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48/4, Knowledge Park-III, Greater Noida, U.P. Phone # 01203819700,

[jimslawjournal@jagannath.org](mailto:jimslawjournal@jagannath.org), [lawjournal.gn@jagannath.org](mailto:lawjournal.gn@jagannath.org)

## Message from Editor's Desk

It is a matter of immense pleasure to publish Volume 5 Issue-1 of JIMS Journal of Law. The Editorial Board is grateful to all the authors who have contributed scholarly research articles on contemporary legal and socio-legal problems. This issue of JIMS Journal of Law covers one article on ple bargaining system in India and focusing on how it is defective and misused. One author has written article on need of effective laws to curb fake news business. One article focused on the frustration of contract under bailment during pandemic 19 due to lockdown . This journal covers one article on critical analyses of the Government of National Capital Territory of Delhi (Amendment) Act, 2021 which undermine the power of Delhi government. One author has written on legal analyses of illegal business by several agencies for private appropriation of the lunar real estate it. One article has written on increasing importance and need of IPR laws due to space law with reference to increasing more space projects.

I take utmost pleasure and privilege in presenting this scholarly, intellectually and thought provoking issue of JIMS Journal of Law to Bar, Bench and academia with a huge expectation that this issue will bring reforms in the society by raising legal awareness and achieving access to justice for all.



Prof.(Dr.) Pallavi Gupta  
Thanking You

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## FOOD SECURITY IN INDIA AND THE WORLD

Dr. Ravinder Kumar  
Associate Professor  
USLLS, GGSIP University

Sana Ullah Siddiqui,  
B.A.LL.B.(Hons.),LL.M., USLLS,  
GGSIP University

### INTRODUCTION

Inequality is on the rise, large sections of the population of the world are on the brink of destitution. The coronavirus crisis has shown us that for most of humanity there has never been a permanent exit from poverty and insecurity.<sup>1</sup> Women and the other disadvantaged groups are worst affected by rising inequality across the globe including India. India's rank of 112 out of 153 countries on the Global Gender Gap Index of 2020, released by World Economic Forum highlights the plight of the female workers with respect to the difference in pay gap and working conditions in comparison with their male counterparts. As the economy of the world is recuperating from the destruction caused by the Covid-19 induced pandemic, it has been observed that there has been uneven recovery reported by different countries. Even within countries inequality is widely reported in the post-pandemic world. In such a scenario, the role played by the United Nations and respective governments of the nations in alleviating poverty and hunger becomes more relevant than before.

The United Nations celebrated 75 years of its existence in 2020, the institution undertook a long and formidable journey since its inception. It was founded on 24th October, 1945 at San Francisco. The United Nations, as an intergovernmental organization plays a major role in ensuring universal peace and concomitantly fostering cordial relations between countries through economic and social progress while ensuring human rights. The prominent agencies of the United Nations comprise of the General Assembly, the Security Council, the Food and Agriculture Organization, the International Court of Justice, World Health Organization among others. The role played by United Nations in the post-pandemic world becomes relevant in fighting the social and economic evils of financial inequality, gender discrimination, food insecurity, issues related to climate change among others.

### Role of United Nations

United Nations, being an umbrella body comprising of various other organizations fights the

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<sup>1</sup> Oxfam (non-profit organization), "The Inequality Virus"<sup>12</sup>(January, 2021).

menace of hunger and food insecurity through its prominent organs which include Food and Agriculture Organization, World Bank, World Food Programme and International Fund for Agriculture Development. Food security is part of the Sustainable Development Goals (SDGs), and the United Nations' development assignment for the present century. The second Sustainable Development Goal of United Nations is Zero Hunger which envelopes the issues related to hunger and malnourishment among the member nations. Achieving the goal by the year 2030 will necessitate an intense revision of the worldwide agricultural ecosystem by the United Nations and its designated organs.

### **Food and Agriculture Organization (FAO)**

The Food and Agriculture Organization celebrated its 75th anniversary in the year 2020 along with the United Nations. The Latin motto of this organization is, '*fiat panis*' which translates as 'let there be bread'. Its prime objective includes hunger eradication and providing nutritious food to the vulnerable population of the world. Along with its other missions, it has a role to play in coordinating with the governments of the world with respect to subjects including agriculture, fisheries, forestry and with regard to management of land and water resources.

### **World Bank**

The World Bank Group is a transnational partnership consisting of nations and five constituent institutions that facilitate in eliminating poverty and ushering in peace and prosperity across regions.

The World Bank derives its authority from the institutions of IBRD and IDA. Investment in agricultural activity and rural infrastructure is a priority spending area for the World Bank group. The investment made by the World Bank group results in the climate smart farming techniques which in turn ensures food security for large sections of the world's population.

### **World Food Programme**

World Food Programme is a humanitarian organization, with its seat in Rome, Italy. Mr. A.H. Boerma was the first executive Director of the organization. The organization was founded in the year 1961, by the endeavors of President John F. Kennedy of United States of America, at the United Nations. The organization was bestowed the Nobel Peace Prize in 2020, "for its efforts to combat hunger, for its contribution to bettering conditions for peace in conflict-affected areas and for acting as a driving force in efforts to prevent the use of hunger as a weapon of war"<sup>2</sup>. The

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<sup>2</sup> United Nations World Food Programme, Get to know the World Food Programme, available at: [https://www.wfp.org/nobel-laureate#:~:text=This%20year%2C%20WFP%20was%20awarded,as%20a%20weapon%20of%20war%22,\(last%20visited%20on%20July%2018%2C%202021\).](https://www.wfp.org/nobel-laureate#:~:text=This%20year%2C%20WFP%20was%20awarded,as%20a%20weapon%20of%20war%22,(last%20visited%20on%20July%2018%2C%202021).)

organization plays a major part in eradicating food insecurity across the globe through its missions in the conflict-ridden areas of the world.

### **International Fund for Agriculture Development (IFAD)**

The International Fund for Agriculture Development has restricted its area of work to the rural population of the developing nations. The IFAD sponsored initiatives address the issue of food and nutrition insecurity in a distinct mode. The organization works exclusively among the rural sector of the economy in the developing part of the world. Its presence has ameliorated the lives of the rural population. It is a dedicated organ of the United Nations to tackle the social evils of poverty and food insecurity in the hinterland of the developing nations.

### **United Nations Environment Programme (UNEP)**

United Nations Environment Programme is a dedicated organ of the United Nations working for the conservation of the environment. The agency cooperates with the various other United Nations organs working in similar fields in order to secure the distinct Sustainable Development Goals. The organization was founded by Maurice Strong on 5th June, 1972 with its head office in Nairobi, Kenya. Inger Andersen is the present head of the organization.

With United Nations completing 75 years of its existence lately, on appraisal it comes to light that it has performed its mandate efficiently on the world stage. Major achievement of the United Nations includes the non-existence of another world war. The United Nations along with its dedicated organs was able to address the major problems of the world which include poverty, illiteracy, hunger, financial inequality, issues ailing the society, environmental degradation among others. The United Nations as an institution transformed the world with the aid of salient documents which include United Nations Charter, Universal Declaration of Human Rights, Convention on the Rights of the Child, Statute of the International Court of Justice among others. The United Nations as an institution of repute should cherish its past achievements concurrently it should prepare itself for the future challenges in order to serve humanity.

### **Major Challenges in Eradication of Hunger can be listed as below:**

- **Climate Change:** Climate change is one common menace that is impairing our lives in multiple ways. The rising temperatures of the ocean remains a cause of concern for the nations in the coastal regions of the world. The consequences of climate change are evident in our day today lives, food and hunger are not untouched by it. The ill-effects of the climate change will be much worse for the vulnerable sections of the population. The developing

nations of the world would bear the brunt of the harmful consequences of climate change. Without any doubt it remains one of the major hindrances in ensuring food security and alleviating poverty across the globe.

- **Gender Inequality:** Gender inequality is more widespread in the developing nations of the world. India's rank of 112 out of 153 countries in the Global Gender Gap Index 2020 should be a cause of concern for the policy makers as well as the society at large. Such disparity among the genders hampers the cause of ensuring food security and eliminating poverty across India.
- **Biofuels:** Biofuel in simple terms can be defined as a fuel which is obtained from biological sources such as algae material, plant or animal waste. Biofuel are a source of renewable energy unlike petroleum, natural gas and coal, which form the non-renewable source of energy. Like many other phenomenon, biofuels have their advantages and their respective disadvantages. The major disadvantages of biofuels includes lack of efficiency, high environmental cost and large amount of water required by it. The major disadvantage that stands out in the day and age of climate change is the high environmental cost of biofuels. The excess use of water and other natural resources which include the land resources questions the relevancy of using biofuels in place of petroleum, natural gas etc. If left unchecked, increased use of biofuels in place of non-renewable sources of energy can lead to food shortages in India and across the world.
- **Conflict:** Conflict-ridden areas are a breeding ground of the social menace of poverty and hunger. Conflict whether within a nation or between nations gives rise to inequality which in turn promotes poverty and hunger. Hence, in order to achieve food security, the United Nations and its member states should promote and facilitate peace and prosperity across the globe.
- **Unmonitored nutrition programmes:** Many a times lack of co-ordination among various organs of the governments results in the worsening of the problems of poverty and hunger. The United Nations along with its member nations should prioritize streamlining of the various procedures which includes removing the varied bottlenecks. Concerted effort is mandatory in order to defeat the burgeoning menace of poverty and hunger across the globe.
- **Corruption:** Corruption remains germane to the debate of alleviating poverty and hunger across the world. Corrupt practices restrict the over-all success of the poverty and hunger alleviation programmes sponsored by the United Nations agencies along with its member

nations across the regions. The hapless poor sections of the population are most vulnerable to the curse of corruption. The corrupt not only discredit the institution they serve but they also foster distrust among the poor about the institution.

