID was created by the British Government in 1902, based on the recommendations of the Police Commission.In 1929, the CID was split into Special Branch, CID and the Crime Branch CID (CB-CID).

CID branches

The CID has several branches which work from state to state. These branches include:[4]

- CB- CID
- Anti-Human Trafficking & Missing Persons Cell
- Anti-Narcotics Cell
- Finger Print Bureau
- CID
- Anti-Terrorism wing

Crime Branch CID

CB-CID is a special wing in the CID headed by the Additional Director General of Police (ADGP) and assisted by the Inspector General of Police (IGP). This branch investigates serious crimes including riots, forgery, counterfeiting and cases entrusted to CB-CID by the state government or the High Court.

TOPIC: D- OTHER ORGANIZATIONS

The incidence of crime in India is increasing alarmingly with a disastrous spatial distribution of population due to mismanagement and an overwhelmingly ubiquitous new technology. The profile of the criminal has undergone a sea change from the earlier stereotypes, requiring a new paradigm to comprehend and manage the emerging scenario. Today's criminal could well be your suave, smooth talking colleague or neighbour, someone who is relatively well off and well educated. The criminal mind is no more matching the orthodox definition of an economically deprived background but one that seeks to compete, outsmart and short-change the society that he or she lives in.

Recently, an internal survey conducted by a leading retail chain found that the largest section of loss due to theft was of women's clothing and women's innerwear. This by natural extension points to women as the emerging segment for pilferage in the organized retail sector.

There is a fair chance that most of the women stealing come from reasonably well-to-do families but their craving for excitement from pilferage is what drives many to the crime. Several Hollywood celebrities are known to be compulsive kleptomaniacs. But this is a relatively mild crime when compared to the number of child rape and molestation that is being reported from all parts of India and include urban, semi-urban and rural areas. Violent crime is on the increase.

Emerging trends in cyber crimes include hacking, phishing and cyber stalking with social media as the new playground for the criminal mind to let itself loose.

With these emerging trends in crime, it is time for India to revamp and reform how crime is reported, investigated and followed through with scientific evidence, which can ensure successful prosecution of the criminal.

The Indian system of policing and criminal investigation is still stuck in the old ways of information gathering and beating out a confession from the suspects. The police force is completely untrained on modern methods of criminal investigation and is not primed to gather scientific evidence to present a watertight case in the court. This is why the gap continues between reporting of crime, arresting a criminal and finally ensuring successful prosecution of the accused.

Three of the problems

Police is a State subject and the number and quality of the police force varies from State to State. Most of the recruits at the entry level are barely school educated and come from diverse backgrounds, where their upbringing has been influenced by their religion, caste, community or economic status and this usually comes in conflict when policing urban areas, where the mindset of society that they serve, is different from the one that they grew up in. This cultural difference

is very visible when it comes to police dealing with women related issues or the educated section of society.

In addition, the lack of education also hampers the police from scientifically investigating any crime. The training is restricted to basic beat policing and does not expose them to modern techniques of criminal investigation. Even the so called 'dedicated' departments that are supposed to be primed up with scientific investigation techniques, is usually saddled with obsolete technology and techniques.

Furthermore, the method and content of data on crime collected and recorded varies from State to State. With cross border crime occurring frequently, tracing criminals is a challenge for any State police, in the absence of criminal data sharing and cooperation. The data collected and recorded by the National Crime Records Bureau (NCRB) is basic and data access at all levels is limited.

An integrated approach to criminal investigation

Without compromising the federal structure and authority, criminal data recording and access has to be standardized and seamless, if India is to keep crime down to minimal levels. The first step towards this has to be data recording and capture.

Criminal profiling and data

Every person who is brought into the police station as a suspect must be full body scanned and facial data recorded. This will include bone structure, facial and dental profile, iris scan along with finger print and DNA profile collected and recorded for posterity.

The data can be kept under suspect, accused and prosecutedgroupings. Sub groupings may also be created, as per need. While, this may evoke strong debate on the need for profiling, it is necessary to understand the importance of collecting this data as the primary requirement in surveillance, tracking and subsequent arrest of a potential criminal.

Today, software is available to capture real time data through surveillance cameras located at public places like airports, railway and bus stations. The data captured is matched on the basis of bone structure and facial recognition software. So if there is a potential terrorist or criminal passing through any public area, there is a fair chance that the software will pick him out of the crowd in real time. This would be possible only if his profile has been collected, recorded and made available to all law enforcement agencies, seamlessly.

The National Security Agency (NSA) of the United States is using this widely and the same data has helped agencies like FBI, CIA, State Police, Homeland Security etc solve several cases, in addition to monitoring and tracking suspects to prevent crime. There is no point in data being

collected by one agency and not being available to other agencies, seamlessly. This was one of the biggest lessons the United States learnt post the 9/11 incident.

India has no choice but to learn and implement similar strategies if it were to seriously attempt crime prevention and crime control. Data collection, availability and access is the first tool in this battle.

Using technology

Technology is rapidly evolving in the field of homeland security and specialized tools are available for human identification, authentication, tracking, access control through a variety of bio-metric technologies.

Cyber crime is increasing and therefore cyber security, access and user profile analytics is becoming imperative, in an increasing cyber dependent world.

Adopting forensic science

Crime scene investigation is the first and most important moment in solving any crime. The forensic information captured by way of pictures, body fluid sample, DNA sample, fingerprinting or material sample can go a long way in helping the police to solve crime.

In India, the police appearing at a crime scene is usually not even aware of the need to maintain crime scene integrity for forensic purposes nor are they geared to collect crime scene evidence from a forensic perspective.

Need for criminal profiling

Criminal profiling to understand the criminal mind and thought pattern is emerging as an important tool in criminal investigation. This has evolved as a specialized field of science and India must encourage our police to use criminal profiling as a tool in investigating crime.

Adopting modern techniques of interrogation

One of the biggest challenges for any police is to get a suspect to confess to a crime. In India, the police still follows all kinds of physical force to get suspects to confess to a crime, only to have them deny the same in court, subsequently.

All developed nations now follow basic human rights principles and have done away with physical means to elicit confession from a potential suspect. Modern techniques are applied to confirm innocence or psychologically break down a suspect into confessing a crime.

If a watertight case has to be built against an accused, then all evidence collected against him must pass judicial scrutiny during trial. The process of interrogation is one component of this

evidence gathering and therefore the same has to comply with accepted norms, as permitted by the law in India.

India has made some progress with initial training in modern interrogation techniques, as followed by FBI of the USA and Scotland Yard of the UK. But India is still a long way from introducing these techniques as part of Standard Operating Procedure (SOP) for all arms of police, at the State level.

It is time India implemented reforms across all State police and integrated and shared all criminal data, seamlessly.

SOCIO ECONOMIC OFFENCE (507-E)

Unit – I: HOARDING AND PROFITEERING

b. Laws relating to maintenance of essential supplies

The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980 was enacted on 12th February, 1980 and enforced on 5th October, 1979. The act aims to prevent un-ethical trade practices which include black-marketing and hoarding of essential commodities, the act lays provisions for punishment against such persons who commit either of these.

