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Message from Editor's Desk

It is a matter of immense pleasure to publish Volume 5 Issue-2 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 wide range of topics like Banking Scam due to loopholes in banking laws, critical analyses of political campaigns keeping in mind influence of celebrity, competency of contractual parties with reference to section 11 of ICA 1872. It also covers worldwide problem of child labour issue with special reference to India, analyses of farmers laws, its relevancy and legilimate concern of farmers, although these laws are repealed. One article focused on right to drinking water to be considered as fundamental right, it also covers the critical analyses of supreme court ruling in Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd regarding corporate governance keeping I mind the concept of oppression and mismanagement in a company.

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

Vol. 5 Issue 2, July - December 2021 ISSN : 2581 - 6837

JIMS JOURNAL OF LAW

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BANKING SCAMS OVERRIDING THE BANKING LAWS IN RECENT YEARS

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INTRODUCTION

Banking scams are not only targeting financial institutions but trapping the country's economy and society as a whole. Fixing deposits, loan disbursements, credit and debit card frauds, and ATM-based scams reported in recent years. And these scams demonstrate that they may have an impact not only on revenues, service availability, and operating efficiency but also on society and the company itself. Increased events of scams has created an influence on the profitability of the sector in the economy, as well as an increase in nonperforming assets (NPAs), and this increase in nonperforming assets poses a severe danger to the Indian banking industry, as the banking sector is a key component of the economy that influences the quality of products and services. It is a direct reflection of people's living standards and well-being. Thus, if the banking system has a high level of nonperforming assets (NPAs), it indicates the borrower's hardship and inefficiencies in the transmission mechanism. The Indian economy has suffered greatly as a result of these incidents occurring frequently. And as a result, it has become a business killer and an underlying element in all human activities. It has also increased the degree of corruption in a country. Even though the RBI has made numerous efforts to minimize or reduce scams, the legislation has yet to come up with more stringent rules and regulations to combat banking scams.

RESEARCH OBJECTIVES

- To identify the reasons for Banking Scams.
- To know about some major banking scams encountered in recent years.
- To find the efforts made to prevent banking scams through laws.

REASONS FOR BANKING SCAMS

1. The involvement of staff is seen to be the main reason behind banking scam as they become the mediator between the client and bank and in favor they got high commissions from the clients.
2. Violation of certain instructions issued by the bank for employees.
3. Manipulation of cheques, drafts and other instruments.
4. Forgery & Cheating.
5. Misappropriation and criminal breach of trust.

6. Negligence and cash shortages.
7. Collusion between businessmen, top bank executors, civil servants, and politicians.
8. Irregularities in foreign exchange transactions.
9. Theft, Robbery, Dacoity.
10. Extension of unauthorized credit facilities and Opening of bogus accounts.

MAJOR SCAMS ENCOUNTERED IN RECENT YEARS

1. Vijay Mallya's Scam

Vijay Mallya, the chairman of United Breweries Holdings Limited (UBHL), is being investigated in India for fraud and money laundering. He was taking out loans from various banks regularly to run his Kingfisher Airlines airline business. In 2016, he was declared bankrupt by SBI and other banks for a scam worth Rs. 9000 crores. Before any action could be taken against him, he flew to the United Kingdom. Now India is trying to extradite him to recover the remaining funds and pursue legal action against him.

2. PNB Scam

NiravModi is the prime accused in the PNB Scam, who reportedly took fraudulent Letters of Undertakings (LoUs) with the help of PNB employees starting in 2011 and allegedly defrauded the bank of Rs. 14,000 crore by issuing bogus Letters of Undertakings (LoUs). When PNB filed a case against him in 2018, he flew away with his family.

3. YES Bank Scam

YES Bank scam recently comes into the picture when the Central Bureau of Investigation (CBI) lodged an FIR against GautamThapar, promoter of Avantha Group, and others for suspected misappropriation of over Rs. 466 crore from YES Bank since 2017. GautamThapar and other businessmen have been accused of defrauding the bank by taking out a loan that turned into a non-performing asset (NPA).

EFFORTS MADE TO PREVENT BANKING SCAMS THROUGH BANKING LAWS

1. Although India has a well-structured Banking Regulation Act, 1949,[1] which defines the entire regulation of banks and banking companies, including restrictions on loans and advances under Section 20[2] and the Reserve Bank's power to control advances by banking companies under Section 21,[3] the act's motivation has been defeated in recent years because

[1] The Banking Regulation Act, 1949, No.10, Acts of Parliament, 1949 (India).