In a bid to eliminate hunger, we need a multi-pronged strategy. For prevention of floods, earthquakes and forest fires we need to conserve the environment around us and abstain from superfluous construction activity in the hills. With the help of United Nations, the member nations must ensure prevalence of peace and prosperity around the globe. Any conflict between nations should not be allowed to escalate to a further stage. In order to abolish the evil of corruption from the society, economic parity must be ensured by the nations by dispensing with concentration of wealth.

### **Indian Scenario on Food Security**

Our nation being a welfare state strives for the social, economic and political justice for all of its citizens as enshrined in the preamble of our constitution. Unlike the authoritarian or dictatorial form of government, our constitution strives for a welfare state. The nation works for the betterment of its citizens by introducing welfare schemes through legislation, one such legislation is the National Food Security Act, 2013. The act is a boon for the hapless citizens of the country facing the scourge of poverty, and provides a helping hand to them. The purpose of the enactment of the act is to dispense with food insecurity in relation to the underprivileged sections of the society. Post-pandemic the severity of the social menace of hunger and poverty has further increased. The latest rankings brought out by various organizations of the world highlight the same. The Indian society is capable of fighting the social evils of hunger and poverty with the help of a concerted effort of the government institutions, international organizations, the non-government organizations along with the involvement of the people at large. As our father of the nation, Mahatma Gandhi rightly said, "There is enough for everybody's needs but not for everybody's greed". The message he wished to convey to the people of the nation was that, if we as a nation are able to achieve socio-economic equality then there would be plausibly no death by malnourishment or destitution in our nation.

### **Issue of Malnutrition**

India's rank of 94 out of 107 nations in the World Hunger Index 2020 jointly released by Concern Worldwide and Welthungerhilfe, highlights the issue of malnutrition along with food insecurity. The World Hunger Index prepares the ranking of varied nations by compounding the four major constituents which includes the share of undernourished populace, share of infants under the age

of five suffering from acute undernutrition, share of infants under the age of five suffering from chronic undernutrition and mortality rate of infants below the age of five. The bane of malnutrition plagues the society which is bereft of social and economic equity. United Nations as an intergovernmental body along with the governments of the world strives to achieve socio-economic equity. In the Indian context, the founding document of our nation, the Constitution of our country enlists the intent to achieve social, economic and political justice for its citizens in its preamble. Hence, social welfare legislations are enacted by the Parliament to achieve such goals.

Section 4 along with section 5 of the National Food Security Act, 2013 deals with the issue of malnutrition of women and children. The provisions of the Act require strict implementation on the part of the local authority. The efficient implementation of the Act is bound to bear fruits and concomitantly secure a healthy body and mind to the mother and child. Elimination of corrupt practices along with strict implementation of the Act at the community level will have a salutary impact on the society at large.

### **Relevance of the National Food Security Act, 2013**

The United Nations mentions the first Sustainable Development Goal as No Poverty while the second Sustainable Development Goal remains Zero Hunger, it highlights the alacrity with which the United Nations along with its member nations wants to annihilate the social evils of poverty and hunger respectively by the year 2030 from the globe.

### **Prominent Features of National Food Security Act, 2013**

“An Act to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto”.<sup>3</sup> Reads the starting lines of the National Food Security Act, 2013 establishing its purpose of enactment. In public interest litigation petition (civil) no. 196/2001, *People Union for Civil Liberties v. Union of India and Others*, the Supreme Court of India upheld the constitutional human right to food for India's underprivileged sections of the society. Before the introduction of the National Food Security Act in 2013, the country was running the Public Distribution System, Mid-Day Meal programme, Antyodaya Anna Yojana among others for ensuring food security. With the enactment of the National Food Security Act, 2013 the right to food became a justifiable right of the hapless and vulnerable sections of the country.

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<sup>3</sup> National Food Security Act 2013, India, available at: [http://www.egazette.nic.in/WriteReadData/2013/E\\_29\\_2013\\_429.pdf](http://www.egazette.nic.in/WriteReadData/2013/E_29_2013_429.pdf) (last visited on July 20, 2021).

**The principal features of the National Food Security Act, 2013 can be enumerated as below:**

- **Salutory Provisions for Women and Child:** Section 4 of the National Food Security Act, 2013 provides the required measures for ensuring good health and well-being of women during their pregnancy period as well as during their post pregnancy time period. Pregnant women along with lactating mother will be entitled to receive maternity benefit of the monetary value amounting to not less than Rs.6,000. The act aims to provide financial security to every women of the deprived sections of the society during their motherhood period. Section 5 of the National Food Security Act, 2013 mentions the provision which enables nutritional support to children below the age of fourteen years of age. The mandate behind the provision is to provide a healthy body and mind to the children, which in turn can be fruitful for the nation in the form of demographic dividend.
- **Food Security Allowance:** The provision of food security allowance is a boon for the underprivileged sections of the community. It is bound to have a salutary affect on people who are facing adverse circumstances in life on account of poverty. According to the provision, in the event of non-supply of food grains to the entitled person, he or she is bound to get Food Security Allowance from their respective state governments.
- **Women Empowerment:** Section 13 of the Act is an exemplar of women friendly as well as women oriented provision. The section mandates that for the purpose of issuance of ration cards, women who is of eighteen years of age or above will officiate as the head of the household. The section not only aims to bulldoze gender based discrimination in the society, rather concurrently strives to place the disadvantaged gender at the steering position.
- **Complaint Redressal Apparatus:** As per section 14 of the Act, every provincial government shall have in place an internal complaints redressal method. It can be distributed at two major levels: Firstly, at the district level and secondly, at the state level. The presence of two tier grievance redressal mechanism boosts confidence of the populace as well as provides them two distinct forums for airing their discontent.
- **Transparent Functioning:** Section 29 of the National Food Security Act, 2013 mandates transparency in the functioning of the Targeted Public Distribution System (TPDS), a vigilance committee shall be established by the respective state governments. The committee shall provide apt representation to the local authority along with the deprived sections of the community. Transparency in the functioning of the TPDS instils faith and credence among the populace.

### **National Food Security Mission**

The National Food Security Mission is a scheme patronized by the union government. The mission was initiated in the year 2007, its major purpose is to facilitate and augment production of rice, pulses, wheat, coarse cereals and cash crops such as cotton through expansion of the cultivation land. The mission helps in ameliorating the soil fertility and its production capacity at the level of farms and in turn benefitting the health of the rural economy. One of its primary purpose is to increase the accessibility of vegetable oils and to lessen the import of edible oils.

### **CONCLUSION**

#### **Road Ahead for Eradicating Food Insecurity in India**

The road ahead for eradicating food insecurity in India should include a multi-pronged approach. Firstly, given the size and diversity of our nation, it is very unlikely that one single organization or institution will be capable of decimating the vicious cycle of hunger and poverty in our country. Hence, a region specific approach should be developed. Secondly, the role of state governments and union territories is of prime importance with regard to the implementation of the social welfare schemes. They have an obligation to ensure the leaks in the system are checked regularly so that the exchequer is not burdened and the cost of implementation of the social welfare schemes remains modest. Thirdly, the state governments should also involve the non-governmental organizations as well as international institutions working in the same direction across the globe. The government should facilitate the operation of subsidized food canteens, where cooked food can be served to the impoverished strata of the nation at a subsidized cost. Fourthly, the role of agricultural and fisheries sector along with the cooperation of the local community also remains important, they should be trained and incentivized for climate smart farming methods. Such measures once start working in tandem are bound to produce prolific results in the near future. Fifthly, it is the apt opportunity to remove the obstacles originating out of the Aadhar related linkage of the public distribution system which in turn excludes the vulnerable sections of the population from the social security net put in place with the help of social welfare legislations.

## **THE DEFECTIVE SYSTEM OF PLEA BARGAINING IN INDIA**

Jane Christina  
St. Joseph's College of Law, Bengaluru

### **INTRODUCTION**

This article is an attempt to bring forth a critical analysis of the process of plea bargaining with an elaborate context of the Indian constitutional and moral principles that go against it. The Indian Judiciary has time and again condemned the system of plea bargaining as a whole in numerous cases as it is a clear impediment to the due course of justice as it results in the sudden change of plea. Plea bargaining pushes for a settlement with the prosecution and the defense with minimal interference of the judge/court, and this fact is adequate to justify that a settlement of such nature instead of a thorough trial goes against universally accepted judicial procedures. The virtue of such a system cannot be assumed especially when the repercussions of the allegations under offences that are covered within the scope of plea bargains can be grave in nature as well.

Plea bargaining was introduced in the year 2005 as part of a set of amendments to the Code of Criminal Procedure (CRPC) under Chapter XXI-A sections 265A to 265L. The process of plea bargaining in India must be initiated by the accused through a petition to the court however; one cannot ensure that the accused has freely consented to or comprehended the initiation of such a process as there is a lot of ambiguity within the approach itself. Once the petition is filed before the court, the court will then issue a notice to the prosecutor and the complainant thereby waving off the constitutional rights of: the right to a full trial, the right to testify on your own defense, or to remain silent on the part of the accused. The anomaly of a mere settlement as a substitute for a full and fair trial in a country such as India, only accelerates abuse of justice rather than being advantageous to our justice system. Thus the system of plea bargaining can be perceived through three different perspectives: Governance, Judicial/Constitutional and Social and moral perspective.

### **Governance Perspective**

Plea-bargaining usually takes place at the pre-trial stage but it may also take place at any period before the judgment is passed by the court; as a consequence it leads to the lack of systemic accountability as there is no institution under the government which is in charge of keeping track of how these plea bargains take place in actuality. The fact that plea bargains have now become a platform of sudden change in an accused person's plea proves that there is a high possibility that the plea was changed due to false promises of leniency, manipulation or coercion. All of the above mentioned circumstances fall under the lack of free consent which construes as a very

serious offence and according to do the Indian Penal Code yet such a process is still allowed even though there is a significant risk that it could in all likelihood cause hindrance to the due process of law.