The act empowers state government or central government or an officer not below the rank of Joint secretary representing centre or state government in case has a reason to believe that a person is committing an against provisions of the Act shall make an order for detaining such person. Act shall directly apply to such person committing, aiding or abetting an offence under provisions of the Essential Commodities Act, 1955 or any other law dealing with distribution, production or supply of essential commodities; any person who make profits by defeating provisions of the act. The Act also gives similar power of taking action to district magistrates and commissioner of police. An order made by an officer under sub section (2) of section 3 shall be brought into the notice of government along with relevant details; the order shall remain into force for not more than twelve days after making it within which State Government shall approve the order. The State government shall within seven days report to Central Government along with grounds of order where-after detention order under sub section (2) of section 3 shall be carried. No order of detention shall be invalid merely on the ground that detention was carried outside territorial jurisdiction of the government making order.

Section 4 of the Act relates to absconding persons, once a person is found to avoid order of detention or is absconding, the Government or officer shall draft a report in writing to Metropolitan Magistrate or Judicial magistrate first Class who shall order against such person

under section 82, 83, 84 and 85 of Code of Criminal Procedure which shall apply against the person and his property. Provisions of section 4 are also applicable once the authorities have an apprehension of absconding of person against whom orders of detention have been made.

Incase a person is notified to present himself before court of law he shall do so on the date and time specified incase of failure to make an appearance such person shall be punished with imprisonment extending one year and with fine or both. Offences under the act shall be cognizable. Person detained shall be made aware of the ground of detention and shall be given an opportunity of fair representation.

Section 9 of the Act deals with appointment of an advisory board consisting of three persons who is, are qualified or had been Judge of a High Court, along with one another member who is, or has been Judge of High Court. The state government is imposed with a duty to refer the deatined person before advisory board along with the representation of grounds of detention, whereafter the advisory board shall look into all aspects of the matter brought in front of it. The advisory board after giving an opportunity to person detained shall draft a report which shall be acted upon by the Government. The report shall either ask the government to revoke detention orders or shall further continue the detention. Maximum period of detention shall be six months from the date of detention. The order of detention may be revoked under provisions of section 21 of the General Clauses Act, 1897 only after confirmation from State or Central Government. Person detained may be temporarily released after imposing necessary conditions on release of such person one such condition may be filing of bond along with sureties. Incase a person breaches conditions of release his bond shall be forfeited. The Act protects all acts and actions taken in good faith under the provisions of the Act.

Thus the Act is an effort to bring into hold of law person who inorder to suffice there greed keep essential commodities out of the reach for other people.

TOPIC: B- Laws on Maintenance of Standards of Weights And Measures

The Standard of Weights and Measures Act, 1976 was enacted to establish standards of weights and measures, to regulate inter-state trade or commerce in weights, measures and other goods

which are sold or distributed by weight, measure or number, and to provide for matters connected therewith or incidental thereto. The Act extends to the whole of India.

Sale and Distribution of Goods in Packaged Form

When commodities are sold or distributed in packaged form in the course of inter-State trade or commerce, it is essential that every package must have a:

v. Plain and conspicuous declaration thereon showing the identity of the commodity in the package,

vi. The net quantity in terms of the standard units of weights and measures and if in nos., the accurate number therein,

vii. The unit sale price of the commodity and the sale price of that particular package of that commodity.

viii. The names of the manufacturer, and also of the packer or distributor, should also be mentioned on the package.

In this regard the Packaged Commodities Rules were framed in 1977. These Rules extend to the whole of India and apply to commodities in the packaged form which are, or are intended or likely to be sold, distributed or delivered or offered or displayed for sale, distribution or delivery or which are stored for sale, or for distribution or delivery in the course of inter-state trade and commerce.

Exemptions

The rules do not apply to:

viii. Packages for the exclusive use of any industry as a raw material, or for the purpose of servicing any industry. Mine or quarry provided:

ix. Their net contents are more than 5 kg. Or 5 ltrs. And they are not displayed for sale at retail outlets;

x. It is not yarn sold to handloom weavers;

xi. It is not a component, part or material used for servicing any vehicle covered under the Motor Vehicles Act, 1939; and

xii. The package does not contain any commodity sold by number or length and displayed for sale at retail outlet;

xiii. Commodities (excluding any drug or medicine) whose net weight is 20 gms or less or 20 mililitres or less, if sold by weight or measure;

xiv. Any package containing fast food items packed by restaurant / hotel and the like; Drugs covered under the Drugs (price control) order, 1995, Agricultural farm products in packages of above 50 kg.

Further, the Central Government may, on an application being made, permit manufacturer / packer to pack for sale the following types of pre-packed commodities for a reasonable period, relaxing any or all the provisions of these rules:

vi. Introductory packs;
vii. Innovation packs;
viii. Trial packs;
ix. Promotional packs;
x. Packages on which corrective action is to be taken after a compounding or a court decision or other genuine reasons.

Packages For Retail Sale

i. Packaged commodities meant for retail sale, distribution or delivery shall contain items only in standard quantities as specified in the Third Schedule to the Rules.

ii. Every package shall bear thereon or on a label securely affixed thereto, a definite, plain and conspicuous declaration giving the name and address of the manufacturer or where the manufacturer is not the packer, the name and address of the manufacturer and packer, the name and net quantity of the commodity in weight, measure or number, as the case may be, the month and year in which the commodity is manufactured is manufactured or

pre-packed, the retail sale price of the package. Where size of the commodity is relevant, the dimensions thereof shall also be given in the package.

iii. Besides, every package shall bear conspicuously the name and address of the manufacturer; where the manufacturer is not the packer, the package shall bear the name and address of the manufacturer and the packer; and where the commodity is manufactured outside India but is packed in India, the package shall also contain the name and complete address of the packer in India.

iv. Certain commodities have been exempted from the printing of the declaration of sale price. These are -uncanned package of vegetables, fruits, fish or meat.

v. With effect from 1.1.1996, in case of soft drinks, ready to serve fruit beverages, or the like, the retail sale price shall be printed either on the crown cap, or on the bottle or on both.

vi. The Rules specify the size of letter, etc. of the principal display panel on packages so that the details provided thereon can be easily examined by the customer.

vii. Any manufacturer or packer of Vanaspati, ghee and butter oil, shall declare the net quantity by weight with its equivalent in volume or vice versa w.e.f. 1.7.1995.

WHOLESALE PACKAGES

Every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration giving the name of the manufacturer or of the packer, the identity of the commodity contained in the package and the total number of retail packages contained in that wholesale package or the net quantity in terms of the standard units of weight, measure or number of the commodity

Packages For Export

Every package for export shall have conspicuous declaration that it is intended for export and the name and address of the manufacturer or packer, provided the importer has no objection to such indications.

In addition, the identity of the commodity contained and its net weight, measure or number shall also be declared on the package.

Where an export package contains two or more individually packaged or labeled pieces of the same or different commodities, the number and description of such individual packages and the net weight, measure or number of commodities in each, shall also be clearly displayed.

Every country and an export package shall not be sold in India unless the manufacturer or packer has repacked or re-labeled the commodity for domestic sale.

