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CASE COMMENT ON RICHPAL SINGH MEENA V. UOI

By Yash Ajmani¹

INTRODUCTION

Chapter XVI of the IPC deals with offences affecting human body in which one of the offences is of culpable homicide. Homicide is the killing of a human being by another human being. It is either lawful or unlawful. Lawful homicide includes the several cases which fall under the General Exceptions i.e. Chapter IV of the IPC. However, unlawful homicides can be divided into further two categories. These are:-

I. Culpable homicide, dealt with between Sections 299 and 304 of IPC
II. Not-culpable homicide, dealt with by Section 304-A of IPC

Furthermore, there are two kinds of culpable homicide:

I. Culpable homicide amounting to murder (Section 300/302 of IPC), and
II. Culpable homicide not amounting to murder (Section 304 of the IPC)

The trend which started arising in IPC jurisprudence was that the if the case was unable to fit into any of the clauses of Section 300 IPC, the Court held the accused guilty under provisions relating to hurt or grievous hurt. Therefore, the present case deals with the thin line of distinction between cases falling under Culpable Homicide and those falling in the category of grievous hurt.

FACTS OF THE CASE

1. That on 14th December, 1996 the Appellant (Richhpal Singh Meena) and a few others were sitting beside a well near the agricultural fields. Richhpal's father Sunderlal Meena (deceased) had gone to inspect the fields. While he was there, Sunderlal met Kailash, Ghasi, Lala and their respective wives and their mother.
2. That soon thereafter, there was a hot exchange of words between them regarding damage to the embankment in the agricultural fields. Kailash, Ghasi and Lala told Sunderlal that they were looking for him and that he had now walked into the trap.
3. That saying this, Kailash caught hold of Sunderlal while Ghasi gave him a blow with a shovel and Lala gave him a blow with a lathi on his back. On receiving the blows Sunderlal fell

¹ Yash Ajmani, Student at University Institute of Legal Studies, Panjab University, Chandigarh
down and on hearing noises, Richhpal and others ran towards the spot and found that Sunderlal was being beaten up by the ladies.

4. That with the assistance of those who were with him, Richhpal managed to take Sunderlal to a hospital in 22 Alwar but he succumbed to the injuries.

5. That a post-mortem examination was carried out by Dr. Amar Singh Rathore and he gave a report that the two injuries given to Sunderlal were sufficient to cause death in the normal course. The injuries were:

- **External injuries**-
  I. Contusion abrasion measuring 8 x 10 cm reddish, located on left side of the rear side of the back.
  II. Contusion abrasion measuring 8 x 8 cm located on right side of chest.

- **Internal injuries**: Fracture on the 4th and 5th ribs located on right side of the chest. Right lung crushed measuring 4 x 3 x 1 cm. Blood clotting in lung. Fracture in 7th and 8th rib on left side. Lung crushed. Plurae of either side of the lungs torn.

6. That Dr. Rathore deposed that shock, haemorrhage and lung injuries resulted in his death. The injuries were sufficient to cause death in the normal course.

7. That on these broad facts, a charge sheet was filed against Ghasi and Lala for an offence punishable under Sections 302, 302/34 and 447 of the Indian Penal Code.

**DECISION OF TRIAL COURT**

On the evidence adduced before him, the Additional District and Sessions Judge-III, Alwar convicted Ghasi and Lala for an offence punishable Under Section 302 of the Indian Penal Code as well as for an offence punishable Under Section 447 of the Indian Penal Code. However, they were acquitted of the charge framed Under Section 302/34 of the Indian Penal Code.

**DECISION OF RAJASTHAN HIGH COURT**

Feeling aggrieved, the convicts preferred D.B. Criminal Appeal No. 403/1997 in the Jaipur Bench of the Rajasthan High Court. By a judgment and order dated 16th April, 2003 the High Court concluded that Ghasi and Lala could be convicted only Under Section 325/34 of the Indian Penal Code and not Under Section 302/34 of the Indian Penal Code. The High Court also held that they could not be convicted Under Section 447 read with Section 302 of the
Indian Penal Code. The sentence awarded to them was imprisonment for the period undergone; that is, about 18 months imprisonment.

**APPEAL IN SUPREME COURT**

Hence, the present appeal was filed before the Hon’ble Supreme Court by Criminal Appeal No. 341 of 2005 by Richpal Singh Meena s/o the deceased.

**ISSUE BEFORE THE COURT**

The prime issue for consideration before the Apex Court in this case was that whether a conviction for murder under Section 300/302 of the IPC, 1860 under any circumstance could be altered into a conviction under Section 322/325 of the IPC or under Section 326 of IPC, ignoring or overlooking the intermediate possibility of a conviction under Section 304 of IPC.

**PROCEEDINGS BEFORE THE SUPREME COURT**

While hearing the appeal, the Court took note of the fact and expressed its surprise that the High Court while convicting Ghasi and Lala did not take into consideration the fact of Sunderlal’s homicide and also no attempt was made to ascertain from the evidence on record to fix the responsibility of the death of the deceased on either of the accused or on both.

The Hon’ble Court was assisted by Ms. Sumita Hazarika, learned Amicus Curiae and Mr. Uday Lalit, Senior Advocate on the issue raised. Various decision of this Court were cited by Mr. Lalit whereby the case involved the death of a human being but the only punishment awarded to the accused was for voluntarily causing grievous hurt and not any punishment for homicide. In furtherance to this, the Learned amicus expressed the view that the fact that a human being had died could not and should not have been ignored or overlooked in any of the cited decisions.

The Supreme Court took note of all the judgments provided for consideration and discussed them at length.

**JURISPRUDENCE BY THE COURT**

- A five-step inquiry is necessary to determine whether the act or omission of accused causing death, a culpable homicide or not:
  1) Is there a homicide?
2) If yes, is it a culpable homicide or a 'not-culpable homicide'?  
3) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder (Section 300 of the Indian Penal Code) or is it a culpable homicide not amounting to murder (Section 304 of the Indian Penal Code)?  
4) If it is a 'not-culpable homicide' then a case Under Section 304-A of the Indian Penal Code is made out.  
5) If it is not possible to identify the person who has committed the homicide, the provisions of Section 72 of the Indian Penal Code may be invoked.

- With respect to the cases cited by Learned Senior Advocate for reference of the Court, the Court observed that these decisions were decided on their own particular facts and no particular law was laid down by this Court through these decisions that if there is only a common intention to cause a grievous injury without any intention to kill, an accused cannot be convicted of murder. This is quite obvious since it would result in an absurd situation in cases where a person smashes the head of another and pleads that he had no intention to kill the victim but only cause a grievous injury. The accused must be deemed to know the consequences of his act, unless it was accidental or unintentional.

- When an act or omission of an accused causes the death of any person, he or she is either guilty of culpable homicide or guilty of not-culpable homicide. It is for the Court to determine on the evidence whether, if it is culpable homicide, it amounts to murder as explained in Section 300 of the Indian Penal Code (along with all its clauses) or not as explained in Section 304 of the Indian Penal Code. If culpable homicide cannot be proved, then it would fall in the category of 'not-culpable homicide'.

- Arrangement of Sections in the Indian Penal Code makes it clear that 'offences affecting life' are quite distinct from offences of 'hurt'. If hurt results in death, intended or unintended, the offence would fall in the category of an offence affecting life, else not.

- The law laid above also is significant as it impacts the issue of sentencing. The reason is the quantum of punishment to be imposed in a given situation. If an accused is guilty of murder, say under Section 300 (thirdly) he or she would be liable for a minimum of life imprisonment; if an accused is guilty of culpable homicide not amounting to murder Under Section 304 he or she would be liable for a maximum of ten years imprisonment; if an
accused is guilty of not-culpable homicide under Section 304-A of the IPC the punishment would not exceed two years imprisonment. On the other hand, if the Court ignores or overlooks the question whether the homicide is culpable or not but merely treats the case as one of voluntarily causing grievous hurt punishable under Section 325 or Section 326 of IPC for which the maximum punishment is seven years imprisonment or ten years/life imprisonment (as the case may be), then there is a real danger in a given case of an accused either getting a lighter sentence than deserved or a heavier sentence (depending on the offence made out) than warranted by law. It is for this reason that not only a precise formulation of charges by the Trial Court (if necessary multiple charges) is essential but also a correct identification by the court of the offence committed.

**DECISION BY THE SUPREME COURT**

Applying the five-step inquiry, it is clear that:

a) there was a homicide, namely the death of Sunderlal;

b) the assailants gave two lathi blows to Sunderlal which resulted in the fracture of his ribs and piercing of his lungs. The injuries were not accidental or unintentional-the assailants had a common intention of grievously injuring Sunderlal and it is not as if they intended to cause some injury to him other that the ones inflicted,

c) the opinion of Dr. Amar Singh Rathore confirmed that the injuries caused to Sunderlal were sufficient to cause death in the normal course. Consequently, the homicide was a culpable homicide.

Applying the law laid down in Virsa Singh it is clear that Ghasi and Lala are guilty of the murder of Sunderlal, the offence falling Under Section 300 (thirdly) of the Indian Penal Code and punishable Under Section 302 of the Indian Penal Code.

Thus, under the circumstances, the Court set aside the decision of the High Court and restored the decision of the Trial Court and convicted Ghasi and Lala of the offence of murdering Sunderlal. The Court further ordered the State to take necessary steps to apprehend the convicts so that they undergo life imprisonment as required by law.
CONCLUSION

Indian Courts through its decision has been continuously evolving the law laid down in Section 299 and 300 of IPC. Thus it can be seen that with the decision in the present case, the Supreme Court laid down a new interpretation to law. Finally the ambiguity with regard to putting cases of Section 299/300 under grievous hurt was finally done away in this case. The Court clearly spelt out the law by holding that cases in which death of a human being is the result, the offender should not be let go away by giving a lesser punishment under Section 326 IPC than he really deserves. If the facts of the case do not satisfy the ingredients under Section 300, the case must be considered to be one covered by Section 304 IPC.

OTHER SIMILAR CASES

- Ankush Shivaji Gaikwad vs State Of Maharashtra 2013 (6) SCC 770

FACTS OF THE CASE

1. That the incident that culminated in the death of deceased-Nilkanth Pawar and the consequent prosecution of the appellant and two others occurred at about 10.00 p.m. on 3rd February, 2006 while the deceased and his wife P.W.1-Mangalbai were guarding their Jaggery crop growing in their field.

