

VOL-I, NO.1, 2019



# MGCL

## CHRONICLE

LAW MAGAZINE OF THE  
MAHATMA GANDHI COLLEGE OF LAW, GWALIOR



**VOLUME 1**  
**LAUNCH EDITION**

**“THE LAW IS REASON,  
FREE FROM PASSION”**

**- ARISTOTLE**



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# MGCL CHRONICLE

Law Magazine of the Mahatma Gandhi  
College of Law, Institute of Legal Education &  
Research, Gwalior • (VOLUME-I, NO.1, 2019)

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### MESSAGE

It gives me immense pleasure to know that Mahatma Gandhi College of Law, Gwalior is publishing a debut edition of its College Magazine – MGCL Chronicle for the year 2019.

I am aware that Mahatma Gandhi College of Law is making all efforts to encourage its students to excel academically and motivating them to harness their creative skills by providing them a platform to exhibit their talent through debut edition of annual college magazine – MGCL Chronicle.

I congratulate the Chief Editor and the entire team of the Editorial Board of the faculty members as well as students and wish them for the successful publication of the college magazine.

  
(Narendra Singh Tomar)



जयभान सिंह पवैया

पूर्व मंत्री  
उच्च शिक्षा, लोक सेवा प्रबंधन  
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## Message

It gives me immense pleasure to know that Mahatma Gandhi College of Law, Gwalior is bringing out the Debut Edition of its annual magazine MGCL Chronicle 2019.

I congratulate the Chief Editor and the entire team of the Editorial board of teachers as well as students for the successful publication of the annual magazine.

(Jaibhan Singh Pawaiya)

विवेक के. तन्खा

*Vivek K. Tankha*

संसद सदस्य (राज्य सभा) मध्य प्रदेश  
Member of Parliament (Rajya Sabha)  
(Madhya Pradesh)



पूर्व अतिरिक्त सॉलिसिटर जनरल ऑफ इंडिया  
पूर्व महाधिवक्ता, मध्य प्रदेश

Former Addl. Solicitor General of India  
Former Advocate General of Madhya Pradesh

27<sup>th</sup> January, 2019  
[New Delhi]

The Chief Editor  
MGCL Chronicle  
Mahatma Gandhi College of Law  
Gwalior (Madhya Pradesh)

**MESSAGE**

It gives us immense pleasure to learn that Mahatma Gandhi College of Law, Gwalior is not only encouraging its students to excel academically but also motivating them to harness their creative skills by providing them a platform to exhibit their talent through the Debut Edition of Annual College Magazine - "MGCL Chronicle" for 2019.

I congratulate the Chief Editor and the entire team of the Editorial board of teachers as well as students for the successful publication of the Debut Edition of annual magazine.

With Best Wishes

  
[Vivek K. Tankha]



## MESSAGE

Mahatma Gandhi College of Law is an institution founded by Yogi Shri Durga Singh Tomar and his son Shri Yashpal Singh, not for earning profits but to impart education which could infuse high intellectual spirit among the students. An institution of such a high standards needs association and inspirations from equally high class of intellectuals. With this end in view the institution has decided to bring out a magazine "MGCL CHRONICLE". Such a publication, I hope, will be of great value for those who write to uplift their career and engage in research work of excellent quality. I hope that the endeavour will be successful with the help of the concerned.

A handwritten signature in blue ink, appearing to read "R.B. Dixit".

JUSTICE R.B. DIXIT





## डॉ. निर्मल मित्रल

### संदेश

गुरुवर रविन्द्रनाथ टैगोर के शब्द— जहाँ हृदय में निर्भयता हो, मस्तक अन्याय समक्ष नहीं झुकता , जहाँ ज्ञान का मूल्य नहीं लगता, जहाँ संसार घरों की संकीर्ण में खंडित और विभक्त नहीं होता , जहाँ शब्दों का उद्भव केवल साथ के गहरे स्त्रोत से होता हो, जहाँ अनथक उद्यम पूर्णता के आलिंगन के लिये भुजायें पसारता हो, जहाँ विवेक की निर्मल जलधारा पुरातन रूढ़ियों के मरुस्थल में सूखकर लुप्त नहीं हो गई हो, हे ईश्वर! जीवन के इस दिव्य प्रकाश से मेरे भारत को जाग्रत कर दे . विद्यार्थियों के मनन एवं चिंतन का मार्ग प्रशस्त करते हैं।

हमें याद रखना है—

**“जितने कष्ट कण्टकों में है,**

**जिनका जीवन सुमन खिला,**

**गौरव गंध उन्हें उतना ही**

**यंत्र तंत्र सर्वत्र मिला।”**

मनुष्य एक सामाजिक प्राणी है । समाज को शांतिपूर्ण प्रगति के पथ आरुढ़ रखने के लिए कानून की महती आवश्यकता है। कानून के विद्यार्थी होने के नाते आस्था , विश्वास में प्रति प्रतिबद्धता रखते हुये कानून की परिधि में कार्य करते हुये एवं अध्ययन के प्रति हमें दृढ़ संकल्पित होना होगा । तभी हम महात्मा गांधी कॉलेज ऑफ लॉ के विद्यार्थी होने की विश्वसनीयता दृढ़ता से स्थापित कर पायेंगे । हमें सामाजिक प्रचार — प्रसार से दूर रहकर , समाज के अभिन्न अंग बनकर , कानून के रक्षक बनकर उसका उचित रूप में उपयोग कर देश को अपना अमूल्य योगदान देना होगा और तभी हम एक अच्छे विद्यालय के विद्यार्थी होने का सही आंकलन कर पायेंगे। अपनी स्वयं की मेहनत से किया गया छोटा सा कार्य भी पराई बैसाखी के सहारे मांगी गई सिफारिश के विशाल दिखने वाले कार्य से कहीं बेहतर होता है । ये विद्यार्थियों को समझना होगा ।

आत्मविश्वास, चुनौतियों और विपरीत परिस्थितियों में संतुलन के साथ सहजता बनाये रखना लक्ष्य— प्राप्ति हेतु आवश्यक तत्व है , यह बात विद्यार्थियों को अपने आचरण से सि करनी होगी। हमें कानून की पढ़ाई को सिर्फ आजीविका पालन करने का एक मात्र जरिया नहीं बनाना है, अपितु गांधी जी के सपनों को पूरा करने हेतु एक ऐसा सच्चा आंदोलन चलाना है जो मानव मन की संवेदनाओं से, उसकी आत्मा से , उसकी आत्मा के प्रवाह से जन्मता हो ।

बस, इतना ही ।

## डॉ. निर्मल मित्रल

(पूर्व अकादमिक डायरेक्टर)

महात्मा गांधी कॉलेज ऑफ लॉ



## CHAIRMAN'S MESSAGE

It gives me great pleasure to learn that the academic team at MGCL has published the first issue of the college magazine - "MGCL CHRONICLE". The process of achieving excellence in education involves active development and articulation of the creative thought process that emerges due to learning. The **"MGCL CHRONICLE"** shall provide a platform to all students and staff to hone their skills of creative expression apart from presenting a trip down the memory lane through its yearly round up of activities and achievements.

My best wishes to the entire team of  
**"MGCL CHRONICLE".**

**Durga Singh Tomar**  
Chairman, MGCL



## VICE-CHAIRMAN'S MESSAGE

Congratulations to the entire community of MGCL Chronicle. I'm certain that the MGCL Chronicle will not only serve a platform for the students to express their creativity and imagination but also help inspire, build and involve the MGCL Community to think, articulate and contribute content that stands out in the field of law.

The end product is usually a deceptively simple reflection of the input effort. I believe the remarkable synergy between the team members has resulted in a success. I extend my best wishes to all the members of the editorial committee and all the students who have helped breaking the ice by bringing out this much awaited issue.

**Yash Tomar**

Vice-Chairman, MGCL

## EDITOR'S MESSAGE

Welcome to the first issue of MGCL CHRONICLE. The MGCL CHRONICLE is a platform for the MGCL community to express their originality of thought and expression. The contents of the magazine reflect the wonderful creativity and imagination of the students and faculty especially in the field of law. The mission of the magazine is to inspire, build and involve the MGCL Community to think, articulate and contribute content that stands out. The magazine, alongside, also endeavors to capture nostalgic moments of the year gone by and highlight the significant developments at MGCL and achievements of students.

The end product is usually a deceptively simple reflection of the input effort. But the remarkable synergy between the team members has resulted in this success. I extend my heartfelt gratitude to all the members of the editorial committee, the Vice-Chairman for his valuable guidance and all the staff and students who have helped breathing life into these pages and in bringing out this issue of MGCL CHRONICLE.

Hope you enjoy reading it as much as we have writing it.

**S.P.S. Raghav**

Editor





# Mahatma Gandhi on Law

-Y. P Singh

"YOU MUST BE THE CHANGE YOU WISH TO SEE IN THE WORLD"  
-MAHATMA GANDHI

Gandhi's approach to understanding the world was intrinsic in contrast to being superimposed—observing the world through his 'inner eyes' rather than relying on his ordinary senses. According to him, the focus for all human development was the 'Self'. If an individual can inculcate positive values by looking inwards into the being and make positive efforts to evolve values based on good conscience in the personality, then such a person is able to accomplish 'self-discipline' and effect 'self-rule' or 'swaraj' in himself/herself. Such a person then becomes self-capable to check the root cause of all problems pertaining to human interaction and development as well as to catalyze the world society toward positive growth. Such approach is grounded on the commonality of the basic tenets of religious ethics and positive ethical morality, and not on the narrow practices of negative religious law stipulating vengeance-based moralities, or absolute legalism and penalism that advocate 'Do Nots' against the iron-laws of a stern, revengeful and external God situated only to control human behaviour. In this way, human activities are sought to be oriented toward positive actions based on self-righteousness, rather than toward mechanical responses to fixed logical clauses of an absolute law promulgated by an external supernatural authority. So then, the focus of all transformation is the Self alone.

In tune with his thought, Gandhi derived his theories from his own experiments with himself in real life and the transformation that occurred in him due to influences during his youth, his child marriage, his western education in England, his discovery of the 'Bhagwat-Gita', Tolstoy, Ruskin, Thoreau, his Guru, his experiences as an attorney in South Africa and subsequently as the socio-political leader in the Indian national struggle for independence. Due to positive transformation in himself, he became a great reformer, a powerful negotiator, a consciousness raiser and came to be regarded the world over as a great soul—'Mahatma'.

Through his synthesis of the underlying principles of ethics of the East and the West and by addressing the causes of social unfairness and injustice, Gandhi points out that most human activities are honest and just only if they are assigned a moral qualifier that is aimed at preserving not just law, but ethics. As long as these moral qualifiers are not honoured in human societies,

we cannot expect to find a solution to corruption, exploitation and despotism. Gandhi thus advocates a bottoms-up approach to people to look for the roots of their problems, as opposed to behaving in a top-down situation, where lack of law and order is assigned by the powerful top to the weak bottom for lack of obedience. In this context, Gandhi discovered seven root causes of injustice and unfairness that comprise volitional human activities devoid of socially redeeming moral content: activities devoid of socially-redeeming moral content –

***Wealth without Work***

***Pleasure without Conscience***

***Knowledge without Character***

***Commerce without Morality***

***Science without Humanity***

***Worship without Sacrifice***

***Politics without Principles***

**Gandhi's law of self-rule consisted in observing the 11 vows that make a human being an ideal person and an ideal citizen of humanity, namely:**

**Brahmacharya**—Chastity in thought, word and deed, which removes selfishness and sense gratification in an individual

**Firmness of mind**—Willpower to observe chastity

**Aswaad**—Contentment, particularly of the palate

**Asteya**—Non-acquisition: discouragement of multiplication of wants that lead to theft

**Aparigraha**—Non-possession of property, i.e., detachment from worldly objects and possessions

**Abhaya**—Fearlessness to face the truth of our weaknesses

**Removal of Untouchability**—Freedom from apartheid and practice of equality toward all fellow humans, regardless of their race, religion, colour, sex or socio-economic status

**Bread Labour**—Duty to work for a livelihood

**Sarvadharma Sambhava**—Respect for all religions equally as revelations of the same truth, i.e., respect for the faith of others

**Swadeshi**—Achievement of self-realization and self-dependence so as to enable one to do service to immediate neighbours and to society, culminating in the final detachment of the soul from the earthly bondage of selfish possessions

**Ahimsa**—Practicing non-violence by renouncing all evil so as to cultivate universal love for all that is not restricted to mere non-killing, but extends to all thought and action

**Truth**—Realization of God through devotion and the eternal principle of love (This means, even if a wrongdoer does a great harm, one must not be angry. Instead, one should love such a person, as we do to a patient suffering from a disease requiring care and cure, without submission to his wrongful act and without contracting the disease itself. This involves self-suffering and the ability to do service to cure the social disease that causes people to become law-breakers and criminals, and has threefold influence—over the penitent himself, on the wrongdoer and over the congregation.

It is this approach of Gandhi that must be understood in order to analyze his ideas on law. Gandhi's concept of law is primarily based on the unique principle of conscience and 'Swaraj' as opposed to the western law based on coercion and punishment. Gandhi has rooted law in religion, 'satyagraha' and moral values, such as 'Ahimsa', which are deeply rooted in the Indian ethos. According to him, an ethically unjust law ought not to, and shall not be, tolerated by people howsoever rigorous may be the punishment stipulated for breaking it. Such law must be opposed, disobeyed and overthrown by the positive action of the masses to be replaced by a just and righteous law instead. For Gandhi, "the law was—an eye for an eye makes the whole world blind".

Gandhi differentiated between law as logic and law as practice. He challenged law's violence by showing how law's logic should be supplanted with law's practice and action. Further, he emphasised on duties rather than rights, for rights are wants attached with certain material worldly possessions and emphasising on them would lead to violence and failure in observing the vows of Asteya, Brahmacharya and Ahimsa. Law and order thus results not as a result of fear of punishment for violation of a written code (which may in most part be unknown to the general public and yet its ignorance cannot be pleaded as an excuse), but as a product of positive conduct of righteous persons that naturally arises from within themselves due to their self-discipline.



Concepts such as equality, fraternity and secularism enshrined in the Constitution have to be interpreted in the light of the above philosophy to understand them from his point-of-view. Significantly, the Directive Principles of State Policy relate to the above sense of positive duty. In the related articles, the state itself is duty bound to take positive action to ensure a certain status. This is in the Gandhian taste itself. However, the state may be far from having achieved the targets envisaged. But this, according to Gandhi, is natural and admissible, as perfection can only be achieved through persistent efforts, and the process of realisation is a continual pursuit. In my opinion, in so far as the state does not fail to make improvements in its efforts to implement the Directives, it is still in tune with the Gandhian sense of duty. A similar undercurrent emphasising self-correction may be noticed in Gandhi's opinions about equality and secularism.

'Secularism' is meant to be an onus on the character of people constituting India. Although the word 'secular' was sometimes used with contempt for the clergy (as being synonymous with 'ignorant') before the mid-19th century, the word came to be popularised politically later in the 20th century when more democratic forms of government came to be established across the world. The Motilal Nehru Committee Report on the Principles of the Constitution of India in 1928 made no reference to the word itself; though the spirit of the Report is entirely secular. The Karachi Resolution in March 1931, to which Gandhi, Jawaharlal Nehru and Maulana Azad were party, stipulates religious neutrality of the state. Secularism is writ large on the resolution, but the word is absent. Recently, the term secularism has been the focus of much political argument. It is relevant here to discuss what it means from Gandhi's point-of-view. Clearly, it appears to be embedded in his concept of 'Sarvadharmā Sambhava'. However, we must observe Gandhi's own comments on the term during his speeches and writings.



The word secular occurs early in his writings and speeches in 1933 in relation to a bill pending before the central legislature regarding untouchability. Gandhi supported the bill deeming it as proper for it sought to withdraw the sanction of “secular law” from a “custom that is repugnant to the moral sense of mankind”. On May 6, 1933, he said that untouchability “cannot and ought not to have the sanction of the law of a secular state”. Later in November, he defended the Bill against the charge that it was an undue interference in religion saying that it was a situation when the state must interfere, as it was not an “undue” interference. In January 1935, addressing the Central Legislature he said that “even if the whole body of Hindu opinion were to be against the removal of untouchability, still he would advise a secular legislature like the Assembly not to tolerate that attitude.”

Later in January of 1942, while discussing the Pakistan scheme he remarked, “What conflict of interests can there be between Hindus and Muslims in the matter of revenue, sanitation, police, justice or the use of public conveniences? The difference can only be in religious usage and observance with which a secular state has no concern”. This is an instance of his synthesis of different religious thoughts by determining the highest common factor in them all.

“If I were a dictator, religion and state would be separate. I swear by my religion. I will die for it. But it is my personal affair. The state has nothing to do with it. The state would look after your secular welfare, health, communications, foreign relations, currency and so on, but not your or my religion. That is everybody’s personal concern!” said Gandhi to a missionary in 1946. A deeper look here reveals his vision of the future of world democracies. These are, in fact, the areas that the state is retaining as core areas and devolving power in the rest. In the modern says of privatization, too, the state is retaining health, communication, currency, foreign relation, defense, and social welfare leaving the rest on social bodies and NGO s. From the point of view of modern democracies this is termed as de-centralization of power in areas that are not ‘secular’ duties. However, on the issue of property, it is still far from being Gandhian.

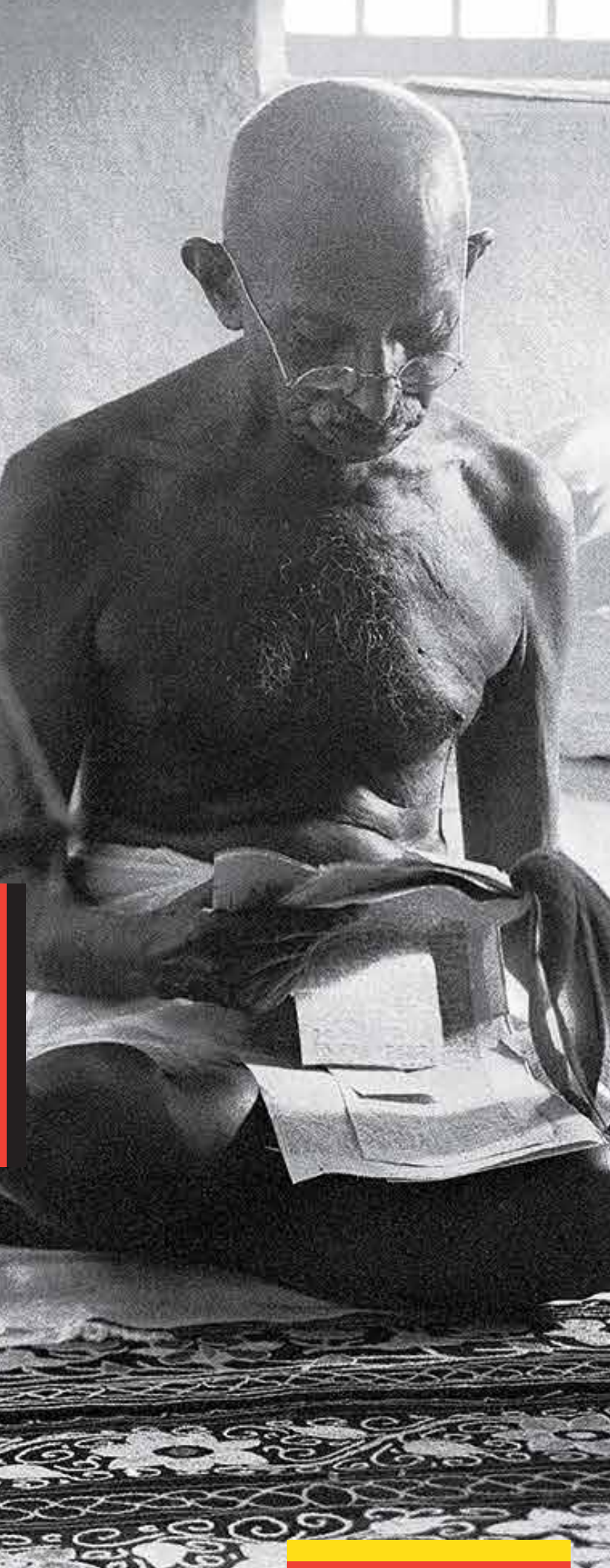
By separating religion from state Gandhi also asserts the independence of religious thought from state control since according to him religion becomes a fundamental right of the self for the improvement of the

individual deriving its authority from higher echelons of morality and humanity that the state has no right to govern. In this sense he is strongly religious. He preaches a person to be strongly religious and the state to be strongly secular. While the individual must practice the highest standards laid down in his respective religion to bring about self-perfection, the state must be totally free from religious influence while contemplating the betterment of its masses. Since religion dealt with personal improvement, and state law with improvement of the public at large. Thus, both are assigned specific duties. However, being religious is distinguished from being fanatic in his visualization, for concurrently he prescribes relative freedom and respect of all religions with respect to each other.