### **Judicial Perspective**

The very basic principle of the Indian Constitution is that of "Innocent until proven guilty", this principle at its very foundation goes against the system of plea bargaining as the burden of proving a person guilty by the prosecution is absent and results in the assumption that people who plead guilty are in fact guilty. Discretion of the Judge is an important element at the sentencing stage of every trial, and plea bargains omit the very essence of discretion by the way of pre-decided sentencing by the prosecution. Illegal practices of arrest by the police go unchecked during plea bargains. Extensive pre-trial detentions and unaffordable bail requirements compel people to plead guilty as an ultimate resort in their reality of injustice. Going through with the trial also means that the prosecution must produce evidence before the court, in case there is insufficient evidence or no evidence against the accused, the prosecution will insist for a plea bargain as they are aware that they have less or no chances of winning the case.

### **Socio-Moral Perspective**

Despite the fact that the provision of plea bargain is applicable only for those offences which carry a prescribed punishment of up to a period of seven years, it denounces the fact that it still induces immense harm to the person from a societal point of view as crimes which carry punishment of up to 7 years can be grave in nature as well; making it all the more important to work towards an uncompromised trial. Due to the humiliation, loss and trauma associated with accusations of such nature, most people plead guilty only so that the ordeal of a judicial trial can be over with so that they can return to their lives after the completion of a sentence for an offence that they most probably did not commit and had a good chance of being acquitted in case they had gotten a trial. Additionally, guilty pleas during plea bargains do no good to the society as there is an absence of an alternative forum for the accused person to be a part of so that they can go through the process of rehabilitation and restoration.

### **CONCLUSION**

The concept of a plea bargaining has become a thriving and effective system especially in the United States of America, thus making it a norm rather than an exception to their due process of justice. However, India on the other hand is not yet equipped for the incorporation of such a system as there is an absence of a structure of accountability that is essential for the implementation of this concept. The only comprehensible and logical advantage to the practice

of the system of plea bargaining in India is that it is time saving and will reduce the burden of the court in terms of the pendency of cases but at the cost of a full and fair trial. Thus, the system of plea bargaining plays a minimal role in improving the current socio-legal mechanism in India.

## **THE CONUNDRUM OF CURBING FAKING NEWS AND ITS ENFORCEMENT BY THE PRESENT LEGAL REGIME**

Prachi Sharma  
Delhi Metropolitan Education

### **INTRODUCTION**

This article advocates against including an overarching requirement of "intention" for including a specific piece of information inside the ambiguous confines of fake news since it is so easy to deceive the audience by bending the facts to support a certain narrative, determining the veracity of the facts boils down to whether the material assertions in the report have grounds to stand on. Over the years, much thought has gone into establishing criteria for defining fake news. While some scholars believe that the phrase simply refers to the act of portraying false material as news, others argue that such information must always be accompanied with the purpose to deceive people in order to be classified as fake news. Multiple government institutions have already collaborated with intermediaries such as Facebook and Instagram to flag and even delete incorrect or obsolete material, without unjustly restricting the data provided online. Furthermore, although Twitter has pledged to improve the effectiveness of its algorithmic tools to combat propaganda and misinformation and change its community rules, Facebook has already amended its policy terms to prohibit ads from websites that carry false content but all of that has fallen short of the reforms that are required to curb fake news. The present article will dwell on the conundrum of fake news, its repercussions & the required reforms to abate the imbroglio, all of which shall be discussed at a later stage.

### **The advent of Fake News in the 21st Century**

The world had previously witnessed countless instances of misinformation spreading in the past, with the misinformation surrounding the Trojan Horse being one of the most notable examples. The rise of digital platforms, on the other hand, has aided the spread of fake news, the content of which is rarely monitored. During the 2016 U.S. presidential election, the ability of social media platforms to fully affect public opinion was pushed to the forefront. Elections for the presidency. According to statistics, about 160 million Indians use the social media behemoth WhatsApp, which has also been dubbed the most powerful tool for the spread of misinformation in India. The country has been a silent victim of the upheaval produced by the spread of false information. Unsurprisingly, some analysts have referred to the proliferation of fake news as a public health crisis and any attempt to improve the situation must examine the current legislative structure in place to combat it.

### **Current Legal Framework concerning Fake News**

Despite the widespread propagation of fake news on the internet, the Indian legal system lacks a dedicated statute to combat this threat. In any case, India's cyber legislation is governed under the Information Technology Act of 2000 (the "IT Act"). In a 2015 Supreme Court ("SC") decision, IT Act's Section 66A was overturned because it was arbitrary and disproportionately infringed on the right to free speech. Surprisingly, even though the decision was lauded for protecting the sanctity of free speech, 66A may have been used to combat the spread of bogus news on the internet. The Indian regime currently relies on sections 66D, 67, and 69 of the Information Technology Act, sections 295A (which punishes acts intended to offend religious beliefs), 500 (defamation), and 505 (which punishes statements intended to cause public mischief) of the Indian Penal Code, 1860 ("IPC"), as well as section 54 of the Disaster Management Act, 1954 ("DMA"), which was recently used to combat the spread of fake news.

### **Fragilities Associated with the Current Indian Legal Framework**

The dissemination of false information is a flagrant violation of freedom of speech because it undermines people's trust in the democratic process by influencing their decision-making. Furthermore, the aforementioned laws were enacted to encourage internet intermediaries' unrestricted technological advancement.<sup>1</sup> At a period when, at most, their influence on the broader democratic regime was fledgling. However, because of their dominating position in the telecommunications system, most social media platforms are already well-equipped to impact public discourse;<sup>2</sup> hence, their immunity under Section 79 should be severely constrained.

In the lack of dedicated laws to combat false news, social media intermediaries sometimes rely on the protection provided by Section 79 of the Information Technology Act to absolve themselves of any obligation. Under this provision, social media intermediaries would not be held liable if they were not responsible for the origination, transmission, or reception of the allegedly defamatory content over their networks. While this clause was created to prevent the suffocation of free speech through unrestricted State-led regulation of online content, intermediaries have already used it to defend their passivity in the face of a torrent of disinformation being spread over their networks.

Another flaw in the current framework is the inclusion of criminal culpability criteria to deal with incidents of false information dissemination. The provisions of the IPC are better suited to information dealing with hate speech and defamation, which effectively precludes a large number of situations. Previously, India used internet shutdowns to combat the spread of fake

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<sup>1</sup> Zeran v. AOL, Inc., 129 F.3d 327, 330 (4th Cir. 1997)

<sup>2</sup> Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1164 n.15 (9th Cir. 2008)

news; however, the author claims that this strategy is ineffective in addressing the issue of fake news for two reasons. It is legal under Section 144 of the Criminal Procedure Code, which allows it only when a quick remedy is required, rendering it ineffective in combating the spread of bogus news. It's worth noting that 144(1) only applies where the Magistrate believes it's essential to prevent a person from suffering an injury.

Second, the article's operative phrases, such as public serenity, are not defined in the Code, making the provision vulnerable to abuse for restricting speech. In several judgments, such as in *re Madhu Limaye*,<sup>3</sup> the Supreme Court has attempted to define the contours of the expression. Authorities have allegedly exploited the clause in the past by obviating the need to meet the provision's conditions before implementing broad internet shutdowns. As a result, despite the lack of a written standard, the provision is vulnerable to abuse.

### **Suggestions for Improving the Framework's Current Status**

As reported previously, Indian legislation has a relatively limited repertoire of legislation aimed at regulating the stratospheric spread of fake news. Its legislative structure is largely based on section 505(1)(b) of the IPC and section 54 of the DMA, both of which have been in the news recently. Given the consequences of the extensive transmission of unverified material on the internet, it is remarkable that the Indian cyber regime still lacks a particular provision to control the propagation of speculations on the internet. Similarly, in its 267th Report, the Law Commission of India proposed adding sections 153C and 505A to the IPC to outlaw the transmission of inciteful speech over the internet. Even the Department of Promotion of Industry and Internal Trade issued a Draft National E-Commerce Policy, which held intermediaries accountable for the authenticity of the material uploaded on their websites.

Since all of these steps have failed to address the propagation of misleading information, the objective of this section is to clarify several unlawful actions that the Indian framework may do to improve its existing position concerning the combat of fake news. First, the Indian regime may collect interpretive information from the Malaysian and Qatar cyber regimes, as the two jurisdictions are already launching websites to monitor information, i.e., 'sebenarnya' and 'lift the blockade.' Secondly, the inclusion in a national curriculum of media literacy may also assist it in effectively review its Cyber Security Laws, as it is seen in Canada and Taiwan. Many other Nations also supported artificial intelligence (AI) and machine learning research initiatives to detect dubious material. For instance, the U.S. supports ClaimBuster, which uses methods to detect factual discrepancies in national language processing. The AI Foundation also has a programme called Reality Defender that helps to detect fake news at an early stage. In addition,

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<sup>3</sup> *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr & Ors.*, 1971 AIR 2486

some leading intermediaries like Facebook and Google have also established an Information Trust Alliance to efficiently remove false material.

## **CONCLUSION**

To combat fake news, the author proposes a decentralized three-point agenda. The first pillar is to ensure critical media literacy, which includes critical digital literacy. This would encourage people to develop the skills needed to explore the internet and to question the information they come across. The limitations of digital media should be understood by users. The article was designed to highlight the shortcomings in our present legal framework in the online propagation of fake news. It is disappointing that social media platforms have been transfers of disinformation across the Internet from sophisticated platforms for public discourses and civic participation to the quiet intermediary. The Article suggests that social media intermediaries must face the moral duties which form part and parcel of their huge worldwide impact, by suggesting certain ways to reduce the hardships connected with the wide spreading of false news. Although these platforms must be kept impartial, they also have an equal duty to sustain an atmosphere of diversity in which the public consensus is negotiated following a genuine factual foundation. Implementation of such measures will ensure the balance between freedom of speech & reasonable restrictions.