2. That the appellant-Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (accused No.2) and Shivaji Bhivaji Gaikwad (accused No.3) were walking past the field of the deceased when a dog owned by the deceased started barking at them. Angered by the barking of the animal, the appellant is alleged to have hit the dog with the iron pipe that he was carrying in his hand.

3. That the deceased objected to the appellant beating the dog, whereupon the appellant started abusing the former and told him to keep quiet or else he too would be beaten like a dog.

4. That the exchange of hot words, it appears, led to a scuffle between the deceased and the accused persons in the course whereof, while accused Nos.2 and 3 beat the deceased with fist and kicks, the appellant hit the deceased with the iron pipe on the head.

5. That on account of the injury inflicted upon him, the deceased fell to the ground whereupon all the three accused persons ran away from the spot. The incident was witnessed by the wife
of the deceased, P.W.1- Mangalbai and by P.W.5-Ramesh Ganpati Pawar who was also present in the field nearby at the time of the occurrence.

6. That the deceased was carried on a motorcycle to the hospital of one Dr. Chinchole at Omerga from where he was shifted to Solapur for further treatment. Two days after the occurrence when the condition of the deceased became precarious, P.W.1-Mangalbai filed a complaint at the Police Station, Omerga on 5th February, 2006 on the basis whereby Crime No.25 of 2006 under Sections 326, 504 and 323 read with Section 34 of the I.P.C was registered by the police.

7. That the investigation of the case was taken up by P.W.6-Police Sub Inspector Parihhar who recorded the panchnama of the scene of the crime and arrested the accused persons.

8. That the deceased eventually succumbed to his injuries on 7th February, 2006 whereupon Section 302 read with Section 34 of the I.P.C. was added to the case.

9. That the post-mortem examination of the deceased revealed a contusion behind his right ear, a contusion on the right arm and an abrasion on the right ankle joint. Internal examination, however, showed that the deceased had sustained an internal injury to the temporal and occipital region under the scalp and a fracture on the base of the skull. Blood clots were noted in the brain tissues and the base of the skull, besides internal bleeding. According to the doctor, the death was caused by the injury to the head.

10. That after completion of the investigation that included seizure of the alleged weapon used by the appellant, the police filed a chargesheet before the judicial Magistrate, who committed the appellant and co-accused to face trial for the offence of murder punishable under Section 302 read with Section 34 of the I.P.C. before the Sessions Court. Before the Sessions Court the appellant and his co-accused pleaded not guilty and claimed a trial.

**DECISION OF THE TRIAL COURT**

Appraisal of the evidence adduced by the prosecution led the trial Court to hold the appellant and his co-accused guilty for the offence of murder and sentenced them to imprisonment for life besides a fine of Rs.2,000/- each and a default sentence of three months rigorous imprisonment.

**DECISION OF HIGH COURT**

The appellant and his co-accused preferred Criminal Appeal No.359 of 2008 before the High Court of Judicature at Bombay, Bench at Aurangabad. The High Court by the judgment
impugned in this appeal dismissed the appeal of the appellant but allowed the same in so far as the co-accused were concerned. The correctness of the said judgment and order is under challenge before us.

**ISSUE RAISED**

The prime issue before the Hon’ble Supreme Court in the present case was that whether in the facts and circumstances of the case the appellant has been rightly convicted for the capital offence and if not whether the act attributed to him would constitute a lesser offence like culpable homicide not amounting to murder punishable under Section 304 Part I or II of the IPC.

**ARGUMENTS ADVANCED**

Arguments advanced by the defence were that:

- It was argued that the incident in question took place on a sudden fight without any premeditation and the act of the appellant hitting the deceased was committed in the heat of passion upon a sudden quarrel without the appellant having taken undue advantage or acting in a cruel or unusual manner.

**DECISION OF THE COURT**

Firstly, there was no premeditation in the commission of the crime. There is not even a suggestion that the appellant had any enmity or motive to commit any offence against the deceased, leave alone a serious offence like murder. It was the barking of the dog that provoked the appellant to beat the dog with the rod that he was carrying apparently to protect himself against being harmed by any stray dog or animal. The deceased took objection to the beating of the dog without in the least anticipating that the same would escalate into a serious incident in the heat of the moment. The exchange of hot words in the quarrel over the barking of the dog led to a sudden fight which in turn culminated in the deceased being hit with the rod unfortunately on a vital part like the head.

Secondly, because the weapon used was not lethal nor was the deceased given a second blow once he had collapsed to the ground. The prosecution case is that no sooner the deceased fell to the ground on account of the blow on the head, the appellant and his companions took to their heels – a circumstance that shows that the appellant had not acted in an unusual or cruel manner in the prevailing situation so as to deprive him of the benefit of Exception 4.
Thirdly, because during the exchange of hot words between the deceased and the appellant all that was said by the appellant was that if the deceased did not keep quiet even he would be beaten like a dog. The use of these words also clearly shows that the intention of the appellant and his companions was at best to belabour him and not to kill him as such. The cumulative effect of all these circumstances, in our opinion, should entitle the appellant to the benefit of Exception 4 to Section 300 of the I.P.C.

Thus the Court held that the nature of the simple injury inflicted by the accused, the part of the body on which it was inflicted, the weapon used to inflict the same and the circumstances in which the injury was inflicted do not suggest that the appellant had the intention to kill the deceased. All that can be said is that the appellant had the knowledge that the injury inflicted by him was likely to cause the death of the deceased. The case would, therefore, more appropriately fall under Section 304 Part II of the IPC.

Further the Court commented on the question of awarding compensation to the family of the victim under Section 357 CrPC. The Court observed that while the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion.

It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the Court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the Court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.

Thus, the Court allowed this appeal but only to the extent that instead of Section 302 IPC the appellant shall stand convicted for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment.
for a period of five years. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered.

- **Mukesh Kumar v. State of Delhi, 2015 (4) RCR (Criminal) 506 (SC)**

**FACTS OF THE CASE**

1. That there was an incidence of assault. Ranbir @ Pappu, Mukesh and Daulat Ram were present in the scene of crime. Accused Ranbir @ Pappu had held the deceased by the neck and all the three accused were assaulting the deceased with their legs and fists.

2. That at some points later, the accused Ravi @ Ashu came with a danda and assaulted the deceased on his head. Thereafter, all the four accused held the deceased by neck with danda.

3. That as per Prosecution’s version, the incident of assault revolved over the return of a loan of Rs. 2 Lacs by the accused Ranbir @ Pappu to Sarla (PW 2).

4. That Post mortem examination of the deceased was performed by Dr VK Jha (PW 20) and had found the cause of death to be coma as a result of head injury consequent to blunt force diverted upon head by other party. Head injury was sufficient to cause death in ordinary course of nature.

5. That the conviction of the appellants by the Learned trial Court was affirmed by the High Court based on the testimonies of eye-witnesses PW1 and PW2 which was corroborated by the evidence of PW5 and PW6.

6. That aggrieved by the affirmation of their conviction recorded under Section 302 IPC and the life sentence awarded, the three appellants filed the present appeal before the Hon’ble Supreme Court.

**DECISION OF THE SUPREME COURT**

The Court heard both the parties at length and held that insofar as Section 34 IPC is concerned by which the culpability of the accused has been decided from the sequence of events presented before the Court, it clearly transpires that the solitary cause of death is the head injury which was given by accused Ravi @ Ashu.

In a situation where the deceased was already held by the accused Ranbir @ Pappu and all of them were assaulting the deceased with their fists and legs and the accused Ravi @ Ashu appeared in the scene with a danda at a subsequent point of time, liability for causing death
by invoking Section 34 IPC cannot be attributed to the accused Ranbir @ Pappu and Mukesh Kumar.

The situation perhaps would have been different if after arrival of accused Ravi @ Ashu on the scene any of the other accused had held back the deceased and the accused Ravi @ Ashu had delivered the death blow. It is the accused Ravi @ Ashu who came later armed with the danda with which he alone assaulted the deceased on the head who would be liable for his individual act.

Thus the Court changed the conviction of the accused Mukesh Kumar and Ranbir @ Pappu from Section 302/34 to one under Section 324/34 IPC. The conviction of Ravi @ Ashu under Section 302 was maintained.

• Abdul Waheed v. State of Uttar Pradesh, 2016 (1) RCR (Criminal) 91 (SC)

FACTS OF THE CASE

1. That the complainant Razzaq Khan’ brother Abbas and Shabbir had instituted a suit against the appellant and an injunction order was issued by the Court.
2. That despite the Court’s order, appellant Abdul Waheed did not stop the construction and continued the construction on the Panchayat Ghar.
3. That due to the continuing unlawful act of the appellant, contempt proceedings were initiated against him and the case was listed for hearing on 6.11.1974.
4. That one day before the hearing i.e 5.11.1974 at about 8 PM, the complainant was sitting near the chabutra of the well along with Abbas, Shubrati discussing about the Court hearing.
5. That at that time, the appellant and others came there and abused them giving a warning that they would be killed if they proceeded to the Court next day.
6. That the appellant and others were armed with licensed guns while some had lathis and dandas. Abdul waheed exhorted others to break the bones, while others started inflicting injuries by giving lathi blows.
7. That the accused Abdul Waheed opened fire on the complainant party. The gunshot directly hit Abbas in his arm and he sustained fractured and died little thereafter.
8. That the complaint was lodged by one Razzaq Khan and a case was registered under Sections 147, 148, 302, 302/149 IPC.
9. That the post-mortem certificate declared that Abbas had died of shock and harmorrhage due to injuries sustained by him.
10. That Additional District & Sessions Judge convicted the appellant Abdul Waheed under Section 302 IPC for murder of Abbas Khan and sentenced him to undergo life imprisonment. Others were convicted under Section 302 r/w 149 IPC.

11. That the High Court of Allahabad also confirmed the conviction of the appellant Abdul Waheed as awarded by the Trial Court.