Packed Commodities Imported into India

All pre-packed commodities imported into India shall carry:

6. Name and address of the importer,
7. Generic or common name of the commodity packed,
8. Net quantity in terms of standard unit of weight and measure without applying standard sizes prescribed under Third Schedule,
9. Month and year of packing in which the commodity is manufactured or packed or imported, and retail sale price.
10. Importer shall be responsible for making these mandatory declarations in either of the following manners:

v. printed on a label securely affixed to the package; or
vi. made on an additional wrapper and imported package may be kept inside the additional wrapper; or
vii. printed on the package itself; or
viii. made on a card or tape affixed firmly to the package or container and bearing the required information.

Price Tags and Stickers

i. No manufacturer, packer, wholesales or retail detailer shall sell any packaged commodity at a price exceeding its retail sale price.

ii. Where any tax payable in relation to a packaged commodity is revised, it shall not be sold at a price exceeding the revised retail sale price, communicated by the manufacturer or packer.

iii. The manufacturer or packer shall communicate by at least two advertisements in the newspaper, such price revision- whether increase or decrease of any pre-packed commodity.

iv. The revised retail price shall be charged in relation to packages which were pre-packed in the month in which such tax has been revised or fresh tax has been imposed or in a month following thereto.

v. Where the revised prices are lower than the price marked on the package, the commodity shall be sold at the revised price irrespective of the month of packing.

vi. The retail sale price of any packed commodity indicated on the package or a label affixed thereto, shall not be obliterated, smuggled or altered by any person.

vii. No additional label should be stuck on a package even with manufacturer's logo or trademark. However, affixing of a price sticker to indicate a retail sale price less than the MRP declared by the manufacturer is not a violation of the Rules, provided that the declaration made by the manufacturer is not obliterated.

The manufacturer or packer shall not alter the price on a wrapper once printed and used for packaging.

1	Use of non-standard weights or measures, or numeration.	Imprisonment upto 6 months, or fine upto Rs. 1000/- or both. For second or subsequent offence, imprisonment upto 2 years and also fine.
2	Quotation, etc in non-standard weights and measures	Fine upto Rs. 2000/-. For the second or subsequent offence, imprisonment for a term upto 3-years and also fine.
3	Sale, etc of un-verified weights and measures	Fine upto Rs. 10,000/-. For the second or subsequent offence imprisonment upto 7 years and also fine.

4	Sale etc. of packaged goods not conforming to provisions of Sec. 39	Fine upto Rs. 5000/- . For second or subsequent offence imprisonment upto 5 years and also fine.
5	Contravention of any other provision of the Act	5 Fine upto Rs. 2000/-

UNIT – II: ADULTRATION

TOPIC: A-Prevention of Food Adulteration

The Ministry of Health and Family Welfare is responsible for ensuring safe food to the consumers. Keeping this in view, a legislation called "Prevention of Food Adulteration Act, 1954" was enacted. The objective envisaged in this legislation was to ensure pure and wholesome food to the consumers and also to prevent fraud or deception. The Act has been amended thrice in 1964, 1976 and in 1986 with the objective of plugging the loopholes and making the punishments more stringent and empowering Consumers and Voluntary Organisations to play a more effective role in its implementation.

The subject of the Prevention of Food Adulteration is in the concurrent list of the constitution. However, in general, the enforcement of the Act is done by the State/U.T Governments. The Central Government primarily plays an advisory role in its implementation besides carrying out various statutory functions/duties assigned to it under the various provisions of the Act.

The laws regulating the quality of food have been in force in the country since 1899. Until 1954, several States formulated their own food laws. But there was a considerable variance in the rules and specifications of the food, which interfered with inter-provincial trade. The Central Advisory Board appointed by the Government of India in 1937 and the Food Adulteration Committee appointed in 1943, reviewed the subject of Food Adulteration and recommended for Central legislation. The Constitution of India provided the powers to Central Government for making such legislation as the subjects of Food and Drugs Adulteration are included in the concurrent list. The Government of India, therefore, enacted a Central Legislation called the Prevention of

Food adulteration Act (PFA) in the year 1954 which came into effect from 15 June, 1955. The Act repealed all laws, existing at that time in States concerning food adulteration.

In India, a three-tier system is in vogue for ensuring food quality and food safety. They are:

- Government of India;
- State/UT Governments;
- Local Bodies.

The Prevention of Food Adulteration Act is a Central legislation. Rules and Standards framed under the Act are uniformly applicable throughout the country. Besides, framing of rules and standards, the following activities are undertaken by the Ministry of Health and Family Welfare.

- Keeping close liaison with State/local bodies for uniform implementation of food laws.
- Monitoring of activities of the States by collecting periodical reports on working of food laws, getting the reports of food poisoning cases and visiting the States from time to time.
- Arranging periodical training programme for Senior Officer/Inspector/Analysts.
- Creating consumer awareness about the programme by holding exhibitions/seminars/training programmes and publishing pamphlet'.
- Approving labels of Infant Milk Substitute and Infant food, so as to safeguard the health of infants.
- Coordinating with international bodies like ISO/FAO/WHO and Codex.
- Carrying out survey-cum-monitoring activities on food contaminants like colours.
- Giving administrative/financial/technical support to four Central Food Laboratories situated in Kolkata, Ghaziabad, Mysore and Pune and providing technical guidance to the food laboratories set up by the States/Local Bodies.
- Holding activities connected with National Monitoring Agency vested with powers to decide policy issues on food irradiation.
- Formulation of Manual on food analysis method.

The Ministry of Health and Family Welfare is designated as the National Codex Contact Point in India to examine and formulate India's views on the agenda for the various meeting of Codex Alimentarius Commission, a joint venture of FAO/WHO dealing with International Food Standards and its subsidiary

committees. The Ministry of Health and Family Welfare constituted a National Codex Committee (NCC) and an Assistant Director General (PFA) has been working as Liaison Officer for NCC. The NCC has further constituted 24 Shadow Committees corresponding to various Codex commodities committees for preparation and finalization of India's stand.

India has been regularly attending the various sessions of the Codex Alimentarius Commission and various Codex Commodity Committees to put forward her views and defend these views.

TOPIC: B - Control of Spurious Drugs

Globally, every country is the victim of substandard or spurious drugs, which result in life threatening issues, financial loss of consumer and manufacturer and loss in trust on health system. The aim of this enumerative review was to probe the extent on poor quality drugs with their consequences on public health and the preventive measures taken by the Indian pharmaceutical regulatory system. Government and non-government studies, literature and news were gathered from journals and authentic websites. All data from 2000 to 2013 were compiled and interpreted to reveal the real story of poor quality drugs in India. For minimizing spurious/falsely-labelled/falsified/counterfeit drugs or not of standard quality drugs, there is urgent requirement of more stringent regulation and legal action against the problem. However, India has taken some preventive steps in the country to fight against the poor quality drugs for protecting and promoting the public health.