To elaborate further, on August 16, 1947, in his talks with Rev. Kellas of the Scottish Church College, Calcutta, he said “the state should undoubtedly be secular. It could never promote denominational education out of public funds. Everyone living in it should be entitled to profess his religion without let or hindrance, so long as the citizen obeys the common law of the land. There should be no interference with missionary effort, but no mission could enjoy the patronage of the state as it did during the foreign regime.” This understanding came to be reflected in Articles 25, 26 and 27 of the Indian Constitution. Harijan reported Gandhi’s speech in Narkeldanga thus: “In India, for whose fashioning he had worked all his life, every man enjoyed equality of status, whatever his religion. The state was bound to be wholly secular. He went so far as to say that no denominational institution in it should enjoy state patronage. All subjects would thus be equal in the eye of the law.” At Deshbandhu Park in Calcutta on August 22, 1947, he said “Religion was a personal matter and if we succeeded in confining it to the personal plane, all would be well in our political life...If officers of Government as well as members of the public undertook the responsibility and worked wholeheartedly for the creation of a secular state, we could build a new India that would be the glory of the world.”

When AICC adopted resolutions on minorities, the aim of Congress was defined as a “democratic secular state where all citizens enjoy full rights”. On Guru Nanak’s birthday on 28th November 1947, Gandhi opposed spending of state funds for the renovation of the Somnath temple saying, “After all, we have formed the





Government for all. It is a secular government, that is, it is not a theocratic government, rather it does not belong to any particular religion. Hence it cannot spend money on the basis of communities. Gandhi's idea of a state being secular was that of being guided by the basic elements of humanism in society, which according to him was the guiding force in all religions and which existed as a commonality. In January 1948 he wrote: "A well-organized body of constructive workers will be needed. Their service to the people will be their sanction and the merit of their work will be their charter. The ministers will draw their inspiration from such a body which will advise and guide the secular government."

The concept of a nation, too, according to Gandhi was based on territorial integrity rather than one being based on religion-based regionalism. It is not surprising that states today that are headed by religious fanatics have not only ignored the development of their masses, but have also created great risks and imbalances to regional and global peace and security. Over a period of time, they have not only proved their failure, but they have also subjected their people to peril due to persistent war and socio-economic disaster. This stands a clear evidence of the repercussion Gandhi warns about when a state fails to be secular.

A state that is secular does not allow itself to be influenced by the considerations of personal religion of its leaders or its ruling class, but by the sole consideration of the issue of development of its masses based on the principles of humanism. A secular state is a state in which its political leaders should strive constructively, based on the merit of their work, for the service of the people and without forcing their personal likes and dislikes or matters of their faith onto others.

As we can see, Gandhi's concept of secularism is grounded, as a corollary, on the fundamental principle of equality of all mankind. This in turn is rooted deeply in the basic common principles found in all religions. The most important one is Ahimsa—non-violence in thought, word and deed.

[to be continued in the next issue]

# DEBATE EUTHANASIA

Mandeep Kaur  
Rashpal Singh Gill • Rahul Dubey  
Shivani • Surabhi Goyal

## What is Euthanasia?

Euthanasia is the practice of killing somebody without pain who wants to die because he/she is suffering from a disease that cannot be cured.

Euthanasia has many definitions. The Pro-life Alliance defines it as: "any action or omission intended to end the life of a patient on the grounds that his or her life is not worth living".

The modern definition of euthanasia is: "A good death brought about by a doctor providing drugs or an injection to bring a peaceful end to the dying process."

## History and Origin

The word 'euthanasia' was first used in the medical context by Francis Bacon in the 17th century, to refer to an easy, painless death during which it was a physician's responsibility to alleviate the physical suffering of the body.

Euthanasia has deep historical roots. Before Hippocrates, euthanasia was a routine procedure and physicians assumed they had the authority to kill patients for whom they gave up hope of recovery without asking for their permission. They accepted euthanasia as part of their medical practice. Hippocrates regarded this act of killing as a hindrance to the establishment of confidentiality between patients and physicians.

According to the Universal Medical Oath a practitioner swears "I will give no deadly medicine to anyone if asked, nor suggest any such counsel".

Euthanasia also has a dark historical connection with the Nazis. In that regime the euthanasia program, also called Action T4, targeted institutions and hospitals caring for the mentally disabled and psychiatric patients. In October of 1939, Hitler signed a decree enabling doctors to grant mercy death to patients judged "incurable", representing the ideology called 'life unworthy of life'. The program began with the killing of children under three with serious hereditary diseases, including suspected idiocy.

Euthanasia was practiced in Ancient Greece and Rome. For example, hemlock was employed as a means of hastening death on the island of Kea, a technique also employed in Marseille. Euthanasia, in the sense of deliberate hastening of a person's death, was supported by Socrates, Plato and Seneca; although, Hippocrates appears to have spoken against the practice.

## Classification of Euthanasia

### 1. Voluntary Euthanasia

Voluntary euthanasia is conducted with the consent of the patient. It is legal in Belgium, Luxembourg and the Netherlands.

### 2. Non-voluntary Euthanasia

It is conducted when the consent of the patient is unavailable. Examples include child euthanasia, which is legal worldwide but decriminalized under certain specific circumstances in the Netherlands under the Groningen Protocol.

### 3. Involuntary Euthanasia

It is conducted against the will of the patient.

## Passive and Active Euthanasia

Voluntary, non-voluntary and involuntary types can be further divided into passive and active variants.

Passive euthanasia entails withholding treatment that is necessary for the continuance of life. Passive voluntary euthanasia is legal throughout the US per *CRUZAN V. DIRECTOR, MISSOURI DEPARTMENT OF HEALTH*.

Active euthanasia entails the use of lethal substance or forces such as administering a legal injection and is more controversial.

When the patient brings about his or her own death with the assistance of a physician, the term 'assisted suicide' is often used instead. Assisted suicide, therefore, is the act of intentionally killing oneself with the assistance of another who provides the knowledge, means or both. It is legal in Switzerland and the US states of California, Oregon, Washington, Montana and Vermont.



## Legality of Euthanasia

Every individual strives to live "a good death" or an easy death. Euthanasia is a compound of two Greek words 'eu' meaning good and 'thanasia' meaning death. Efforts to change government policies on euthanasia of humans in the 20th and 21st centuries have met with limited success in western countries. Human euthanasia policies have also been developed by a variety of NGOs, most probably medical associations and advocacy organizations. Euthanasia has been legalized in Switzerland (1942), Australia (1996), The Netherlands (2001), Belgium (2002) and Luxembourg (2009).

A law legalizing euthanasia in the Australian state of Victoria will come into effect in mid 2019.

## Euthanasia in Japan

The Japanese government has no official laws on the status of euthanasia, and the supreme court of Japan has never ruled on the matter. Rather, to date, Japan's euthanasia policy has been decided by two local court cases, one in Nagoya in 1962 and another after an incident at Tokai University in 1995. The first case involved passive euthanasia and the latter case involved active euthanasia. The judgment in these cases set forth a legal framework and a set of conditions within which both passive and active euthanasia could be legal.

Nevertheless, in both of these particular cases, the doctors were found guilty of violating these conditions when taking the lives of their patients. Further, because the findings of these courts have yet to be upheld at the national level, these precedents are not necessarily binding. Nevertheless, at present, there is a tentative legal framework for implementing euthanasia in Japan.

## Sati, Jauhar and Saka Pratha in India

The customs of Sati, Jauhar and Saka pratha may be taken as evidences of providing the above arguments. Sati stood for a custom of self-immolation of a widowed woman by sitting on the funeral pyre of her deceased husband. Although, a scholar, Varun Prabhat (2006) argued that Sati was not an ancient custom; its modern connotations were invented by the Christian missionaries. Some famous examples are Sati Anusuiya and Sati Savitri.

Raja Ram Mohan Roy (1772-1833) initiated a movement against Sati pratha and pursued it till the horrible custom was abolished in 1829 by Lord William Bentinck, the then Governor General of East India Company. Even in recent times, Roop Kumar performed Sati on the burning pyre of her husband in village Deorala of Sikar district in Rajasthan.

Jauhar and SaKa refer to the voluntary deaths of men and women of the Rajput clan in order to avoid capture and dishonor at the hands of their enemies. This was done sometimes by Hindu and Sikh women in the Mughal times. There are recorded incidents of this on a

much smaller scale during the partition in 1947.

Jauhar was originally the voluntary death on a funeral pyre performed by the queens and royal women folk of the defeated Rajput kingdoms. The term is extended to describe the occasional practice of mass suicide carried out in medieval times by Rajput women and men.

## PROS & CONS

The right to die should be a matter of personal choice. We are able to choose all kinds of things, from whom we marry to what kind of work we do. I have long favoured legalizing physician-assisted dying for terminally ill patients whose suffering can't be relieved in any way. The crux of the matter is whether states should continue to make it a crime for a dying person to end his life, no matter how great his pain and suffering. Data from places where assisted dying has been legalized, such as Oregon, suggest that the fear of opponents of the bill is largely unjustified. The most significant vulnerability in many of the terminally ill is that of agonizing chronic and unbelievable pain. Assisted dying in no way precludes giving the best palliative care possible, but rather integrates compassionate care and respect for the patient's autonomy and ultimately makes death with dignity a real option. There is no financial incentive to encourage people to accelerate their deaths.

Campaigning to end certain people's lives doesn't end suffering; it passes on the suffering to other similar people, who now have to fear they are the next people in line to be seen as having worthless lives. Legalizing euthanasia would allow the killing of people who do not genuinely volunteer to be killed. It would have a wide range of profoundly detrimental effects. Most patients request lethal drugs not due to pain, but due to concerns like 'loss of dignity' and 'becoming a burden on others'. The solution is to care for people in ways that assure them that they have dignity and it is a privilege, not a burden, to care for them as long as they live. Seeing suicide as a solution for some illness can only undermine the willingness of doctors and society to learn how to show real compassion and address patients' pain and other problems.

## Related Major Cases

### The 14-year old Chilean girl who asked the President to let her die

A 14-year old Chilean girl suffering from terminal cystic fibrosis is asking her country's President to end her life. Valentina Maureira, who was diagnosed with cystic fibrosis as a baby, recently published an emotional self-shot video on her Facebook page for a meeting with the Chilean President, Michelle Bachelet.

"My name is Valentina Maureira. I am 14 and I suffer from cystic fibrosis", the teenager says in the video, which is filmed with a cell phone in a hospital room. "I



tired of living with this disease and she can authorize an injection that will allow me to sleep forever." The girl's video has also sparked a broader conversation about whether euthanasia should be legalized in the largely Catholic nation.

### **The terminally-ill, 29-year-old wife who moved to Oregon to have the right to die on her own terms**

On November 1, 2014, Brittany Maynard, the terminally ill woman who pledged to end her own life under Oregon's 'Death with Dignity Law', died in her home from a lethal dose of barbiturates. She was 29. She posted a goodbye letter to her Facebook page.

Maynard and her husband Dan Diaz drew national attention a month before, when the couple announced they intended to take advantage of Oregon's 'Death with Dignity Law', which allows residents with terminal illnesses to take their own lives with lethal drugs provided by a doctor. The couple had relocated to Oregon from California in June specifically for the law, which was adopted in the state in 1994.

Maynard was diagnosed with brain cancer—stage 4 glioblastoma—in January 2014 and was told she had six months to live. Her decision to end her own life has reignited the right-to-die and assisted suicide debate. In the lead-up to her death, her campaign was criticized as exploitative, but her supporters heralded her as brave.

### **The healthy woman who wanted to die beside her ailing husband**

Inseparable throughout their 50 years of marriage, George and Betty Coumbias of Canada wanted to die together. They sought to become the first husband and wife to complete simultaneous suicides with legal authorization. They were featured in John Zaritsky's 2007 documentary, 'The Suicide Tourist'. Although assisted suicide is illegal in Canada, they hoped to end their lives with the approval of the government of Switzerland.

The couple's request was unusual in that, while George Coumbias suffered from heart disease, Betty Coumbias was reported to be in excellent health. Ludwig Minelli, director of the Swiss assisted-suicide group Dignitas, petitioned the Canton of Zurich to grant doctors the authority to issue lethal drugs to healthy people after they have been counseled by his organization. The Coumbiases ultimately had their request turned down. However, in 2009, in a weird turn of events, Betty Coumbias developed cancer and died, while George continues to live with his heart condition.

### **The Belgium man who was killed by euthanasia after a botched sex change**

In 2013, Nathan, born Nancy Verhelst, 44, was given legal euthanasia, most likely by lethal injection, on the grounds of "unbearable psychological suffering."

# DEBATE EUTHANASIA



Wim Distelmans, a cancer specialist who carried out the euthanasia, is the same doctor who a year before gave lethal injections to congenitally deaf twins who were frightened they were also going blind.

Mr Verhelst had hormone therapy in 2009, followed by a mastectomy and surgery to construct a penis in 2012. But "none of these operations worked as desired."

Euthanasia carried out by doctors at the request of a patient is only legal in three European countries—the Netherlands, Belgium and Luxembourg.

### **A woman with a large face tumor**

In 2000, a retired French teacher, Chantal Sébire, was diagnosed with esthesioneuroblastoma, a rare form of cancer of which only 200 cases have been reported in the past 20 years. Sébire refused any treatment at the time of her diagnosis, not wishing to take the risk of the surgery or medications, and started fighting for the right to die through euthanasia.

On March 2008, a French court denied the 52-year-old former schoolteacher and mother of three's request for assisted suicide. Ms. Sébire was asking for the right to be assisted to die, not the right to die itself. France was one of the first countries to legalize suicide in 1790.

A few days later, the severely disfigured woman was found dead in her home. An autopsy concluded that she did not die of natural causes. Subsequent blood tests revealed a toxic concentration of the drug Pentobarbital, a barbiturate that is not available in French pharmacies, but is used elsewhere in the world for the purpose of physician assisted suicide.

### **Indian Scenario on Euthanasia**

On March 9, 2018, the Supreme Court of India legalized passive euthanasia by means of the withdrawal of life support to patients in a permanent vegetative state. The decision was made as part of the verdict in a case involving Aruna Shandbag who had been in a persistent vegetative state (PVS) until her death in 2015. The Supreme Court of India passed a historic judgement, permitting passive euthanasia in the country. The judgement was passed in the wake of Pinky Virani plea to the highest court in December 2009 under the constitutional provision of "next friend". In the landmark law, which places the power of choice in the hands of the individual, our government, medical or

religious control which sees all suffering as “destiny”. The Supreme Court specified to irreversible conditions to permit passive euthanasia in its 2011 law. These were 1 – Those who are brain dead for whom the ventilator can be switched off; and 2 - Those who are in persistent vegetative state(PVS) for whom the feed can be tapered out and pain managing palliatives be added, according to the laid down international specification. The same judgment law also asked for the scrapping of IPC S.309, which penalizes those who survive suicide attempts. In December 2014, government of India declared its intension to do so. However, on February 2014, a three judge bench of Supreme Court of India termed the judgement in Aruna Shanbaug case to be “inconsistent in itself” and referred the issue of euthanasia to its five judges. On December 23, 2014, the Government of India endorsed and revalidated the passive euthanasia judgement law in a press release after stating in the Rajya Sabha as follows: “That the Hon’ble Supreme Court of India in its judgment dated 07.03.2011 [WP ( criminal) no: 115 of 2009] while dismissing the plea for mercy killing in a particular case laid down comprehensive guidelines to process the case relating to passive euthanasia. At present, there is no proposal to enact legislation on this subject and the judgement of Hon’ble Supreme Court is binding on all”. The Health Minister, JP Nadda, stated this in a written reply in the Rajya Sabha. The high court rejected active euthanasia by means of lethal injection. In the absence of a law regulating euthanasia in India, the court stated that its decision becomes the law of the land until the Indian Parliament enacts a suitable law. Active euthanasia, including the administration of lethal compound for the purpose of ending life, is still illegal in India as well as in most countries. In 2018, the Supreme Court of India declared through a five judge constitution bench that if strict guidelines are followed, the government would honor living wills and allow consenting patients to be passively euthanized if the patient suffers from a terminal illness or is in a vegetative state.

## **Latest Indian Cases**

**The issue of euthanasia has caught legal and public attention in the past in India. India is one such country, which allows euthanasia under specific conditions.**

### **Anamika Mishra Case**

A woman from Kanpur wrote to Prime Minister Narendra Modi seeking euthanasia for her daughter Anamika Mishra who is suffering from muscular dystrophy disease. Her father lost his life because of the disease and now, because of the disease and poor financial condition, her mother has asked for euthanasia for her daughter.

### **Aruna Shanbaug Case**

Aruna Shanbaug was a nurse working at the King Edward Memorial Hospital, Mumbai. On 27th November 1973, she was strangled by Sohan Lal Walmiki, a sweeper. During the attack she was strangled with a chain and the deprivation of oxygen has left her in a vegetative state ever since.

### **Jeet Narayan of Mirzapur In U.P.**

In 2008, Jeet Narayan pleaded for euthanasia for his four sons, Durgesh (22), Sarvesh (18), Brijesh (13) and Sushil (10), who are all crippled and paralyzed below the neck. Narayan wrote to the President of India, who later rejected his plea.

### **Mr. Narayan and Mrs. Iravati Lavate, Mumbai**

An elderly couple from Thakur Duwar, Moar Charni road, Mumbai, wrote to the President, seeking permission for active euthanasia. Mrs. Lavate, a retired school principal, and her husband, a former government employee, have no major medical problems. But the fear of falling terminally ill made them write to the President, seeking permission for mercy killing.

## **Present Scenario**

Every beginning has its inevitable end however painful it may be. The debate over euthanasia has to basically commence with the thread bare discussion on the concept of life and its various aspects, such as the value of life, quality of life, sanctity of life and protection of life. It has been observed that not only the value, but also the quality of life is extremely important. Quality of life has been evaluated in the clinical and legal perspective, as it targets the intrinsic value of life in the course of legalizing euthanasia. The need for protection of life has been emphasized by moral philosophers, which has universal acceptance in a civilized society. For them, life has innate importance, and therefore, irrespective of the quality of life, it should be protected. Quality and sanctity of life cannot, for sure, be considered one and the same. Rather, quality of life is in contrast to the sanctity of life principle and it forms the heart of the euthanasia debate with the evaluative status of life. Hence, in the opinion of the researcher, although life as a concept is very important, it should not be forced in exceptional cases, such as terminal illness. The principle of self-determination and best interests of patients have been considered as fundamental for arguing in favour of legalizing euthanasia. The argument of self-determination provides a firm base to convince that if human beings have the right to self-determination, as a corollary, they should also have a right to die with dignity when haunted with certain compelling conditions. Moreover, the protection and promotion of





the concept of best interests of the patients influences all concerned to be in favour of legalizing euthanasia. Instead of suffering from pain and agony, a dignified death may be in the best interest of a terminally ill patient if the patient so wishes. All these factors provide the base for legalization of euthanasia. Article 21 of the Indian Constitution guarantees among other things life, liberty, privacy and human dignity. The Indian judiciary magnificently has broadened the horizon of Article 21 by providing the widest possible interpretation to include various facets of life under this provision. Unfortunately, the judiciary has not gathered the courage to interpret right to die with dignity as a facet of Article 21. It is equally important to identify the glaring difference amongst suicide, physician assisted suicide, passive euthanasia, active euthanasia, voluntary and involuntary euthanasia.