12. That aggrieved by the order of High Court, the present appeal was filed before the Supreme Court.

DECISION OF SUPREME COURT

The Court observed that the appellant and the accused party were having enmity against the deceased on account of civil suit and filing of contempt petition. The appellant and the accused party went to chabutra of Abbas Khan armed with pistol, guns and lathis which shows the intention of the appellant to commit the murder.

An ordinary person is not presumed to know the precise location of arteries in the human limbs. Therefore, if a stab with a knife or dagger, aimed at an arm or leg, severs an artery and the injured man dies as a result, it may be reasonable to argue that the offence is not one of culpable homicide and that the assailant can only be presumed to have intended to cause hurt or grievous hurt with a dangerous weapon.

The case in hand is quite different. When gun is used and the person who fires the gun must be presumed to have knowledge and intention that he is inflicting an injury which in the ordinary course of nature is sufficient to cause death and the offence is clearly murder. The Apex Court held that having regard to the enmity and the weapon used, the High Court had rightly held that the appellant accused was guilty of murder of Abbas Khan.

*****
### NCRB DATA

**CASES REPORTED UNDER IPC FOR CRIMES AGAINST BODY DURING 2015**

<table>
<thead>
<tr>
<th>OFFENCE</th>
<th>ALL INDIA TOTAL</th>
<th>PUNJAB</th>
<th>CHANDIGARH</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>32127</td>
<td>701</td>
<td>20</td>
</tr>
<tr>
<td>Attempt to commit murder</td>
<td>46471</td>
<td>884</td>
<td>42</td>
</tr>
<tr>
<td>Culpable homicide not amounting to murder</td>
<td>3176</td>
<td>124</td>
<td>7</td>
</tr>
<tr>
<td>Attempt to commit culpable homicide</td>
<td>6118</td>
<td>37</td>
<td>8</td>
</tr>
<tr>
<td>Grievous hurt</td>
<td>92996</td>
<td>2440</td>
<td>35</td>
</tr>
<tr>
<td>Causing death by negligence</td>
<td>134384</td>
<td>3349</td>
<td>98</td>
</tr>
</tbody>
</table>

The present data leads to following conclusion:

- Of total incidences of Murder reported across the country, the State of Punjab accounts for 2.18% of the total while Chandigarh accounts for 0.06%.
- 1.9% complaints were with respect to attempt to murder in Punjab of the total all India total.
- With regard to complaints for culpable homicide not amounting to murder, Punjab registered 1.9% and Chandigarh reported 0.09% of total complaints.
- For the offence of grievous hurt, about 2.62% of total complaints were registered alone in Punjab while for death by negligence; about 2.49% of total complaints were registered in Punjab.

****
CHILD TERRORISTS AND THEIR CRIMINAL LIABILITY

By Sanya Singh

ABSTRACT

Terrorism is not a thing of the modern world but has been present since the beginning of 20th century. However, the modus operandi of terrorists with time has changed, has become more complex, more shocking and surprising. Earlier it was the technology which was being used to succeed in their mission of spreading terror but nowadays a very shocking trend has come forward.

The terrorist organizations have been enrolling young children ranging from the age of 3-17 as their trainees. These groups are releasing videos and images in which one can clearly see children participating in war training, or celebrating the beheading of a person or carrying guns and machines and openly being exposed to bombs and grenades as if they are their dearest toys. This images shake the conscience and also bring a cry from every person seeing the demise of the innocence and childhood of these children.

However, the most important question which arises is that how will law deal with such children, what will be the correct approach? So far India has not come across any act of terror being committed by children. Thus, this paper deals with the hypothetical question that what would be the approach of India in such a case having regard to the penal laws existing in the country. At the same time the approach of international law and different nations in this respect is laid down in this paper. In the end, the paper emphasizes on the need for rehabilitation of the child terrorists.

INTRODUCTION

The word terrorism originated from French word terrorisme which referred to the acts committed by the French Government during the Reign of Terror. But now the term has taken an altogether different meaning. Terrorism refers to the act of creating terror among the masses by killing the innocent people for a specific political motive. Since 1994, the United

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Nations General Assembly\(^3\) has defined terrorism as “criminal acts intended or calculated to provoke a state of terror in the public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them”.

Terrorism is not a new phenomenon. However, with the progress of mankind into era of technology and sophistication, terrorism has also acquired new dimensions in the twenty-first century. Terrorist groups have now become more organized, and are now often transnational. Many of the terrorist attacks are religiously motivated; and terrorist acts have become increasingly brutal, particularly in terms of civilian casualties. The ever-evolving character of terrorism, together with the sense of anxiety that such a phenomenon creates in the community, has prompted States to adopt counter-terrorism policies and measures to tackle the issue.

Terrorists have been evolving new and new methods in succeeding their agenda i.e in shaking the conscience of mankind to its very roots. One such method adopted by them is recruitment of children as terrorists in their organization. Such children are often termed as Child soldiers or child terrorists.

**WHO ARE CHILD TERRORISTS?**

Article 1 of the Convention on the Rights of the Child (CRC), states that a child is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” Having defined child, the term ‘child soldier’ refers to the military use of children either by the Government, rebel groups and participation of children in hostilities as spies, messengers, informants etc. But the term child terrorists specifically refer to the recruitment of children by Non-state organization as their prospective terrorists. These are the children who are below 18 years and who since impressionable age of their lives are nurtured and brought up by terrorist groups and are made to participate in rigorous training and are exposed and brainwashed by the banned organizations.

Many children who are alleged to commit, or are accused of terrorist offences are living in areas of armed conflicts. Forced by poverty, exposed to inhuman conditions since childhood, lack of education and living in hostile environment, these children are easily brainwashed and

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\(^3\) 1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60, “Measures to Eliminate International Terrorism”, of December 9, 1994,
taken by the terrorist groups to serve their purpose. Having no hope of bright and peaceful future, the young population in disturbed areas is filled with vengeance against the authorities responsible since the very beginning and is motivated to work as terrorists in the name of their emancipation and freedom.

The infant filled with their innocence and kind attitude are easily repulsed by the violent and gruesome acts of terrorism. For this very reason, such children are forced to serve as armed terrorist and taken as trainees. But in the recent time when children are easily exposed to the various vices through internet and other sources in the open the trend has started shifting towards adherence and children themselves appear to choose to join terrorist organizations. Such children are joining for the ideological reason and not due to their socio-economic background.

**CHILD TERRORIST: A MISNOMER**

The very term child terrorist does not strike well in our minds. One gets the a contradicting image in one’s mind as it is not likely that one can imagine an innocent and playful child to be playing and juggling with dangerous weapons and the lives of others. And for this very reason one needs to take a proper look at the term ‘child terrorist’ itself. There is a contradiction in terms.

The word ‘terrorist’ means that a person’s actions are deployed in pursuit of a particular political aim. But a child who is yet not capable of understanding the true nature of things, can he be having the same convictions as the people who motivate him and keep him on this journey. These children have been shaped and moulded by the adult worlds around them. None of the children has developed the political perspective on various agendas required to form a genuine belief in any ideology. The idea that we are seeing a rise in child terrorism merely demonstrates that the adult world has failed to interpret the peculiar position of these children in the societies they have been brought up in. Thus there arises a need to delineate between the actions of children and adults. More so these children are mere trainees yet and not yet grown into terrorists. Thus to consider the children as part of the organization would be a wrong approach on part of humanity.

**THE RISE IN THE USE OF CHILD TERRORISTS**
The taking of children and their exploitation by the terrorist groups is not new but such recruitments are continuously increasing with the terrorist organizations employing more and more children to carry out their activities. The researchers from the Georgia State University found that between January 2015 and January 2016, 39% of the children were killed when they detonated vehicle-borne explosives on suicide bombing runs for ISIS. Another 33 percent were killed in battlefield operations, and 18 percent died in suicidal raids behind enemy lines that they didn’t expect to survive.\textsuperscript{4} The study found that the death rate for children and teenagers fighting for ISIS is increasing at a rapid rate and was more than twice as high in 2015. The analysis, published by the Combating Terrorism Center at West Point\textsuperscript{5} in February, tallied at least 89 deaths, and suggests that ISIS’ “mobilization of children and youth for military purposes is accelerating.” As has been seen India as well, time and again the news had been coming that youth have fled away to join the cause of ISIS.

The use of child terrorists is strategic as well as shocking move. It provides the desired heightened media attention and also provides the terrorist groups to groom more loyal members. Children are easier to indoctrinate and less likely to resist, since they do not yet fully understand their own mortality. Moreover, because children appear less suspicious, they are less likely to be apprehended easily and thus using them often leads to more successful missions.

Thus it can be judged from the figures that the there is an upward trend in the use of children in the terrorist propaganda. The shocking aspect of this all is that now it has become a voluntary practice for the children to join the terrorist groups. Following are some of the reasons which can be assigned to this trend:

1. **BRAINWASHING:** A major reason for this is the brainwashing of the children at a very young age and turning them into radicalized youth. They are being wrongly guided in the name of poverty, religion and freedom from the stagnant environment where they see no growth.

2. **ACCESS TO VIRTUAL PLATFORMS:** 21\textsuperscript{st} century is the era of internet and gadgets where one can access far into depth at the tip of their hand within seconds. The access to

\begin{itemize}
    \item [4] Priyanka Bhogani; The Number of Children Dying for ISIS is Rising; Frontline; March 1, 2016; \texttt{http://www.pbs.org/wgbh/frontline/article/the-number-of-children-dying-for-isis-is-rising/};
    \item [5] Marielle Ness; Beyond the Caliphate; Islamic State Activity Outside the Group’s Defined Wilayat; The Combating Terrorism Center
\end{itemize}
information is open to all but this is prone to great misuse as well. Information is being uploaded every now and then without any guarantee of it being true and the youth is easily being misled. One can easily understand this having regard to the number of videos and messages which are being circulated through whatsapp, facebook etc which create agitation among the readers and ignite their aggression. Children and youth are thus at a severe risk factors for radicalization and with the vast ambit of social media and virtual platforms, these factors remain unsupervised. Many terrorist websites are broadcasting youth-targeted content such as cartoons and videogames that promote extremism and violence.

3. GLORIFICATION OF DEATH: The non state armed organization have their own unique ways of recruiting children. They glorify, normalize and publicize the deaths of their members in the name of sacrifice for a good cause. ISIS tags its young recruits as the ‘cubs of the Caliphate’. They make it seem as if this is the empowerment of children and children are thus tempted to join in. Participation in such activities is considered to be a valuable and honorable act.