With a population of more than 1.24 billion, right to health is a fundamental right in India and has been recognized in the national constitution and statutory laws as well as in international laws. Globally, about 2 billion people, one third of the global population lack access to essential medicines. As medicine are life saving entities and thus are more essential for the treatment, while they account for 20-60% of care cost and 50-90% of this cost is being paid by the patient, particularly in low and middle income countries. India is a developing country where more than 40% of the population survives on less than US $1 a day and if a patient needs medicines he has to pay more than half of this. There are some schemes by Indian Government for distribution of free generic medicines for certain categories of patients. However, people accept, prefer and buy counterfeit or substandard products over genuine or branded products due their cheap price, easy accessibility and availability in the market. Consumer does not know about the manufacturer or the quality of the product and many time they are unaware of expired, degraded or substandard products which ultimately results in failure of the treatment and with antibiotics this lead to

antimicrobial resistance. Substandard product arises correspondingly due to lack of expertise, unfair manufacturing practices or insubstantial infrastructure; whereas counterfeit is the product of black marketer. The problem of poor quality is already very serious and steadily growing and is likely to cause much more damage in the near future. As such poor quality drug does not bear any universal definition as it may vary from country to country. In general poor quality drug are the spurious/falsely-labeled/falsified/counterfeit (SFFC) drugs that can cause treatment failure or even death. Accordingly, International medical products anticounterfeiting taskforce (IMPACT) of World Health Organization (WHO) defines SFFC medicines as "medicines which are deliberately and fraudulently mislabelled with respect to identity and/or source, and also which may include products with correct ingredients or with the wrong ingredients, without active ingredients, with insufficient or too much active ingredient, or with fake packaging". In India, as per Drug and Cosmetic (D and C) act, 1940, under section 17, 17A and 17B poor quality drug comprises of misbranded, spurious and adulterated drugs, respectively. With the 2008 amendment of D and C act, Indian drug regulatory authority that is Central Drugs Standard Control Organization (CDSCO) has categorised not of standard quality (NSQ) products in three categories A, B and C that is helpful in categorising the products during quality evaluation. Category A incorporates spurious and adulterated drug products; which conceal the real identity of the product or formulation and be similar to some well-known brand. These products may or may not contain active ingredients and generally manufactured by unlicensed antisocial people or sometimes by licensed manufacturers. Products that consist of adulterant/substituted product or incorporate some filth material are known as adulterated drugs. Category B include grossly substandard drugs in which product fails the disintegration or dissolution test and where active ingredient assay get below 70% and 5% of permitted limit for thermo labile and thermos table product, respectively for tablets or capsules. In case of parenteral preparation, failing sterility, pyrogen/end toxin test or inappropriate toxicity, and fungus presence in any liquid preparation hold such products in this substandard category. Category C involved products with minor defects like emulsion cracking, change in formulation colour, small variation in net content, and sedimentation in clear liquid preparation, failing of weight variation test, spot or discoloration on product, uneven coating, and presence of foreign matter and labeling errors.

SFFC drugs: A Pandemic Threat

Poor quality drug or substandard product encounters a major stringent issue for the global health system and it cannot be ignored. In most streamlined regions of the globe like Japan, Canada, Australia, New

Zealand, the United States of America and most of the European Union, hardly
1% of the market value products are counterfeit, developing countries like Africa, Latin America and many parts of Asia may markedly be the seller and producer of SFFC medicines. Russia, China, India, Brazil, Mexico, Pakistan, Southeast Asian and Middle Eastern countries are considered as the chief operators in distribution and manufacturing of counterfeit drugs. A decade ago, it was examined by WHO that 10% of the global medicines were counterfeit. However, contrary to its previous communicated data WHO-IMPACT pointed out that data was not much authentic. It means no absolute extent is reported. Now, it is questionable that what are the causes and influences of this problem. In turn, one reason is poverty and other is ignorance and these could contribute to the demand for counterfeit and substandard drugs. Moreover, ignorance of poor quality, unregistered medicines, lenient penalties, inadequate enforcement of laws are some of the significant causes which provoke the situation.

Day by day, public trust in health system may deteriorate as the consumption of substandard drugs by patients increase due to availability and lack of detection of SFFC or NSQ medicine in the market. Consumption of SFFC medicines can be responsible for failure of treatment or even death. Unbelievably, 0.20 to 0.30 million people die every year in China just because of counterfeit and substandard drug product. No such data is available in India, yet many patients are dying every year. According to a report revealed by International Policy Network, globally
0.70 million deaths were reported for malaria and tuberculosis because of counterfeit drugs. This data reveals the loop holes in the regulatory system and the cautions for avoiding the poor quality medicines.

In this evaluative review, an attempt has been made to know the correct extent of the SFFC or NSQ drugs in India and to make awareness among the public, medical practitioners and pharmacists. Data was acquired from governmental and non-governmental studies, literature, news, journals and authentic web sites. All the data was compared and interpreted to reveal the real story of poor quality drugs in India.

SFFC or NSQ drugs in India:

India is the largest manufacturer of generic drugs and probably 12-25% of the medicines supplied globally are contaminated, substandard and counterfeit. Being the world's largest manufacturers of active pharmaceutical ingredients and finished products, it is likely that India along with China could be the major contributors to spurious medications as per Patrick Lukulay, vice president of US Pharmacopoeial Convention's global health programs. In a report, it has been declared by the European Commission that 75% of the global cases of SFFC medicines originate from India. Indian Government officials initiated an

investigation to scrutinize the drugs product which are supplying by India to Nigeria when India was accused along with other 29 Asian countries as the main originator of counterfeit drugs. On one side, India extensively interacts with the African countries in providing quality medicine at affordable prices, while on other side predictive blames were imposed on India and China for exporting the fake or substandard quality of antimalarial, antibiotics and contraceptives drug product to Uganda and Tanzania. In turn, India and China is denying for such blames. At present, Indian drug regulatory authority has taken various steps against the causes and they have put all their efforts to improve the drug regulation in the country.

India is considered as the main originator and distributor of SFFC drugs. However, no authentic evidences exist against the country according the data provided by the government and non government agencies of India. Many researchers have investigated only individual drugs or narrow range of drug preparations and formulations. Currently, no large randomized studies of drugs quality have been done in India.

In the year 2000, it has been stated that around 35.0, 23.1 and 13.3% global sales of counterfeit medicines come from India, Nigeria and Pakistan, respectively and counterfeiting includes all therapeutic classes of drug and mainly antibiotics. A decade ago, Indian government officials estimated that 9% of the drug products were of substandard quality. Although according to Indian press media, 30-40% of the total marketed drugs are considered as spurious, but this data is without any scientific confirmation. Under laboratory analysis in a survey accomplished in 2007 by South East Asia Region Pharmaceutical (SEARPharm) Forum, a group of Pharmaceutical Associations of International Pharmaceutical Federation (FIP) and WHO, 10 743 samples were collected from 234 retail outlets. About 3.1% were estimated as spurious and 0.3% were out of pharmacopoeial standard. In 2007, 294 fixed drug combinations (FDCs) products were unlawfully available in the market since these were not approved by the Drugs Controller

General of India (DCGI). In 2008, out of 1 83 020 chemist shops, 8418 chemist licenses were suspended or cancelled by the State Drugs Control Organizations on behalf of their trade with spurious drugs. According to CDSCO, estimation of the data during 2003-2008 indicates 6.3- 7.5% of the samples were of substandard quality and 0.16-0.35% were encountered as spurious. In 2009, CDSCO reported that in 1995-96, 10.64 and 0.30% tested samples out of 32 770 were substandard and spurious, respectively, while in 2007-2008, 6.42 and 0.16% tested sample out of 42 354 were substandard and spurious, respectively. It was good achievement by the drug authority.