Further, after considering the various forms of euthanasia, all forms should not be considered for legalization, as that may lead to catastrophic situation. Only euthanasia in the form of physician assisted suicide needs to be given attention by the law makers in India. The right to refuse medical treatment along with the right to self autonomy and the doctrine of informed consent supports legalization of euthanasia. However, these rights can be exercised only by competent patients. Terminally ill patients may either be competent or incompetent. Those who are incompetent will be in a PVS state, which is dealt with at length at the relevant place in this research. The patient in PVS or those who are incompetent will be forced to await their death in pain and suffering. Legalization of euthanasia may overcome such practical difficulties faced by terminally ill patients, provided the law makes provision for advance directive.

By and large, mercy killing and euthanasia in the form of physician assisted suicide are misconceived to be one and the same by the majority, but the reality is that both these concepts differ substantially. Mercy killing includes termination of life by assistance of any person for very many reasons like physical or mental disabilities, whereas euthanasia is demanded always in the case of a person who is a terminally ill patient. Mercy killing in itself is wrong, as it includes mercy for insane or differently abled persons. However, in the case of euthanasia (physician assisted suicide), the sole

reason is terminal illness of the patient awaiting death with unbearable pain and agony. If euthanasia is legalized, undoubtedly it can be regulated by the state to avoid its misuse. After having a basic idea about life and its various aspects and accomplishing the task of distinguishing physician assisted suicide from other forms of euthanasia, there is a felt need to consider the medico-legal aspect involved in the euthanasia debate. The tremendous development in medical technology has posed certain ethical and moral questions about death. Even to exactly declare the time of death, there is confusion. In the past, the cessation of spontaneous respiration, circulation, heart beats, brain function, etc. were entirely considered as the criteria for determining that a patient is dead. However, since four decades, advances in medical technology have made it possible to sustain brain function despite the absence of spontaneous respiration and circulation. It is even possible to maintain respiration and circulation when the brain is not functioning. Where only the higher regions of the brain have ceased to function, spontaneous respiration and circulation may continue for months or even years. Life can now be sustained on artificial life support systems for days, months and years together. The medical technology that helps all these things in life certainly needs appreciation, but when it is used beyond requirement, it adds to the suffering of the patient instead of relieving the pain. The medical ethics, i.e., autonomy, beneficence, non-maleficence and justice, unwittingly oppose any form of euthanasia.

At present, there is no law available in India. As earlier averred, when the Indian Constitution was drafted, nobody amongst the Indians were experienced in democracy. While drafting the Indian Constitution the makers of the Constitution incorporated the required provisions of other working constitutions. Similarly, in case of legalizing euthanasia, experience can be gathered from countries like Netherlands, Belgium, Switzerland, Luxemburg and State of Oregon where euthanasia is legalized. Although historically euthanasia was condemned, the time is ripe now to rewrite history. The World Federation of Right to Die Societies demonstrates the endeavour of proponents of right to die with dignity worldwide.

**Indian Context** - After a clear understanding of euthanasia, it is now time to turn towards India for legalization of euthanasia in the form of physician assisted suicide. The process of law making in this context should start with assessing the possibility of incorporating terminally ill patients' right to die with dignity in Part III of the Constitution of India, which is the *Suprema Lex* of the land. While considering legalization of euthanasia in the light of Preamble precept and the Fundamental Rights, such as right to equality and right to life and



liberty, it is strongly felt that it is inevitable to consider right to die with dignity as a part and parcel of the Fundamental Rights mentioned herein. The Apex Court has gone to the extent of holding that the right to have electricity as part of comfort falls within the ambit of Article 21. In view of this, it is a reasonable demand to plead for terminally ill patients' right to die with dignity also as one of the facets of Article 21 till this right finds its independent place in Part III of the Constitution. Terminal illness can very well be a factor to be considered for applying the principle of intelligible differentia that paves way for reasonable classification of other individuals and terminally ill patients.

Apart from the Constitution, the IPC also needs to be amended if legalization of euthanasia takes place, because in case of apprehended misuse of euthanasia law, penal law should provide the 448 required sanction. The IPC at present has no such separate provision, as India is yet to legalize euthanasia. Presently, euthanasia in the form of physician assisted suicide is confused with suicide and assisted suicide and dealt with under Sections 299, 300, etc. In the commission of crime, mens rea plays a vital role, but in euthanasia, there is no mens rea. Apart from the Constitution and IPC, as euthanasia deals with termination of life, Human Rights challenges are also analyzed. Human rights always protect and promote life, whereas euthanasia promotes death for terminally ill patients. However, if terminally ill patients are denied of death with dignity, it will amount to cruel and inhuman treatment to them. Hence, allowing terminally ill patients to die by physician assisted suicide is not a violation of Human Rights; instead, it is protecting their rights even in the last and crucial phase of life.

Quality of life should be maintained not only in clinical decisions, but also in legal perspective. The best interests of the patient should be considered not only for protection of life but also for allowing to die peacefully when the patient is in a hopeless health condition. Physician assisted suicide should be conceptually differentiated from the other forms of euthanasia, for legalizing euthanasia in India. Suicide and mercy killing should not be confused with physician assisted suicide.

Right to refuse medical treatment, self-autonomy and informed consent form the base for legalizing euthanasia. These concepts should be further developed for facilitating death with dignity to terminally ill patients. The courts, while deciding cases of right to die, should interpret laws in order to provide justice to terminally ill patients. Each case will have different aspects, which should be fairly judged. The state is under an obligation to protect the life of individuals. However, just as the state lawfully takes away life by awarding capital punishment, likewise, the state can allow death with dignity in exceptional circumstances. Law allows abortion under certain conditions. Likewise, death with dignity should also be allowed for terminally ill patients.

There is an immediate need to modify a few provisions of medical ethics. According to medical ethics, a doctor cannot prescribe a deadly medicine to a patient and also cannot participate in performing an abortion; whereas, abortions are performed by doctors worldwide and euthanasia in a few countries. Artificial life support systems and other life prolonging treatments should not be used to prolong death of terminally ill patients against their wish. Instead, such medical resources should be used to improve the health condition of patients who have chances of recovery. A well equipped set of laws for dying with dignity will definitely enable the courts to avoid the possibility of tension and conflict between the law and medical science while at the same time safe-guarding the individual interest. Presently, there is considerable pressure, and it's time for a change in the law to allow doctors, under certain strict conditions, to administer a lethal injection at the patient's request. The government may still play a pivotal role in regulating and limiting the liberty interest, but it may not prohibit it in all circumstances.



## IS TRUE SPIRIT OF PREAMBLE NURTURED.....? (ROLE OF CRAFTMANSHIPS OF THE FOUNDING FATHERS)

# Arun Pratap Singh

*“A man has but one youth, and considering the consequences of employing that well, he has reason to think himself very rich, for that gone, all the wealth in the world will not purchase another.”*

**- Sir R. North, in 'A Discourse on the Study of the Laws'**

No reading of any Constitution can be complete without reading it from the beginning to the end. While the end may expand, or alter, the point of commencement can never change. It is the Preamble wherefrom the Constitution commences; hence the significance of the Preamble.

It is no exaggeration to say that the Preamble to the Constitution of India is its spirit and backbone. The Preamble pervades through and inspires all provisions of the Constitution. It is also the quintessence of the Constitution. Ever since it was adopted by the Constituent Assembly, it has enabled the Constitution to stand erect, neither bending nor breaking. Hundreds of judicial pronouncements made by stalwarts testify to the Constitution of India having stood like a rock facing the splash and floods of stormy waters; the waters have flown by but the Constitution and its Preamble have not swayed away.

No stone has been left unturned to enunciate the true spirit and foundation of the Preamble by the eminent jurists and lawyers of the country. However, an interesting aspect remains unknown about what was accepted for incorporation and what was rejected while framing the Preamble. In this article, I will try to summarise some of the discussions held during the process of framing the Preamble, which were ultimately annulled.

We have seen the craftsmanship of the Founding Fathers in constructing the Preamble. Each word was chosen and placed in an order, none without significance. Not one word could have been dropped in the then Preamble. They guarded against any inclusion in the Preamble, which would have disturbed the equilibrium and drifted the Constitution away from its path so well laid.

The Preamble was taken up for consideration and adopted on 17th October, 1949. During discussions on the text of the Preamble, several amendments were suggested by the members of the Constituent Assembly, but none were accepted. Following is a brief glimpse into the nature of amendments moved and then either withdrawn or not accepted.

Maulana Hasrat Mohani suggested that in the Preamble, the words “We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic” be substituted with:

“We the people of India having solemnly resolved to constitute India into a Sovereign Federal Republic”

Or,

“We, the People of India, having solemnly resolved to constitute India into a Sovereign independent Republic”

Maulana insisted on the word “federal” or “independent” preceding “republic”. He also suggested the phrase “Sovereign Democratic Republic” be substituted with “independent sovereign republic”, by way of concession to Dr. Ambedkar. The amendment and the alternative were both annulled.

The next amendment moved by Maulana Hasrat Mohani was to substitute the expression “Sovereign Democratic Republic” with

“Union of India Socialist Republics to be called UISR on the lines of USSR”, Dr Rajendra Prasad in Chair asked Maulana: “Do you really suggest that the Constitution we have passed is on the lines of USSR?”

Dr. Rajendra Prasad echoed the sense of the House that the suggested amendments were inconsistent with the whole Constitution the Assembly had passed. At the end, this amendment too was annulled.





A large number of amendments, including the one moved by Shri H.V. Kamath related to two things—in some of the amendments, the name of God was brought in some form or the other in the preamble and in some others, the name of Mahatma Gandhi was sought to be brought in some form or the other. Dr. Rajendra Prasad pointed out to the Assembly that in Schedule III of the Draft Constitution as passed, an oath or affirmation is prescribed for ministers and others who have to take office. “Swear in the name of God” or “Solemnly affirm” have been placed in the prescribed form so as to give freedom of choice to believers and non-believers who take the oath or affirmation. How such an alternative was capable of being incorporated in the Preamble asked Dr. Rajendra Prasad. The members generally tried to persuade H.V. Kamath and appealed to him not to drag God or Mahatma Gandhi into discussions in the House and withdraw the amendments. H.V. Kamath refused to yield. One member, probably in a lighter vein, suggested to Shri Kamath that instead of “in the name of God”, he should be pleased to accept “in the name of Goddess”. The suggestion witnessed a hearty laughter. An Hon’ble Member remarked that God includes Goddess. Rajendra Prasad observed with a sense of sorrow that it was bad that the name of God was being brought into discussion and appealed to the members not to become flippant on account of God. Another member reminded that the political movement for freedom was started with the singing of “Bande Mataram”, which meant an invocation to a Goddess. It meant belief in a Goddess. The suggestion was that if the name of God was to be brought in at all, then the name of the Goddess should also be brought in. Although, the amendment should not have been brought at all, H.V. Kamath insisted on his amendment being put to vote. He claimed a division. The Assembly divided by show of hands and in spite of an earnest appeal by Pt. Govind Malaviya that was being done was an injustice to this country and to its people, and therefore it should be known who says what in this matter. The motion for amendment received 41 “ayes” and 68 “noes” and was consequently annulled. H.V. Kamath could not resist observing—“This, Sir, is a black day in our annals. God save India.”

**Prof. Shibban Lal Saxena suggested the following preamble to be adopted in place of the one under consideration, and moved a resolution:**

“That for the Preamble, the following be substituted:

“In the name of God the Almighty, under whose inspiration and guidance, the Father of our nation, Mahatma Gandhi, led the nation from slavery into freedom, by unique adherence to the eternal principles of satya and ahimsa, and who sustained the millions of our countrymen and the martyrs of the nation

in their heroic and unrelenting struggle to regain the complete independence of our Motherland, We, the people of Bharat, having solemnly resolved to constitute Bharat into a Sovereign, Independent, Democratic, Socialist, Republic and to secure to all its citizens

- **Justice, social economic and political.**
- **Liberty of thought, expression, belief, faith and worship.**
- **Equality of status and of opportunity; and to promote among them all.**
- **Fraternity, assuring the dignity and freedom of the individual, and the unity of the country and the Nation.**

In our constituent Assembly this day of Vikrami Samvat 2006 (the 26th day of January, 1950 AD) do hereby enact, adopt and give to ourselves this constitution.”

**Pandit Govind Malaviya** suggested by way of amendment the following preamble be adopted:

That in the Preamble, for the words “we the people of India”; the following be substituted:

‘By the grace of Parameshwar, the Supreme being, Lord of the Universe (Called by different names by different people of the world.)

From whom emanates all that is good and wise, and who in the Prime Source of all Authority.

We the people of Bharat (India)

Humbly acknowledging gratefully remembering our great Mahatma Mohandas Karamchand Gandhi and the innumerable sons and daughters of this land who have laboured, struggled and suffered for our freedom , and -----’

**Shri Brajeshwar Prasad** moved an amendment for adopting the following Preamble:

“We, the people of India, having resolved to constitute India into a Secular Cooperative Commonwealth to establish Socialist order and to secure to all its citizens-

- **An adequate means of Livelihood**
- **Free and Compulsory Education**
- **Free Medical Aid**
- **Compulsory Military Training**

Do hereby ordain and establish this constitution for India.”

Dr. P.S. Deshmukh asked a sarcastic question: “What about a camel and motorcycle?” Shri Brajeshwar Prasad replied, “It is for you to suggest those things”.

All the above said amendments were annulled.



— PARLIAMENT OF INDIA —



# MY EXPERIENCE AT INTERNATIONAL ARBITRATION CONFERENCE – PARIS

Rashi Agarwal



It has been a great experience attending the Tour De Arbitration-Cards as one of the Indian Delegates in Paris this February where I met many erudite international colleagues, veteran attorneys, experts in various legal disciplines, and legal practitioners from different world cultures. Personally, I think this conference was very well organized and very successful. I totally enjoyed the week-long event with so many interesting seminars and discussions on various legal topics.

This event organised by Damodaram Sanjivayya National Law University, Vizag and supported by the International Chamber of Commerce, welcomed over a hundred scholars and practitioners from around the world to Paris, France scheduled between 1st and 5th February, 2019. Supporting partners included ICC Court of Arbitration, Gide Loyrette Nouel, Cleary Gottlieb, Freshfields Bruckhaus Deringer and DLA Piper that are among the best law firms in Paris.

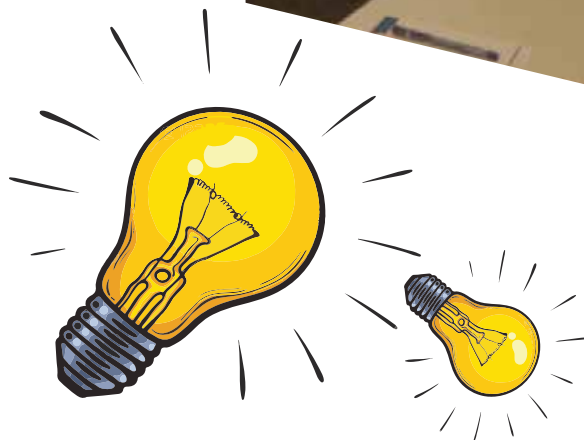
The main topics that were covered were 'Effective Advocacy in International Arbitration', 'How to Make Institutional Arbitration work?', 'Arbitration Market In Asia', 'Parallel Proceedings and Consolidation of Related Arbitrations', 'World Investment Courts', 'Investment Arbitration' and many other relevant topics. Some light was also shed on 'Commercial Arbitration and Dispute Settlement'.

On the first day of the Conference, where there was the special session for young lawyers and Indian delegates, I enjoyed the presentations by Ms. Ziva Filipic, Managing Counsel of the ICC Court who talked about International Commercial Arbitration and personal experiences in her legal practice with Asian countries. After the presentation I had a very pleasant private conversation with her which was very enriching.

After attending the conference I got to know about the new aspects and scope of Arbitration, its scope in Asia and worldwide, and its future market. It was great in terms of own experience, new information and sharing expertise of peers.

International arbitration should grow in tandem with the globalization of trade and national economies. It was predicted that perhaps in the year 2043 we will still be gathering information about arbitrators exclusively via word of mouth, complaining that the procedure is too expensive for many disputes, struggling to agree for dates of hearings 12 to 24 months after the first procedural conference, and arguing over whether a respondent in Europe should receive additional weeks to reply on a submission that falls due during the summer holidays.

On March 7, 2018, the Union Cabinet approved the Arbitration and Conciliation (Amendment) Bill, 2018 for introduction in the parliament. Under this, the Arbitration Council of India is proposed to be established as an independent body primarily to grade arbitral institutions and accredit arbitrators in India. Its functions can be extended to creating an Arbitration Bar with enrolment of arbitration practitioners. This will widen the scope and future arbitration proceedings in India and it will be at par with other regions of the world like London, Paris and Singapore where foreign lawyers and law firms are allowed to provide legal services in arbitration proceedings. All in all, I would like to express my heart-felt thanks to people who made this conference possible and all my colleagues during that one exciting week in Paris.



# GENDER DISCRIMINATION AND WOMEN'S DEVELOPMENT IN INDIA

**Amit Agarwal**

The State level Seminar on Gender Bias in Society held at MGCL was a platform for all students and intellectuals from all over the state to come together and develop a better understanding of laws relating to Gender Justice in India. It was a two day conference scheduled from 30th November to 1st December, 2018.

Learned speakers such as Justice R. B. Dixit (Retd. Justice, High Court of MP), Dr. Subhash Sharma (Dean Law Faculty, ITM University), Dr. Sanjay Kulshreshtha (Dean Law Faculty, Jiwaji University), Dr. Vanadana Premi (Social Activist), Gayatri Singh (Advocate MP High Court), Dr. A.P.S. Chauhan and Dr. S. K. Singh of Sambhav CSO shared their concerns, views and opinions.

It is known to all that the pragmatic precept varies tremendously from the vision and objectives of enacted laws. The seminar was organised with the sole purpose of comprehending this polarity and its reasons. It is rightly said that no one can change the world in a day but everyone can do their part. Nevertheless, this small initiative of Mahatma Gandhi College of Law to make this nation a better place to live in is an important step in the right direction.

The topics that were addressed included female foeticide, harassment at work place, representation in Parliament, honour killing, transgender, gender injustice, domestic violence and child marriage.

The main causes of gender inequality are poverty, illiteracy, lack of employment opportunities, social customs, beliefs and practices, social attitude and lack of awareness among women. Preference for a male child and sex selection are, in fact, products of gender discrimination. The underlying causes of bias against women and girls are incredibly complex social issues.

A brutal gang rape followed by murder of a 23-year-old woman and assault on her companion on a moving bus in the Indian capital New Delhi in December 2012 prompted the government to tighten laws and make rape punishable by death. Of the six persons accused in the December 2012 case, a court convicted four men and sentenced them to death, and convicted one juvenile and sentenced him to three years in custody. A fifth adult allegedly committed suicide in police custody before trial.