[2] The Banking Regulation Act, 1949, § 20

[3] The Banking Regulation Act, 1949, § 21

the management staff is the one who leads to the occurrence of massive scam occurrences. The effect of the controlling power of RBI is diminishing because the exploitation of the act is seen continuously in recent years. We need to focus on the compliance part as people in India have a habit of avoiding compliances as it seems unnecessary to them but the actions reflect in the growth of the economy also.

2. The Prevention of Money-Laundering (Amendment) Act, 2012[4] got the major amendments in 2021 with the introduction of the concept of "reporting entity" to include therein a banking company, financial institution, intermediary, or a person carrying on a designated business or profession. That was a major step to report any banking entity also. Furthermore, Section 12 (1) (a)[5] of the Act mandates the maintenance of all specified requirements to establish a clear picture of the transaction, and The Prevention of Money Laundering Act, 2002[6] and its Rules require every reporting entity (banking company, financial institution, and intermediaries) to submit the following reports:

   Cash Transaction reports (CTRs)

   Suspicious Transaction Reports (STRs)

   Counterfeit Currency Reports (CCRs)

   Non-ProfitOrganization reports (NPRs)

   Even after having the stringent compliances therein for the banking entities, the events of scams occurred, which is a great disappointment for lawmakers who were hoping that the measures to safeguard the economy from this elimination would be successful. However, the wealthy people find a way to take benefits out of it; the Nirav Modi Scam is the best illustration of how managerial staff engagement may lead to the occurrence of a much larger catastrophe.

3. And one of the most significant initiatives taken by the government for providing ease for the regulation of frauds is the clubbing of the various debt recovery acts in one code i.e., The Insolvency & Bankruptcy Code,2016.[7] The code aims at consolidating and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals. The two adjudicating bodies established by IBC, 2016[8] are The National Company Law Tribunal and the Debt Recovery Tribunal. The IBC's three primary pillars for 2016 are:

   - IBBI - The Insolvency and Bankruptcy Board of India (IBBI) is a regulator that has the

[4] The Prevention of Money-Laundering (Amendment) Act, 2012, No. 002, Acts of Parliament, 2013(India)

[5] The Prevention of Money-Laundering Act, 2002, § 12(1)(a)

[6] The Prevention of Money-Laundering Act, 2002, No. 15, Acts of Parliament, 2003(India)

[7] The Insolvency & Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India)

[8] The Insolvency & Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India)

authority to exercise legislative, executive, and quasi-judicial duties.

- IPAs (Insolvency Professional Agencies) - A company registered under the Companies Act can be recognized as an Insolvency Professional Agency. The IPA is in charge of enrolling and regulating insolvency professionals as per the Code's norms and regulations.

Insolvency Professional– To be an Insolvency Professional, an individual has to be:

a. Registered with Insolvency and Bankruptcy Board of India.
b. Member of Insolvency Professional Agency.

The IBC Code, 2016[9] was a great initiative for eliminating confusion among various debt recovery laws and providing a way to dispose of the matters speedily through the above-mentioned bodies. But the major problem came is the discovery of the matter, the transparency in the system is still not maintained that's why the economy is still receive facing the deterioration through the frauds that have been taken place between the banks and the high profiled companies.

CONCLUSION

Despite the aforementioned observations of scams and legislative measures to combat banking scams, the main problem lies in compliance with the norms. The banking sector also requires a robust executive body, as the RBI would not be able to handle everything. For the regulation of the banking sector, a separate compliance organization, in my opinion, is required. As we are moving towards a digital world, a balance between legislation and management is required to preserve India's economy.

RESEARCH METHODOLOGY

This research paper is completely doctrinal. The material collected and referred to, is from both primary and secondary sources. This research is entirely based on the analysis that how the banking scams is overriding the banking laws even after the efforts of the legislature to prevent these scams.

[9] The Insolvency & Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India)

CELEBRITY INFLUENCE ON POLITICAL CAMPAIGNS : A CRITICAL ANALYSIS

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INTRODUCTION

“Leadership is not about a title or a designation. It's all about impact, influence and inspiration. Impacts involve getting results, influence is about spreading the passion”. This famous quote of Robin S. Sharma itself speaks how the influence works for the leadership.