Nevertheless, in 2009, 24 136 samples of 62 brands of drugs product were collected in a nationwide survey to find those products which are covertly manufactured and thus to explore the extent of spurious drug in India. Samples were drawn from over 100 pharmacy outlets from various regions of India, which were belong to nine therapeutic categories of 30 manufacturers. Survey affirmed that only 11 products (0.046%) were spurious. Supplementary information revealed by the State Drugs Control Departments declared 1146 (4.75%) products were of substandard quality. These kinds of inspections and surveys by the government officials are some driving steps for the public safety. However, stringent actions are yet to be taken for the betterment of public health. Overlaying the effects of inferior manufacturing standards, deterioration with inactive or toxic fillers, relabeling of time expired drugs and degradation during storage are closely associated with drug quality, which must be checked regularly by fast and efficient techniques.

Manufacturing of spurious and substandard quality drug products is a fraudulent activity and their availability in the market is the life threatening issue for the public health. In 2008, a pilot study performed in two major cities of India, Delhi and Chennai to explore the extent of substandard and counterfeit drugs available in market, under which it was estimated that 12 and 5% samples from Delhi and Chennai, respectively, were of substandard quality. In 2007-08 maximum instances were from Maharashtra and in 2008-09 Kerala was the leading manufacturer of the spurious and substandard drugs. In 2007 four deaths were reported in Maharashtra related to spurious drugs. While more serious results came in news when it was reported that 300 infant
died in 2012 in Kashmir because of ceftriaxone substandard quality product which was used to treat pneumonia.

No absolute and entire data is reported for substandard and spurious drugs after 2010 by CDSCO, non government organizations or any individual research. For last 3 years, Government has noticed several cases of spurious and substandard drugs importation. In 2009, at Chennai sea port, CDSCO officials caught 3 cases of unregistered bulk drugs originating from China. Cases related to the substandard quality drug product importation in India showed 35, 35, 34 cases for 3 consecutive years 2009-2010, 2010-2011 and 2011-2012, respectively. On a surprise inspection by the CDSCO officials, 85 sales outlets out of 130 were trafficking with the banned drugs in Delhi and Bhiwandi city. It is highly recommended to investigate individually every drug product that is available in the domestic market

UNIT – III: CORRUPTION

TOPIC: A- Practice and Dimensions of corruption

Last year "Lokpal", Anti-Corruption, Civil Society has been buzz word among media, social networking and youth, owing to humungous nature of corruption scandals like 2G, Common Wealth, Antrix Devas Deal etc that have surfaced. Corruption exists in every system in India, right from obtaining birth certificate to death certificate. It takes heavy toll on our economic progress, and it is a complex phenomenon which has to be addressed from different angles. Corruption is just a symptom of larger complex co morbidity which is caused by many factors including inefficiencies, lack of governance, weak institutions etc. So fight against corruption should including addressing flaws along with going behind corrupt individuals.

Social and Economic Inequality

India is country of 1 billion populations, even after 60 years of Independence; the economic and social Inequality still exists. We still host 41% of world poor and most number of malnutrition children in World. There is still discrimination based on caste, religion and gender. So how does inequality give raise to corruption? As inequality increases, one strata (may be base on caste/economic/religion) of people gain prominence over other in political, social, economic, media and judicial system. They will try to influence policy decisions by bribing top government officials favoring them. This makes goods and services like education, health available for poor scare, and to overcome that, they will involve in petty corruption things. This is what we see, daily in our activities like small officers (like clerks, attendees etc) in government officers demanding bribe to provide services. This 20 years of economic reforms is leading us to crony capitalism, this can be corroborated by recent 2G/Coal scams, where big industrialists manipulated laws, causing huge loss to exchequer leaving benefits to only one section of society. So let us try to reduce economic inequality, so that temptation to bribe people and give bribe is been reduced.

Democracy and People

Close to 150 MP's who were elected to Parliament have serious corruption charges. People who face serious corruption charges still win elections with huge margin. We need to ask our self, Do people who elect those leaders are not responsible for corruption? Corruption was never a major election issue because people tend to have short memory and we completely ignorant about its impact on our economic progress. In a democratic country like India, where high inequality exists People are getting attracted to

sell their votes for free schemes. It has become a ritual to give freebies (indirect corruption) like Laptops, grinders, fans, TVs, cell phones etc as part of Election manifesto without providing basic requirements like schools, drinking water, electricity and roads. Mindless freebies will not only increase fiscal deficit but makes people lazy and shortsighted impacting there voting pattern. We can say ours is largest democracy, but still way behind participative democracy. The Panchayat Raj system is very weak to encourage active grass root level participation of people. Educated people don't show interest in voting. Also it is wrong to assume Democracy is not about just voting and elections. True democracy is achieved when people are aware of Government policies, its impact and provide continuous feedback to politicians in policy decision. NGO's can educate people on how to choose candidates during elections. Recently Election commission has taken bold steps to stem money flow during elections. It can be empowered to check malpractices, augment power implement Election code to weed out corrupt practices.

Natural Resources and Corruption

India is blessed with significant Natural resources. And research strongly supports that it tends to increase Corruption. Most of the big corruption cases, directly or indirectly involve Natural Resources. The recent scams in illegal mining in Karnataka and Goa, allocation of Coal fields, distribution of 2G spectrum etc corroborate this point. The income that is generated through natural resources is not being invested back in Human Capital that is the reason in spite of having abundant mineral resources; states like Bihar, Chattisgarh, Oddisha perform poorly in Human Development Indexes. The whole process of Natural Resource allocation has to be re- looked and fault lines has to be corrected to ensure, it is fair and transparent.

Sisyphus Syndrome

India ranks 166 out of 183 in starting a business by a private entity as per World Bank report. The project approval process of Government is mired with complex rules and bureaucracy hassles. We don't have timeliness fixed for clearing projects and approval goes back and forth between various Government departments. This not only overruns the cost of project leading economic wastage but also fosters corruption to bribe administrative officials who are involved in decision process. And finally an investor/entrepreneur had to bribe officials to expedite his approval process. To overcome this fault line in our system, we need to ensure that simplification of rules/regulations and ensure more transparency.

Educational System

We have acute shortage of good quality of Universities and Colleges. But demand overwhelms the supply. This wedge between demand and supply, has given rise to private sector exploiting people through donations and capitation fees. Being a lucrative business Colleges/Schools get approvals and recognition through corrupt means (Medical Council of India scam, and Tandon commission recommendation of de-reorganization of 44 deemed universities). Students who go through this process will imbibe shortcuts to make money in future instead of believing in hard work and meritocracy, to recover educational costs spent. Moral Science, Social Service, RTI and Ethics don't find place in our curriculum. Career success should not mean making money but professional satisfaction. Good Education system can spearhead fight against corruption.