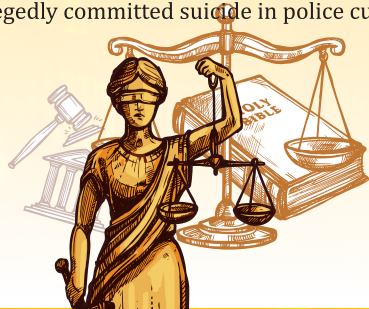


According to sources 'cruelty by husband and relatives' continues to occupy the highest share (43.6%) among the crimes committed against women in 2012 followed by 'assault on women with the intent to outrage her modesty' (18.6%). About 15.7% cases were that of kidnapping and abduction, 10.2% of rape, 3.8% of 'insult to the modesty of women' and 3.7% of 'dowry prohibition act'. Out of them 10.8% cases pertaining to 'cruelty by husband and relatives' underwent trial by the courts in 2012 and conviction was done in 1.6% cases. The highest conviction rate of 7.8% was achieved for the crime 'insult to the modesty of women'. Out of a total of 24915 victims of rape in 2012, there were 1051 victims who were less than 10 years of age.

Government schemes such as 'Beti Bachao Beti Pado', Mother and Child Tracking System, 'Pradhan Mantri Matritva Vandana Yojana', Rajiv Gandhi Scheme for Empowerment of Adolescent Girls, 'Rashtriya Mahila Kosh' and various subsidy schemes for women were launched.

According to the World Bank data of 2017 in India in terms of the overall working-age population ratio there is a higher percentage of women than men. This presents a greater opportunity for growth-related benefits by creating more jobs for women (aged 15-64) across all sectors. However, relational inequalities in facilitating access to opportunities, including basic economic facilities and protective social security, make it extremely difficult for women to gain access to higher-income opportunities.

In conclusion, gender inequality and domestic violence against women is still an ongoing issue in the world. Women are faced with unwanted discrimination everyday of their lives, due to their gender, which they have no control over. A contributing factor to abuse is the social inequality between man and women. Domestic violence is mainly caused by familial inequalities that set barriers between man and woman. The abuser, already dehumanized, further dehumanizes the victim with his mistreatment. Most of this abuse stems from male patriarchal values in society, and can be shown through both structural and direct violence. The women in our world do not agree with this treatment and make movements to put an end to it. These women not only suffer from the physical effects of gender inequality but also from psychological and emotional effects. The feminist and Marxist perspective pushes for equality, as both see inequalities as the main cause of domestic violence against women. It is in everyone's best interest to put an end to inequalities and bridge the gap between our fellow human beings.





# THE EQUALITY OF ENTRY

-Afreen Hussain

There is an immense stress placed on the term 'Equality' in the Constitution of India. The principle of gender equality is enshrined in the Preamble of the Indian Constitution. The Preamble blurs the segregation between genders and applies to all citizens as one entity. Any provision treating women with inequality is not constitutional, because unequal treatment of women invites the wrath of the Constitution. Women can't be asked to think how a man or society desire.

Equality isn't just about gaining the same footing as the male gender; it means to be satisfied with the provisions or rights, which would acknowledge the differences and needs of each gender class, and to feel equally recognized. To ensure equality of the female gender in society, the Indian judiciary gave historical verdict in the favour of women. In 2016, the High Court of Bombay gave a verdict to grant access to women inside the shrine of Shanishingnapur temple of Maharashtra

and the sanctum sanctorum of the Haji Ali durgah [Article 14, 15 and 25]. The Sabarimala temple case was a test of constitutional morality. The exclusion of women between the ages of 12 and 50 violated the equality principle of [Article 14, 15 and 17]. The verdict lifted centuries old ban on the entry of women inside the temple.

In the year 2018, the Supreme Court of India gave a milestone verdict to ban triple talaq, which is a 1,400 year old practice. It violates the fundamental right of Muslim women [Article 14 and 21].

These judgements were an act of social engineering and based on the belief that faith and custom must correspond to the diktats of modernity. The Constitution grants us "Empower yourself with knowledge and back your opinions to implement change, or we do all be flogging a dead horse with no solution or gain".

We do have a long way to go in terms of equal balance as well as to uplift the position and address the needs of women in the Indian society.



*equality*



# CHANAKYA (KAUTILYA)

**"THE HINDU STATESMAN,  
PHILOSOPHER, ECONOMIST, JURIST"**

**-Mandeep Kaur**

One of the greatest figures of wisdom and knowledge in the Indian history is Chanakya. He is estimated to have lived from 350-283 B.C. Chanakya is depicted to be the "Pioneer Economist of India". Chanakya was the adviser and Prime Minister of Emperor Chandragupta. Chanakya was a professor at the University of Takshila (located in present day Pakistan) and was an expert in commerce, warfare, economics, etc. His famous works include Chanakya Neeti, Arthashastra and Neetishastra.

Chanakya is also known by the name of Kautilya and Vishnugupta as is mentioned in his text. His famous work called Arthashastra is a classic example of statecraft and politics and is read in Europe even today. It basically consists of the principles of politics and how the state works. An able ruler has to be a ruthless leader to make sure that the state works smoothly and efficiently.

According to many historians, Chanakya had a very manipulative nature that helped in the formation of Maurya Dynasty—one of the largest dynasties ever known in ancient India. It is said that the real name of Chanakya was Vishnugupta and he was a minister at the court of Dhana Nanda—a ruler of Nanda Dynasty that built up the Magadha Empire. When Chanakya was born, he had a full set of teeth, which is a sign that he would become a king or an emperor. But since he was born in a Brahmin family, it was considered inappropriate. Thus, his teeth were broken and it was predicted that he would make another person a king and rule through him.

Even as a child, Chanakya had the qualities of a born leader. His level of knowledge was beyond the children of his age. Chanakya was thrown out of the court of King Nanda, as he was a blunt man and spoke his mind clearly. Chanakya swore he would take revenge. He came across Chandragupta as a young child. Even at that age, Chandragupta was a born leader and showed the qualities of an able Emperor.

Chanakya was the guiding force behind Chandragupta and the vital person who made him an able Emperor. Chanakya added poison in little amounts daily in Chandragupta's food in order to make him immune to poison, lest some enemy tries to poison him. However, Chandragupta was unaware about this and once gave a little food to his wife who was in the ninth month of pregnancy. She didn't survive, but Chanakya cut open her belly and took out the baby. This baby grew up to become an able emperor named Bindusara. He had a minister named Subandhu who did not like Chanakya. He told Bindusara that Chanakya had killed his mother. Without assessing the facts, Bindusara confronted Chanakya. On knowing the whole story, he felt ashamed at his hasty actions and begged for forgiveness. He asked Subandhu to go and apologize and make Chanakya come back. Subandhu was very cunning and on the pretext of going to apologize to Chanakya, he killed him. That ended the life of a great person like Chanakya just because of political rivalry.



# SOME INTERESTING FACTS ABOUT CHANAKYA

- Chanakya is considered as extremely cunning and shrewd politician. He is also known as one of the earliest economists of ancient India.
- Ashwin Sanghi wrote “Chanakya’s Chant”, a book in which Sanghi claims that it was Chanakya who was responsible for uniting the entire nation when India was attacked by Alexander the Great.
- There are many legends, which state that Chanakya actually maintained an army of females. These women were known as Vishakanyas. As per legends, Vishakanyas were extremely beautiful girls who were given small doses of poison every day along with food.
- Because of the small doses of poison, the girls grew resistant to any kind of poisoning. Not just that, it is believed that the girls were given poison until they reached puberty and then they were used for secret assassination missions.
- As per legends, the poisons fed to the girls made them so deadly that even their kisses could easily kill a person.
- Chanakya was very well aware that when it comes to women, men are pretty weak at their knees. So, when Alexander invaded, Chanakya unleashed the Vishakanyas who seduced the army men of Alexander and the moment they became physically close, those men died because of the poison these women had in their bodies.
- Chanakya was possibly the man who pioneered inequality among men and women that India faces today. He believed that a man can experience heaven on earth if he gets a wife who acts according to his wishes. Else, it will be a hell on earth!
- Chanakya was the pioneer of economics. He was the first person to write on economics. He wrote the Arthashastra, which holds significance even today, more than 2,000 years after his death.
- About Chanakya’s death, there are two legends. It is said that Chanakya died in 283 BCE. The most commonly accepted fact is that he went to a jungle and starved himself to death. Equally accepted theory is that there was a minister in Samrat Bindusara’s court by the name of Subandhu. Subandhu hated Chanakya and in order to remove him from power, Sabandhu told Bindusara about the death of his mother (Chandragupta Maurya’s wife) but portrayed that Chanakya was responsible for her death and that Chanakya intentionally did that.
- Upon hearing the story, Bindusara became angry and decided to kill Chanakya. However, Chanakya decided to end his own life once he learned that Samrat Bindusara hated him by starving himself to death. Realizing his mistake Bindusara sent Subandhu to stop Chanakya. Instead, Subandhu burnt Chanakya alive.



# TRANSFORMING INTERNATIONAL INITIATIVES ON GENDER JUSTICE: THE INDIAN PARADIGM

Sharmistha Singh

## Introduction

The concept of social justice is very broad and comprehensive; in a way, it is the sin-qua-non for all organs of governments, constitutions and laws. Social justice is, in fact, the objective of all development—technological, socio-economic, political and otherwise. Governments across the world today have opened a new window in their outlook toward the female society, in particular, and the idea of gender justice has gained significant momentum, internationally, as the most important target area of efforts to deliver social justice.

The human civilization owes much of its stable development and evolution to the women-kind that constitutes half of the world society. The contribution of women to build a just society and social order can hardly be over-emphasized. However, the administration of justice, and law and order, has largely rested in the hands of men, and down the ages, it has resulted in a deep dichotomy between the social status of women in contrast to that of men. The gaping valley between haves and have-nots has to be painfully traversed now and abridged by the social scientists and engineers of today so as to build a more coherent and peaceful world future. India, on account of it being one of the most populous country and the most ancient civilization, with all its socio-cultural and spiritual richness, has the most vital role to play in this gender based socio-engineering. We, in India, have not only to recognize this gender disparity at the international level and stand first in implementation of remedial measures, but also to show to the world community indigenous and novel paths in the administration of gender justice.

## Global Concerns: Status of Women

Gender disparity and the status of women in the world today can be understood by the quantum of extreme kind of physical violence targeted against women and girls. In the United States, a woman is battered every 15 seconds; a woman is raped every 6 minutes. In North Africa, 6,000 women are genitally mutilated every day. This year, more than 15,000 women will be sold into sexual slavery in China. In Bangladesh, 200 women will be horribly disfigured when their spurned husbands or suitors burn them with acid. In India, more than 7,000 women will be murdered by their families and in-laws due to disputes over dowry. There have been 83 reported assaults against female US military personnel during the last 18 months of military action and enforcement in Iraq, Kuwait and Bahrain. 215 cases of violence against women by US military personnel have been reported in Afghanistan. Women and children make up for 80 percent of the world's refugee population. Worldwide, women make up more than half the population but occupy only 12.7 percent of all parliamentary seats. More young women across the world are being struck by HIV/AIDS. According to United Nations Population Fund (UNFPA), more than 100 million girls over the next decade will marry before their 18th birthday, including many aged as young as eight or nine, if the problem of child marriage is ignored. Women in Africa grow 80 percent of the continent's food but own as little as 1 percent of land in sub-Saharan Africa. Saudi women cannot check into a hotel without a male family member. Hundreds of Azerbaijani women are being trafficked each year. The abortion laws are causing increasing number of maternal deaths among young women. Many of the tens of millions of people who have been displaced from their homes are women fleeing oppressive norms and violence. Women and children are the worst affected during and after armed conflicts as well as by the indiscriminate use of anti-personnel landmines used by security forces. The list exposes the horrible saga of the abuse of women's Human Rights that requires immediate action.



## Women, Peace and Security: Global Initiatives

The concern of the international community to the rights and protection of women and girls has grown rapidly. There has been a paradigm shift in the UN as the Security Council and the Secretary General have initiated a multi-pronged approach to ensure Gender Justice and Gender Mainstreaming. Two major landmarks in this effort have been the UN Security Council Resolution 1325 adopted in October 2000 and the Rome Statute of the International Criminal Court.

Resolution 1325 was the first time the Security Council addressed the disproportionate and unique impact of armed conflicts on women; recognized the under-valued and under-utilized contributions women make to conflict prevention, conflict resolution, peace-keeping and peace-building at community, national and international levels and stressed the importance of their equal participation as active agents in peace and security. The UNSCR 1325 affirms the need for accountability for war-time violence against women. With the growing number of peacekeeping operations and sexual abuses by peace keeping forces, the Security Council, vide Resolution 1400, has directed all states maintaining peacekeeping forces to bring to justice their own nationals responsible for such crimes and that there would be no exemptions for peacekeepers from prosecution by international tribunals and the International Criminal Court. The Security Council is holding regular follow-up debates, and the Secretary General will submit his final report on the full implementation of the UNSCR 1325 in October 2004.

The Rome Statute has facilitated setting up of the International Criminal Court (ICC), which will be the world's first permanent international tribunal to try individuals for genocide, war crimes and crimes against humanity. The Statute reflects a quantum shift in the recognition of crimes against women by including rape, sexual slavery, forced pregnancy and other forms of gender-based sexual violence in the statute of the ICC as being the gravest, when historically they had not been treated as such in humanitarian law.

The Security Council realizes today that peace is inextricably linked with equality between women and men; that while entire communities suffer the consequences of armed conflict, women and girls are particularly affected; that the impact of violation of the Human Rights of women in conflict situations is experienced by women of all ages;

that women constitute the majority of the world's refugees and internally displaced persons; that women must be empowered politically and economically and represented adequately at all levels of decision making connected with peacekeeping, peace-building, reconciliation and reconstruction and that the role of women is crucial in preserving social order and in fostering a culture of peace in strife-torn communities and societies. The Security Council has called upon all governments and actors to refrain from Human Rights abuses of women and to bring about gender sensitization of judiciary at national level and gender mainstreaming.

The UN General Assembly in its 58th session, vide Resolution 142 on women and political participation, stresses "the important role of women" and "their full and equal participation in all efforts to maintain and promote peace and security". March 2004 witnessed the appointment of two women— Elisabeth Lindenmayer and Angela Kane—to the posts of Assistant Secretary General. The Secretary General, in keeping with his commitment to gender parity within the UN, had targeted to increase the women envoys and representatives from a minimum of 30 percent in the next three years to total gender parity by 2015. Another initiative called the 50:50 Campaign has been launched to secure gender parity in governments across the world. But recently the target year has been pushed again to 2030. As of 31st December 2015 the UN could achieve gender parity in only 5 of its entities at higher professional levels. In the case of the rest of the organizational entities the figure was less than 10 percent short of parity. Nonetheless, it is a great achievement for the UN itself to be near parity..

Goal 5 of the recently developed Sustainable Development Goals reiterates as a stand-alone target "to achieve gender equality and empower all women and girls". However, despite the fact that 143 out of 195 countries guarantee constitutional equality to women the statistics reveal that, as of 2015, hardly 23 percent of parliamentarians, taking all 143 nations together, were female.

The United Nations Development Fund for Women (UNIFEM) along with its fifteen offices has undertaken significant work in the area of HIV/AIDS and conflict resolution, integrating gender into Early Warning Systems to prevent conflicts and conducting research studies in legal, socio-economic, justice, truth and reconciliation issues for bringing about gender mainstreaming.



The issue of health is being simultaneously addressed by the UN Population Fund (UNFPA), World Health Organization (WHO), UNHCR and UNICEF. The Hunger Project has been initiated to identify strategies to transform the conditions that give rise to the persistence of hunger. The greatest obstacle to ending hunger is the severe subjugation, marginalization and disempowerment of women who are responsible for the key actions of the family: family nutrition, health, education, food production and also family income.

The issue of gender injustice has been taken up by several NGOs and Human Rights activists in a major way, and their multinational presence and networking will act as a significant pressure on local and national governments to act to eliminate all biases in their legal and political framework in due course of time.

### **Gender Issues: Strategies for India**

Perhaps it has taken too long for the international community to recognize that the status of women, being unequal, requires special attention. In contrast, the founding fathers of the Indian Constitution were visionaries and had led their times by recognizing this problem. The Constitution of India already accords a special status to women. Here, it is important to realize that with regard to social justice India has a much greater and more evolved thought than other countries. However, there is an utter lack of self-confidence in implementing our indigenous ideas and paradigms. Such ideas ought not only to be robustly implemented in the country, but also advocated internationally as leading examples. Above all, we must never forget Gandhi. In the words of Martin Luther King: "If humanity is to progress, Gandhi is inescapable".

Mahatma Gandhi's concept of making a village the unit of all national development is one of the most pertinent examples. With regard to achieving social justice, we must energize our efforts to strengthen the grass root systems by way of Panchayati Raj. All international statutes and national laws should be interpreted at the village level and seen from the point of view of the poorest inhabitant of the society. Only then can we correctly perceive the best methodologies and test their effectiveness.

Looking at the UN Security Council Resolution 1325 (Clause-1), it urges the member states to ensure increased representation of women at all decision making levels, institutions and mechanisms for the prevention, management and resolution of conflict. In the Indian perspective, this would mean increased number of women representing India at the international level, by way of appointing more women ambassadors in the international agencies, and increased participation of women at national and regional level in resolving the Kashmir, Naga, Tamil, and other border area conflicts. This would certainly require more representation of women in local bodies, state assemblies and district administration of affected areas, which is significantly lacking. Taking cue from Kenya, which has Peace and Development Committees at both village and district level, it will be interesting to explore the possibility of setting up 'Mahila Shanti avum Vikas Dal' at the village level in the conflict affected areas. This will have a two-pronged affect – one, of increasing women's participation in government, and two, of building local early warning



systems. Appropriate legislation may be affected to constitute the above. The above idea of 'Mahila Shanti avum Vikas Dal' can be linked to the 'Panchayati Raj' system in such a manner as to give them quasi-legal authority under the Rural Court "Gram Nyayalaya" system as conceptualized, for example, by the M.P. Government. Such a 'Dal' must be established throughout the country at the village level, as it can play a wider role in tackling issues of consumption, child marriage, dowry and female health. Alternatively, it will also support the National Commission for Women. At present, there is a strong need to establish a quasi-legal authority for women at the grass-root level. There is also a need for a Rural Legal Services in order to carry legal aid and justice to the common masses.

Significantly, household water management in rural as well as urban areas continues to be the domain of women of the house. Starting from waiting in long queues to fill water in pitchers and utensils to the utilization of water for cooking, washing and drinking purposes, the entire responsibility is borne by women. It is ironical that neither the municipal corporations, nor the village water management committees, nor any other water management body or irrigation department has enough representation of women. This issue needs an immediate solution, as water is a major scarcity and problem area in India and sometimes the cause of skirmishes and disputes at the ward and village level.

Resolution 1325 (Clause-8) calls on states to adopt a gender perspective, including "measures that ensure the protection of and respect for Human Rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary". This clause has much wider connotation and impact. The responsibility on the existing judicial system to become gender-sensitive can be performed by including a larger number of women judges or, alternatively, by setting up several smaller courts as "Mahila Adalats" to adjudicate smaller issues of women's rights and to arbitrate over disputes pertaining to women. Although, the existing Family Courts cover certain areas, they are still limited in scope and jurisdiction. The conceptualization of relevant solution lies in the domain of the Hon'ble Supreme Court of India. More women in District Consumer Forums need to be appointed, as they are direct users of consumer goods and have wider knowledge on suitability of such goods. Also required





# TRANSFORMING INTERNATIONAL INITIATIVES ON GENDER JUSTICE: THE INDIAN PARADIGM

on the legal front is a suitable change in the CrPC for laying down time-bound and quick disposal of criminal cases pertaining to atrocities on women, where woman is the aggrieved party.

As regards political representation, the record is still poor. The inability of the Indian Parliament to adopt the Women's Reservation Bill due to political fuss has taken away a golden opportunity from the country to lead the world in women's political rights field. We hope it will be adopted soon.