## STATUS QUO OF A BAILMENT AMIDST A LOCKDOWN

Harpal Singh  
Amity Law School Delhi  
Guru Gobind Singh Indraprastha University

### INTRODUCTION

On 24<sup>th</sup> March 2020, Government of India under Prime Minister Narendra Modi ordered a nationwide lockdown for 21 days, limiting movement of 1.3 billion people as a preventive measure against the COVID-19 pandemic in India. As of now as many as four nation-wide lockdowns and a multitude of state-level lockdowns were imposed in the country to contain the virus.

The supply chain has been completely disrupted by the Covid-19 pandemic. Parties subjected to various contracts sensed that it was possible that performance under multiple contracts would be delayed, disrupted, or canceled. The counterparties (especially suppliers) in those contracts wanted to delay and / or avoid the performance (or non-performing debt) of their contractual obligations and / or terminate contracts, because Covid-19 has legally barred them from performing their contractual obligations, further as well Parties wanted to use Covid-as a basis for renegotiation of price or other key contractual provisions. In this piece, I have highlighted how the lockdowns imposed has brought to light a pertinent lacuna in the prevailing Bailment laws, under the Indian Contract Act, 1872 (herein referred to as the “Act”).

Bailment is a special agreement where a formal or legal relationship is formed by delivering of mere possession of goods by one person to other, former is named as bailor and the latter is named as bailee. Bail transactions generally occur daily in one way or another. Basically, it implies physical control granted to bail for a specified purpose or at a specified time. It can be considered with or without consideration.

The position in India is only that there must be a contract for bailment; it is not like English law where there can be a bailment with or without a contract. The leading case on this behalf is *Ram Gulam v. U.P. Government*<sup>1</sup> wherein the court placed reliance on the point that where the property is under the custody of police so it cannot be held as bailment as there is no contract. Further, In *State of Gujarat v. Memom Mahomed*<sup>2</sup> The Supreme Court observed that it is the settled law in India that bailment can arise only when there is a contractual obligation between the parties, but the court recognized that with respect to the specific property, it can arise even in

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<sup>1</sup> *Ram Gulam And Anr. vs Government Of U.P.* AIR 1950 All 206.

<sup>2</sup> *State of Gujarat v. Memom Mahomed* AIR 1967 SC 1885.

the absence of any enforceable contract.

### **STATUTORY PROVISIONS GOVERNING THE CONCEPT OF BAILMENT**

While there are multitude of provisions in the Indian contract Act which cover the contract of Bailment in its entirety, I have only taken up those which are relevant to the point that I seek to make by way of this piece. They are:

**Section 148** - Defines 'Bailment' and lays down the essentials for a contract of bailment. Also defines a 'bailor' and a 'bailee'. A bailor is a person who delivers the goods and a bailee is a person who receives, works upon/takes care and returns/disposes of the goods as per the conditions of the contract of bailment.

**Section 151** - Casts a duty on the bailee to take reasonable care of the goods bailed as if the goods bailed were his own. The bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods or the same bulk, quality and value of the goods bailed.

**Section 152** - Says that in the absence of any special contract, the bailee is absolved from the liability of any loss or destruction caused to the goods bailed if he/she has taken the amount of care described in Section 151.

**Section 158** - Talks about repayment of necessary expenses by the bailor where the bailee is to receive no remuneration.

**Section 160** - Casts a duty on the bailee to return or dispose of the goods bailed as soon the period of bailment expires.

**Section 161** - Makes the bailee liable for any loss or destruction caused to the goods bailed after the expiry of the period of bailment if the goods were not returned/disposed of in time owing to the bailee's default.

### **ANALYSIS AND IMPLICATIONS OF THE AFOREMENTIONED PROVISIONS**

According to the requirements of Section 148 of the Act, for a legally enforceable contract of Bailment, there needs to be delivery of goods for some purpose upon a contract and the goods need to be returned after the purpose is achieved or disposed of according to the bailor's directions. On scrutinizing the provisions on Bailment, we see that no arrangements have been made to govern situations wherein the bailed goods continue to remain with the Bailee even after the expiration of the term of the contract of Bailment.

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<sup>3</sup> Loyd Bituman Products (P.) Ltd. vs Union Of India (1980) 2 MLJ 363.

Section 151 and 152 of the Act, for example, are vocal about the amount of care that the bailee needs to take and the repercussions of not taking the required amount of care, but it must be noted that these provisions talk about taking the required care while the contract of bailment is subsisting and do not clarify what needs to be done if the period of bailment is over, but the goods have not been returned/disposed of. Does the bailee still need to take care of the goods bailed in the same manner or not, even if the period of bailment is over is one conspicuous question which these provisions have failed to address.

A similar question, however, was settled in *Lloyd Bituman Products (P.) Ltd. vs Union Of India (UOI)*, 1980<sup>3</sup> wherein the court was of the view that there is no provision regarding the liability of the bailee to take care of the goods bailed after the period of bailment is over. Going by this, if the period of bailment is over during the lockdown, the bailee isn't required to take care of the goods bailed beyond that period. This judgment, however, might be persuasive and not binding since the liability of the bailee, in this case, had to be decided keeping in mind its position under *The Railways Act, 1989* along with the *Indian Contract Act, 1872*.

Section 158 again provides no clarity as to whether or not the expenses that are spent after the bailment period is over but before the goods have been returned/disposed of, can be recovered or not.

## **CONCLUSION**

Bailment usually occurs when goods are given to someone for completing a discrete task or to keep them for an agreed amount of time. It is considered as a powerful tool for owners of goods which are lost, destroyed or stolen. Therefore, Bailment imposes a duty of care on the person who is in control of the goods. Hence, we can say that the law relating to bailment is complex and taking early legal advice is key.

The coronavirus had a significant and harmful impact on businesses and their ability to perform under their contracts. However, whether a claiming party can successfully excuse performance due to the coronavirus is a fact intensive inquiry and must be assessed on a case-by-case basis. Contractual parties must have a look to the specific language of the contract, including the applicable law, to determine their likelihood of success.

Although it would be unwise on our part to have expected the lawmakers to consider situations like lockdowns in advance, the statute should have, however, made arrangements for other contingencies like a curfew or an emergency due to which a bailee might not be able to return or

dispose of the goods in time. Both the parties will surely have a tough time litigating their stance in the courts of law.

### **SUGGESTIONS**

For Bailment disputes which are yet to be redressed, the parties should be heedful of the circumstances and should do their part to maintain their relationship post these trying times. The existence of a recourse wherein the bailee can enter into a special contract to exempt himself from the liability arising under Section 151<sup>4</sup> should prompt the lawmakers to give a similar way-out to bailees which absolves them of their duty to take care of the goods in between the period wherein the term of the contract of bailment has expired but the goods have not been returned.

To protect the bailees acting in good faith from being tried under Sections 160 and 161, the laws on Bailment should also be amended and provisions should be made to take into account situations wherein the bailee has a legitimate reason as to why he/she was not able to return/dispose of the goods in time. Section 158 should also be amended and should take into account the expenses incurred by the bailee after the expiration of the term but before he/she has returned or disposed of the goods bailed.

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<sup>4</sup> Loyd Bituman Products (P.) Ltd. vs Union Of India (1980) 2 MLJ 363.

## **IS THERE A BRIGHT FUTURE AHEAD FOR INTELLECTUAL PROPERTY LAW AND SPACE EXPLORATION?**

Vartika Vaishnavi

K.P. Mehta School of Law NMIMS Mumbai

Suyash Dayal

Hansraj College, Delhi University

### **INTRODUCTION**

It is not a new notion to use technological developments in the realm of outer space to explore, research and use an extra-terrestrial habitat. Furthermore, because these advancements have been more of an independent or commercial concern than a public one issues of Intellectual Property Rights regulation have only recently been thrust into the spotlight. During the advance days of the space era, most space operations were governmental and not commercial. Today, space exploration is no longer limited to governmental institutions but also involve independent and commercial activities. Article VI of the Outer Space Treaty of 1967 provides international responsibility for government acts in outer space or non-government organisations, as well as the need that nations allow non-governmental activities in space.<sup>1</sup> IPR in space mean that the government is capable of and prepared to protect works generated in space, outside of its usual territorial boundaries. If the work is commercially exploited in space, the creator of the work has the right to seek legal redress. Unfortunately, one of the primary difficulties with IP law's protection of inventions in space is that its basis was established during the Cold War time, when space was a subject for national interest rather than independent businesses inside the country. IPR, on the other hand are intended to safeguard the rights of the creators. However, the concern is that the private sector has adequate protection to engage in commercial space operations, i.e., whether firms think they will get a satisfactory return on their investment. The protection of one's originality is critical to the development and commercialization of any modern innovation on Earth or in space. Intellectual property such as patents, copyrights, trademarks are frequently the product of innovation. Even though the national laws and treaty obligations that safeguard on this planet, intellectual property is well-known and unresolved regions are clearly marked. Intellectual property protection in space is susceptible to larger uncertainties. The law is at best changing and technology is frequently cutting-edge. The execution of United Nations space agreements is the foundation of international law in outer space. These agreements primarily concern governmental space operations, they do not however expressly tackle intellectual

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<sup>1</sup> [http://www.newworldencyclopedia.org/entry/Outer\\_space](http://www.newworldencyclopedia.org/entry/Outer_space)

property safeguard, which is necessary for the independent sector to participate economically in space operations. With increased engagement by non-governmental groups in the space environment acknowledgment of their rights and duties in space will grow.

Here we will talk about the foreseeable Intellectual property protections in accordance with Space exploration, firstly Copyrights, copyrights can be used to protect satellite broadcast and reception. Since the 1960s, preventing unlawful interception and exploitation of copyrighted material broadcast via satellite has been a global problem. There is a serious deficiency in the same. Although Art 22 of the International Telecommunications Convention and Art 17 of the International Telecommunications Union's Radio Regulations compel participating countries to keep some telecommunications secret its applicability to satellite signal interception is unclear. Direct broadcast satellite technology might potentially result in copyright concerns. The Brussels Satellite Convention was created in order to address this shortcoming.