4. FAMILY PRESSURE: To a great deal families of the young children are also responsible for their child being sent over to such missions. The families who are themselves connected with such organization, easily provide free access to the terrorists to their children. Since the very beginning they are bred in an environment where they are exposed to guns, machines, weapons, beheading and these become toys and games for them. And in some cases, families are coerced into sending their kids for this cause. The youth is taken away only to never return again.

CHILD TERRORISTS AND PENAL LAW

In almost all legal systems of the world children are not fastened with the same criminal liability as adults. This is because the law does not presume the same mens rea on part of a child as can be expected of an adult. Children are gullible creatures who can be easily tutored, misguided and enticed to act in a particular way and this is exactly the case with child terrorists as seen above. However, with the advancement in technology era, where at one hand, science with its various tools is making lives easy, on the other side; the acts of violence are becoming more and more organized and sophisticated. The attacks on humanity
are becoming more and more gruesome and disgusting. In this entire ruckus, child soldiers are becoming the perpetrators but they are also the victims at the hands of the terrorists themselves. In such a case the question arises regarding the criminal liability of child soldiers.

A very similar situation arose with respect to Ajmal Kasab who was arrested for carrying out the attacks of 26/11 Mumbai attacks in India in 2008. When the trial was about to be commenced the media was filled with the news that the accused is a juvenile and may go scot free under the protection given to juveniles in a matter of few years. Had Kasab been proved to have been a juvenile, he would have surely been dealt with by law in a completely different manner which is good having regard to the spirit of the law. But seeing from the aspects of a common man in India whose faith in humanity was shakened by the inhuman attacks and mass killing, would he have allowed Kasab to be getting the benefit of age when clearly the acts committed by him allege otherwise.

Thus, this is where the conflict with respect to the criminal liability of child soldiers arises.

**CHILD RIGHTS**

Children too like any other human beings have certain rights and this was recognized for the first time by the Declaration of Children’s Rights which was adopted by the League of Nations in 1924. The Declaration emphasized that children have a right to be protected and thus it is the responsibility of adults to provide for the protection. Then in the post world war world came the Convention on the Rights of the Child which came into force in September, 1990.

The law adopts reformatory approach with respect to children. This is stemmed from the belief that these are young humans who have their entire lives ahead of themselves and with correct moral support and guidance they can be embarked upon the right track. No man is born a criminal and children more so are not capable of having the required guilty mind comprehended by law. Thus, greater emphasis is placed on having juvenile laws under which children in conflict with law are tried and are not given the traditional punishment of imprisonment in jails or fine but are rather sent to reformatory houses with a view to correcting their conduct and helping them adjust back in society.

**JUVENILE JUSTICE SYSTEMS**
Article 40 of the CRC promotes the States to establish laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law. Thus, a State is required to establish a juvenile justice system. Different States prescribe their own minimum age of criminal responsibility and children falling below the specified age will be tried with the juvenile justice system regardless of the nature of the crimes committed. This applies to terrorist offences as well as it applies to any other criminal offence.

India recently amended the Juvenile Justice Act in 2015 bringing about a major change in the Act. Prior to the amendment, any person under 18 years could be tried only under juvenile system. But having regard to the Delhi Gang Rape in 2012 and the facts brought on record, a need to amend the law was felt and thus, after the amendment a juvenile falling under the age group of 16-18 may be tried as a adult if the circumstances of the case so warrants.

Seeing in this light, will child terrorists also be dealt under this law? Or would the law prefer to adopt a lenient and reformative approach for children considering the fact that these children themselves are victim. India so far has not come across any case of child terrorist.

**IMMUNITY UNDER PENAL CODE**

Indian Penal Code also prescribes special immunity for children committing offences under the Code or any special or local law. Section 82 of the Code specifies that nothing is an offence which is done by a child under seven years of age. Thus, child terrorists under the age of 7 will be absolutely immune under Indian laws. The terrorist organizations are recruiting children since the age of 3 only and they are being seen in beheading videos in which some of the children are not just mere spectator but participating in beheading as such. However, such children will enjoy special immunity due to Section 82 of the Code.

But such children cannot be let go off but are in need of rehabilitation. So in such cases, the law can take it upon itself to ensure that such children do not go back and fall into the same trap of terrorists that they have been caught in before. In such cases, it has to be seen that such victims of hatred and selfish agenda are provided education including moral education as well. Children can be easily shaped and thus they have to be taught between what is right and wrong. Thus, such children below 7 should not only be allowed to go scot free but an effective machinery can be established by all the countries to take initiatives and steps to
provide a normalized life to the children, to bring them back in the innocent world of children away from all the violence and blood and to free them from all the influence under which they lived before. The need is to psychologically understand and treat such children with sensitivity.

**CRIMINAL LIABILITY IN OTHER COUNTRIES**

Article 40(3)(a) of the Convention on Child Rights provides that Parties shall establish a minimum age below which children shall be presumed not to have the capacity to deliberately and willfully infringe on the criminal law. Thus, no fixed age is provided by International law for fixing criminal liability and States are free to choose the age with regard to cultural, social and educational environment. However, the ages fixed by States vary from age 7 to 18.

All around the globe majority of countries support a reformative approach towards child terrorists and emphasize on their rehabilitation rather than punishment. However, few countries are taking a strict stance against this issue and making laws to deal with such children at par with adult terrorists. Recently Israeli parliament approved a new law allowing child "terrorists" as young as 12 to be jailed. Those in support of the Bill state that this is out of necessity having regard to situations being faced by the country. The introduction to the bill reads: “The seriousness that we attach to terror and acts of terror that cause bodily injury and property damage, and the fact that these acts of terror are being carried out by minors, demands a more aggressive approach including toward minors who are convicted.”

**WAYS TO DEAL WITH CHILD TERRORISM**

- First and foremost all the countries should seek to establish a standardized age for imposing criminal liability. If the parity will exist, the terrorists will not be able to take advantage of this loophole existing in the municipal laws of all the countries. Thus, international instruments should set the age limit.

- In case of child terrorists punishment will not serve as an effective measure. The need is to take the children out of horrors of terrorism and establish them back in their normal life
which every child as a human deserves. Thus, emphasis will have to be laid on education of children. A child friendly approach will be the best measure.

- The government will have to keep a check on the proliferation of unchecked content online. Moreover, the parents should not be too aloof from their children so as to not know what their children are doing or going through. Families should encourage open discussion and debates.

- Poverty still remains the major cause which breeds all the other evils. Terrorism also is one of the outcomes of frustration from poverty. Thus, the authorities should make sure to remove illiteracy, poverty and corruption.

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REFERENCES

- Angell, Ami; Rohan Gunaratna; Terrorist Rehabilitation; CRC Press, July-2011;

- Bhogani, Priyanka; The Number of Children Dying for ISIS is Rising; Frontline; March 1, 2016; [http://www.pbs.org/wgbh/frontline/article/the-number-of-children-dying-for-isis-is-rising/](http://www.pbs.org/wgbh/frontline/article/the-number-of-children-dying-for-isis-is-rising/)


- LoCicero, Alice; Samuel J. Sinclair; Creating Young Martyrs: Conditions that Make Dying in a Terrorist Attack Seem Like a Good Idea; Praeger Security International; ABC-CLIO, 2008
• LoCicero, Alice; Why "Good Kids" Turn Into Deadly Terrorists: Deconstructing the Accused Boston Marathon Bombers and Others Like Them: Deconstructing the Accused Boston Marathon Bombers and Others Like Them; ABC-CLIO, July-2014

• Mahan, Sue; Griset, Pamala L.; Terrorism in Perspective; 3rd ed; SAGE Publications, Nov-2012;

• Martin, Gus; Understanding Terrorism: Challenges, Perspectives, and Issues; 4th ed; SAGE, Jan-2012;

• Matusitz, Jonathan; Symbolism in Terrorism: Motivation, Communication, and Behavior; Rowman & Littlefield, 16-Sep-2014

• Nacos, Brigitte L; Terrorism and Counterterrorism; 5th ed; Routledge, March-2016;

• Ness, Marielle; Beyond the Caliphate: Islamic State Activity Outside the Group's Defined Wilayat; The Combating Terrorism Center

• Tari, Viktória Alexandra; The need for legal protection for radicalized children in Western countries ; December 2015
CASE COMMENT ON INDIRA SAWHNEY V. UOI. 1993

By Mansi Singh

INTRODUCTION

The spirit of equality pervades the provisions of the Constitution of India, as the main aim of the founders of the Constitution was to create an egalitarian society wherein social, economic and political justice prevailed and equality of status and opportunity are made available to all. However, owing to historical and traditional reasons, certain classes of Indian citizens are under severe social and economic disabilities that they cannot effectively enjoy either equality of status or of opportunity. Therefore the Constitution accords to these weaker sections of society protective discrimination in various articles, including Article 15(4). This clause empowers the state, notwithstanding anything to the contrary in Article 15(1) to make special reservation for the advancement of any socially and educationally backward classes of citizens or for scheduled castes and scheduled tribes. Further empowering provisions for the backward classes are provided by Article 16 of the Constitution.

Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India. The State although is a model employer, its right to create posts and recruit people therefore emanates from the statutes or statutory rules and/or rules framed under the proviso appended to Article 309 of the Constitution of India. The recruitment rules are to be made with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts. The case of Indira Sawhney v. Union Of India, known as the Mandal Commission case, is a very significant pronouncement of the Supreme Court on the question of reservation of posts for backward classes. The court has dealt with this question in a very exhaustive manner.

CASE HISTORY IN BRIEF

The Mandal Commision was appointed by the Govt of India in terms of Article 340 of the Constitution of India in 1979 to investigate the conditions of socially and educationally backward classes. One of the major recommendations made by the Commission was that,

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6 Mansi Singh, Graduate, Ba.LLB (H), University Institute of Legal Studies, Panjab University, Chandigarh
7 Dr. Sunil Kumar Jaggir, Reservation Policy and Indian Constitution in India, American International journal of Research and Humanities, Arts and social Sciences,
8 Prof. MP Jain, Indian Constitutional Law, 6th Ed., Lexis Nexis, 2012
9 AIR 1993 SC 477
besides the SCs and STs, for OBCs which constitute nearly 52% component of the population, 27% government jobs be reserved so that the total reservation for all, SCs, STs and OBCs amounts to 50%.