Issues of dowry and marital violence are currently dealt with in various provisions in the IPC, and the CrPC, but the root cause of this social evil is economic dependence of women on men. Inheritance laws have to be suitably modified to give more right to women over husband's property. Economic strength can also be ensured by providing for a lower rate of Stamp Duty for property registration in the name of women. Lower rate will prompt more women to be title-holders of immovable property, thereby giving them more economic strength and stability.

On the economic front, a higher rate of interest on savings accounts of women and a lower rate of professional tax for working women would be highly desirable in order to bring about economic empowerment of women.

In comparison to their counterparts, however, women in India enjoy a special status under the constitution and constitute a more vibrant and powerful community, but the population is large and class and regional disparities are glaring. It is only befitting that India, the country of "Shakti", should be a shining example in the world of gender equality and justice by paving an exemplary path in this direction.





# CYBER CRIME

## TROUBLE- MAKER IN INDIA

Pratiksha Pandey

Millions of people around the world use computers and internet every day. We all use it in schools, colleges, offices and even at home. Computers have made our life much easier than before. It has brought many benefits to the society. However, it has also brought major problems and cyber crime is one of them. The times have really changed. Nowadays, India has become a favourite spot for CYBER CRIMINALS, who are mostly hackers and other destructive users who commit crimes with the help of internet. These crimes are rising at an alarming rate.

Behind this the trend, which includes cyber crimes, are hacking, identity theft, spamming, phishing and cyber stalking.

### Cyber Crime against Individuals

At the receiving end of cyber crimes are children, consumers and regular internet users. Of these, cyber crime against children is the most significant issue, which should be focused on. One of the main areas of cyber crime is child pornography, which is documented sexual abuse of children. This is a serious threat to the safety of children.

### Solutions to Stop Cyber Crime against Children

Parents are required to be educated enough to recognize the risk of cyber crimes that their children may face while using the internet. This could be rectified by installing protective software on computers, which restricts access to certain websites containing pre-determined functions or keys, which are very much harmful for children. In addition, parents should advice their children to not to talk to any stranger in cyberspace, which can lead to dangerous situations. Parents can restrict their children's access by only allowing them to access pre-approved content on the internet, and thus manage their children's safety from sexually orientated content.

### Cyber Crime against Organisations

Cyber crime is extremely threatening to business and political websites. Cyber criminals often attack commercial websites, such as shopping websites and banks. Cyber crimes against commercial websites can occur in several ways. Cyber criminals often resort to piracy, such as downloading music, films and games illegally and stealing information that is private and therefore not freely accessible. Software piracy by cyber criminals can cause a serious problem in cyberspace.

### Solutions to Stop Cybercrime against Organisations

Companies should develop and secure their websites by providing anti-piracy software, which could possibly help to reduce the risk of cyber crimes.

# SURROGACY

RASHPAL  
SINGH GILL

In the 21st century, technology has helped broaden the traditional boundaries we typically put around the notion of family. One of the latest trends in reproduction is surrogacy, wherein a couple (or a single person) who, for whatever reason, cannot have children, hire a woman who can carry their offspring. Often, the childless couple is a wealthy, western one that, driven by high prices and heavy restrictions in their home country, opts to travel to developing countries, where the costs are lower and the legal environment more welcoming. For this reason, this type of surrogacy is known as 'outsourced pregnancy' or 'fertility tourism', and it is a booming industry. In India especially, clinics have popped up all over the country and many impoverished women, knowing the pay they receive will be enough to totally change their circumstances, are all too happy to sign up to be surrogates.

Though there are certainly moral questions that have rightly been raised, the global surrogacy industry should be recognized for the overwhelmingly positive impact it has had on people all over the world. Not only does it bring the miracle of life, it injects much-needed cash into impoverished areas. Nevertheless, there are many who are opposed—westerners, especially. They make the comparison between this benign industry, where all involved participate freely, and Margaret Atwood's *Handmaid's Tale*, a dystopian reimagining of a society in which women and their reproductive capabilities are controlled outright by men (Warner 2008). The comparison is a terrible one, one which completely misunderstands what is really going on. Rather than oppressing women, surrogacy gives women opportunities they can choose to act on or not, and those who

oppose it would rob participants of their right to self-determination.

Dissenters argue that surrogates in developing countries, many of whom are uneducated, cannot give their informed consent, because they cannot understand what is really expected of them (Williams 2013). This argument is pure condescension. Just because a person is uneducated, it does not mean they are incapable of rational thought. Most surrogacy clinics in India require that surrogates have already had multiple children of their own, ensuring they will be fully aware of the physical and emotional toll pregnancy will take. Furthermore, many surrogate mothers are anxious to be surrogates two or three times, suggesting that the experience can be as beneficial to surrogates as it is to the people who commission the child.

Another point of contention is the health risks involved in surrogacy. To be sure, this is one area that needs to be studied further, and potential surrogates need to be informed of the risks they are taking before they get involved. As far as we know now, though, the health risks are fairly low and manageable. Surrogates face only slightly greater risks than an average woman would normally face during pregnancy (Surrogacy in Canada Online 2017). Some surrogates react negatively to the fertility drugs that are used to increase the chances of successful fertilization; in rare instances, severe ovarian hyper-stimulation syndrome can occur. In general, however, surrogate mothers receive excellent healthcare, as it is in the clinic's best interest to ensure the health of their surrogates.

There are, of course, instances where a woman's health is negatively impacted by surrogacy; but these are exceptions, not the rule. We should remember that there are

health risks associated with many kinds of occupations, such as with mechanics or construction workers, but we do not argue that cars should not be fixed or homes not built because of the risk to the workers. Firemen and construction workers are adults who know the dangers and are capable of making their own decisions, as are surrogate mothers. The emphasis needs to be on ensuring that women are properly informed and taken care of, rather than condemning surrogacy altogether.

The most commonly-used argument against fertility tourism, however, is that it is exploitative, as it takes advantage of poverty-stricken women and pays them far less than a surrogate would usually be paid in a developed country, which is true. Though estimates vary, surrogacy in the West can cost tens of thousands of dollars more than in India, where, depending on which clinic you choose, the total fees could be as little as \$12,000. Of this, the surrogate will usually receive around \$6,000. The difference is how much that \$6,000 is worth. In India, that is enough to buy a house, or start a business, or send one's children to school. It can make an incredible impact on a woman's life, breaking the cycle of poverty for her and her family.

Moreover, attempting to discredit surrogacy because of the money involved is simply unrealistic. By this line of reasoning, anyone who does anything for pay is being exploited. There are various unpleasant aspects to pregnancy, and human beings rarely do unpleasant things without being rewarded. Obviously, few women would agree to be surrogates if they were not being paid, but payment does not delegitimize the practice.

What this all really comes down to is an inability to comprehend why surrogates behave in ways that contradict traditional ideas of motherhood and womanhood in general. In "Oh Baby Baby: The Problem of Surrogacy", for instance, Matthew Tieu argues that there are certain unbreakable bonds that naturally develop between a mother and the unborn child she carries during pregnancy. Surrogate mothers, says Tieu, will inevitably face great psychological trauma when forced to give up the baby, and those who do not feel the pain of separation, are simply repressing their true, deeply-seated feelings. This suggests that all women

possess the same maternal instincts (and emotions they have no control over). In reality, there is little empirical evidence to prove that there is really a 'special tie' between birth mother and fetus, and even if there is, most clinics counsel surrogates to prepare them to give up the baby. They are not damaged, but they are not unnatural either.

Before I conclude, I would like to make one last point that I realize people are not homogeneous, and their motives and experiences with surrogacy will of course vary. Not all people who seek surrogates do so because they are infertile; some might be motivated by a fear of pregnancy, or something else. Likewise, surely not all surrogates volunteer to be so out of an altruistic desire to provide for their families; it is entirely possible that they may simply want to buy a shiny new car. Whatever the motivation or rationalization, it just does not matter. Adult men and women have a right to make their own decisions and do what they want with their bodies, and until their actions do harm to another person, their moral status is not our business.

All of this is not to say that those who oppose surrogacy are entirely wrong to be wary of the practice. For centuries, the weight of the world has been pressed down upon female bodies and their reproductive organs, and we should certainly be suspicious of anything that seems as though it may be taking advantage of women. But when we look closer at surrogacy and abandon our preconceived ideas of motherhood, we can see that it should be seen as a source of empowerment, not oppression, for women. Far from a come-to-life *Handmaid's Tale*, surrogacy is a business where the providers, clients and many of the entrepreneurs who run the industry are all women. As technology continues to revolutionize reproduction, we should not only accept, but welcome the new opportunities that redefine motherhood and the family, and give us the power to control nature.





# THE ROOT CAUSES OF JUVENILE DELINQUENCY

Katyayini Angre

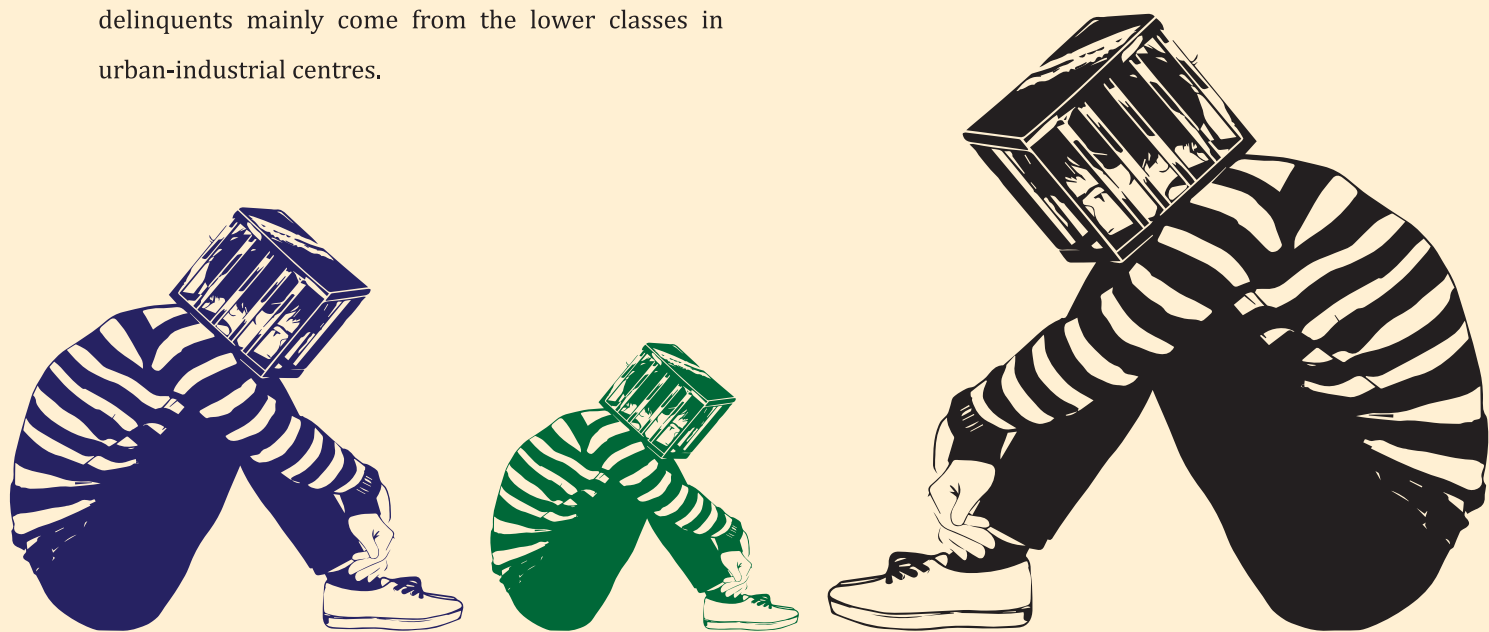
Juvenile delinquency is one of the major social problems found in almost all societies around the world. Young boys and girls under the age of sixteen years indulging in acts of social deviance are called juvenile delinquents. Juvenile delinquents indulge in all kinds of anti-social behavior, such as committing thefts, murders, bringing information for gangsters and intake of illicit drugs and alcohol. Gangs of 'veterans' give training to such youngsters, provide them with food and shelter and gradually turn them into child criminals. This type of deviance is a marked characteristic of urban-industrial areas of the West.



According to many psychological researchers, this delinquency is a form of mental imbalance found in children below the age of sixteen that arises due to certain circumstances; as a result of which, children start walking on the wrong path of life. Their circumstances are both personal as well as environmental. Personal causes may include lack of emotional balance due to parental neglect or even parental vindictiveness. Environmental factors include disturbed homes with alcoholic parents, chronic poverty, prolonged unemployment, parental desertion of children and overcrowded homes. Breakdown of community ties and rise of impersonal urbanism are factors responsible for the widespread occurrence of delinquent acts in towns and cities. Familial, economic and social causes also aggravate this deviance. Juvenile delinquents mainly come from the lower classes in urban-industrial centres.

The above mentioned are not the only factors responsible for the creation of destructive minds belonging to such young children. All parents must be warned against those distractions for their children, which will lead them towards a miserable life. Juvenile delinquents and their parents need a helping hand from those who care for and understand the feelings of such children who have earned an unwanted image of “future criminals” due to circumstances created by a careless and selfish society.

We must all join hands and prevent juvenile delinquency as much as possible. If we take our duties seriously towards our society and help the needy in whatever way required, financial or emotional, we might soon create a world that is free of not just this but many other social problems.



# JUVENILE DELINQUENCY

The background image shows a library with tall wooden bookshelves filled with books. In the foreground, a laptop is open on a desk, displaying a website. Next to it, a large, open, antique book lies flat. The word 'LAW' is superimposed in large, bold, yellow letters with a black outline.

# LAW

## AS AN INSTRUMENT OF SOCIAL CHANGE LAW

Surabhi Gupta

The collection of rules enforced by the authorities forms the backbone of every country. Any nation can reach a state of utter pandemonium if the laws are not followed by the citizens of that nation. It took our leaders months to write the longest constitution in the world. There certainly are reasons behind the Constitution of India containing 444 Articles in 22 Parts, 12 Schedules and 118 Amendments. Why did the leaders take so long to constitute the law by which the nation should be governed? The answer is simple enough—to avoid confusion and lay down the guidelines for governing India. There are numerous cases that are being already fought for and also countless many filed every day. Even a layman can understand the importance that law holds in the life of every individual. Everything, from assassination and theft to industrial and land disputes is totally covered under law and order. But a significant question arises about the impact of law and order on the social front of the nation.

Can law be an instrument of social change? The question itself takes the mind back to various social issues that have been highlighted since the third pillar of our democracy—Judiciary—one of it being the Food Security Bill. Honourable Supreme Court of India appointed State Advisors across the nation to help in drafting a Food Security Bill that would give the poorest of poor citizens a right to live a life of dignity by means of providing food and nutrition at a nominal rate. The impact of these schemes will be directly felt by a certain part of the society. Saying that the problem of hunger will be eradicated totally will be incorrect, but it will certainly be beneficial for the society. Besides providing food security, law can also drive significant changes on the social front. Every day the newspapers are tainted with headlines of rape and murder. Can the law do nothing to prevent it?



After the brutal assault and murder of the paramedical student in the capital city, Delhi, the entire nation froze for a while. They stood united to fight for the departed. But out of all the accused, the one who did the most heinous and brutal crime of all was judged by the Juvenile Justice Court. A person responsible for stopping another life, let alone assaulting the body in the worst imaginable way, would walk free and be able to breathe free air in a few years. What message does this send to the society? Had he been punished on the basis of the intensity of the crime committed, it would have sent a strong message to the society. It would have been the first of many steps that we would have initiated in order to drive a social change and make India a safer place to live in. If a person can commit a crime that a child could never think of, he certainly does not fit into the definition of 'juvenile'.

Law, if observed, can create an ideal state, a state that is fit for living. A fear of immediate and stringent ruling against the criminal can instill a fear in the mind of the possible wrong doers. It would set an example and certainly make the world a better place to live in. Another problem, just as big as the increasing number of cases of violence, is corruption. That issue was also recently very much highlighted after the demand for a Jan Lokpal Bill. Corruption has an indirect impact on the life of people. Apart from being morally wrong, people who support, observe or are silent spectators to corruption are also a social hazard. They are a social hazard because increasing corruption has caused irreparable damage to the nation. Making money by depriving the citizens of their right has been a daily affair for many. This acts as an obstruction on the path of development and also causes the common man a mountain of trouble that he has to deal with every day.

Something needs to be done in order to check the problem from increasing further more. This check can only be applied if the law of the nation is drafted to punish the corrupt. The third pillar of democracy—Judiciary—has also fallen into the trap of corruption over the years; sometimes under the influence of the

powerful and at other times under the influence of money. If lawmakers and enforcers of law fail to abide by law, the common man will also follow their footsteps. Power comes with great responsibilities. Law can be used as an instrument of social change, but to observe it, most importantly of all, the ones enforcing it should treat it with respect and abide by it. Secondly, the rules and regulation that are laid down should be followed by a set of stringent rules that can instill fear in the mind of those who merely think of breaking the rules and regulations, let alone putting their thoughts into action. Thirdly, lawmakers should think at the grass root level and devise laws that can drive change. An ideal social state would be when the society is free from criminal activities and governed with equality. People cannot learn to be morally correct by themselves; this has to be taught by means of law, not just by passing them but observing them stringently without delay. In the words of a great man, "No man is above law and no man is below it; nor do we ask any permission when we ask him to obey it".

**“No man is above the law  
and no man is below it;  
nor do we ask any permission  
when we ask him to obey it”**



# HOMOSEXUALITY IN INDIA

Surabhi Goyal

**"I am what I am, so take me as I am"**

– Johann Wolfgang von Goethe

## What is Homosexuality?

Homosexuality is a romantic attraction, sexual attraction or sexual behavior between members of the same sex or gender. As a sexual orientation, homosexuality is an "enduring pattern of emotional, romantic, and/or sexual attractions to people of the same sex".

## Section 377

Section 377 of the Indian Penal Code refers to 'unnatural offences'. It says, whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment of either description for a term, which may extend to 10 years and shall also be liable to pay a fine.

In 2009 in the case of Naz Foundation the Delhi High Court had ruled that Section 377 of the IPC, which criminalizes sex between adult homosexual men, was unconstitutional. However, in the case of Suresh Koushal in 2013 the apex court had set aside the 2009 order of the Delhi High Court and restored the criminality of sexual relationship between persons of the same sex. Later a five-member bench of the Supreme Court pronounced its verdict on 6th September 2018 in the case of Navtej Singh Johar . The Court bench headed by CJI Dipak Mishra, Justice R. F. Nariman, Justice A. M. Khanwilkar, Justice D. Y. Chandrachud

and Justice Indu Malhotra overruled the 2013 judgement of Koushal by stating that using the section of Indian Penal Code to victimize homosexuals was unconstitutional saying that the veil of social morality cannot be used to violate fundamental rights, and that consensual sex between two adults is permitted. Thus 377 would apply only to sex with animals or to cases where 'free consent' is absent, including all cases of minors. But in general 377 violates ARTICLE 14 of the Constitution, which guarantees all people "Equality before law"; ARTICLE 15, which prohibits "Discrimination on the grounds of religion, race, caste, sex, or place of birth" and ARTICLE 21, which guarantees "Protection of life and personal liberty", and thus could not be used to harass adult freely consenting homosexuals.