Can existing Investigative and Judiciary systems work

Computer and Auditor General CAG is a constitutional body whose role is to audit government expenditure. In spite of being an independent organization its impact on corruption has been tangential. Firstly CAG has no authority to call Government officers/department for clarification, it can just mention a paragraph in it report of lapses occurred. Secondly they don't have authority to sanction. Everything has to go through Public Accounts Committee (PAC). The response of Government officials/Departments has been poor on clarifications and remedial steps seeked. PAC had failed in apprising Parliament and Government in audit reports. Central Vigilance Commission CVC was setup to check corruption in Central Government organizations. Upon receiving complaints CVC can direct vigilance officers or CBI to take up investigation. It has neither investigative powers, nor its reports are obligatory to Government departments. This severely defeats the objective of setting up CVC. Central Bureau of Investigation

CBI is country's major Investigative agency. We have some of the best officers working for it. It has severe shortage of manpower and autonomy. As of 2010 December 21% of posts are vacant, which includes 52% law offices, 65% technical officers, and 21% executive. Close to 10,000 cases of CBI are pending in court out of which 23% are pending for more than 10 years. It needs to take permission from Government to prosecute any officer above Joint Secretary, which generally involves time consuming process reducing steam in investigation. It is severely manipulated by Government to cater its political needs. Making CBI more independent can be right way forward. Judicial Justice delayed is equivalent to Justice Denied. With delay in getting justice, the ordinary public has lost hope in Judiciary, so instead of fighting any injustice, we tend to believe corrupt practices are better than going through than following

legal rules. With current estimate, it is said that It will take over 350 years to clear pending cases. India ranks lowest among world in number of judges per million populations, with each judge on average handling close to 4000 cases. The best legal brains in Supreme Court are wasted on unnecessary cases like Bail petitions to politicians. We have to Supreme Court only for constitutionally and very high profile cases. Judicial reforms are long pending, unless these reforms are implemented, we keep on pilling up cases and cases with no solutions.

Role of Media

Media forms fifth pillar of our Democracy. It forms significant role in shaping up people thoughts and minds by educating on day to day issues in Country in an unbiased manner. People's memory is very short on corruption, media can play active role in keeping the issues alive. It should encourage Investigative Journalism, Sting operations, Opinion polls and Public Debates in unearthing corrupt practices. This puts pressure on Government to ensure transparency in its operations.

Conclusion

There is no one panacea to solve corruption, it has to be addressed at all levels from social, economic inequality, empowering people, and strengthening existing democratic and investigative institutions. We cannot eliminate corruption; but only reduce the corruption by fixing bugs in existing systems.

TOPIC: B- Anti Corruption Laws

Corruption laws in India Public servants in India can be penalized for corruption under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988. The Benami Transactions (Prohibition) Act, 1988 prohibits benami transactions. The Prevention of Money Laundering Act, 2002 penalises public servants for the offence of money laundering. India is also a signatory (not ratified) to the UN Convention against Corruption since 2005. The Convention covers a wide range of acts of corruption and also proposes certain preventive policies. Key Features of the Acts related to corruption Indian Penal Code, 1860:

vii. The IPC defines "public servant" as a government employee, officers in the military, navy or air force; police, judges, officers of Court of Justice, and any local authority established by a central or state Act.

viii. Section 169 pertains to a public servant unlawfully buying or bidding for property. The public servant shall be punished with imprisonment of upto two years or with fine or both. If the property is purchased, it shall be confiscated.

ix. Section 409 pertains to criminal breach of trust by a public servant. The public servant shall be punished with life imprisonment or with imprisonment of upto 10 years and a fine. The Prevention of Corruption Act, 1988

x. In addition to the categories included in the IPC, the definition of "public servant" includes office bearers of cooperative societies receiving financial aid from the government, employees of universities, Public Service Commission and banks.

xi. If a public servant takes gratification other than his legal remuneration in respect of an official act or to influence public servants is liable to minimum punishment of six months and maximum punishment of five years and fine. The Act also penalizes a public servant for taking gratification to influence the public by illegal means and for exercising his personal influence with a public servant.

xii. If a public servant accepts a valuable thing without paying for it or paying inadequately from a person with whom he is involved in a business transaction in his official capacity, he shall be penalized with minimum punishment of six months and maximum punishment of five years and fine. It is necessary to obtain prior sanction from the central or state government in order to prosecute a public servant.

The Benami Transactions (Prohibition) Act, 1988

The Act prohibits any benami transaction (purchase of property in false name of another person who does not pay for the property) except when a person purchases property in his wife's or unmarried daughter's name.

iii. Any person who enters into a benami transaction shall be punishable with imprisonment of upto three years and/or a fine.

iv. All properties that are held to be benami can be acquired by a prescribed authority and no money shall be paid for such acquisition.

The Prevention of Money Laundering Act, 2002

v. The Act states that an offence of money laundering has been committed if a person is a party to any process connected with the proceeds of crime and projects such proceeds as untainted

property. “Proceeds of crime” means any property obtained by a person as a result of criminal activity related to certain offences listed in the schedule to the Act. A person can be charged with the offence of money laundering only if he has been charged with committing a scheduled offence.

vi. The penalty for committing the offence of money laundering is rigorous imprisonment for three to seven years and a fine of upto Rs 5 lakh. If a person is convicted of an offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 the term of imprisonment can extend upto 10 years.

vii. The Adjudicating Authority, appointed by the central government, shall decide whether any of the property attached or seized is involved in money laundering. An Appellate Tribunal shall hear appeals against the orders of the Adjudicating Authority and any other authority under the Act.

viii. Every banking company, financial institution and intermediary shall maintain a record of all transactions of a specified nature and value, and verify and maintain records of all its customers, and furnish such information to the specified authorities.

Process followed to investigate and prosecute corrupt public servants

vi. The three main authorities involved in inquiring, investigating and prosecuting corruption cases are the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI) and the state Anti-Corruption Bureau (ACB). Cases related to money laundering by public servants are investigated and prosecuted by the Directorate of Enforcement and the Financial Intelligence Unit, which are under the Ministry of Finance.

vii. The CBI and state ACBs investigate cases related to corruption under the Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860. The CBI’s jurisdiction is the central government and Union Territories while the state ACBs investigates cases within the states. States can refer cases to the CBI.

viii. The CVC is a statutory body that supervises corruption cases in government departments. The CBI is under its supervision. The CVC can refer cases either to the Central Vigilance Officer (CVO) in each department or to the CBI. The CVC or the CVO recommends the action to be taken against a public servant but the decision to take any disciplinary action against a civil servant rests on the department authority.

ix. Prosecution can be initiated by an investigating agency only after it has the prior sanction of the central or state government. Government appointed prosecutors undertake the prosecution proceeding in the courts.

x. All cases under the Prevention of Corruption Act, 1988 are tried by Special Judges who are appointed by the central or state government.

UNIT – IV: INVESTIGATION AND PROSECUTION

TOPIC: A- Central Vigilance Commission (CVC)

Central Vigilance Commission (CVC) is an apex Indian governmental body created in 1964 to address governmental corruption. It has the status of an autonomous body, free of control from any executive authority, charged with monitoring all vigilance activity under the Central Government of India, advising various authorities in central Government organizations in planning, executing, reviewing and reforming their vigilance work.

It was set up by the Government of India in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by Shri K. Santhanam Committee, to advise and guide Central Government agencies in the field of vigilance. Nittoor Srinivasa Rau, was selected as the first Chief Vigilance Commissioner of India.

The Annual Report of the CVC not only gives the details of the work done by it but also brings out the system failures which leads to corruption in various Departments/Organisations, system improvements, various preventive measures and cases in which the Commission's advises were ignored etc.

The Commission shall consist of:

- A Central Vigilance Commissioner - Chairperson;
- Not more than two Vigilance Commissioners - Members;

The current Central Vigilance Commissioner is Mr. K.V. Chowdary, and among the two Vigilance Commissioners, one is Mr. Rajiv and the other is Shri T.M. Bhasin.