As can be seen, no IPR can be asserted in space because it is traditionally viewed as a customary legacy of all people and secondly personal freedoms are far from being asserted under the OST, which requires the distribution of the advantages obtained from Space. As previously noted, this element is governed by Article VIII of the Outer Space Treaty which states that the launching State must classify the object and as a result will have authority over it. When there are two or more launching states, the parties must decide which one shall have jurisdiction and authority over the payload. Secondly, **Trademarks**, there is presently no procedure for providing trademark immunity to any innovations launched to space. Unlike a patent, it is focused with the character and branding of the products and services in question. Commercial and industrial upstarts such as SpaceX, Blue Origin and XCOR, for example would fight to preserve their invention and character in space. Virgin Galactic is aiming to conduct commercial commerce in space and as a consequence anyone who wish to profit from this trade will need to obtain trademark immunity. Lastly, **Trade Secrets**, it can be utilised to protect the innovations of self-reliant entities that can manufacture and operate their space-related technology without the help of a third party. They relate to any data held by an organization that may be used in the operation of the entity's corporation or business and is significant enough to give an actual or prospective economic value.

There were several legal concerns concerning space law during the dawn of the space age. The question of space sovereignty was a major concern. Control over space objects, accountability and governmental accountability for damages were also major concerns. Some questions have been raised, like anyhow space should really be controlled in the same way as the water or the air or if anyhow space should be open to research. To address these concerns and challenges, the UN accepted an ad hoc commission on Peaceful Uses of Outer Space. It is crucial to highlight that a number of accords and agreements have been established in connection to space law norms up to

this point and International Law of Outer Space is based on these accords. The Outer Space Treaty of 1967, the Liability Convention of 1972, the Registration Convention of 1975 and the Moon Treaty of 1979 are among them. The Outer Space Treaty is the most fundamental of them all. The 1967 Outer Space Treaty as the first treaty on space law lays the groundwork for future developments in the field. It establishes broad rules for space use and advancement.

The IPR system is governed by geographical<sup>2</sup> or national laws with some unification achieved under the supervision of the WIPO authorities. In light of these conditions the application of these rules to space which is a domain of all humanity and offers numerous prospects, deserves re-examination due to its capability to sabotage global space endeavours. As a result, it is critical to create and execute a uniform and unified Intellectual Property protection scheme for space to benefit emerging nations. Implementing planetary state legislation in outer space for the acquisition and regulation of rights, possession of roles and obligations for use in collaborative initiatives, dispute resolution, and compliance with various obligations are just a few of the new legalities that outer space adds to IP rights. At the national, regional and international levels there has been little success in extending the scope of planetary IP laws into space. Only the US changed its patent laws that included space in its sovereignty. Only the United States Space Bill and the NASA Act have regulations that apply domestic IPR law to space operations today. Intellectual property is unquestionably important for space exploration and driving continuous R&D. However, certain disagreements persist. Intellectual property rights may be inconsistent with the concept of free and equal intellect and information generated by space activities creating a barrier to their accessibility.<sup>3</sup>

It might take us years to even explore the possibilities of space. It has the ability to supply resources that are now unpriced. Proper and appropriate techniques for space research can only be achieved via the technological and monetary teamwork of the independent sector and government organizations. Any organization has an incentive to innovate and create superior technologies since it has exclusive rights to its innovations which means no one else can use them. Intellectual property rights are the sole means to provide such an exclusive right. As a result, IPR legislation must be enacted in conformity with Space Laws for exploration of space in overall. In outer space, IP rights take on new dimensions particularly with respect to discoveries created there. Disputes between Intellectual Property Laws and Space Law regimes might be addressed by the development of a harmonised system by the worldwide IPR and Space Law communities under the aegis of UN bodies such as UN COPUOS and WIPO. The essential principles of international space law as well as other international commitments should be

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<sup>2</sup> <http://www.legalservicesindia.com/article/790/IPR-protection-in-outer-space-activities.html>

<sup>3</sup> [https://www.wipo.int/export/sites/www/patent-law/en/developments/pdf/ip\\_space.pdf](https://www.wipo.int/export/sites/www/patent-law/en/developments/pdf/ip_space.pdf)

completely respected by such a harmonized system of Intellectual Property Rights regulation for outer space. It is also strongly advised that the harmonised system should include the concerns of developing nations and supports ethical and moral use of outer space for the welfare of mankind as a whole.<sup>4</sup>

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<sup>4</sup> <https://www.griffithhack.com/ideas/insights/commercialisation-of-space-and-the-use-of-intellectual-property-laws/>

## **PRIVATE APPROPRIATION OF THE LUNAR REAL ESTATE - A LEGAL ANALYSIS**

Nitya

ICFAI Law School, Dehradun

### **INTRODUCTION**

The tales relating to 'Claim of Ownership' over the 'Lunar Land and other Celestial Bodies' is not new, nor is the continued buying and selling of it, by certain agencies to various private individuals and corporations. However, it was only in the 1980s, that the debate got ignited, after 'Dennis Hope' claimed ownership on the lunar land and established the 'Lunar Embassy'- a private agency, engaged in the hawking of lunar land to private parties, on grounds, that the international laws and treaties did not expressly mention anything with respect to 'Private Appropriation of the Lunar Real-Estate'. It is to be noted, that in the present scenario, the outlook of celestial bodies, especially the 'Moon' as a 'commercial spot' has become quite prevalent and its illegal buying and selling has increased enormously. The article hence seeks to answer whether any claim of ownership over the lunar real-estate is possible? It also makes a discussion about the Extra-terrestrial Laws and Treaties, with respect to the appropriation of the lunar land. Further, it also specifies, if private appropriation of the lunar land is possible? The article further goes on to conclude that why such appropriation should be stopped? And also suggests ways by which the said aim could be accomplished. Hence, before digging the article deeper, let us discuss- if a claim over the lunar real-estate is possible?

### **Claiming the Lunar Real Estate- Is it Possible?**

There have been several instances in the history of mankind that has marked the exploitation of the celestial bodies. However, no such exploitation has been worse than what is happening in the 21st century, where individuals and corporations have started staking a claim of ownership on them, including the 'Lunar Land' and have engaged in its buying and selling business. In the said business, the most prominent role is being played by the 'Lunar Embassy', established by 'Dennis Hope' (who claims the lunar land to be his own), that has sold approximately 500 million acres of the lunar land till date, to millions of people, for a value raging between \$25 to \$500, along with a 'Lunar Deed', declaring them as legitimate owners of the purchased land.<sup>1</sup> A prominent example to this is Late, Mr. Sushant Singh Rajput, who purchased a land on moon called- 'The Sea of

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<sup>1</sup> Nahal Toosi, Who Owns the Moon? The Politio, (Jun. 13, 2019, 4:59 AM), <https://www.politico.com/agenda/story/2019/06/13/space-travel-moon-resources-000899/>.

Muscovy' through 'Lunar Land Registry Portal'.<sup>2</sup> This hawking business hence, has increased the number of private individuals and corporations claiming ownership over the lunar land. However, the question is, whether such a claim can suffice? According to the arguments of the claimants, the claims can suffice, as the extra-terrestrial laws are silent about the private appropriation of the lunar land. But, a wider interpretation of the laws suggests the contrary.

Hence, before jumping on the interpretation of these laws so as to answer this question, let us highlight the provisions of these laws with respect to appropriation of the extra-terrestrial land and resources.

### **International Treaties and the Appropriation of the Extra-terrestrial Land and Resources:**

Keeping in view, a sudden explosion in the appropriation of lunar land, the 'United Nations Committee on Peaceful Uses of Outer Space' introduced several treaties, most critical of which is the 'Outer Space' and the 'Moon' Treaty. The said treaties reject 'res nullius' approach and adopt 'res communis' approach, declaring the extra-terrestrial land and resources as 'Common Heritage', thus prohibiting its appropriation.<sup>3</sup> The Outer Space Treaty of 1967, protects the outer space from a claim of ownership by sovereignty, thus prohibiting its National Appropriation.<sup>4</sup> It also holds the signatories, internationally responsible for the national activities being carried out by governmental or non-governmental entities.<sup>5</sup> Thus, imposing a duty on them to act in conformity with the provisions set forth in the treaty. The treaty also dictates the private entities to carry out its activities relating to the outer space, under the authority and supervision of the state party to the treaty.<sup>6</sup> Apart from this treaty, the Moon Treaty of 1979 also declares the 'Moon' as 'Common Heritage', for the benefit of all, and prohibits its commercial exploitation even by private individuals.<sup>7</sup> However, in practice this treaty has got no teeth as it has not been ratified by major influential countries like the U.S and U.S.S.R. And also, the 'Outer Space Treaty' has not mentioned anything expressly with respect to property rights of private entities on the Lunar Land.

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<sup>2</sup> DH Web Desk, When Sushant Singh Rajput bought Land on the Moon, Deccan Herald, (Jun. 14, 2020, 16:46 PM), <https://www.deccanherald.com/national/when-sushant-singh-rajput-bought-land-on-the-moon-849437.html>.

<sup>3</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies art. 1, adopted Dec. 5, 1979, 18 U.S.T. 2410, 610 U.N.T.S. 205.

<sup>4</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies art. 2, adopted Dec. 5, 1979, 18 U.S.T. 2410, 610 U.N.T.S. 205.

<sup>5</sup> Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies art. 6, adopted Dec. 5, 1979, 18 U.S.T. 2410, 610 U.N.T.S. 205.

<sup>6</sup> Id.

<sup>7</sup> Matt Williams, Can You Buy Land on the Moon?, Universe Today, (Oct. 7, 2016), <https://phys.org/news/2016-10-moon.html>.

Thus, it can be concluded that the question of 'Private Appropriation of Lunar Real-Estate' is still a matter of debate and the treaties require a wider interpretation, in order to reach a conclusion.