No action was taken on the basis of the Mandal report for long after it was submitted except that it was discussed in the Houses of Parliament twice, once in 1982 and again in 1983. On August 13, 1990, the VP Singh Government at the centre issued an office memorandum accepting the Mandal Commission recommendation and announcing 27% reservation for the socially and educationally backward classes in vacancies in civil posts and services under the Govt of India.

This memorandum led to widespread disturbances in the country. In 1991, the Narsimha Rao Govt modified the above memorandum in two aspects:

i. The poorer sections among the backward classes would get preference over the other sections

ii. 10% vacancies would be reserved for other “economically backward sections” of the people who were not covered by any existing reservation scheme.

Ultimately the constitutional validity of the memorandum came to be questioned in the Supreme Court through several writ petitions. The question of constitutional validity of the memorandum was considered by a Bench of 9 Judges and six opinions were delivered.

**ISSUES INVOLVED**

1. **Whether**:
   a) **the 'provision' contemplated by Article 16(4) must necessarily be made by the legislative wing of the State?**

   The Hon’ble Supreme Court held that the very use of the word "provision" in Article 16(4) is significant. Whereas Clauses (3) and (5) of Article 16 - and Clauses (2) to (6) of Article 19 - use the word "Law", Article 16(4) uses the word "provision". Regulation of service conditions by orders and Rules made by the Executive was a well known feature at the time of the framing of the Constitution. Probably for this reason, a deliberate departure has been made in the case of Clause (4).

   Therefore, the "provision" contemplated by Article 16(4) can also be made by the executive wing of the Union or of the State, as the case may be, as has been done in the
present case. With respect to the argument of abuse of power by the political executive, we may say that there is adequate safeguard against misuse by the political executive of the power under Article 16(4) in the provision itself. Any determination of backwardness is neither a subjective exercise nor a matter of subjective satisfaction. As held herein – as also by earlier judgments - the exercise is an objective one. Certain objective social and other criteria have to be satisfied before any group or class of citizens could be treated as backward. If the executive includes, for collateral reasons, groups or classes not satisfying the relevant criteria, it would be a clear case of fraud on power.

b) If the answer to Clause (a) is in the negative, whether an executive order making such a provision is enforceable without incorporating it into a rule made under the proviso to Article 309?

The Court held that once it is held that a provision under Article 16(4) can be made by the executive, it must necessarily follow that such a provision is effective the moment it is made.

2. Whether:
   a) Clause (4) of Article 16 is an exception to Clause (1) of Article 16?

   The Hon’ble Court observed that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. Not doing so, would perpetuate and accentuate inequality. Accordingly, it was held that Clause (4) of Article 16 is not exception to Clause (1) of Article 16. It is an instance of classification implicit in and permitted by Clause (1).

   b) Whether Clause (4) of Article 16 is exhaustive of the special provisions that can be made in favour of 'backward class of citizens'?

   The Court held that article 16(4) is exhaustive of the provision that can be made in favour of the backward classes in the matter of employment. No reservation can be made in favour of the backward classes outside the scope of art. 16(4) though it may not be exhaustive of the very concept of reservation.
In one sense, the Court has given a broad interpretation to art 16(4). The court has broadly interpreted the word ‘reservation’ therein. Reservation does not mean “reservation simpliciter” but it takes in “other forms of special provision likes preferences, concessions and exemption”. Thus, the constitutional scheme and context of art 16(4) leads to the view that larger concept of reservation takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions like exemptions, concessions and relaxation, consistent no doubt with the requirement of maintenance of efficiency of administration. Thus, all supplemental and ancillary provisions to ensure full availment of provision for reservation can be provided as part of reservation itself under art 16(4) and there is no need to fall back to art 16(1) for this purpose.

c) **Whether it is exhaustive of the special provisions that can be made in favour of all sections, classes or groups?**

The Hon’ble Court was of the opinion that Clause (4) is not, and cannot be held to be, exhaustive of the concept of reservations; it is exhaustive of reservations in favour of backward classes alone. Merely because, one form of classification is stated as a specific clause, it does not follow that the very concept and power of classification implicit in Clause (1) is exhausted thereby.

3.

a) **What does the expression 'backward class of citizens' in Article 16(4) means?**

In the opinion of the Court, the words "class of citizens - not adequately represented in the services under the State" would have been a vague and uncertain description. By adding the word "backward" and by the speeches of Dr. Ambedkar, it was made clear that the "class of citizens...not adequately represented in the services under the State" meant only those classes of citizens who were not so represented on account of their social backwardness.

From a review of the previous case law in the area, the Court concluded that the judicial opinions emphasise the integral connection between caste, occupation, poverty and social backwardness. Social, educational and economic backwardness are closely intertwined in the Indian context.
b) **Whether backward classes can be identified on the basis and with reference to caste alone?**

The Hon’ble Court gave its view that Caste may be used as a criterion because caste often is a social class in India. But caste cannot be the sole criteria for reservation. Reservation under Article 16(4) is not being made in favour of the caste but a backward class. Once a caste satisfies the criteria of backwardness, it becomes a backward class for the purposes of Article 16(4). Besides castes, there may be other communities, groups, classes and denominations which may qualify as backward class of citizens. Among the Non-Hindus, there are several occupational groups, sects and denominations which, for historical reasons, are socially backward. They too represent backward social collectivises for the purpose of art 16(4).

Neither the Constitution nor the law prescribe the procedure or method of identification of backward classes. Nor is it possible or advisable for the court to lay down any such procedure or method. It must be left to the authority appointed to identify. If the Govt. can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. Identification of the backward classes can certainly be down with reference to castes among, and along with, other groups, classes and sections of people. One can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria.

c) **Whether the backwardness in Article 16(4) should be both social and educational?**

Addressing this issue, the Court held that backwardness under Article 16(4) need not be both social as well as educational as is the case under Article 15(4). Article 16(4) does not contain the qualifying words “socially and educationally” as does Article 15(4). It is not correct to say that “backward class of citizens” in Article 15(4). Saying so would mean and imply reading a limitation into a beneficial provision like Article 16(4). Backwardness contemplated by Article 16(4) is mainly a socially backwardness.

Further, if one keeps in mind the context in which Article 16(4) was enacted it would be clear that the accent was upon social backwardness. It goes without saying that in Indian context, social backwardness leads to educational backwardness and both of them together lead to poverty which in turn breeds and perpetuates the social and educational backwardness. They feed upon each other constituting a vicious circle.
d) **Whether a class, to be designated as a backward class, should be situated similarly to the S.Cs./S.Ts.?**

The Court saw no reason to qualify or restrict the meaning of the expression "backward class of citizens" by saying that it means those other backward classes who are situated similarly to Scheduled Castes and/or Scheduled Tribes. The relevant language employed in both the clauses is different. Article 16(4) does not expressly refer to Scheduled Castes or Scheduled Tribes; if so, there is no reason why the Court should treat their backwardness as the standard backwardness for all those claiming its protection. As a matter of fact, neither the several castes/groups/tribes within the Scheduled Castes and Scheduled Tribes are similarly situated nor are the Scheduled Castes and Scheduled Tribes similarly situated. If any group or class is situated similarly to the Scheduled Castes, they may have a case for inclusion in that class but there seems to be no basis either in fact or in principle for holding that other classes/groups must be situated similarly to them for qualifying as backward classes. There is no warrant to import any such a priori notions into the concept of Other Backward Classes. At the same time, we think it appropriate to clarify that backwardness, being a relative term, must in the context be judged by the general level of advancement of the entire population of the country or the State, as the case may be.

e) **Whether the 'means' test can be applied in the course of identification of backward classes? And if the answer is yes, whether providing such a test is obligatory?**

'Means test' in this discussion signifies imposition of an income limit, for the purpose of excluding persons (from the backward class) whose income is above the said limit. This submission is very often referred to as "the creamy layer" argument. The Court made the recommendation that the “creamy layer”, the socially advanced members of a backward class, should be excluded from the benefit of reservation. Such exclusion would benefit the truly backward people, and thus, more appropriately serve the purpose of Article 16(4). But the real difficulty is how and where to draw the line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by the others.

Reddy J. Opined that the basis of exclusion should not merely be economic, unless, of course, the economic advancement is so high that it necessarily means social advancement.
There are however certain positions, the occupants of which can be treated as “socially advanced” without any further inquiry. Thus, when a member of a designated backward class becomes a member of IAS or IPS or any other All India Service, his status in society rises. He is no longer socially disadvantaged and his children get full opportunity to realise their potential. It is but logical that in such a situation, his children are not given the benefit of reservation. For giving them the benefit of reservation, other disadvantaged members of that backward class may be deprived of it.

However, laying down a test to identify the creamy layer, the Court has directed the government to specify the basis of exclusion- whether on the basis of income, extent of holding or otherwise.

**Adequacy of Representation in the services under the State:**
Not only should a class be a backward class for meriting reservations, it should also be inadequately represented in the services under the State. The language of Clause (4) makes it clear that the question whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This is evident from the fact that the said requirement is preceded by the words "in the opinion of the State". This opinion can be formed by the State on its own, i.e., on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is, there must be some material upon which the opinion is formed.

4. Whether:
   a) **the backward classes can be identified only and exclusively with reference to economic criteria?**
      A backward class cannot be identified only and exclusively with reference to economic criterion. A backward class may, however, be identified on the basis of occupation-cum-income without any reference to caste. It may be a consideration or basis along with and in addition to social backwardness, but it can never be the sole criterion. This is the view uniformly taken by the Supreme Court in different cases.

   b) **Whether criteria like occupation-cum-income without reference to caste altogether, can be evolved for identifying the backward classes?**
In *Chitralekha’s case*\(^{10}\), the Supreme Court held that such identification is permissible. The Court did not differ with the said view in as much as this is but another method to find socially backward classes. Indeed, this test in the Indian context is broadly the same as the one adopted by the Mandal Commission.