ROLE

The CVC is not an investigating agency.

The only investigation carried out by the CVC is that of examining Civil Works of the Government which is done through the Chief Technical Officer.

Corruption investigations against government officials can proceed only after the government permits them. The CVC publishes a list of cases where permissions are pending, some of which may be more than a year old.

The Ordinance of 1998 conferred statutory status to the CVC and the powers to exercise superintendence over functioning of the Delhi Special Police Establishment, and also to review the progress of the investigations pertaining to alleged offences under the Prevention of Corruption Act, 1988 conducted by them. In 1998 the Government introduced the CVC Bill in the Lok Sabha in order to replace the Ordinance, though it was not successful. The Bill was re-introduced in 1999 and remained with the Parliament till September 2003, when it became an Act after being duly passed in both the Houses of Parliament. The CVC has also been publishing a list of corrupt government officials against which it has recommended punitive action.

Appointment

The Central Vigilance Commissioner and the Vigilance Commissioners are appointed by the President after obtaining the recommendation of a Committee consisting of:

- The Prime Minister of India (Chairperson)
- The Minister of Home Affairs
- The Leader of the second largest party in the Lok Sabha or majority group leader in parliament.

Removal

The Central Vigilance Commissioner or any Vigilance Commissioner can be removed from his

office only by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought to be removed. The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference. The President may, by order, remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central Vigilance Commissioner or such Vigilance Commissioner, as the case may be:

- is adjudged an insolvent; or
- has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- engages during his term of office in any paid employment outside the duties of his office; or
- is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
- has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

Organization

The CVC is headed by a Central Vigilance Commissioner who is assisted by two Vigilance Commissioners.

The Central Vigilance Commission has its own Secretariat, Chief Technical Examiners' Wing (CTE) and a wing of Commissioners for Departmental Inquiries (CDI).

As on 21 March 2012, CVC has a staff strength of 257 against sanctioned strength of 299 (including the post of CVC and 2 VCs)[1]

Secretariat

The Secretariat consists of a Secretary of the rank of Additional Secretary to the Govt of India, one officer of the rank of Joint Secretary to the Govt of India, ten officers of the rank of Director/Deputy Secretary, four Under Secretaries and office staff.

Chief Technical Examiners' Wing (CTE)

The Chief Technical Examiner's Organisation constitutes the technical wing of the Central Vigilance Commission and has two Engineers of the rank of Chief Engineers (designated as Chief Technical Examiners) with supporting engineering staff. Following are the main functions of this organisation:

- Technical audit of construction works of Governmental organisations from a vigilance angle
- Investigating specific cases of complaints relating to construction works
- Assisting the CBI in their investigations involving technical matters and for evaluation of properties in Delhi and
- Assisting the Commission and Chief Vigilance Officers in vigilance cases involving technical matters.

Commissioners for Departmental Inquiries (CDI)

There are fourteen posts of Commissioners for Departmental Inquiries (CDI) in the Commission, 11 in the rank of Director and 03 in the rank of Deputy Secretary. The CDIs function as Inquiry Officers to conduct inquiries in departmental proceedings initiated against public servants.

The Directorate General of Vigilance

The Directorate General of Vigilance, Income Tax is the apex body under the Central Board of Direct Taxes for the vigilance matters. The Directorate General interfaces with the Central Vigilance Commission, the Central Bureau of Investigation, field formations of CBDT who are also having their Vigilance wings and others in all the matters relating to Vigilance, preliminary investigation of complaints, obtaining CVC/CVO's first stage advice, wherever required, assistance to Ministry in issuance of charge sheets, monitoring the charge sheet issued by the Disciplinary authorities in the field, monitoring of progress in inquiry proceedings, processing of enquiry reports, obtaining CVC/CVO's second stage advice, wherever required and communication thereof to Disciplinary authorities and monitoring compliance/implementation of the advice.

TOPIC: B – Central Bureau of Investigation

What is known today as the CBI was originally set up as the Special Police Establishment (SPE)

in 1941 to investigate cases of bribery and corruption involving the employees of the War and Supply Department of the Government of India during the Second World War.

Even after the war was over, the need to continue the agency to investigate corruption charges involving government servants was felt. The Delhi Special Police Establishment Act was passed in 1946 to give the organisation a statutory base. Its jurisdiction was extended to cover cases of corruption involving employees of all departments of the Government of India.

The role of the SPE was gradually extended and by 1963, it was authorised to investigate offences under 97 Sections of the Indian Penal Code, offences under the Prevention of Corruption Act and 16 other Central Acts.

Presently, the CBI Consists of the Following Divisions :

(x) Anti-Corruption Division
(xi) Economic Offences Division
(xii) Special Crimes Division
(xiii) Legal Division
(xiv) Coordination Division
(xv) Administration Division
(xvi) Policy and Organisation Division
(xvii) Technical Division

(xviii) Central Forensic Science Laboratory

The legal powers of investigation of the CBI are derived from the Delhi Special Police Establishment Act, 1946 (DPSE Act).

The organisation can investigate only such offences as are notified by the central government under Section 3 of the DPSE Act. The powers, duties, privileges and liabilities of the members of the organisation are the same as those of the police officers of the union territories in relation to the notified offences.

While exercising such powers, members of the CBI of and above the rank of Sub- Inspectors are deemed to be officers in charge of the police station.

The Central Government is authorised to extend the powers and jurisdiction of the members of CBI to any area, including railway areas, for the investigation of offences notified under Section 3 of the District Special Police Establishment Act, subject to the consent of the government of the concerned state.

Even though the CBI has been in existence for so long, it is still governed by the old Delhi Special Police Establishment Act of 1946 section 4 (1) of this Act vests the superintendence over

the organisation in the Central Government. An important development in this regard occurred in December, 1997 when the Supreme Court delivered its judgement in Writ Petitions (Criminal) Nos. 340-343 of 1993, commonly known as the Havala Case.

The Court directed that the responsibility of exercising superintendence over the CBI should be entrusted to the Central Vigilance Commission (CVC) and that the CVC should be given a statutory status. The judgement of the apex court is yet to be implemented. The CVC Bill has not yet been passed.

The Single Directive

The term 'Single Directive' is commonly associated with the role and functioning of the CBI. The Single Directive was a set of executive instructions issued by the Central Government, prohibiting the CBI from undertaking any inquiry or investigation against any officer of the rank of Joint Secretary and above in the Central Government including those in the public sector undertakings and nationalised banks without the prior sanction of the head of the department.

The Supreme Court's judgment in the Havala Case had declared the single directive null and void. The Court found it unacceptable in law on two grounds. It required a police agency to seek permission from the executive to initiate investigation into a criminal offence.

Intelligence bureau (IB)

Amongst the existing intelligence agencies, the IB is probably the oldest in the world. It was established as the Central Special Branch by an order of the Secretary of State for India in London on December 23, 1887.

Following the recommendations of the 1902-03 Indian Police Commission, the organisation was renamed as the Central Criminal Intelligence Department. Gradually, the security tasks of the organisation started overshadowing its responsibilities in respect of criminal work.

The word 'criminal' was therefore dropped from its name in 1918 and its present nomenclature (IB) was adopted in 1920.