The bench had noted "Moral indignation, however strong, is not a valid basis for overriding individuals' fundamental rights of dignity and privacy. In our scheme of things, constitutional morality must outweigh the argument of public morality, even it be the majoritarian view". The Judgment quoted the verse by Vikram Seth:

The bench had noted "Moral indignation, howsoever strong, is not a valid basis for overriding individuals' fundamental rights of dignity and privacy. In our scheme of things, constitutional morality must outweigh the argument of public morality, even it be the majoritarian view". The Judgment quoted the verse by Vikram Seth:

“Through Love’s great power to be made whole  
In mind and body, heart and soul-  
Through freedom to find joy, or be  
By dint of joy itself set free  
In love and in companion hood:  
This is true and natural good.  
To undo justice, and to seek  
To quash the rights that guard the weak-  
To sneer at love, and wrench apart  
The bonds of body, mind and heart  
With specious reason and no rhyme:  
This is the true unnatural crime.”





# विनम्रता का महत्व

संदीप खोला

संस्कृत का एक सूत्र है—“विद्या ददाति विनयं, विनयात् याति पात्रताम्” जिसका अर्थ है कि विद्या से विनम्रता आती है एवं विनम्रता से पात्रता प्राप्त होती है। विनम्रता एक ऐसा गुण है जो अन्य लोगों को भी प्रशासित और सुशोभित कर देता है और यदि यह गुण न हो तो अन्य गुणों को भी बेकार और प्रभावहीन बना देता है क्योंकि जहाँ विनम्रता होगी वहाँ अहंकार नहीं होगा। विद्यार्थियों के इस गुण की बड़ी आवश्यकता है। हम विनम्र रह कर सबके प्रिय बन सकते हैं और अनुभवी व्यक्तियों से शिक्षा ग्रहण कर सकते हैं जैसे फल वाले वृक्ष की डालियाँ झुक जाती है, भरा हुआ बर्तन आवाज नहीं करता वैसे ही जो बुद्धिमान, विद्वान और किसी भी रूप में प्रतिभावान होते हैं वे विनम्र और मधुरभाषी होते हैं।

सम्राट अकबर के दरबार के नौ रत्नों में से एक थे—महाकवि रहीम, जो बड़े विद्वान, कलावन्त, पराक्रमी और बड़े दानी पुरुष थे उनमें अहंकार लेश मात्र भी नहीं था। वे प्रतिदिन दान किया करते थे। एक दिन प्रसिद्ध कवि गंग उनसे मिलने आये, रहीम कवि उस समय दान कर रहे थे। गंग कवि ने देखा कि रहीम कवि नजरें झुकाये वस्तुयें उठा-उठाकर दे रहे हैं ओर देखा भी नहीं कि दान लेने वाला कौन है, तो गंग को बड़ा आश्चर्य हुआ। उन्होंने इस पर तुरंत एक दोहा रचा और बोले—

**“सीखे कहाँ नवाब जू, ऐसी दैनी दैन।**

**ज्यों ज्यों कर ऊँचौ करौ त्यों त्यों नीचे नैन॥”**

रहीम जी भी महान कवि थे सो उन्होंने भी अपना उत्तर एक दोहा बनाकर दिया और बोले —

**“देनहार कोउ और है, भेजत सो दिन रैन। लोग  
भरम हम पर करें, तासों नीचे नैन॥”**

यही है विनम्रता। रहीम कवि का कहना था कि देने वाला तो प्रभु है। जो दिन रात देता है। लेकिन सब मुझे दानी कह रहे हैं इसी लज्जा के कारण मेरे नेत्र झुक गये हैं।

आज इस मशीनी युग और स्वार्थी युग में लोग दो पैसे का दान भी अहंकार के साथ करते हैं। दान केवल धन—दौलत का ही नहीं बल्कि शिक्षा, कला, अनुभव का भी होता है। ये सभी विनम्रता से दूसरों को देना चाहिये। इसको देने पर अहंकार नहीं करना चाहिये। बल्कि महत्व की भावना रखकर लेने वाले के प्रति कृतज्ञ होना चाहिये कि उसने हमारे हाथों कुछ लेना स्वीकार किया या उसके काबिल समझा। शिक्षा व कला दूसरों को देने से कम नहीं होती बल्कि बढ़ जाती है।



# बदलते युग में जीवन मूल्यों का महत्व

नरेन्द्र कुमार

**“समय बदलेगा,  
युग बदलेगा, इतिहास बदलेगा,  
कौन जानता था कि,  
परिवेश भी बदलेगा**

समय बहुत ही प्रगतिशील, परिवर्तनशील तथा बलवान है जो अपने आप में इतनी पर्याप्तता रखता है कि वह कुछ भी बदल सकता है और बदलता भी है। आज मनुष्य एक-दूसरे से दूर होता चला जा रहा है। उसकी स्वयं की पहचान समाप्त होती जा रही है। इस वैज्ञानिक युग ने मनुष्य की स्वयं की पहचान तथा उसके जीवन मूल्यों को समाप्त कर दिया है। अब मनुष्य की पहचान मात्र घटनाओं के आधार पर ही होगी। मनुष्य में आपसी प्रेम तथा भाईचारे की भावना समाप्त होती जा रही है। हम अपने संबंधियों से मिलने घर नहीं जाते और न ही उन्हें अपने घर आमंत्रित करते हैं और यदि हमें उनसे बातें करनी होती हैं तो टेलीफोन पर करते हैं और उनका चेहरा देखने की इच्छा भी होती है तो कम्प्यूटर या मोबाईल की स्क्रीन पर देख लेते हैं। इसका मतलब हम अपने रिश्तेदारों को फोन या स्क्रीन पर तलाशते हैं। शायद आगे आने वाला समय और भी प्रगतिशील होगा। शायद उसका अनुमान हम नहीं लगा सकते, बस उस समय का इंतजार कर सकते हैं। ऐसी दशा में जीवनमूल्यों का क्या महत्व रह जायेगा।

उन्नति करना बुरी बात नहीं है। लेकिन हमें यह नहीं भूलना चाहिये कि उन्नति की इस अंधी दौड़ में हम जीवन मूल्यों को पीछे ही छोड़ आये हैं। आज की नई पीढ़ी यह भी नहीं जानती है कि जीवन-मूल्य क्या है? इसमें हमारा कोई दोष नहीं है, दोष तो है उस बदलते परिवेश का और कुछ सीमा तक हमारे बड़ों का, जिनके पास समय ही नहीं है हमें जीवन मूल्यों तथा उसके महत्व से अवगत करवाने का। जीवन-मूल्य से तात्पर्य हैं — ईमानदारी, प्रेम, ममता, देशभक्ति, करुणा, कर्तव्य निष्ठा, मैत्री, सहयोग, भाईचारे की भावना, अहिंसावादी दृष्टिकोण आदि। लेकिन आज के बच्चों के लिये जीवन-मूल्य ये नहीं हैं। उनके जीवन मूल्य हैं— बेईमानी से ही सही परंतु सफलता प्राप्त करना, मन को प्रसन्न करने के लिए उत्तेजक व्यसनों का प्रयोग करना, माता-पिता को पिछड़ा समझ कर उनका अनादर करना, भाषा के नाम पर गाली-गलौच करना, बुरी संगत में पड़कर बुरी आदतों को अपनाना व उसे अपनी आजादी की अभिव्यक्ति कहना, सत्यम् शिवम् सुंदरम् के सिद्धांत न खोजकर अश्लीलता को सुंदरता समझना आदि।

समाज के उस क्षेत्र का वर्णन जो पूजा करने का नाम लेता है उसका और भी बुरा हाल है। इसका एक सीधा उदाहरण हैं। मंदिरों में ज्योति जलाकर पुजारी रिकॉर्ड चला देता है। देखिये मानव के पास इतना समय नहीं है कि वह सुबह-शाम भगवान की पूजा के लिये 10 मिनट निकाल सके। पहले लोग नींबू, शहद तथा दूध —दही प्रयोग करते थे। उसका स्थान अब कोक और मदिरा ने ले लिया है तो प्रिय साथियों, सज्जनों आज हमें बदलते युग में जीवन मूल्यों को पतन से बचाना है।

## जय हिन्द !



# महिलाओं को थाने नहीं बुलाया जा सकता

Amrita Singh

महिलाओं को हमारे समाज में कहीं भी सुरक्षा प्राप्त नहीं है चाहे वा घर हो या बाहर । हालांकि घर और पुलिस थानों को महिलाओं के लिये सुरक्षित स्थान ही होना था पर हमारा समाज विडम्बनाओं से भरा पड़ा है। घर में भी नजदीकी रिश्तेदार से उनकी अस्मत् को खतरा बना रहता है। और इसकी खबरें आये दिन समाचार-पत्र और पत्रिकाओं में पढ़ने को मिलती है। न्यायालयों में भी इस तरह के मुकद्दमें चलते देखे जा सकते हैं थानों में भी पीड़ित महिला न्याय की गुहार लगाते हुये सशंकित बनी हो रहती है। क्योंकि थानों में अस्मत् लूटे जाने की खबरें समाचार पत्रों में भी आती है चाहे छः साल की बच्ची हो या 60 साल की बुजुर्ग महिला। हमारे यहाँ सैद्धांतिक तौर पर नारी को देवी तो मानते हैं पर व्यवहारिक तौर पर उन्हें भोग की वस्तु ही माना जाता है।

इसी मानसिकता के मद्देनजर महिलाओं के लिये भारतीय दण्ड संहिता की धारा 160 के अन्तर्गत उनसे किसी मामले के संबंध में पूछताछ करने का प्रावधान किया गया है ताकि महिला अपने घर सुरक्षित महसूस करें पर कभी-कभी ऐसा होता है कि महिला का किसी अपराधी की शिनाख्त के लिये थाने आना जरूरी हो जाता है। ऐसे में महिला को थाने तो ले जाया जा सकता है पर उसके साथ उसके किसी पुरुष रिश्तेदार का होना जरूरी है, ताकि उसकी सुरक्षा को खतरा न हो। अगर किसी महिला ने कोई अपराध किया हो तो कानूनी तौर पर उसे गिरफ्तार करना होता है। न्याय की अवधारणा लिंग भेद से अलग पुरुष और स्त्री के लिये एक ही है। आरोपी महिला की गिरफ्तारी में भी महिला की सुरक्षा की खातिर कानूनी तौर पर महिला को उसके पुरुष रिश्तेदार की उपस्थिति में ही गिरफ्तार किया जा सकता है अन्यथा नहीं। और कानून ये भी है कि गिरफ्तार महिला को पुलिस थाने में एक रात के लिये भी नहीं रखा जा सकता । यदि गिरफ्तार करते वक्त तलाशी लेने की जरूरत होती है तो तलाशी कोई महिला कांस्टेबल ही ले सकती है।

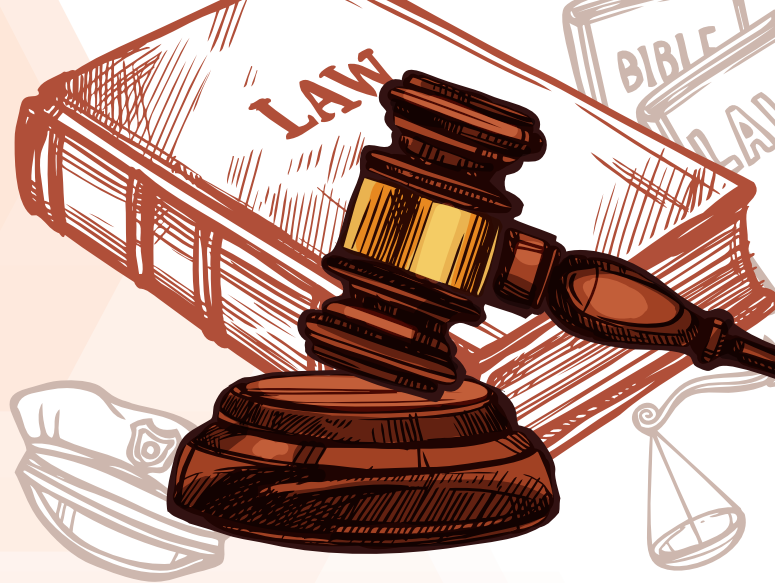
**पुलिस महकमें में महिला को प्रताड़ित किया गया**

**जब रक्षक ही भक्षक बन जाय**

**थाने में महिला से साथ बलात्कार**

**इस तरह की खबरें आये दिन अखबारों में पढ़ने को मिलती हैं लेकिन क्या महिलायें अपने कानूनी अधिकारों को जानती हैं कि उन्हें थाने नहीं बुलाया जा सकता। और भी न जाने कितने अधिकार हैं लेकिन**

जागरूकता के अभाव में ये अधिकार सिर्फ किताबों में दबकर रह जाते हैं। भारतीय दण्ड संहिता की धारा 160 में महिलाओं को शारीरिक रूप से छेड़छाड़ से बचाने के इतने प्रावधानों के बावजूद हमारे यहाँ शिक्षा की जो स्थिति है उसमें कितनी महिलायें और कितने पुरुष इस कानून की जानकारी रखते हैं ? वो तो पुलिस



के नाम से ही खौफ खाते हैं। दो जून की रोटी की चिंता में लगे अशिक्षित जन तो पुलिस के नाम से ही भयभीत हो जाते हैं। पढ़े लिखे लोग ज्यादातर अपने विषय का ही ज्ञान रखते हैं और थोड़ी बहुत अन्य जानकारी पर अपने कानूनी अधिकारों के प्रति जागरूक नहीं होते ऐसे में किसी के घर स्त्री को आपसी रंजिश के तहत ही सही, साजिश कर पुरुषों के संग थाने ले जाने की प्रक्रिया पुलिस अपनाती है तो महिला के रिश्तेदार पुलिस को रिश्त देकर पहले घर की इज्जत बचाने की सोचते हैं। यही हाल अनपढ़, अशिक्षित , कानून से अनभिज्ञ लोग भी करते हैं। तभी तो महिला को एक रात के लिये भी थाने में न रखने के कानून के बावजूद अभी हाल ही में समाचार-पत्रों में एक खबर पढ़ने को मिली थी कि रात-भर महिला को थाने में रखा गया और सुबह उसने थाने की बिल्डिंग से छलांग लगाकर आत्महत्या कर ली। कहा गया कि उस निरीह, असहाय महिला को पुलिस की ज्यादाती का शिकार होना पड़ा और अपनी अस्मत् से हुये खिलवाड़ को यह बर्दाश्त नहीं कर सकी और इसी वजह से उसने आत्महत्या कर ली। ये पुलिस थाने में किये गये दुष्कृत्य की कोई एक अकेली घटना नहीं है और न ही पुलिसिया गुरुर में आकर किये जाने वाले कुकर्मों का नमूना भर, बल्कि ऐसे अनेक केस हैं जिसे पुलिस वालों की स्वच्छ छवि को बरकरार रखने की अनिवार्यता के मद्देनजर पुलिस द्वारा रफादफा कर दिया जाता है। जिसे रक्षक होना है वही भक्षक हो जाये तो न्याय पाना बहुत मुश्किल हो जाता है। पुलिस वाले भी अधिकतर पुरुष ही होते हैं और स्त्री को लेकर उनकी मानसिकता भी वही होती है। एक आम इंसान से लेकर पढ़े-लिखे उच्च अधिकारी और पुलिस तक सभी के सभी स्त्री के प्रति एक ही नजरिया रखते हैं। ऐसे में इस धारा के बावजूद स्त्रियों पर पुलिस पर बढ़ता अविश्वास कोई कौतूहल पैदा नहीं करता। आज जरूरत है जनता में महिला कानून के प्रति जागरूकता पैदा करने की ताकि लोग इन्हें जाने, इनके प्रति सचेत रहें। इसके लिये जरूरी है पाठ्यक्रमों में इस तरह की जानकारियाँ दी जायें साथ ही मेले एवं अन्य सार्वजनिक अवसरों पर कानूनी शिविर लगाकर लोगों को इस तरह की कानूनी जानकारी दी जाये। जब तक अधिकारों के प्रति जागरूकता नहीं होगी तब तक उसके लिये जद्दोजहद की बात सोची ही नहीं जा सकती।



# वकील और उसका पेशा

विनय कुमार

वकालत की पढ़ाई कर रहे छात्रों से आपने यह तो सुना ही होगा कि “अरे यार , अगर वकालत का पेशा मेरा चल गया, तो इसमें बस माल ही माल है। धन कमाने का नशा कुछ इस तरह उसकी आखों के सामने छाया रहता है मानों काले कोट के धारण करने के साथ-साथ उनकी आँखों पर भी काली पट्टी बंध गई हो जो अच्छे बुरे की पहचान करने में अक्षम सी जान पड़ती है।

आजकल के वकील अपने दायित्वों को जानते हुये भी अनजान नजर आते हैं। जहाँ तक मैं जानता हूँ वकील का दायित्व कानून की रक्षा करना है न कि इसकी कमजोरियों को हतकण्डा बनाकर मुजरिमों को श्रेय देना और उनसे धन कमाना। हमारे देश की जनता आज हर वकील को बड़ी ही हीन भावना से देखती है। उनकी नजर में जैसी काली पोशाक वकील अपने शरीर पर धारण किये रहता है वैसा ही उसका चरित्र भी होता है। इस सोच को जन्म देने वाला कोई और नहीं बल्कि वकील खुद ही है। उसने अपने-अपने दायित्वों को भली-भाँति नहीं निभाया जिसकी सजा हमारा समाज उसे दे रहा है।

महात्मा गांधी जी भी वकील थे, उन्हें कोई इस निगाह से नहीं देखता है। वह एक अच्छे इंसान होने के साथ-साथ एक अच्छे वकील भी थे। उन्होंने अपने वकालत के पेशे को एक नया आयाम दिया और उसे अपने देश की आजादी की लड़ाई के लिये एक ढाल के तौर पर इस्तेमाल किया और सच्चाई के रास्ते से कभी भी नहीं हटे। पर आज हमारे देश की जनता वकील को धन की अगुवाई करने वाले दलाल के रूप में जानती है जो अमीरों के हाथों बिक चुका है अब तो अंग्रेजी में एक कहावत भी बन गई है जो इस प्रकार से है।

**“ Rich govern the Law**

**& Law governs the poor ”**

इस सोच के जिम्मेदार आज के नामी-गामी वकील भी हैं जिन्हें केवल माल ही माल चाहिये , और कुछ नहीं । एक वकील से साक्षात्कार में जब पूछा गया कि आप समाज के गुनेहगारों को सजा मिलने से बचा लेते है । यह आपकी कैसी समाज सेवा है तो उस व्यक्ति ने यही कहा कि वकालत उसका पेशा है इसका मतलब तो यही हुआ कि वह अपने पेशे में धन कमाने के लिये किसी भी हद तक नीचे गिर सकता है।

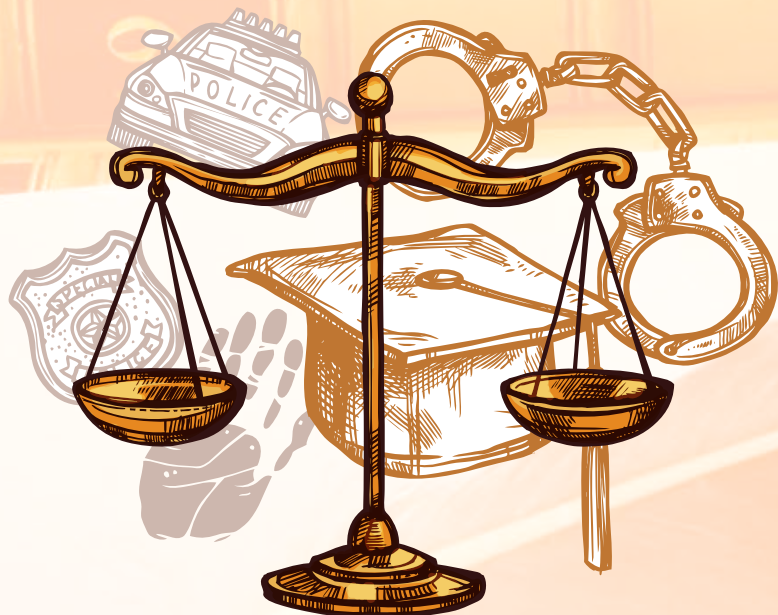
यह कैसा पेशा है जिसमें इंसानियत नाम की चीज कही दूर-दूर तक नजर ही नहीं आती है। हमारे देश की जनता मूर्ख नहीं है जनता सबको देख रही है और आपकी इस बेवकूफाना हरकत के लिये देर या सबेर जबाब जरूर मांगेगी। तब आप कहीं जाकर अपना मुँह छिपाते फिरेंगे।