5. **Whether the backward classes can be further categorised into backward and more backward categories?**

There is no constitutional bar in the state categorising the backward classes as “backward” and more backward. The Court observed that there is no reason why on principle there cannot be a classification into Backward Classes and More Backward Classes, if both classes are not merely a little behind, but far far behind the most advanced classes. In fact such a classification would be necessary to help the More Backward Classes; otherwise those of the Backward Classes who might be a little more advanced than the More Backward Classes might walk away with all the seats.

6. **To what extent can the reservation be made?**

a) **Whether the 50% rule enunciated in Balaji**\(^{11}\) a binding rule or only a rule of caution or rule of prudence?

The Court pointed out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period.

Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonably limits - and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extra-ordinary situations as explained hereinafter.

While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on

\(^{10}\) *Chitralekhs v. State of Mysore*, AIR 1964 SC 1823

\(^{11}\) *Balaji v. State of Mysore*, AIR 1963 SC 649
account of their being out of the main stream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

b) Whether the 50% rule, if any, is confined to reservations made under Clause (4) of Article 16 or whether it takes in all types of reservations that can be provided under Article 16?

The Court gave its opinion that the rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). The Court divided the total reservation of 50% into ‘vertical’ and ‘horizontal’ reservations. The reservation in favour of SC/ST and OBS under art 16(4) may be called vertical reservation whereas reservation made in favour of physically handicapped (under art 16(1)) can be referred to as horizontal reservation. Horizontal reservation cut across the vertical reservation what is called interlocking reservation.

To be more precise, suppose 3% vacancies are reserved for physically handicapped persons. This reservation is relatable to art 16(1). The persons selected against this quota will be placed in the appropriate category, i.e if he belongs to SC/ST category, he will be placed in that quota by making necessary adjustments, similarly, if he belongs to the open competition category, he will be placed in that category by making necessary adjustments. Even after providing for those horizontal reservations, the over-all % of reservations in favour of backward class of citizens “remain and should remain the same.”

It is, however, made clear that the rule of 50% shall be applicable only to reservations proper; they shall not be - indeed cannot be - applicable to exemptions, concessions or relaxations, if any provided to 'Backward Class of Citizens' under Article 16(4).

c) Further while applying 50% rule, if any, whether an year should be taken as a unit or whether the total strength of the cadre should be looked to?

It must be remembered that the equality of opportunity guaranteed by Clause (1) is to each individual citizen of the country while Clause (4) contemplates special provision being made
in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, the Court held that for the purpose of applying the rule of 50% an year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be.

7. Whether Article 16 permits reservations being provided in the matter of promotions?

The Court is not to apply the rule of reservation to promotions. Under Article 16(4), reservation is permissible only at the stage of entry into the state service i.e only at the initial stage of direct recruitment and not at subsequentional promotion stage. The court disagreed with the proposition that Article 16(4) “contemplates or permits reservation in promotion as well”. The court reached this conclusion as a result of the combined reading of Article 16(4) and Article 335. While it is certainly just to say that a handicap should be given to backward class of citizen at the stage of initial appointment, it would be serious and unacceptable inroad into the rule of equality of opportunity to say that such a handicap should be provided at each stage of promotion throughout their career. That would mean creation of permanent separate category apart from the mainstream- a vertical division of the administrative apparatus. At the initial stage of recruitment reservation can be made in favour of backward class of citizens but once they enter the service, efficiency of administration demands that these members to compete with others and earn promotion like all others. They are then expected to operate on equal footing with others.

8. Whether reservations are anti-meritian? To what extent are Articles 335, 38(2) and 46 of the Constitution relevant in the matter of construing Article 16?

The Hon’ble Court observed that may be, efficiency, competence and merit are not synonymous concepts; May be, it is wrong to treat merit as synonymous with efficiency in administration and that merit is but a component of the efficiency of an administrator. Even so, the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, the Court recognised that this much cost has to be paid, if the constitutional promise of social justice is to be redeemed. Given an opportunity, members of these classes are bound to overcome their initial disadvantages and would
compete with - and may, in some cases, excel members of open competitor candidates. It is undeniable that nature has endowed merit upon members of backward classes as much as it has endowed upon members of other classes and that what is required is an opportunity to prove it. It may not, therefore, be said that reservations are anti meritian. Merit there is even among the reserved candidates and the small difference that may be allowed at the stage of initial recruitment is bound to disappear in course of time. These members too will compete with and improve their efficiency along with others.

Thus, the Court gave its opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. The Court included the following posts in this category:

a) Defence services including all technical posts therein but excluding civil posts.

b) All technical posts in research and development including those connected with atomic energy and space and establishments engaged in production of defence equipment.

c) Teaching posts of professor and above

d) Posts in super-specialities in medicine, engineering and other scientific and technical subjects

e) Posts of pilots and co-pilots in Indian Airlines and Air India.

9. **Whether the extent of judicial review is restricted with regard to the identification of Backward Classes and the percentage of reservations made for such classes to a demonstrably perverse identification or a demonstrably unreasonable percentage?**

It is enough to say on this question that there is no particular or special standard of judicial scrutiny in matters arising under Article 16(4) or for that matter, under Article 15(4). The extent and scope of judicial scrutiny depends upon the nature of the subject matter, the nature of the right affected, the character of the legal and constitutional provisions applicable and so on. The acts and orders of the State made under Article 16(4) do not enjoy any particular kind of immunity. At the same time, the Court would normally extend due deference to the judgment and discretion of the Executive - a co-equal wing - in these matters. The political executive, drawn as it is from the people and represent as it does the majority will of the people, is presumed to know the conditions and the needs of the people and hence its judgment in matters within its judgment and discretion will be entitled to due weight. More than this, it is neither possible nor desirable to say. It is not necessary to answer the question as framed.
10. Whether the distinction made in the Memorandum between 'poorer sections' of the backward classes and others permissible under Article 16?

The object of the clause is to provide a preference in favour of more backward among the "socially and educationally backward classes". In other words, the expression 'poorer sections' was meant to refer to those who are socially and economically more backward. The use of the word 'poorer', in the context, is meant only as a measure of social backwardness. (Of course, the Government is yet to notify which classes among the designated backward classes are more socially backward, i.e., 'poorer sections'). Understood in this sense, the said classification is not and cannot be termed as invalid either constitutionally speaking or in law.

It shall be open to the Government to notify which classes among the several designated other backward classes are more backward for the purposes of this clause and the apportionment of reserved vacancies/posts among 'backward' and "more backward". On such notification the clause will become operational.

11. Whether the reservation of 10% of the posts in favour of 'other economically backward sections of the people who are not covered by any of the existing schemes of the reservations' made by the Office Memorandum dated 25.9.1991 permissible under Article 16?

The Court rejected the reservation of 10% posts in favour of ‘other economically backward sections of the people who are not covered by any existing schemes of reservations. Such a category cannot be related to art 16(4). If at all, it can be related to art 16(1). Reservation of 10% vacancies among open competition candidates on the basis of income/property holding means exclusion of those who are above the demarcating line from those 10% seats. It is not permissible to debar a citizen from being considered for appointment to an office under the state solely on the basis of his income or property-holding. Any such bar would be inconsistent with the guarantee of equal opportunity held out by art 16(1).

CONCLUSION

In Indira Sawhney’s case, the Supreme Court took cognizance of many complex but very momentous questions having a bearing on the future welfare and stability of the Indian
society. The Supreme Court delivered a very thoughtful, creative and exhaustive opinion dealing with various aspects of the reservation problem.

Three positive aspects of the Court’s opinion may be highlighted. These are:

1. The over-all reservation in a year is now limited to a maximum of 50%.
2. Amongst the classes granted reservation. Those who have benefited from reservation and have thus improved their social status should not be allowed to benefit from reservation over and over again.
3. Promotions are to be merit-based and certain posts are to be excluded from the reservation and recruitment such posts is to be merit-based.

**BIBLIOGRAPHY**

Dr. Sunil Kumar Jaggir, Reservation Policy and Indian Constitution in India, American International journal of Research and Humanities, Arts and social Sciences,

Prof. MP Jain, Indian Constitutional Law, 6th Ed., Lexis Nexis, 2012

**WEBLIOGRAPHY**

www.indiankanoon.com

www.legalcrystal.com

www.manupatra.com
THE TREND OF PURCHASING COMPANIES: NEED FOR INNOVATION IN SOCIAL MEDIA

By Surner Singh

INTRODUCTION

Man being a social animal cannot survive without company. It is an inevitable fact that we all need company for we love to talk, to share information about our day to day activity and to remain in touch with our loved ones. From the time when Neanderthals existed began the era of discovery aiming at making the lives easy and comfortable. Later on with the growth of civilisation, human brain developed further and further and brought a revolutionary change with the advent of technology.

No date can be pinpointed as to when information technology was introduced in this world. As long as people have existed, information technology has been present because there was always one way or another for communicating through technology available at that point of time.

WHAT IS SOCIAL MEDIA?

Even though the term social media is in wide usage nowadays, hardly the meaning of it is understood by all the users of it. For many, social media has a restricted meaning indicating to websites such as Facebook, Snapchat, Twitter etc. However, the vastness of the term 'social media' can be gauged from the fact that it covers a variety of websites ranging from social networking websites like Facebook, Twitter, Instagram to sites like Wikipedia, Pinterest, Linkedin etc.

In general parlance, social media is the web-based communication tool that enables people to come in contact with each other by sharing and consuming information. It is the collective of online communications channels dedicated to community-based input, interaction, content-sharing and collaboration. Websites and applications dedicated to forums, microblogging, social networking, social bookmarking, social curation, and wikis are among the different types of social media. In 2016, Merriam-Webster defined social media as "Forms of electronic communication (such as Web sites) through which people create online communities to share information, ideas, personal messages, etc."

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A 2015 paper identified four commonalities unique to then-current social media services. These common features are:

1. social media are Web 2.0 Internet-based applications,
2. user-generated content (UGC) is the lifeblood of the social media organism,
3. users create service-specific profiles for the site or app that are designed and maintained by the social media organization,
4. social media facilitate the development of online social networks by connecting a user's profile with those of other individuals or groups.