### **Private Appropriation of the Lunar Real-Estate: Is it Possible?**

It has been held by the US Supreme Court, that- “neither the failure of the United States to ratify the 'Moon treaty' nor the State's ratification of the 'Outer Space Treaty' or its silence on the private ownership rights on the celestial bodies and moon, created any rights in Nimitz to appropriate private property rights on asteroids”.<sup>8</sup> Hence, the conclusion drawn from this case is that- no person has a natural right over any property in outer space. Thus, any kind of appropriation of the lunar real-estate is illegal in itself as it is barred by the Treaties entered into in this context.

It is true that the 'Outer Space Treaty, 1967', doesn't explicitly narrate anything with respect to the 'Private Ownership Rights' over extra-terrestrial land and resources, but the words contained in the Articles have a wider interpretation to them, thus prohibiting such ownership. The following arguments with respect to the treaty, shall tell us why?

Firstly, the term 'Common Heritage' used in Article-I of the treaty implies that the extra-terrestrial land is available for the benefit of the entire human race. It thus cannot be appropriated even for private purposes. Secondly, the application of the 'Fortiori Principle' to Article-II of the treaty which prohibits national appropriation of outer space and celestial bodies, has an implicit extension to private individuals. Thirdly, according to Article-VI, what is forbidden to a State, has ultimately been forbidden for its nationals and other private entities as well. Meaning, private appropriation cannot exist independently of State appropriation.<sup>9</sup> Fourthly, according to Article-VI of the treaty, the acquisition and administration of extra-terrestrial land by private individuals or corporations must occur under the authority and supervision of the State Party.<sup>10</sup> However, if the State in any way protects, recognizes or endorses such administration or acquisition it would constitute National Appropriation, thus violating the Treaty. Thus, such acquisition and administration become illegal in itself. The said article also holds the government responsible for the actions of its people. Hence, it is clear that the treaty is meant to apply to all entities, be it public or private. Moreover, the adoption of 'res communis' principle by the treaty in itself makes private appropriation of the lunar real-estate illegal, barring both National and Private Entities from appropriating the same. Nonetheless, if the appropriation is still prevalent, then it can cost a lot. Hence, it's important to know why and how should it be

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<sup>8</sup> Nimitz v. United States, 2004 WL 3167042.

<sup>9</sup> Virgiliu Pop, Appropriation in Outer Space: The Relationship between Land Ownership and Sovereignty on the Celestial Bodies, 16 JSP 275, 278-279 (2000).

<sup>10</sup> Williams, supra note 7, at 2

stopped?

### **Private Appropriation of Lunar Land- Why Should it be Stopped?**

With the number of illegal sale and purchase of the lunar real-estate increasing in the realm of internet by agencies like the 'Lunar Embassy', who sell parts of lunar land to people under a misrepresentation of ownership rights being granted to them by means of the 'Lunar Deeds' (that acts nothing more than a Souvenir), a first-hand need to take corrective actions is being felt. Hence, its high time that such transactions are stopped because- firstly; “the lunar land and other celestial bodies are labelled as 'Humanity's Common Heritage' and are meant to be protected & reserved for future generations”, according to the International Law on Outer Space. Secondly; any lunar land transaction is violative of the Outer Space Treaty, 1967. And thirdly; the consumer rights of the purchasers are being hampered on a large scale and there's no authority to give them remedy.<sup>11</sup> What could be a solution then?

### **SUGGESTIONS AND CONCLUSION**

To curb the growing tentacles of the said illegal business to which the governments have turned a blind-eye, the article suggests- Firstly; the enactment of municipal codified laws with respect to utilization of outer-space that expressly forbids appropriation of any sought and makes the hawking business punishable. Secondly; the appointment of officers by the United Nations to the countries where the Lunar Embassy has its agents, to identify, investigate and stop such transactions. Thirdly; shifting focus towards intergovernmental cooperation for exploitation of outer space. Fourthly; reading space laws in consonance with international law and avoiding their separation. Moreover, the author also suggests the adoption of a positivist approach which could also help achieving the aforesaid aim. Thus, when the international law and treaties clearly doesn't support the idea of appropriation of outer space and its resources then shouldn't Elon Musk's company 'SpaceX' be stopped from staking a claim of ownership over Mars?

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<sup>11</sup> Nemitz v. United States, 2004 WL 3167042.

## **GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ACT, 2021: A POTENTIAL MOVE TO MAKE ELECTED LEADERS TOOTHLESS**

Shriya Ramesh

Symbiosis Law School, Hyderabad

Reema Jain

Symbiosis Law School, Hyderabad

### **INTRODUCTION**

The territoriality and governance of Delhi is a cumbersome mélange of Central rule and self-rule. History plays an instrumental role in understanding the current state of affairs in the set-up of Delhi. The Government of India Act, 1935 classified Delhi as a “Chief Minister's Province” and that is equivalent to a “Union Territory” in contemporary terms.<sup>1</sup> The Sitaramayya Committee recommended a co-operative set-up for Delhi, where a Lieutenant Governor shall be appointed by the President and an elected legislature by the public of Delhi.<sup>2</sup> This peculiar diarchal structure represents an attempt to reconcile Central control over the federal capital with autonomy at State level. This model renders the administrative set-up as extremely anomalous and inefficient. The State Government in Delhi has consistently raised hue and cry over lack of administrative power vested in it which hampers development in Delhi. After consideration of global scenario, it can be understood that even the Government of France has special control over Paris, which is the national capital. It is observed that to some extent, all over the world, there is an issue of conflicting jurisdictions between State Government and Central Government over Federal capitals, due to their political and social predominance.<sup>3</sup>

These dual arguments gained prominence in 1987, when an argument of whether Delhi should remain a union territory or should it be granted statehood was kick-started in full-swing. This was settled to a limited extent by the 69th Constitutional amendment that inserted Article 239AA and Article 239AB. The case of **New Delhi Municipal Corporation v. State of Punjab**,<sup>4</sup> recognized the special status of Delhi as a Union Territory. The Government of National Capital Territory of Delhi Act, 1991 outlined the distribution of powers between the elected legislative assembly and the appointed Lieutenant Governor.

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<sup>1</sup> Government of India Act, 1935, §94.

<sup>2</sup> B. SHIVA RAO, THE FRAMING OF INDIAN CONSTITUTION 249 (Universal Law Publishing, 3rd ed., 2019).

<sup>3</sup> Report of the States Reorganization Commission, 142 GOVERNMENT OF INDIA (1955).

<sup>4</sup> **New Delhi Municipal Corporation v. State of Punjab**, AIR 1996 SC 345.

### **The effect of the Government of National Capital Territory of Delhi (Amending) Act, 2021**

The distribution of power between Centre and State is facilitated through three lists under Seventh Schedule of The Constitution: State list, Union list and Concurrent list.<sup>5</sup> Delhi enjoys powers under State list and Concurrent list. However, three entries of the State list viz. Police, Public Order and Land are outside the purview of State list in the context of Delhi. In the 2018 verdict of **Govt. of National Capital Territory of Delhi v. Union of India**<sup>6</sup> It was held that Article 239AA shall not be interpreted rigidly and it is meant to confer democratic, societal and political powers on citizens. This judgment was a testimony to the understanding that the Constitution of India envisaged that people had the right to participate in the collective decision making of who can govern them. Therefore, it was further held that the Supreme Court had to uphold the rule of law and maintain the spirit of the Constitution. In doing so, the Court outlined that if the concurrence of Lieutenant Governor is required on every affair of the State except Land, Police and Public Order, the ideals of democracy and representative Government would be negated. The Lieutenant Governor is obliged to act on the aid of the Council of Ministers. However, section 21(2)(3) of The Act now seeks to refer to the Lieutenant General as the “Government” and not the elected legislature. This means all legislations and executive action shall be in the name of the Lieutenant General and the legislative assembly of Delhi will have to take the opinion of the former before taking any executive action, which reduces the autonomy of the elected representatives. Under Article 166 of The Constitution, all executive actions are passed in the name of the Governor. However, the Governor acts on aid of the Council of Ministers. In the present case, the Lieutenant General can directly refer any case to the President, thus making the elected assembly weak. This is in stark contrast to the 2018 verdict where it was held that the Lieutenant General was an administrator at best and giving him more power would violate the principles of cooperative federalism.

In light of the present amendment, several administrative and executive difficulties have surfaced. Under Article 356, the Governor recommends the President to impose emergency if the situation warrants. This gives rise to a question that if the Lieutenant Governor is considered as “Government” in place of the elected representatives, then how logically right is his recommendation to the president.

As per General Clauses Act, 1897 the President and Governor are only titular heads of a State. However, since Delhi is a Union Territory with a special status, it has been assumed by the Central Government that Lieutenant General can be used interchangeably with State

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<sup>5</sup> The Constitution of India, 1950, Art. 245.

<sup>6</sup> Government of National Capital Territory of Delhi v. Union of India, (2018) 8 SCC 501.

Government. On the other hand, **Iron Works v. Union of India**<sup>7</sup> held that the Lieutenant General of Delhi is not “State Government”. Similar arguments were upheld by the Supreme Court in **Ram Jawaya Kapoor v. State of Punjab**,<sup>8</sup> where it was lucidly chalked out that the Council of Ministers had the real executive powers whereas the President and the Governor had mere nominal powers. This implies that the following mutatis mutandis applies to Lieutenant General as the prime rationale is that power must rest with the entity that has been elected by people and not with the entity that has been appointed. This is instrumental for a well-functioning democracy in a State where the Constitutional spirit burgeons on decentralization of power and separation of powers.

The Constitution operates on a scheme that encourages Representative Government and that is reflected in Article 153 of the Constitution. In **State of Karnataka v. Union of India**,<sup>9</sup> it was held that the State administration is run in the name of the Government but with the aid of the council of ministers. The crux behind this is that the council of ministers is elected by people and it presupposes the idea of democracy which is “By the people, for the people and to the people”.