जेशिका मर्डर केस, चारा घोटाला, तेहलका डॉट कॉम और न जाने कितने ही केस ऐसे हैं जिनके अभियुक्त आज भी हमारे बीच हमसे ज्यादा स्वच्छंद रूप से घूम रहे हैं। यही हमारे देश की कानूनी व्यवस्था का हाल रहा तो आने वाला भविष्य कैसा होगा। यह मुझे बताने की आवश्यकता नहीं है।

हमारे देश की जनता कानून की रखवालों से बहुत सारी उम्मीदें लगाये बैठी है । वकील का दायित्व कानून की रक्षा करना है न कि इसकी कमजोर कड़ियों को हतकण्डे के रूप में इस्तेमाल करके समाज के गुनेहगारों को श्रय देना। गुनेहगारों को श्रय देने से हमारा समाज दूषित होता है और नयी-नयी बीमारियाँ इससे समाज में पनपने की आशंका का बोध होता है।

वकालत की पढ़ाई करने वाले युवकों और युवतियों से मेरा आग्रह है कि काले कोट के नीचे पहने अपनी सफेद पोशाक के महत्व को समझें । सफेद पोशाक सत्य का प्रतीक है जो काले कोट रूपी कवच से ढका हुआ रहता है। इसका तात्पर्य यह है कि आपको काला कोट सत्य की रक्षा के लिये दिया गया है। अपनी आँखों पर काली पट्टी जितनी जल्दी हो सके हटाइये वरना आपसे अनर्थ हो जायेगा। आपका दायित्व कानून की किताबों के जरिये समाज में सत्य रूपी अमृत को बचाना है। इसे इस कदर से फैलाइये कि हमारे देश की जनता के मुख से अनायास ही यह निकल पड़े कि “सत्यमेव जयते” और तभी अंग्रेजी में कहावत होगी :

**“Law governs everyone whether he is rich or poor.”**



# सकारात्मक सोच ही सफलता

जैना रावत

अपने कार्य क्षेत्र में हर व्यक्ति सफलता पाना चाहता है। सफलता पाना बहुत कठिन भी नहीं है और बहुत सरल भी नहीं। अपने कार्यक्षेत्र में सफलता पाने के लिये हर व्यक्ति अगर कुछ बातों का अपने जीवन में ध्यान रखें तो सफलता का रास्ता और भी सरल हो जाता है। सफलता की पहली सीढ़ी है “सोच”। आपकी सोच कैसी है? सकारात्मक है या नकारात्मक? सोच तो हर व्यक्ति के अंदर जागृत रहती है। बस उसे अपने एक सकारात्मक दृष्टिकोण में डालना होता है। जो भी काम आप कर रहे हैं उस काम के प्रति सकारात्मक सोच रखिए। जो भी कुछ आप कर रहे हैं सोचें यह सब सही है। अपने काम में कभी संकोच मत कीजिये। विश्वास, लगन, मेहनत और सकारात्मक सोच को लेकर आप अपना काम कीजिये। यह आपको सफलता दिलाने में सहायक होती है। आज जो काम कर रहे हैं यदि पूरे आत्मविश्वास के व सकारात्मक सोच के साथ कर रहे हैं तो समझो आप अपनी सफलता की आधी मंजिल तक पहुँच गये। दूसरी सीढ़ी है उद्देश्य। मेरी सोच है कि कोई भी व्यक्ति कोई भी काम करने के पूर्व अपना एक लक्ष्य निर्धारण कर ले। आपकी मंजिल कहाँ है? आप क्या बनना चाहते हैं? आप अपने जीवन को क्या दिशा देना चाहते हैं। किस रूप में स्वयं को देश व समाज को स्थापित करना चाहते हैं आदि सवालों को लेकर आपकी सोच साफ होनी चाहिये।

ख्वाब देखो लेकिन बहुत बड़ा। हर इंसान अपने जीवन में कुछ बनने का सपना देखता है या कुछ पाने का सपना देखता देखता हैं। मेरी सोच है कि यदि आप कुछ पाना चाहते हैं तो छोटी सोच मत रखिये। अपनी मंजिल विशाल बनाइये। क्योंकि आपके सपने के साथ-साथ आपकी सोच भी विकसित होती है। और फिर अपनी सोच के अनुसार काम भी करेंगे। और जब उसके अनुसार काम करेंगे तो निश्चित ही आपका सपना पूरा होगा।

रुचि होना भी महत्वपूर्ण हैं। कई बार ऐसा होता है कि कैरियर संबंधी जानकारी अधिक नहीं रहती है। और हम अपने कैरियर को लेकर परेशान रहते हैं। लेकिन आज समाज में प्रतियोगिता दिन प्रतिदिन बढ़ती जा रही है। आज औद्योगिक व सूचना क्रांति के इस दौर में कैरियर संबंधी जानकारी हमें मिलती रहती है। जिनमें यदि हम अपनी पसंद का कोई भी क्षेत्र चुनकर काम शुरू कर लें तो सफलता प्राप्त की जा सकती है। जहाँ तक विषय के चयन का सवाल है। तो मैं यही कहना चाहूँगी कि हर इंसान को अपने कैरियर का चुनाव अपनी रुचि के अनुसार ही करना चाहिए। यदि आप सही चुनाव नहीं कर पा रहे हैं तो मैं एक सही तरीका अपनाना चाहूँगी जो मैंने कई बार अपनाया है : “आप अपनी आँखें बंद करके ध्यान लगायें और खुद से पूछें की कौन सा काम करते समय आपको ज्यादा अच्छा लगता है? कौन सा विषय ऐसा हैं जो अन्य विषयों से ज्यादा रुचिकर लगता है? ऐसी कौन सी दुनियाँ है जो आपको बुलाती है?” इस तरह जब आप

अपने आप से बात करेंगे तो खुद को जानेंगे और जब तक खुद को नहीं जानेंगे अपने लिये कोई सही फैसला नहीं कर पायेंगे। जैसा कि हम सभी जानते हैं, कि कार्य ही पूजा है। हर व्यक्ति की अपनी-अपनी रुचि होती है और वह रुचि ही उसे एक दूसरे से अलग व्यक्तित्व प्रदान करती है। सफलता पाने के लिये हर व्यक्ति को अपने व्यक्तित्व के अनुसार कैरियर को चुनना चाहिये। तभी वह उस मैदान में जाने की हिम्मत कर पायेगा। अगर सही कैरियर नहीं चुनेगा तो कुछ दूर जाने के बाद ही थक जायेगा। थकने का अर्थ आपके कैरियर का वहीं रुक जाना है जब आप अपने कैरियर का चुनाव कर लें तो आपका काम होना चाहिये कि जो भी क्षेत्र आपने चुना है जो भी काम आप कर रहे हैं उस काम में सकारात्मक सोच के साथ 100 प्रतिशत अपने काम को समर्पित कर दें व पूरे ज्ञान ध्यान के साथ पूजा मानकर अपना काम करें।

भूल को जानिये। आप कोई भी काम कर रहें हो तो पूरी लगन, मेहनत व निष्ठा के साथ प्रयास करें। यदि किसी कारणवश सफलता नहीं मिल पाती है, तो निराश न हों पुनः प्रयास करें और यदि काफी प्रयास के बाद भी आप सफल नहीं होते हो, तो मैं मानती हूँ कि आपने जो प्रयास किया वह 100 प्रतिशत नहीं था। उसमें कहीं न कहीं कमी जरूर थी। ऐसी स्थिति में खुद को जानने का प्रयास करें कि हमसे कहीं कोई भूल हो रही है क्या? संगत अच्छी रखें। सफलता पाने के लिये एक और बात महत्वपूर्ण है कि आपकी संगत कैसी है आप अपने दोस्तों से क्या सीख रहे हैं? हमारे जीवन में दोस्तों की बहुत ही महत्वपूर्ण भूमिका होती है। दोस्त वह होता है जो आपका व आपकी सफलता को बढ़ाने में मदद करता हो। दोस्ती ऐसी होना चाहिये जो आपके विचारों को, आपकी सोच को व आपके व्यक्तित्व को समृद्ध करे। यदि आपकी संगत अच्छी नहीं है तो वह आपके कैरियर ही नहीं आपके पूरे व्यक्तित्व को नष्ट कर सकती है।

सफलता के लिये सबसे महत्वपूर्ण हैं व्यक्ति में ईमानदारी का होना। यह ईमानदारी खुद को जानने के काम आती है क्योंकि जब तक व्यक्ति खुद की पहचान नहीं करेगा। कुछ नहीं कर पायेगा। जब तक आप अपने काम के प्रति ईमानदार नहीं रहेंगे तब तक आगे नहीं बढ़ पायेंगे लोग आप पर विश्वास नहीं कर पायेंगे जब तक लोग आपके काम और आप पर विश्वास नहीं करेगे तब तक आपके पास नहीं आयेंगे इसलिए आप अपने कार्य के प्रति पूर्ण समर्पित एवं निष्ठावान रहें।

मैं बताना चाहूँगी कि सफलता के बाद कभी घमंड नहीं करना चाहिए क्योंकि आपकी सफलता में कई व्यक्तियों का महत्वपूर्ण योगदान होता है अर्थात् हमारी उन्नति और सफलता का श्रेय सिर्फ स्वयं को न जा कर उन सभी सहयोगियों और मार्गदर्शकों को जाता है जिन्होंने कष्ट या असुविधा उठा कर हमारी मदद की है।



# एक अच्छा वकील एक अच्छा क्रांतिकारी

संदीप खोला

सज्जनों! मैं अपने विचारों से एक वकील को जिस दृष्टिकोण से देखता हूँ उसे स्पष्ट करने जा रहा हूँ लेकिन इससे पहले क्रांतिकारी का मेरा अर्थ भिन्न है। मैं एक ऐसी क्रान्ति के बारे में बताने जा रहा हूँ, जिसमें न तो मार-पिट्टाई है और नही जलूस है, न ही जेल जाना है। तो फिर कैसी क्रांति ? वो है मौन क्रांति । इसे एक घटना के द्वारा स्पष्ट कर रहा हूँ।

घटना एक छोटे से कस्बे की है। गौड़ा की अदालत में वकील संघ के कमरे में जहाँ फुरसत से वकील बैठकर आराम करते, पढ़ते-लिखते हैं, चर्चाएँ करते हैं, एक बालक दरवाजे पर आकर भीख मांगने लगता है अशांति का दौर शुरू हो जाता है। 15 वर्ष का एक किशोर जिसका चेहरा मुरझाया हुआ डरा-डरा सा मुँह पर दुख के भाव झलक रहे थे जो एक पेशेवर भिखारी के चेहरे पर नहीं होते । एक वकील उधर सारी घटना देख रहा था। उसने तुरंत वास्तविक हालातों को समझ लिया कि इस किशोर को भीख की नहीं बल्कि हमदर्दी की जरूरत है इतने में कमरे से आवाज आई , “अन्दर आइये”। वकील ने किशोर को बुलाकर अपने पास बिठा लिया। बालक का धैर्य और भी बढ़ गया धीरे-धीरे वकील ने बच्चे को बातों में प्यार अपनापन और ममता देकर उसका दिल जीत लिया। तो किशोर फूट-फूट कर रोने लगा। रोते-रोते उसने बताया कि उसके पिता की मृत्यु हो चुकी है। उसके जैसे उसके पाँच छोटे बहन भाई और हैं तथा एक माँ है। इनके भरण पोषण की जिम्मेदारी का बोझ उसी पर आ पड़ा है उसे इसे निभाने के लिये भीख की नहीं हमदर्दी और सहारे की जरूरत थी। जिसे एक वकील ने सही पहचाना और उसका दिशा निर्देशन किया। इससे पहले किशोर बताता है कि उसके खानदान मे किसी ने दूसरे के सामने हाथ नहीं फैलाये और वह कह रहा था कि वह भी भीख मांगने से अच्छा रेल के नीचे कटकर मर जाना उचित समझता था। लेकिन वह जानता था कि यदि ऐसा हो गया तो उसकी बीमार माँ बिस्तर से उठकर उसे देखने भी तो नहीं आ सकती। फिर उसे बिस्तर से सहारा देकर कौन उठायेगा।

परन्तु उस वकील ने उसे भीख नहीं सहारा दिया और उसे जिन्दगी को स्वाभिमानपूर्ण ढंग से जीने की प्रेरणा दी। उसने बताया कि भीख मांगने से तो मेहनत का कोई काम करके इंसान की तरह जीना बेहतर है उसने उसे अपने साथ ले जाकर बूट पॉलिश का सामान दिलवाया और जब तक वह सातों के लिये (6 भाई-बहि. हन एवं उसकी माँ) के लिये पर्याप्त आमदनी न करने लगे तब तक एक रुपया रोज देने का वायदा किया। एक सप्ताह मे वह इतना कमाने लगा कि उसे किसी की मदद की आवश्यकता नहीं रही। उसके बाद किशोर ने प्रेरणा की भावना को आगे बढ़ाया उसने भीख मांगने वाले बच्चे से संपर्क स्थापित किये। जिस तरह वकील ने उसे बूट पॉलिश का सामान खरीदवाया था वैसे ही उसने दूसरे बच्चों के लिये सामान खरीदा। उस कस्बे मे जो लोग भीख मांगते थे आज वे मेहनत करते हैं। इस तरह क्रांति का खामोश सिलसिला जारी हो गया। एक प्यार के बोल ने, एक हमदर्दी की थपकी ने कम से कम सात बच्चों की जिन्दगी का अंधेरा दूर किया। ऐसी ही समाजसेवा मेरा भी उद्देश्य है। ऐसा ही क्रांतिकारी वकील मैं बनना चाहता हूँ।





# वर्तमान परिदृश्य में बालकों पर बढ़ता यौन शोषण

रुबी गुप्ता



बचपन की घटनाएँ सभी के चेहरों पर मुस्कान बिखेर देती हैं। बचपन हमेशा संस्कृति के अनुकूल, स्वच्छन्द विचरण करता है किन्तु वर्तमान में बालकों पर यौन शोषण की घटनाओं से समाज में भयावह स्थिति ने जन्म लिया है। अधिकांशतः माता-पिता अपने बच्चों को घर से बाहर लाने में सकुचाते हैं। घर की चाह-दिदवारी में क्या बालकों का विकास संभव है

**“छुप जाओ आंचल में, डर-सा लगता है।**

**दुनिया है भ्रमजाल, अपना न कोई दिखता है।।”**

एक ओर जहाँ हम स्वतंत्रता के 72 वे वर्ष में प्रवेश कर खुशियाँ मना रहे हैं दूसरी ओर बाल्यावस्था पर ये बंधन हमारी स्वतंत्रता पर एक चिन्ह लगा देता है।

क्या बाकई बालकों पर होते अत्याचार के साथ विकसित भारत की कल्पना की जा सकती है? क्या यह वही भारत है जिसकी संस्कृति सभ्यता का पर्वत विश्व में लहराता है?

ऐसी घटनाओं से भारतीय संस्कृति एवम् सभ्यता पर भी प्रश्न चिन्ह लगा है। आखिर ऐसी दिल दहलाने वाली घटनाओं जन्म क्यों ले रही हैं? क्या कारण है कि बच्चों के साथ इस प्रकार के अपराध हो रहे हैं? अगर वास्तविकता पर विचार करें तो सर्वाधिक लोकप्रिय वैज्ञानिक उपकरण, मोबाइल, इंटरनेट जिन पर अश्लील चल-चित्र किसी भी साइट्स को ओपन करने पर आसानी से उत्पन्न हो जाते हैं सर्वाधिक प्रभावित करते हैं।

इसके अलावा आज की शिक्षा पद्धति में नैतिक शिक्षा का अभाव है जिसके कारण हमारी संस्कृति भी क्षतिग्रस्त हो रही है। वर्तमान कार्यात्मक शिक्षा पद्धति जो पूर्णतः दक्ष न होकर

दोषपूर्ण है, जिसके कारण बालकों को इंटरनेट का सहारा लेना पड़ता है जो मानसिक एवं वैचारिक विकास को कम करता है। उचित मार्गदर्शन की कमी से बालक अपने लक्ष्य से विद्यटित हो जाते हैं।

कई बार जिन लोगों से मार्गदर्शन की आशा की जाती है वही अपराधों में लिप्त होते हैं, इसका ज्वलंत उदाहरण डॉण केण एनण अग्रवाल वाद से लिया जा सकता है। इसी प्रकार देहली में एक एन.जी.ओ. चलाने वाली महिला द्वारा बच्चों के साथ बदसलूकी की गई।

बिहार के मुजफ्फर नगर आश्रित गृह से एक बच्ची लापता एवं 40 बच्चीयों के साथ राजनेताओं एवं समाज के विशिष्ट व्यक्तियों की भाव लिपता उजागर हुई है। इसके साथ मंदसौर, इंदौर फिर ग्वालियर में हुई बच्चों के साथ दुष्कर्म की घटना जिनमें लिप्त अपराधी आपके करीबी या संरक्षक हैं। ऐसे में जब रक्षक ही भक्षक बन जायेंगे तब देश की क्या स्थिति होगी, हम अनुमान लगा सकते हैं।

पहले अपराध में बढ़ोत्तरी का कारण न्यायिक प्रक्रिया में विलंब कहा जाता था, किन्तु भारत सरकार द्वारा पॉक्सो एक्ट, 2012 में बनाया गया जिसके अन्तर्गत 18 वर्ष से कम आयु के बच्चों को बलात्कार, छेड़खानी, एसिड अटैक, अश्लील रिकार्डिंग जैसे मामलों से सुरक्षा के लिये प्रावधान किये गये हैं। मंदसौर, उज्जैन व ग्वालियर में बच्चों के साथ हुए दुष्कर्म सम्बन्धी मामलों में तुरंत न्याय व अपराधियों को हुई फांसी की सजा होने से, त्वरित न्याय की परिकल्पना सत्य चरितार्थ प्रतीत होती है।

किन्तु यह मुद्दा किसी व्यक्ति विशेष का नहीं है बल्कि सम्पूर्ण समाज प्रभावित होता है। सुप्रीम कोर्ट ने मुजफ्फर नगर के शेल्टर होम दुष्कर्म केस पर टिप्पणी करते हुए कहा कि साल में 38947 केस दर्ज होते हैं यानि हर छः घंटे में एक दुष्कर्म। लेपट, राइट, सेंटर हर जगह दुष्कर्म हो रहे हैं। देश में यह क्या हो रहा है? अभी हाल ही ग्वालियर जिले के स्नेहालय में भी दुष्कर्म के मामले सामने आये हैं।

यूनीसेफ की एक रिपोर्ट के अनुसार भारत में 35 प्रतिशत बच्चे यौन उत्पीड़न के शिकार हैं भारत सरकार के एक सर्वे के अनुसार 92 प्रतिशत मामलों में अपराधी नजदीकी लोग, पड़ोसी, रिश्तेदार ही होते हैं।

गतवर्ष प्रोटेक्शन ऑफ चिल्ड्रन फॉर्म सेक्सुअल अफेंसेस एक्ट के तहत लगभग 15 हजार मुकदमें दर्ज हुए। जिनमें 4 प्रतिशत को सजा हुई, 6 प्रतिशत आरोपी बरी कर दिए गये एवं 90 प्रतिशत अभी भी लंबित है।