Some of the features which can help one identify a social media are the following:

1. User Accounts
2. Profile pages
3. Friends, followers, groups
4. News feed
5. Personalisation
6. Notification
7. Information sharing and updating

Even though the features mentioned above look quite similar to those of social networking because social networking websites offer the same facility, there exists a difference between the two. Social networking is more of a sub category of social media only. Networking is more linked with building a relationship with the audience of your profile i.e your friends, relatives, colleagues or even strangers. However, the purpose of social media on the other hand is to share and gather information on a wider online platform without intending to create any relationship with the viewers. Thus, all social networking websites are part of social media while the vice versa is not true.

The above given definition of social media leads one to further confuse between social media and traditional tools of communication such as newspapers, TV, radio etc. This is so because the prime functions of conventional tools of communication are also the same; namely sharing information. However, the concept of social media envelops the idea of both sharing information and interacting as well. The regular media is a one way street through which you
gather ideas and information but you have no scope of sharing your views and ideas back on the subject. On the other hand, social media allows its users to interact by medium of upvoting, likes, commenting.

THE ADVENT OF SOCIAL MEDIA

Social media existed since a very long time since man cannot simply live without communicating and sharing his thoughts with others. For the very reason, interacting with family and friends across distances has always been a matter of concern for humans. Therefore, the social animal devised various means of communication to strengthen and further build his relationship. Thus, even though the term social media is a new coinage but the underlying concept behind it has been present centuries back.

One of the earliest methods of communicating crossing the barrier of long distances was through letters. The earliest form of postal services date back to times, when India was ruled by different monarchs. In 1792, telegraphs were introduced and these became the new mode of communicating messages at a faster pace. Then in the 19th centuries, telephones and radio were introduced to the world. These were the instantaneous means of communication which at that time was an altogether new experience.

With time as soon as computer was discovered in the 1940s, computer engineers started searching for ways to link different computers through a common network which gave birth to the concept of internet. The advent and development of internet gave rise to emails. These were the electronic forms of traditional letters only. By 1980s, computers started becoming common and social media became more sophisticated. Internet chats were introduced in 1988 and remained popular and widely used throughout 1990s.

What we today know as social media was first seen in Six Degrees which was introduced in 1997. It allowed its users to list friends, families and other contact on the site and users could send messages and post bulletin items to the people in their connection. Therefore, this was the earliest manifestation of social network as we see today. However, six degrees lasted from 1997 to 2001 because the users lost interest. But since that time onwards, social media has been on a revolutionary change, evolving through new concepts and applications.

Along with social network another branch of social media was blooming on the screen which is blogs. Blogs are as recent as social networking itself with the earliest recognised blog being
created in 1994 by the name of Links.net. However, then the term ‘blog’ was not in fashion and these were simply referred to as personal homepage. In 1997, the term ‘webblog’ was coined which was later shortened to ‘blog’ as known today in 1999 by Peter Merholz. During the initial years, different platforms for blogging existed such as LiveJournal. It was in 1999 that Blogger was started which is mainly responsible for bringing blogging into mainstream.

In 1999, according to a list compiled by Jesse James Garrett, there were 23 blogs on the internet. By the middle of 2006, there were 50 million blogs according to Technorati’s State of the Blogosphere report. Thus, blogs became the new means for people to share their views on a wide variety of topics; be it politics, religion or personal agendas. With time, bloggers also started earning through their blogs which further pushed the use of blogging. Blogs were on the rise when came the websites popularly known as social networking websites.

In the early 2000s sites like Myspace and LinkedIn gained popularity and at this time around photo sharing apps also started coming into existence. In 2005, YouTube introduced a video sharing platform to the world where people could communicate and share through videos which could range from a mere 10 seconds video to a 3 hour video as well. By 2006, Facebook and Twitter became available to people. Facebook was able to garner a large base of user in its early years only and since then has been widely popular among its users.

**TREND OF PURCHASING COMPANIES**

The trend of purchasing other companies is not unique to social media. This has been prevalent in the business world since a long time because of various reasons. Acquisitions allow the companies to gain the talent of other companies for money. This benefits the companies by increasing their market size as through acquisition they acquire the market of the purchased company as well. Further, this is helpful in reducing the costs of the company.

Companies such as Google and Facebook have always been at the forefront of purchasing other social media applications. Google purchased YouTube in 2006 for $1.65 billion. The price tag seemed high at the time, but YouTube has grown by leaps and bounds.

Facebook purchased Instagram, Lightbox and Face.com, just to name a few. FriendFeed is a real-time news feed that consolidates updates from a variety of social media sites. Facebook bought it for $50 million and integrated the FriendFeed technologies into their service.
including the “Like” feature and an emphasis on real-time news updates. Facebook also adds talent from the FriendFeed team.

Hot Potato was a combination of Foursquare and GetGlue. It was a check-in service that allowed users to check in to more than physical locations, like if they are listening to a song or reading a book. Facebook bought Hot Potato for about $10 million and the integration helped expand Facebook by improving the functionality around status updates and the newly launched Facebook Places feature. Facebook also acquired talent from Hot Potato.

Facebook’s most expensive purchase to date was photo-sharing service Instagram for $1 billion. Instagram lets users to take a picture, apply a digital filter, and share it with followers. Facebook is focusing on integrating Instagram’s features into Facebook while also building Instagram independently to provide the best photo experience possible. Facebook ended up successfully closing deals on Oculus and WhatsApp within a period of just a few weeks.

**NEED FOR INNOVATION**

Even though purchasing companies has become the trend, this spells out fear between the social media websites to tackle competition. Social media widely runs on the bases of popularity only. People will view the contents only on websites which provides the information as per their choice, free of costs and in unique ways. Similarly social networking apps will flourish only if they cater to the needs of the audience. When remaining in constant touch was the constant need, Facebook flourished over emails. People started communicating through Facebook more and more rather than exchanging emails over long distances.

Further instant messaging was the need of the hour which was looked into by whatsapp. However, this was later purchased by Facebook when it could sense that its user base was shifting from its own messenger to whatsapp. Buying the other company is not the only trend. Companies also tend to launch similar competition in the market having the same features on same lines to capture their market. In 2011, Google introduced Google + on similar lines as Facebook after its failed market of Orkut. Similarly, when Facebook was unable to purchase Snapchat, it first tried to launch its own app called Facebook Poke having same features which failed miserably and was discontinued in 2014. However, facebook did not stop here, but further after acquiring Instagram, introduced the ‘story’ feature of Snapchat in Instagram. This was later also introduced in Whatsapp.
Users of these applications do not want to see the same content and same features being offered by different applications. This is something that these companies do not understand. People joined the social media on these platforms because they offered unique features which were new and innovative on their own. The offers took the audience by awe and that is the prime reason why social media gathered huge user base at the beginning only.

However, now it has become a copy cat race between these platforms where all the websites are simply trying to capture the market and popularity of the other simply because they fear that they will lose their own users. In the craze of people pleasing, the applications and social media is losing its own identity. People joined Snapchat because it offers a separate feature while whatsapp still remains the favourite for its own unique concept. This became evident when Whatsapp introduced the ‘story’ feature in place of its unique status feature, the users immediately disliked and disapproved of it. As a result, whatsapp had to install back its original feature.

If the social media desires to grow and keep the audience sticking to it, they need not copy the other features or simply purchase the other forums. We need innovation in social media because people of 21st century constantly desire change. With the fast moving world, people have become habitual to everything being available on their fingertips and with the continuous advancement in technology, people are curious for more and more sophisticated discoveries. Thus, social media can grow further only if the applications as well as websites start developing more and more innovative concepts rather than bringing the same old existing features on all the forums.

**CONCLUSION**

In the end it can be said that innovation can be the saving grace in the world of social media. If new features and concepts are not brought into the market, these websites and applications will soon lose their existing user base also as can be gauged from the fact that even though people have their Facebook account, they are more keen on trying out new forums and apps which offer a new variety of features.

Therefore, there companies need to focus on new ideas and this will positively help in dispelling their fear of competition and will enable positive and healthy competition in the market.
CCI’S Rejection of Airtel's complaint against Reliance Industries Limited:

BY AAKASH NEGI

Prefatory

Since attaining Independence in 1947, India, for the better part of half a century thereafter, adopted and followed policies comprising what are known as “Command-and-Control” laws, rules, regulations and executive orders. The competition law of India, namely, the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act, for brief) was one such. It was in 1991 that widespread economic reforms were undertaken and consequently the march from “Command-and-Control” economy to an economy based more on free market principles commenced its stride. As is true of many countries, economic liberalization has taken root in India and the need for an effective competition regime has also been recognized.

In the context of the new economic policy paradigm, India has chosen to enact a new competition law called the Competition Act, 2002 (Act, for brief). The new law is designed to repeal the extant MRTP Act.

Predatory Vs Penetration:

Penetration Pricing is the practice of charging a low price in order to quickly gain market share, especially when a new entrant or existing incumbent tries to scare the competition away and gain market share. Penetration pricing often implies a “Bait and Switch” approach—bait consumers with low prices and after some time when the consumer is switched on to, and dependent on, the service, prices are hiked. The act of reducing prices to curb competition and then increase prices to earn monopoly profits is considered anti-competitive.

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Brief Facts: Airtel vs. Reliance Jio (Case No. 03 of 2017)

‘Jio Welcome Offer’ under which data, voice, video and the full bouquet of Jio applications and content was available to the subscribers absolutely free, commencing from 5th September, 2016 and ending on 31st December, Case No. 3 of 2017 Page 6 of 17 2016. Telecom Regulatory Authority of India (TRAI) curtailed the period of the said offer till 3rd December, 2016. However, continued the same till 31st December, 2016 in complete disregard of the directions of TRAI. Subsequently, launched a new offer for its subscribers viz. ‘Happy New Year Offer’, whereby it gave all its users unlimited data, voice calls and messages until 31st March, 2017. Also provides an exclusive offer for iPhone users viz. ‘Jio iPhone offer’ offering unlimited local, STD, and national roaming on voice calls on any network in India, 20 GB of 4G data per month, unlimited 4G data during night, 40 GB Wi-Fi data and unlimited Short Message Service (SMS) from 1st January, 2017 to 31st December, 2017.