The IB's role is vast and extensive covering a broad range of issues and has to deal with many problems, like terrorism, subversion and insurgency on the one hand and espionage and attempts to undermine the democratic fabric of the country by external agencies on the other.

Its main task is to collect intelligence about the subversive and terrorist activities of people and organisations, disseminate such information in time to the concerned authorities and adopt

strategies to counter threats to internal security of the country and its institutions

TOPIC: C- Criminal Investigation Department

The **Crime Investigation Department (CID)** is the investigation and intelligence wing of the Indian State Police.

Formation and Organization

The CID was created by the British Government in 1902, based on the recommendations of the Police Commission.In 1929, the CID was split into Special Branch, CID and the Crime Branch CID (CB-CID).

CID branches

The CID has several branches which work from state to state. These branches include:[4]

- CB- CID
- Anti-Human Trafficking & Missing Persons Cell
- Anti-Narcotics Cell
- Finger Print Bureau
- CID
- Anti-Terrorism wing

Crime Branch CID

CB-CID is a special wing in the CID headed by the Additional Director General of Police (ADGP) and assisted by the Inspector General of Police (IGP). This branch investigates serious crimes including riots, forgery, counterfeiting and cases entrusted to CB-CID by the state government or the High Court.

TOPIC: D- OTHER ORGANIZATIONS

The incidence of crime in India is increasing alarmingly with a disastrous spatial distribution of population due to mismanagement and an overwhelmingly ubiquitous new technology. The profile of the criminal has undergone a sea change from the earlier stereotypes, requiring a new paradigm to comprehend and manage the emerging scenario. Today's criminal could well be your suave, smooth talking colleague or neighbour, someone who is relatively well off and well educated. The criminal mind is no more matching the orthodox definition of an economically deprived background but one that seeks to compete, outsmart and short-change the society that

he or she lives in.

Recently, an internal survey conducted by a leading retail chain found that the largest section of loss due to theft was of women's clothing and women's innerwear. This by natural extension points to women as the emerging segment for pilferage in the organized retail sector.

There is a fair chance that most of the women stealing come from reasonably well-to-do families but their craving for excitement from pilferage is what drives many to the crime. Several Hollywood celebrities are known to be compulsive kleptomaniacs. But this is a relatively mild crime when compared to the number of child rape and molestation that is being reported from all parts of India and include urban, semi-urban and rural areas. Violent crime is on the increase.

Emerging trends in cyber crimes include hacking, phishing and cyber stalking with social media as the new playground for the criminal mind to let itself loose.

With these emerging trends in crime, it is time for India to revamp and reform how crime is reported, investigated and followed through with scientific evidence, which can ensure successful prosecution of the criminal.

The Indian system of policing and criminal investigation is still stuck in the old ways of information gathering and beating out a confession from the suspects. The police force is completely untrained on modern methods of criminal investigation and is not primed to gather scientific evidence to present a watertight case in the court. This is why the gap continues between reporting of crime, arresting a criminal and finally ensuring successful prosecution of the accused.

Three of the problems

Police is a State subject and the number and quality of the police force varies from State to State. Most of the recruits at the entry level are barely school educated and come from diverse backgrounds, where their upbringing has been influenced by their religion, caste, community or economic status and this usually comes in conflict when policing urban areas, where the mindset of society that they serve, is different from the one that they grew up in. This cultural difference is very visible when it comes to police dealing with women related issues or the educated section of society.

In addition, the lack of education also hampers the police from scientifically investigating any

crime. The training is restricted to basic beat policing and does not expose them to modern techniques of criminal investigation. Even the so called ‘dedicated’ departments that are supposed to be primed up with scientific investigation techniques, is usually saddled with obsolete technology and techniques.

Furthermore, the method and content of data on crime collected and recorded varies from State to State. With cross border crime occurring frequently, tracing criminals is a challenge for any State police, in the absence of criminal data sharing and cooperation. The data collected and recorded by the National Crime Records Bureau (NCRB) is basic and data access at all levels is limited.

An integrated approach to criminal investigation

Without compromising the federal structure and authority, criminal data recording and access has to be standardized and seamless, if India is to keep crime down to minimal levels. The first step towards this has to be data recording and capture.

Criminal profiling and data

Every person who is brought into the police station as a suspect must be full body scanned and facial data recorded. This will include bone structure, facial and dental profile, iris scan along with finger print and DNA profile collected and recorded for posterity.

The data can be kept under suspect, accused and prosecutedgroupings. Sub groupings may also be created, as per need. While, this may evoke strong debate on the need for profiling, it is necessary to understand the importance of collecting this data as the primary requirement in surveillance, tracking and subsequent arrest of a potential criminal.

Today, software is available to capture real time data through surveillance cameras located at public places like airports, railway and bus stations. The data captured is matched on the basis of bone structure and facial recognition software. So if there is a potential terrorist or criminal passing through any public area, there is a fair chance that the software will pick him out of the crowd in real time. This would be possible only if his profile has been collected, recorded and made available to all law enforcement agencies, seamlessly.

The National Security Agency (NSA) of the United States is using this widely and the same data has helped agencies like FBI, CIA, State Police, Homeland Security etc solve several cases, in

addition to monitoring and tracking suspects to prevent crime. There is no point in data being collected by one agency and not being available to other agencies, seamlessly. This was one of the biggest lessons the United States learnt post the 9/11 incident.

India has no choice but to learn and implement similar strategies if it were to seriously attempt crime prevention and crime control. Data collection, availability and access is the first tool in this battle.

Using technology

Technology is rapidly evolving in the field of homeland security and specialized tools are available for human identification, authentication, tracking, access control through a variety of bio-metric technologies.

Cyber crime is increasing and therefore cyber security, access and user profile analytics is becoming imperative, in an increasing cyber dependent world.

Adopting forensic science

Crime scene investigation is the first and most important moment in solving any crime. The forensic information captured by way of pictures, body fluid sample, DNA sample, fingerprinting or material sample can go a long way in helping the police to solve crime.

In India, the police appearing at a crime scene is usually not even aware of the need to maintain crime scene integrity for forensic purposes nor are they geared to collect crime scene evidence from a forensic perspective.

Need for criminal profiling

Criminal profiling to understand the criminal mind and thought pattern is emerging as an important tool in criminal investigation. This has evolved as a specialized field of science and India must encourage our police to use criminal profiling as a tool in investigating crime.

Adopting modern techniques of interrogation

One of the biggest challenges for any police is to get a suspect to confess to a crime. In India, the police still follows all kinds of physical force to get suspects to confess to a crime, only to have them deny the same in court, subsequently.

All developed nations now follow basic human rights principles and have done away with physical means to elicit confession from a potential suspect. Modern techniques are applied to confirm innocence or psychologically break down a suspect into confessing a crime.

If a watertight case has to be built against an accused, then all evidence collected against him must pass judicial scrutiny during trial. The process of interrogation is one component of this evidence gathering and therefore the same has to comply with accepted norms, as permitted by the law in India.

India has made some progress with initial training in modern interrogation techniques, as followed by FBI of the USA and Scotland Yard of the UK. But India is still a long way from introducing these techniques as part of Standard Operating Procedure (SOP) for all arms of police, at the State level.

It is time India implemented reforms across all State police and integrated and shared all criminal data, seamlessly.