यौन अपराध गरीब ही नहीं संभ्रात परिवार के साथ भी हो रहा है। अपराधों को रोकने के लिए सामाजिक परिवर्तन लाना आवश्यक है। इस दिशा में समाज एवं न्यायालय तथा प्रशासन को भी अपनी पूर्णरूपेण भागीदारी निभानी चाहिये तभी जाकर बाल अपराध पर नियंत्रण पाया जा सकता है।

इसके लिए “नो, गो और टेल” की युक्ति बनाई है, वह एक निश्चय ही उचित कदम है। जन-जन जागरूक होगा तभी जागरूकता आयेगी इसके अतिरिक्त महिला कर्मियों की लोकप्र. बंधन में भागीदारी भी सटीक कदम होगा।

उच्चतम न्यायालय के मुख्य न्यायाधीश न्यायमूर्ति पी एन भगवती तथा न्यायमूर्ति रंगनाथन मिश्र द्वारा शीला बर्से बनाम इण्डिया में विचार दिया कि बालक यदि राष्ट्रीय धरोहर है तो राज्य का यह कर्तव्य हो जाता है कि वह उसके सर्वांगीण विकास को सुनिश्चित करने की दिशा में प्रभावी कदम उठाये। उनका शारीरिक, मानसिक एवं बौद्धिक विकास हमारा दायित्व है। मानव संसाधन विकास की योजनाओं में हम बाल विकास को प्रथम स्थान दें। ताकि हमारा बालक ऐसा सुदृढ़ नागरिक बन सके। जो शारीरिक दृष्टि से हष्ट-पुष्ट, मानसिक दृष्टि से जागरूक एवं नैतिक दृष्टि से स्वस्थ हो।

ऐसे ही कुछ विचार न्यायमूर्ति पी. एन. भगवती तथा न्यायमूर्ति आर. एस. पाठक ने शीला बर्से बनाम चिल्ड्रनस् एंड सोसायटी के मामले में अभिव्यक्त किये हैं। उनका कहना है कि “आज के बालक कल के नागरिक है। उन्ही के कंधों पर कल के भारत का भार है। वे आने वाले समय के नेता है। उन्ही पर राष्ट्र का गौरव एवं गरिमा निर्भर है।”

केवल विधियों के अन्तर्गत ही मानवाधिकारों को संरक्षण प्रदान नहीं किया गया है अपितु न्यायालय द्वारा भी महिलाओं एवं बालकों के अधिकारों को अपने निर्णयों में अहम स्थान दिया गया है। सभंवतः यह अपराध ऐसा नहीं है जिसे समाप्त नहीं किया जा सकता बल्कि यह तो एक सामाजिक बल्कि राष्ट्रीय व्याधि है जिसे राष्ट्रीय/सामाजिक चेतना दारा निष्क्रय किया जा सकता है समाज ‘हम और आप’ से मिलकर बना है जब ‘हम

और आप’ सभी जागरूक होकर प्रयासरत् होंगे तब स्वतः ही अपराध समाप्त हो जायेंगे।

**“बचपन है अनमोल कृति,  
धूमिल मत होने दो।  
स्वतंत्र स्वच्छंद उपवन में,  
विचरण इनको करने दो।।”**

अतः हम अपने नैतिक मूल्यों को समझें एवं अपनी संस्कृति का प्रचार-प्रसार करें एवं एकजुट हो समाज में बालकों पर बढ़ते यौन अपराध का विरोध करें।

# भ्रष्टाचार निवारण में कानून की भूमिका

अरुण प्रताप सिंह

**प्रस्तावना:—** भ्रष्टाचार का शाब्दिक अर्थ 'भ्रष्ट अथवा बिगड़ा हुआ आचरण' से लिया जाता है लोक प्रशासन में इसका अभिप्राय ऐसे आचरण से लिया गया है जिसमें कोई लोकसेवक या राजनेता अपनी शक्ति, स्थिति, पद या सत्ता का प्रयोग जन साधारण के हित के स्थान पर अपने व्यक्तिगत लाभ के लिए करता है।

**जमीं बेच देंगे गगन बेच देंगे।**

**वतन के मसीहा वतन बेच देंगे!**

**कौटिल्य द्वारा:—** कौटिल्य ने अपने अर्थशास्त्र में 40 तरह के भ्रष्टाचारों का वर्णन किया है। उन्होंने भ्रष्टाचार के बारे में कहा है कि जिस तरह "जीभ पर रखे हुये शहद का स्वाद न लेना असम्भव है " उसी तरह किसी अधिकारी के लिए राज्य के राजस्व के एक अंश का भक्षण न करना असम्भव है।

केन्द्रीय सतर्कता आयोग द्वारा : भ्रष्टाचार के 27 प्रकार बताये हैं।

लेकिन भ्रष्टाचार किसी भी तरह का हो आखिर है तो वह भ्रष्टाचार, उसके प्रकार भले ही अलग – अलग हो सकते हैं। लेकिन उद्देश्य तो एक ही है और वो है धन का संचय या धन कमाना। अर्थात् एक बात तो साफ स्पष्ट है, कि भ्रष्टाचार का प्रकार जो भी हो लेकिन इसे करने वाले व्यक्ति या उच्च पदासीन ही होते हैं।

लेकिन इन सभी बड़े एवं प्रतिष्ठित लोगों के लिए भी धार्मिक ग्रन्थों में साफ स्पष्ट लिखा है :—

**सर्वतो धर्मः 'इडभागो राज्ञो भवतिरक्षतः।**

**अदयदिपि 'इडभागो भवत्यसत्यहयः रक्षतः।।**

मनु महाराज ने इस श्लोक में बतलाया है कि जो राजा अपनी प्रजा की या नेता अपनी जनता की रक्षा करता है वह उन सभी के पुण्यों का भागी बनता है। अन्यथा उन सभी के पाप का भागी बनता है।

अर्थात् प्रत्येक राजा या नेता का यह कर्तव्य है कि उसे अपनी प्रजा या जनता का ख्याल रखना चाहिए, लेकिन वह तो भ्रष्टाचार कर उनके हितों पर प्रतिकूल प्रभाव डाल रहा है। लेकिन भ्रष्टाचार तो हमारे देश में इस तरह फैल चुकी है जैसे कुष्ठ रोग, अब इस परिस्थिति में इसे ठीक करना असंभव तो नहीं लेकिन मुश्किल जरूर है।

जिस तरह हम ऑक्सीजन के बिना जीवन की कल्पना नहीं कर सकते, ठीक उसी तरह अब भ्रष्टाचार बिना जीवन की कल्पना नहीं कर सकते हैं।

चोरी वाड़ो हो गयो रे, कोई तो मुण्डे बोलो रे।

लूट खसोट बहुत हो गई, काई तो मुंह अब खोलो रे।।

कहने का तात्पर्य यह है, कि अगर हम भ्रष्टाचार मुक्त देश की कल्पना करना चाहते हैं तो हमें सबसे पहले स्वयं "भ्रष्टाचार मुक्त" होना पड़ेगा, क्योंकि अगर हम देंगे नहीं तो ये लेंगे कैसे।

**भ्रष्टाचार के विरुद्ध पारित किए गए कानून :—** रिश्वत एवं भ्रष्टाचार के इस रोग से निदान पाने के लिए समय-समय पर कई उपाय किए गए एवं अनेकों कानून बनाए गए। लेकिन बात वहीं खत्म होती है जहाँ से शुरू हुई थी कि आखिर इन सभी कानूनों को क्रियान्वित करने के लिए कुछ अधिकारियों एवं अन्य कार्यकर्ताओं की जरूरत पड़ेगी, अब अगर ये स्वयं भ्रष्ट हो जाए तो भ्रष्टाचार कैसे समाप्त होगा लेकिन फिर भी इस कैसर रूपी बीमारी से निदान पाने के लिए समय-समय पर अनेकों कानूनों को बनाया जिनमें से कुछ निम्नानुसार हैं:—

1. भारतीय दण्ड संहिता 1860 की धारा —161 से 165 तक।

2. भ्रष्टाचार निवारण अधिनियम 1947।

3. भ्रष्टाचार निवारण अधिनियम 1988।

4. सिटिजन चार्टर।

5. सूचना का अधिकार अधिनियम 2005।

6. जांच आयोग इत्यादि।

**लेकिन इसके बावजूद भी भ्रष्टाचार नहीं रुका। हम भ्रष्टाचार के सम्बन्ध में बात उन छोटे-छोटे मामलों की कर रहे जिनके बारे में सुनकर लोगों के होश उड़ जाते हैं जो निम्नानुसार हैं।**

1. आदर्श सोसायटी घोटाला— एक हजार करोड़ रुपये।

2. सत्यम् घोटाला — सात हजार करोड़ रुपये—2008।

3. चारा घोटाला— नौ सौ पचास करोड़ रुपये—1986।

4. बोफोर्स घोटाला — चौसठ करोड़ रुपये।

5. कौमन वैल्थ गेम्स —सत्तर हजार करोड़ रुपये।

6. टू जी स्पेक्ट्रम घोटाला — एक लाख सड़सठ हजार करोड़ रुपये।

7. कोयला खदान आवंटन घोटाला — एक सौ ब्यान्वे करोड़ रुपये।

**भ्रष्टाचार के विरुद्ध संघर्ष एवं आंदोलन :—** ये बात सच है कि समय-समय पर भ्रष्टाचार के खिलाफ संघर्ष एवं आंदोलन किए गए लेकिन परिणाम कुछ नहीं निकला आज भी परिस्थिति वहीं है। लेकिन समाज के कुछ लोगों को जागरूक करने में और भ्रष्टाचार सम्बन्धी बात को बच्चे — बच्चे तक एवं हर घर तक पहुँचाने में इन संघर्षों में विशेष योगदान दिया है जो निम्नानुसार हैं:—

1. वी. पी. सिंह द्वारा बोफोर्स काण्ड के विरुद्ध आंदोलन किया गया।

2. स्वामी रामदेव द्वारा विदेशी कालेधन को लाने के लिए आंदोलन।

3. अन्ना हजारे द्वारा जनलोकपाल बिल लाने के लिए आंदोलन।

4. भारत सरकार द्वारा एस.आई.टी. का गठन करना।

लेकिन इन सभी आंदोलनों या संघर्षों का कोई विशेष परिणाम नहीं निकला क्योंकि भ्रष्टाचार तब तक खत्म नहीं होगा, जब तक कि हम स्वयं भ्रष्टाचार न करने की कसम न लें।



4. दण्ड की व्यवस्था — भ्रष्टाचार निवारण अधिनियम 1988 की धारा 7 एवं 8 द्वारा की व्यवस्था की गई है जो कि निम्नानुसार है।

1. किसी लोकसेवक द्वारा अपने पदीय कार्य के निर्वहन में अवैध पारितोषण प्राप्त करने

पर 5 वर्ष का कारावास या जुर्माना का प्रावधान है।

2. जब कोई व्यक्ति किसी लोक सेवक पर अवैध या भ्रष्ट साधनों से अवैध असर

डालेगा, तो वह 5 वर्ष का कारावास या जुर्माना से दण्डित किया जायेगा।

5. भ्रष्टाचार निवारण — भ्रष्टाचार निवारण का कार्य बेहद उत्तरदायित्व पूर्ण कार्य है।

इसके नियन्त्रण से ही सामाजिक एवं आर्थिक उन्नति सम्भव है। आज के व्यक्ति को

दैनिक जीवन चक्र में अपने-अपने कार्यों को पूर्ण कराने में कहीं न कहीं किसी न किसी

तरह के छोटे या बड़े तरीके का इस्तेमाल करना ही पड़ेगा।

और ऐसा करना उसकी मजबूरी भी बन गया है। लेकिन अगर हम चाहें तो सुपर

कम्प्यूटर कृत्रिम उपग्रह, वीडियो कैमरे, इलेक्ट्रॉनिक वोटिंग मशीन से निर्वाचन, व्हाट्स

एप, फेसबुक, इंटरनेट और अनेकों सॉफ्टवेयर की सूचना क्रान्ति से जीवन के प्रत्येक क्षेत्र व प्रत्येक पहलू को प्रभावित कर सकते हैं और आज के समय में यह क्रान्ति ग्राम-ग्राम तक पहुँच गई है।

इसी आधुनिक तकनीक के उपयोग से न्याय प्रणाली, सामाजिक व्यवस्था, वस्तुओं की गुणवत्ता एवं हर व्यक्ति से जुड़ी समस्या को काफी हद तक नियन्त्रित किया जा सकता है। जैसा कि वीडियो-ग्राफी एवं इंटरनेट की मदद से बैंकिंग, रेलवे, ए टी एम, प्रतियोगी परीक्षाएं एवं कोर्ट आदि को पारदर्शी एवं भ्रष्टाचार मुक्त प्रणाली की तरह साइबर स्पेज के क्षेत्र में देखा जा सकता है। आज ऐसे डिजिटल सॉफ्टवेयर विकसित कर लिए गये हैं जिससे हर कार्य प्रणाली में तकनीक का उपयोग कर भारत को भ्रष्टाचार मुक्त देश बनाया जा सकता है।

#### सुझाव:-

1 कठोर दण्ड व्यवस्था होना चाहिए, जिससे अन्य लोगों द्वारा भ्रष्टाचार के बारे में सोचना असंभव हो जाए।

2 भ्रष्टाचार के विरुद्ध संघर्ष करने वालों को प्रोत्साहित करना चाहिए।

3 ज्यादातर भुगतान व्यवस्था ऑनलाईन होना चाहिए।

4 व्यक्ति स्वयं अपने व्यवहार को बदले जिससे सामाजिक स्तर पर नैतिक मूल्यों की स्थापना होगी।

5 सादा जीवन उच्च विचार की अवधारणा को बढ़ावा दिया जाना चाहिए।

GO  
CORRUPTION  
SAY NO

# ROUND-UP OF EVENTS

ORGANISED BY  
MAHATMA GANDHI COLLEGE OF LAW



The Winning Team At  
All India Moot Ct. Competition At Jodhpur



Batch of 2012  
LL.B. (TDC)



Batch of 2011  
LL.B. (TDC)



Renowned Thinker K.N. Govindacharya  
Planting A Sapling in The College Garden



NSS Volunteers at Work  
During NSS Camp



Law Day at MGCL



Tree Plantation on Earth Day



Best Student Award by Rajendra Singh ji  
(Ex-Minister)



Shri Vinod Bharadwaj (Executive Chairman, BCI) presiding the Conference on Cloning Laws



Law Day at MGCL







Research for Resurgence - National Seminar at MGCL



National Council Meet of Bhartiya Adhivakta Parishad at Gwalior - Sponsorship Contribution by MGCL



Job Fair at MGCL



## ROUND-UP OF EVENTS

ORGANISED BY  
MAHATMA GANDHI COLLEGE OF LAW





Free Legal Aid Camps organised by MGCL for public cause



Suresh Nagar (Ex-student LLM Batch of 2016) was awarded Special Prize for his contribution on the 15th of August at MGCL



With nonagenarian Padam Shree Baba Yogendra Ji in the campus. A tree was planted by him on this occasion



Privileged and delighted to welcome the great nationalist and activist Shri K N Govindacharya on his second visit to the Institute



# ROUND-UP OF EVENTS

ORGANISED BY MAHATMA GANDHI COLLEGE OF LAW





**Mahatma Gandhi College of Law** conducted a Seminar & Paper Presentation on "Gender Bias in Society – New Research Horizons on Cultural, Spiritual, and Political aspects of Gender Laws



Congratulations To Rashi Agarwal, Student Of LL.B. II<sup>nd</sup> Year, Who Proudly Participated In ICC Arbitration Conference Held At Paris



## ROUND-UP OF EVENTS

ORGANISED BY MAHATMA GANDHI COLLEGE OF LAW





National Seminar on Electoral Reforms held on 12th January



MGCL Organized A Free Legal-aid Camp For Deprived Urban Sections Of Gwalior



# ROUND-UP OF EVENTS

ORGANISED BY MAHATMA GANDHI COLLEGE OF LAW



# FORCE MGCL



# GEMS OF MGCL

## TOPPERS LIST OF B.A.LL.B.

Session	Roll No.	Name of Student
2009-2010	29345	Udit Agrwal
2010-2011	28818	Priyanka Bansal
2011-2012	812370	Nisha Gupta
2012-2013	812401	Chitra Bais
2013-2014	913229	Neeraj Parohit
2014-2015	1089896	Mitali Pathak
2015-2016	1163424	Charu Trivedi
2015-2017	1267803	Kiran Singh
2017-2018	3196199	Sadaf meer

## TOPPERS LIST OF LL.B.

Session	Roll No.	Name of Student
2009-2010	61215	Amarjot singh Bedi
2010-2011	811625	Sarvesh Kumar
2011-2012	911854	Vishnu kumar Pandey
2012-2013	1088879	Gagandeep kaur
2013-2014	1185937	Leenu jadaun
2014-2015	1288748	Rahul pal
2015-2016	3195421	Yashmi Agrawal
2016-2017	14165727	Prabuddh sheel Mittal
2017-2018	15173314	Ram Sharma

## TOPPERS LIST OF LL.M

Session	Roll No.	Name of Student
2009-2010	40288	Seema Narwariya
2010-2011	848326	Rahul Sharma
2011-2012	129	Vartika dave
2012-2013	1190597	Meenal Singh
2013-2014	1268112	Anshika Nigam
2014-2015	3196700	Shivanand Mishra
2015-2016	14165491	Kiran Keswani
2016-2017	15174884	Anuj Kumar
2017-2018	161070448	Harshita Gupta



Tenzin & Raja: Best Students of 1st Batch



Our Students: The Achievers

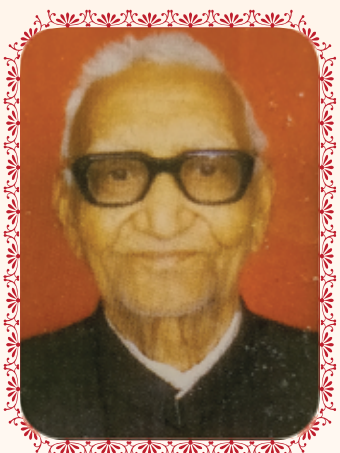
# OUR TORCH BEARERS



**Prof. Dr. V.D. Kulshreshtha, M.Com, LL.M., Ph.D**

**Founding Director**

Dr. Kulshreshtha helped nurture the concept of creation of a legal research centre right since the inception of MGCL. His experience with Dr. Nagendra Singh & International Court of Justice, The Hague and his erudite leadership still haunts the airs at MGCL. He was formerly Research Professor & Chairman, Academic Committee at Indian Law Institute, New Delhi ; Corresponding Collaborator, International Institute for Unification of Private Law(UNIDROIT)Rome(Italy) ; Founding Member, International Association of Constitutional Law, Paris ; Research Professor, International Centre for Law, Health & Ethics, University of Haifa(Israel) ; Advisor for Asia, Inst. of Law and Public Health Protection(Environmental Law) Arlington,USA ; Apart from being on the board of studies of several universities in India.



**Prof. Dr. G.C. Kasliwal, M.A., LL.M., JSD(Cornell)**

**Academic Director**

A post-graduate in History & English, and LL.M. from Lucknow University he had the distinction of being a Fullbright Scholar in Yale University,USA. He was awarded Doctor of Science of Law from Cornell University. He also served as a Judge in Madhya Bharat in Indore. He held many positions as Dean and Professor of several Universities in M.P & Rajasthan. Dr. Kasliwal, being a spiritual person was close to the Chairman and offered all his blessings on MGCL.



**Prof. Dr. Nirmal Mittal, M.A., Ph.D., LL.B., Sahitya Bhushan**

**Academic Director**

An extremely compassionate person Dr. Mittal guided the students out of their problems and shaped them into good human beings. She was instrumental in initiating a series of workshops and conferences at MGCL.





# CAMPUS VIEWS





# MGCL

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