Basically the influence of celebrity on election campaign is not just in a single country but it is worldwide. It is just like a trend to involve celebrity in election campaign for getting the crowed attract. In US presidential election celebrities are always part of the show. Historians have traced the role of celebrities in politics back to the 1920 election. When Warren Harding was endorsed by film stars including Lillian Russell. In India, Glamour has been an integral part of every election and celebrities have an overwhelming presence on either side of election campaigns. Celebrity campaign is now used as a political communication and \marketing mix during elections.

During the last decade, celebrities have assumed a significant role in the political realm, especially during elections.

This paper is based on research aimed at investigating celebrity politics using the emerging theories on celebrity capital in the context of an emerging democracy. The research is based on the role of celebrity or influence of celebrity on political campaigns.

Political influence and endorsement has a very significant history in politics to worldwide. Political parties utilize celebrities during elections to mobilize young voters who instantly connect with the celebrities, which change their voting behaviors.

Young voters perceive voting during elections as a waste of time and have an apathetic view of the political process. Linking celebrities to execute political tasks is the strategy used by political parties to leverage these young voters, which is frequently overlooked.

Celebrities and politicians are like two sides of a coins and their combination covers the weakness they individually have.

Politicians usually have real credibility but are not liked whereas celebrities are admired and well-liked but do have the respectability or credibility to their names.

Politicians and celebrities when they team up stand a good chance to win the elections.

Political parties do celebrity political campaigns because they believe that celebrities support a cause of a party or candidate the general public, media and policy makers take note of it. The influence and visibility a celebrity portrays makes them as endorsers of political parties and candidates.

Celebrity Political Campaigns even if they do not convert into votes it can generate funds, which can be used to engage with the younger generation voters and to rebrand a politicians image.

In India, Celebrity political campaigns have grown over the years even their understanding of the common men problems or the certain challenges being faced by the country is minimal.

The general public has a habit of taking shortcuts when they make a decision to vote for a particular candidate, and Celebrity Political Campaigns makes it easy for the voters to decide on the candidate because they see the celebrity they admire in that candidate who in turn gives them a choice among candidates.

Celebrity Political Campaigns works like magic in India because public attend a political rally only to see their favorite star.

Celebrity endorsements have a tradition nearly as long.

In USA, Historians trace the role of celebrities in politics to the 1920 presidential campaign of Warren Harding in Amrica, who was endorsed by film stars such as Al Jolson and Mary Pickford (Morello 2001). Many presidential campaigns since have involved celebrities. For example, in 1960 John F. Kennedy was supported by "Rat Pack" members such as Sammy Davis Jr. and Dean Martin, and Ronald Reagan received support from many celebrities, including Frank Sinatra (Adamowski 2004; Jolson-Colburn 2007)

Why Celebrities are used in Election campaigns

There is believe that when celebrities are land up on election campaigns by the political parties all the media coverage, people and the policy makers takes the notice of that and also attract the young voters because many of them consider the celebrities as their idol. It is perceive that if the political parties land up the celebrities on their election campaigns it is easy to win the election.

In India, literacy rate is less than other country, people doesn't understand the value of their votes. Celebrities like cricket player, film stars, and musician are basically known for crowed puller. They have more followers.

Celebrity endorsement and influence on election campaigns in USA

In USA, Celebrities are always the part of election campaigns and endorse the political figure. In 1920, the 29th president of America, Warren Harding, who is widely considered one of the most forgettable presidents in united history. He got the support of AI Jolson one of the biggest American stars of the 1920s and the first person to ever speak in a feature film.

The republican nominee whose political record had been called "Faint and colorless" by The New York Times, Jolson compose and sing a song called "You're the man for US". This was the first song of its kind for any American presidential election and soon became Hardings official campaign song.[1]

Since Harding's Presidential Election it has become a trend to employ famous faces to boost their votes. American famous singer Frank Sinatra campaigned for three different presidents: Franklin Roosevelt, Harry Truman and in 1960 John F. Kennedy endorsed by Rat Pack members Sammy Davis junior and Dean Martin.

In 2007, Barack Obama announced for the presidential election of the United States of America. After three month he was supported by the talk show host Oprah Winfrey. Oprah Winfrey is a celebrity of nearly unparalleled influence. She has been named to Time magazine's list of the 100 most influential people six times-more than any other individual, including the Dalai Lama, Nelson Mandela, Bill Gates, George Clooney and Rupert Murdoch.[2]

[1] Sarah Hagi How much celebrity endorsements actually influence Election Results, Nov 1 2016, 7:45 PM https://broadly.vice.com/...us/.../how-much-celebrity-endorsements-actually-influence...