As previously understood, the Central Government by the virtue of The Act can legislate on matters that are associated with land, public order and police and the Lieutenant General in these cases could withhold assent and refer the bills to the President. However, Section 24 of The Act now empowers the Lieutenant General to refer even those bills to the President that are identical or bear similarities with the matters that fall outside the purview of the Legislative Assembly. It must be unequivocally understood that the 2018 verdict outlined that only those matters could be referred to the President that became a point of contention between the Lieutenant General and Legislative Assembly. However, now “any matter” or even “every matter” in limited sense can be referred to the President which is identical and that encroaches upon the principle of cooperative federalism.

The most caustic erosion of the powers of the Legislative Assembly can be seen in the Section 44 of The Act. It takes away the power of the Legislative Assembly to make rules for day-to-day administration of the Capital or conduct enquiries in relation to administrative action. This further invalidates the committees made by the State Government.

## CONCLUSION

The Central Government issued electoral bonds that plummeted the system of transparency, amended the Right to Information Act and made the Chief Information Commissioner toothless

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<sup>7</sup> Iron Works v. Union of India, ILR 1975 Delhi 613.

<sup>8</sup> Ram Jawaya Kapoor v. State of Punjab, AIR 1955 SC 549.

<sup>9</sup> State of Karnataka v. Union of India, (1978) 2 SCR 1.

and this Amending Act though states that it is an attempt to smoothen the business of the National Capital, it appears to be a tool by the Central Government to undermine the powers of a democratically elected Government, which is against the rubrics of the 2018 verdict. This Amending Act serves no substantial purpose and fails to establish how the business would be “smoother” as enshrined in the Statement of Objects.

## **UNDERSTANDING THE ANTICIPATORY BAIL IN THE LIGHT OF JUVENILE JUSTICE ACT 2015 IN INDIA**

Prakhar Dubey

University of Petroleum Energy Studies, Dehradun

Amisha Chauhan

University of Petroleum Energy Studies, Dehradun

### **INTRODUCTION**

#### **CONCEPT OF ANTICIPATORY BAIL IN CONTEXT OF CHILDREN**

In Indian criminal procedure rules, the position of law about anticipatory bail is clear but the question to its applicability arises, when talked about in context of the juveniles. This issue remains in a state of flux until today.<sup>1</sup>

One must know that bail, as a concept is a very useful tool that aims to prevent the innocent person from getting punishment for the crime that he was not involved in. Nevertheless, the judicial mechanism fails to appreciate the complex bail system. Anticipatory bail have been included in the Code with the motive to prevent the violation of the right to personal liberty and freedom as none can be detained under custody unnecessarily. The granting power must be exercised cautiously by the Court so as not to provide chance for the abuse of the special privilege given to the accused.

Juvenile Justice Law in India works on the principles of restorative justice and interpret laws in the interest of the children firstly.<sup>2</sup> The author through this paper have tried to approach the question dealt by various court whether to provide anticipatory bail to children involve in conflict with law or not.

#### **DOES CHILDREN HAVE THE RIGHT TO BAIL IN INDIA?**

Juveniles in India have the statutory right to bail. Justice S. Vimala says that juveniles have been coming up to surrender before the JJBs for the crime they committed before the High Court only if a direction is issued to the juvenile justice board to consider the bail petition on the day of surrender itself.<sup>3</sup>

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<sup>1</sup> Criminal law studies nluj, <https://criminallawstudiesnluj.wordpress.com/2020/06/07/anticipatory-bail-and-children-in-conflict-with-law/> (last visited on 22 March, 2021)

<sup>2</sup> The Hindu, <https://www.thehindu.com/news/cities/Madurai/juveniles-have-statutory-right-to-bail-says-hc/article7794003.ece> (last visited on 22 March, 2021)

<sup>3</sup> The Hindu, <https://www.thehindu.com/news/cities/Madurai/juveniles-have-statutory-right-to-bail-says-hc/article7794003.ece> (last visited on 22 March, 2021)

Even the Section 12<sup>4</sup> of the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>5</sup> talks about the bail of juveniles and mentions that when any person is accused of committing bail able or non-bail able offence, and if a juvenile is arrested, he must be release on bail with or without surety.

However, if there are enough strong reasons, to deprive the accused juvenile of the bail, JJB can issue orders for the detention of the juvenile in an observation home or any other safe place.

### **THE MISCHIEF TO GRANT ANTICIPATORY BAIL TO CHILDREN**

The judiciary have given reasoning for not granting anticipatory bail to a juvenile in conflict with law, firstly that Juvenile Justice Act is itself self-contained code which means that the provisions of the Criminal Code cannot be implemented here. The Juvenile Justice Act does not aim at arresting the young criminals but apprehend them. Hence, it is concluded by the court that there arises no need for granting a bail in anticipation of any arrest.

Now as we have good idea about what is bail. What is anticipatory bail so now taking our studies further we will see seen how different courts has taken stand on granting children with anticipatory bail so firstly let us start *Gurubakash Singh Sibbia v. State of Punjab*<sup>6</sup> here in this case Supreme Court have tried to differentiate the concept of normal bail with that of anticipatory bail. In this case it was held that after a person who is arrested, he can be released from the custody of the police by normal bail however the anticipatory bail is granted where there is anticipation of arrest. This was reason why court came up with certain guidelines under Section 438<sup>7</sup> of Code.

We can very well say that law with regards to anticipatory bail is clear but the issue regarding the anticipatory in matters related to children is still not clear. This is because there is no much cases where Supreme Court has taken this view in consideration also because of this the reason why various High Court have also found the inconsistency and that is why the High Court have come up their own reasoning which presented to us in the form of Juvenile Justice [Care and Protection of Children] Act 2015<sup>8</sup> vis-à-vis Section 438.<sup>9</sup> Even we have seen that various Law Commission Report which are silent to grant anticipatory bail to children.

In this paper, the authors have tried working towards examining the various judgement given by the respective High Courts where the question has dealt for anticipatory bail maintainability

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<sup>4</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, section 12.

<sup>5</sup> The Juvenile Justice (Care and Protection of Children) Act 2015 NO. 2 OF 2016.

<sup>6</sup> Gurbaksh Singh Sibbia v. State of Punjab ((1980) 2 SCC 565).

<sup>7</sup> The Code of Criminal Procedure 1973, Section 438.

<sup>8</sup> Prs India, <https://www.prsindia.org/theprsblog/juvenile-justice-bill-2015-all-you-need-know> (last visited on 29th June, 2021)

<sup>9</sup> The Code of Criminal Procedure, 1973, Section 438.

where the focal point in situations are juveniles. The paper ends with suggestion that could solve this mischief.

### **INTREPRETATING THE STATUTE IN THE STRICT MANNER**

If we read Section 12 of the Juvenile Justice Act where the section is regarding the maintainability of anticipatory bail in that the former statute provides for non-obstante clause thus we see there is no applicability of anticipatory bail given under section 438 when we talk of juveniles. The same logic was accepted by the 2-judge bench of Calcutta High Court in the case of *In Re: Krishna Garaihere*<sup>10</sup> in this case court rejected the application applied for anticipatory bail and finally it was held that JJ Act 2000 has an overriding effect over Cr. P.C 1973.

Again, in the case of *Tejram Nagrachi v. State of Chhattisgarh*<sup>11</sup> the court held that to grant bail to any juvenile is being dealt under Section 12[1] of the JJ Act 2000 and not in the section 437 or 439.<sup>12</sup> The court here in this case suggested that under the statute of juvenile justice a process has been laid like when children are involved in conflict with law and is not given right to bail.

Now what about the jurisdiction of Juvenile Board, so this matter was taken up by the single bench of Madhya Pradesh High Court in case of *Kapil Durgawani v. State of Madhya Pradesh*<sup>13</sup> the judge in this case held that on reading Section 12 of the JJ Act 200 we see there no specific power which is provided to the JJ Board which is similar to that of given in Section 438 of Cr. P.C 1973. Thus, it comes the board does not have any right over the jurisdiction where a juvenile file the application for anticipatory bail.

Now in the case of *Preetam Pathak V. State of Chhattisgarh*<sup>14</sup> the court applied same reasoning as that of M.P High Court Judgement and even in this case it was argued that power is neither granted to High Court or the Court of Session to have jurisdiction for the anticipatory bail application.

In another case of *Satendra Sharma v. State of Madhya Pradesh*<sup>15</sup> the Madhya Pradesh High Court held that it rejects the application of anticipatory bail and the power which is granted to JJ Board can be used by the High Court or the Court of Session when any proceeding is presented

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<sup>10</sup> In Re: Krishna Garai MANU/WB/1374/2016

<sup>11</sup> TejramNagrachi v. State of Chhattisgarh MANU/CG/0360/2019

<sup>12</sup> The Code of Criminal Procedure, 1973, Section 439

<sup>13</sup> Kapil Durgawani v. State of Madhya Pradesh MANU/MP/0287/2010

<sup>14</sup> Preetam Pathak V. State of Chhattisgarh M.Cr.C.[A] No. 1104 of 2014

<sup>15</sup> Satendra Sharma v. State of Madhya Pradesh M.Cr.C. No.4183 of 2014

before them by appeal, revision or otherwise except under the Section 438<sup>16</sup> and 439<sup>17</sup> of the Code.

Firstly, the matter is argued enough that without any kind of enabling provision the relief under Anticipatory bail should not be granted. Thus, in case of *Kamlesh Gurjar v. The State of Madhya Pradesh*<sup>18</sup> there is no provision which is either given in JJ Act 2000 or in the Code of Criminal Procedure 1973 which can provide juvenile chance to bring forth his application for anticipatory bail either if it is before any Hon'ble High Court or the Court of Session or even it has to presented before the JJ Board. Thus, in the end it was held that in the absence of any specific provision in the JJ Act, a juvenile would not be allowed to move his application under Section 438 of Cr. P.C 1973.