Contention by Airtel:

Explanation (b) to Section 4: “Predatory Price” means the sale of goods or provision of services, at a. price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

To support the allegation of predatory pricing, reliance has been placed on the decisions of the Commission and the Competition Appellate Tribunal in the case filed by MCX Stock Exchange Limited alleging predatory pricing by National Stock Exchange of India Limited (Case No. 13/2009), judgment of the High Court of Ontario, Canada in Regina v. Hoffmann-La Roche Limited (30 O.R. (2d) 461), decision of the European Court of Justice in the matter of France Telecom SA v. Commission of the European Communities (Case C- 202/07 P) and the Guidance on the European Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/02).
Contention by Jio:

In response to the contentions of the Opposite Parties, the learned senior counsel for the Informant submitted that the unique characteristics of 4G LTE technology such as speedy downloads, elevated voice excellence, advanced infrastructure requirement and the need for customers to have 4G compatible mobile instruments, make it different from 2G and 3G services.

- Shree Gajanana Motor Transport Company Limited v. Karnataka State Road Transport Corporation\(^{14}\)
- Exclusive Motors Private Limited v. Automobili Lamborghini S. P. A.\(^ {15}\)
- Jeetender Gupta v. BMW India Limited \(^ {16}\)
- Ravi Beriwala v. Lexus Motors Limited and Another \(^ {17}\)

Decision:

The Commission, therefore, is of the view that no prima facie case of contravention of the provisions of Sections 3 or 4 of the Act is made out against Case No. 3 of 2017 Page 17 of 17 the Opposite Parties. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.

Major consideration for Decision:

- Airtel with a market share of 23.5% followed by Vodafone (18.1%), Idea (16.9%), BSNL (8.6%), Aircel (8%), RCOM (7.6%), OP-2 (6.4%), Telenor (4.83%), Tata (4.70), Sistema (0.52%), MTNL (0.32%) and Quadrant (0.27%).

- It is difficult to construe dominant position being possessed by Jio with 6.4% market share, which presupposes an ability to operate independently of the market forces to affect its consumers or competitors.

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\(^{14}\) (Case No. 85 of 2016)
\(^{15}\) (Case No. 52 of 2012)
\(^{16}\) (Case No. 104 of 2013)
\(^{17}\) (Case no. 79 of 2016)
- JIO customers constitute less than 7 per cent of the total subscriber base at pan-India level, various functions of telecom service providers are regulated and entrenched players have been in existence for more than a decade with sound business presence, comparable financial position, technical capabilities and reputation. Even if one were to consider 4G LTE services as the relevant product market, JIO is not likely to hold dominant position in such market on account of the presence of the Informant, Vodafone, Idea, etc.,

- Promotional offer to attract consumer does not amount to Predatory pricing or Anti-competition agreement especially in cases when more than 10 dominants telecom operators in market.

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RIGHT TO INFORMATION: A POWERFUL TOOL IN THE HANDS OF PEOPLE VIS A VIS ACCESSIBILITY TO JUSTICE

By Yash Ajmani and Sanya Singh

Yash Ajmani and Sanya Singh are students of University Institute of Legal Studies at Panjab University, Chandigarh. They are currently pursuing their degree in BA.LLB (Honours) from the said institution.

ABSTRACT

The Right to Information Act, 2005 has been one of the most empowering and progressive legislations in the independent India. The object of the Act has been to promote transparency and accountability in the working of Public Authority, to provide access to people to information in recognition of their Fundamental Right under Article 19(1) of the Constitution, to promote good governance and to act as a check on corruption.

Earlier the common man had to be a victim of inefficient administration and lethargic attitude of the officials. But now RTI Act has emerged as a powerful tool in their hands. This paper aims at understanding the various ways in which RTI Act, 2005 has helped people in various walks of life i.e from the role of RTI in the life of a free man to that in the aid of a prisoner. The paper also gives a detailed analysis on how far RTI Act has been successful in creating an informed citizenry and in improving the quality of life of people in this democracy.

In the end certain suggestions and recommendations are given for making the provisions of the Act more effective so as to open the doors of justice to people to an even greater extent

Introduction:

The Right to Information (RTI) Act is a law enacted by the Parliament of India to provide for setting out the practical regime of right to information for citizens. It was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005. The RTI Act mandates timely response to citizen requests for government information. It applies to all
States and Union Territories of India, except the State of Jammu and Kashmir, which is covered under a State-level law.18

The Act relaxes the Official Secrets Act of 1889 which was amended in 1923 and various other special laws that restricted information disclosure in India. In other words, the Act explicitly overrides the Official Secrets Act and other laws in force as on 15 June 2005 to the extent of any inconsistency. Under the provisions of the Act, any citizen (excluding the citizens within J&K) may request information from a 'public authority' (a body of Government or 'instrumentality of State') which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally.

The RTI Act specifies that citizens have a right to: request any information (as defined); take copies of documents; inspect documents, works and records; take certified samples of materials of work; and obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode.

Prior to the Act being passed by the Parliament, the RTI Laws were first successfully enacted by the state governments of Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). Some of these State level enactments have been widely used. While the Delhi RTI Act is still in force, Jammu & Kashmir has its own Right to Information Act of 2009, the successor to the repealed J&K Right to Information Act, 2004 and its 2008 amendment. At the national level, given the experience of state governments in passing practicable legislation, the Central Government appointed a working group under H.D. Shourie to draft legislation. The Shourie draft, in an extremely diluted form, became the basis for the Freedom of Information Bill, 2000 which eventually became law under the Freedom of Information (Fol) Act, 2002. The Fol Act, however, never came into effective force as it was severely criticized for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but also for requests that would involve 'disproportionate diversion of the resources of a public authority'. Further, there was no upper

limit on the charges that could be levied and there were no penalties for not complying with a request for information.

At the national level, given the experience of state governments in passing practicable legislation, the Central Government appointed a working group under H.D. Shourie to draft legislation. The Shourie draft, in an extremely diluted form, became the basis for the Freedom of Information Bill, 2000 which eventually became law under the Freedom of Information (Fol) Act, 2002. The Fol Act, however, never came into effective force as it was severely criticized for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but also for requests that would involve 'disproportionate diversion of the resources of a public authority'. Further, there was no upper limit on the charges that could be levied and there were no penalties for not complying with a request for information.

The failure of Fol Act led to sustained pressure for a better National RTI enactment. The first draft of the Right to Information Bill was presented to Parliament on 22 December 2004. Subsequently, more than a hundred amendments to the draft Bill were made before the bill was finally passed. The Law is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature.¹⁹

**When to use RTI against PSU bank?**

- When the bank is not giving you correct information about your home loan related items like interest rates, prepayment, documentation issues.
- When you are not satisfied by bank behaviour, its service, the terms and conditions etc
- When bank asks you some unjustified things like opening a FD for locker, buying some policy before locker can be opened!
- When you feel that bank has done something against their own terms and conditions and is not entertaining you.
- When you need any information from bank which you can’t get directly!

Branch Heads are also the CPIO’s!

When you file a RTI letter, it has to be addressed to Central Public Information Officer (CPIO) or Central Assistant Public Information Officer (CAPIO). Now all the major branch heads of PSU Banks are also CPIO’s and you can directly write the RTI letter to the branch head, but address them as CPIO’s. So in the place of address, mention the branch name and the name of the bank with full address. Some of the PSU banks also allow giving the RTI applications by hand to the Branch heads, but I would suggest try it on your own risk, sending the letter by registered post will be much better.

Steps for writing the RTI application against Bank:

1. Download this RTI Template for Banks (Taken from Wealth Club)

2. Put the address and branch name of your Bank

3. Write down all the other details like name, address, email, phone and other details if any.

4. Put the information required at the appropriate place in the template. Make sure the question is brief and too the point.

5. Buy a postal order for Rs 10, favoring to CPIO, Branch name, address (this you need to fill yourself).

6. Make sure you write the postal order number in the RTI letter, change it with your order number.

7. Take a print out and send the RTI letter via registered post or Speed post to the same address as Bank branch.

8. Wait for next 30-60 days for the reply and if you don’t get it, escalate it further.

Use of RTI by Prisoner:

Under the Right to Information Act 2009 and Information Privacy Act 2009, you have the right to:

http://www.jagoinvestor.com/2012/12/rti-application-for-psu-banks.html
• Apply for access to most government documents, including documents held in Corrective Services files, although you may not be given access to all information.
• Have incorrect personal information on government files corrected
• Access to your medical records
• Access to legal aid via Legal Aid Queensland or Prisoners Legal Service.

**Real incident:** Recently an RTI was applied by the resident of Maharashtra to seek information, on which condition bail was granted to Sanjay Dutt. It is clear picture showing how powerful RTI has made ordinary public. Earlier there was simply no trend to get the information on the particular subject but in simple word the same has been became the trend which is widely been used by the general public.

Nowadays, Prisoners are seeking information about their rights in jail, condition of bail, compensation etc. In short, This has been need of the society.

**Conclusion:**

1. It is found that there is lack of motivation among the officers to work as a Public Information Officer. Most of the officers have taken up the role unwillingly, leading to low motivation among them. Often, junior officers have been given the role of the Public Information Officers and First Appellate Authority.
2. There lack of software application to improve efficiency of the officers. Also there was a perception among Public Information Officers that lack of adequate budget and infrastructure hampers Right to Information implementation.
3. There has been a question mark on the operation of the Right to Information Act regarding the disposal of complains within the scheduled time. It supports the fact that „justice delayed is justice denied“. It depicts the slow rate of disposal of the complaints within the stipulated time.
4. To accelerate the effective implementation of the Act the awareness among the people is necessary. Awareness depends on the high rate of literacy and minimum education available to the people. It is thus observed that due to illiteracy, poverty and socio-

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http://shodhganga.inflibnet.ac.in/bitstream/10603/7657/12/12_chapter%207.pdf
economic backwardness the pace of the success of Right to Information Act is reduced.

5. It is not an easy task to identify the level of corruption and negligence of the corrupt officials. The officials may hide the office files and notes. It is not an easy task to break the vicious and unethical relationship among the corrupt officials, dishonest politicians and contractors who are involved in it.

6. The government has already proposed to make amendments in the Right to Information Act to curb frivolous applications. Wrong allegations and frivolous demand of information with no specific intention result in killing the time and energy of the public authorities to a great extent.

7. Though the state government said there will not be any delay in replying to Right to Information applications, there is a delay in providing information due to the loose connections between levels of implementers

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