Now coming back to the judgement of *Preetam Pathak v. the State of Chhattisgarh*<sup>19</sup> the High Court bench have rejected the concept of Anticipatory Bail under section 438 of Cr. P.C 1973 and decided that juvenile should move with his application under Section 12 of JJ Act 2000 instead of going up with application of bail.

Secondly, the other argument which goes against the application of Anticipatory bail is that provision as mentioned under the JJ Act 2000 does not mention anything about arrest of children when they are involved in activity that are against law. We see the Parliament have purposely used the term apprehend rather than using word arrest. As a necessary requirement of apprehension of arrest as given under Section 438 of Cr. P. C 1973 is not present and thus power under this proviso can't be used to provide bail to juvenile whether it may be Hon'ble High Court or the Court of Session.

In the case of *K. Vignesh v. State*<sup>20</sup> the judgement given by the Madras High Court here in this case Justice Nagamuthu has argued that intention of the legislature i.e., Parliament was not that it may empower the police to arrest any child who is found in conflict with law rather the law was made so that the children can be apprehended under the JJ Act. Thus, the Court finally decided that a fear cannot be created by the way of arrest when children is involved in conflict with law and the current legal position given in the statue totally eliminate the need which can exist if the child want to seek anticipatory bail.

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<sup>16</sup> ibid

<sup>17</sup> The Code of Criminal Procedure 1973, Section 439

<sup>18</sup> Kamlesh Gurjar v. The State of Madhya Pradesh M.Cr.C. No 103045 of 2019

<sup>19</sup> supra

<sup>20</sup> K. Vignesh v. State Cr. No. 22361 of 2015

## LANDMARK JUDGEMENTS DEALING WITH THE ANTICIPATORY BAIL IN CONTEXT OF JUVENILES

There has always been inconsistency between the general legislation and special legislation whenever we interpret the provision of the JJ Act 2000 in general and Section 12 in particular, we have seen that the provision provided under the special laws will always prevail. However, if the situation like that when there is no inconsistency and if there is situation when something is not present in special legislation but provided under the general legislation then the latter will prevail. The same argument was accepted in the case of *Shahaab Ali [Miner] and Ors v. the State of U.P.*<sup>21</sup> Justice Yashwant Varma said that the provision provided under Cr. P.C 1973 may prevail and will operate in areas where the JJ Act provides specifically provides no construction. It was decided that the non-obstante clause, which is present under Section 12, is only indicative of the fact that the JJ Board is being provided with the power to grant bail notwithstanding that any kind of disturbance, which may be found in, regards to provision of Code of Criminal Procedure 1973.

In the case of *Mohan [In Jail] v. the State of Chhattisgarh*<sup>22</sup> and in *Subhash Kumar @ Sonu v. State of Chhattisgarh*,<sup>23</sup> the matter was present before the court to interpret Section 12 of the JJ Act so after looking into question the court held that despite of provision presented in Section 12 of JJ Act 2000 the maintainability of bail under Section 439 of Code<sup>24</sup> is valid before any of the Hon'ble High Court or the Court of Session specified under the local jurisdiction.

On reading the Juvenile Justice Act, 2015 Section 12 it mentions about post arrest provision and non obstante clause the word written is “shall” not operate to exclude the pre-arrest bail provision for the juveniles. The court said while providing protection to child when he or she is brought before Juvenile Justice Board the granting of bail will be decided by reading Section 10 and 12 of JJ Act 2015.

In the case of *Krishna Kumar through his Mother v. State of Haryana*<sup>25</sup> the Punjab and Haryana High Court allowed a pre-arrest bail to minor. The court went further to say just because the J.J. Act 2015 is silent on the aspect of anticipatory bail it cannot be assumed that juveniles can be denied for this right. In this provision regarding special legislation is silent on the aspect of granting bail thus there is presumption that general law is to be abided by.

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<sup>21</sup> Shahaab Ali [Miner] and Ors v. the State of U.P. M.Cr.C.[A] No.597 of 2020

<sup>22</sup> Mohan [In Jail] v. the State of Chhattisgarh 2005 CriLJ 3271

<sup>23</sup> Subhash Kumar @ Sonu v. State of Chhattisgarh M.Cr.C.No.5651/2014,

<sup>24</sup> ibid

<sup>25</sup> Krishna Kumar through his Mother v. State of Haryana CRM-M-19907-2020

The JJ Act 2015 is a social welfare legislation it protects the children and it also protect children from becoming criminals and sending these children to rehabilitation center is the best possible means. It is not the intention of the legislature that juveniles should first be apprehended and then brought before Juvenile Justice Board whereas this relief is available to all person and excluding juvenile will stifle the justice delivery.

In the case of *Mohammad Zaid v. State of U.P. and Ors.*<sup>26</sup> the court held that anticipatory bail cannot be granted to child who is conflict with law till the trial has been completed as it down water down the effect of J.J Act 2015. The inquiry has to be conducted by the Board where the child is found in conflict with law as concluded in Section 14 of the J.J Act 2015 or where any preliminary inquiry is done for the offence falling in Section 15 of the J.J. Act 2015. If it is found child is involved in conflict with law he will apply for bail as mentioned in Section 12 of the J.J. Act 2015 for non-bailable offence.

In the case of *Kureshi Irfan Hasambhai v. State of Gujarat*,<sup>27</sup> the High court of Gujarat said that there is no express bar on the application of Section 438<sup>28</sup> of Code to the child who are in conflict with law considering with provision of JJ Act 2015. There is necessary procedure that has to followed as required under Section 12 of the JJ Act 2015 and based on which protection shall be given.

The court have observed that word apprehension used in Section 10 of the JJ Act 2015 is similar to arrest as used in Section 438 of Code. The court said it is important to focus on the liberty of the child and complete denial to anticipatory bail is curtailing the liberty embedded in Article 21 of the Constitution.<sup>29</sup> The court finds no explicit bar if we read language of the JJ Act 2015 as mentioned in Section 10 and 12.

The court in this case was of the opinion that there is no express bar on the application of Section 438 of the Code to children where there arises a conflict in law. We have JJ Act 2015 and if in case there is no bar on the application of Section 438 of the Code there cannot be any reason to imply such bar in the present case where the applicant who in this case is found juvenile.<sup>30</sup>

“The Court opined that personal liberty of an individual is of utmost importance and it cannot be ignored or considered lower. Right of an individual to get himself/herself a legal recourse is

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<sup>26</sup> Mohammad Zaid v. State of U.P. and Ors 2020 SCC OnLine All 1716

<sup>27</sup> Kureshi Irfan Hasambhai v. State of Gujarat R/Criminal Misc. Application No. 6978 of 2021

<sup>28</sup> ibid

<sup>29</sup> The Constitution of India, Article 21

<sup>30</sup> <https://primelegal.in/2021/06/14/the-applicability-of-anticipatory-bail-under-section-438-cr-pc-to-minors-in-confrontation-with-the-law-under-the-jj-act-is-not-expressly-barred-gujarat-high-court/> Last Accessed on 21 March 2021

fundamental for an individual and has to be so if not with more vigor for juvenile”.<sup>31</sup>

Now going back to judgement of *Shahaab Ali [Miner] and Ors. V. The State of U.P*<sup>32</sup> which was discussed earlier in this clarity over the words “arrest” and “apprehend” was given it was stated that both these words can be used as substitute of each other and even they also convey the same meaning. It was finally held that application of Section 438 of Cr. P.C 1973 is there before the registration of FIR and it up to the Hon'ble High Court or the Court of Session that Anticipatory Bail given to juveniles.

Now after getting a good idea about the mischief, it is high time that this need to be resolves and equality should not be divided by treating children in one category and other person in different category who can enjoy the privilege of anticipatory bail.

### **THE WAY FORWARD**

Through this research paper, we have seen the different approach where in the first instance we saw how different benches of High Courts of Madhya Pradesh and Chhattisgarh were different stance which goes against the children to grant them relief of the Anticipatory bail to juveniles involved in conflict with law and the have used the literal interpretation by going word by word of statutory provision. It was even decided that JJ Act 2000 is special and neither of its provision applies to Code of Criminal Procedure 1973. On the other hand, we have Allahabad High Court judgement of *ShahaAb Ali and Ors v. State of U.P*<sup>33</sup> where it was prescribed that application of Code of Criminal Procedure 1973 on the issues concerning the JJ Act are either completely silent or providing no special measures which are in consonance with the principles as mentioned in the statutory interpretation.

Talking about the second approach where the court has relied upon the purposive interpretation of the JJ Act 2000 and Section 438 of the Code. It was noticed that the original purpose of Section 438 of the Code was to provide the personal liberty and freedom to person living in India even the legislative intent was also acknowledged that any person is considered innocent until proven guilty by the court but when we refer to provide relief to children for the Anticipatory bail the statue remains silent on this aspect. It is shows how true spirit of liberty and freedom take a break in this manner.<sup>34</sup>

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<sup>31</sup> ibid

<sup>32</sup> M.Cr.C.[A] No.597 of 2020

<sup>33</sup> Ibid

<sup>34</sup> Ved Kumari The Juvenile Justice (Care and Protection of Children) Act 2015, (Universal Publication, 2017)

As of now we can only see that the JJ Act 2015 which is enforced for providing beneficial and remedial legislation these are the rights which are based on the welfare of the children who are involved in conflict with law and it is duty upon the courts that they see any juvenile's rights should not be violated in any condition completely separating a category of person from their rights where they can get relief means justice denied. It also defeats the spirit of law set behind the JJ Act 2000 simultaneously the purpose of legislation behind anticipatory bail, which was originally enacted.

Thus, it is time when the Supreme Court should take up the issue and provide the necessary solution, which will itself settle the position of law by restoring the liberty and right of such children who are involved in conflict with law. The ultimate purpose of the JJ Act 2015 would fail if children were not provided any relief under Anticipatory bail just because there is ambiguity, which is present in procedural law.