[2] Craig Garthwaite & Timothy J. Moore ,The Role of Celebrity Endorsements in Politics: Oprah, Obama, and the 2008 Democratic Primary, 2008 www.stat.columbia.edu/~gelman/stuff.../celebrityendorsements_garthwaitemoore.pdf Oprah's endorsement of Barack Obama in the 2008 presidential race was arguably the most successful celebrity endorsement in history

Oprah Winfrey's endorsement of Obama in 2008 was found to increase overall voter participation and number of contributions received by Obama, and an estimated overall 1 million additional votes.

In 2016, Donald Trump and Hillary Clinton endorsed by the flock of celebrities, Hillary Clinton endorsed by the LeBron James, Amy Schumer, Katy Perry, Meryl Streep, Jamie Lee Curtis, Lady Gaga, Ellen DeGeneres, Drew Barrymore, George Clooney, Khloe Kardashian, Kerry Washington, Viola Davis, Britney Spears, John Legend, Richard Gere, Salma Hayek, Lena Dunham, Jennifer Lopez, Beyonce and Snoop Dogg.

Celebrity endorsement in India and its History

In India the endorsement of celebrities has a historical background in politics. Celebrities take an active participation in the arena of politics and political parties are turning on their charm offensive to woo voters.

In doing so, they are roping in celebrities – from Bollywood stars to sportsmen and glamorous princesses. The Indian electorate – many poor and uneducated – is generally seen to be star-struck and each political party is hoping that the celebrities would help them to capture the voter's imagination.

Celebrities and politics are so closely intertwined in India that entire books have been written about “Bollywood Star Power in Indian Politics”. Whether we are talking about Bollywood superstars, Olympic medallists, or cricketing heroes, there are numerous examples of celebrities using their fame to advance a political agenda. From promoting democracy to advocating for a particular political party, or even running for election, celebrities are a mainstay in Indian elections.

In India basically the election is dependent on race, caste, religion, or linguistic identity. There are two types of celebrities:

(i) Cricket Players

(ii) Bollywood Stars

In Indian elections basically the Bollywood starts are preferred for election campaign, in rare cases the Cricket players are invited for the campaigns.

Celebrity representation in Indian politics is not a new phenomenon. In the 1960s, Prithviraj Kapoor of the Kapoor Bollywood dynasty, was the first movie star to enter parliament as a nominated member to the Rajya Sabha. In 1980, Mr. Amitabh Bachchan, a renowned celebrity star without having interest, jumped into politics due to his childhood friend Rajiv Gandhi and did the campaign for himself. He contested the Lok Sabha election in 1984 defeating H N Bahuguna the former Chief Minister of Uttar pradesh. Amitabh got a massive 68.2% of popular

votes and his victory margin was one of the biggest in the history of India's general election. By seeing the margin of victory it can be assumed how the celebrity endorsement affects the elections.

In 1984, Rajesh Khanna also campaigned for the congress party insisted by Rajiv Gandhi and in 1991 he fought first Lok Sabha election from New Delhi against BJP Candidate LK Advani of at 1589 votes the margin of votes was narrow one, at that time khanna instated and strongly so, that he had been cheated out of a win and repeatedly the election took place in 1992 for the same seat and Khanna won the election defeating Satrughana sinha 25000 votes. Till 1996 he served as an MP from the New Delhi Seats.

Hema Malini as a campaigner, Mrs. Malini entered into politics when she campaigned for Binod Khanna for the Loksabha election in Gurdaspur constituency of Punjab.

Kiron Kher joined the Bharatiya Janata Party (BJP) in 2009 and campaigned for the party from across the country during the elections, including in Chandigarh for the 2011 municipal corporation elections.

Even sometimes the leaders themselves produced a celebrity in election campaigns, recently in 2014 Lok sabha election the honorable Prime minister of India became one of the most important role models of India.

In the 2014 Lok sabha election there was a list of celebrities who endorsed the political candidates according to their choice.

Photo Credit: PTI

BJP's prime ministerial candidate Narendra Modi, clad in traditional south Indian dhoti attire, shakes hands with film actor and cultural icon Rajinikanth during a visit to the actor's residence. Modi was campaigning for ongoing parliamentary elections in Chennai.

Recently, Vitthal Ganpat Ghavate, who is contesting for the post of sarpanch in Ramalinga Gram Panchayat in Shirur, promised voters to bring Indian cricket captain Virat Kohli to an election rally on May 25.

Word spread like fire, with billboards and banners with the photos of Ghavate and Kohli put up at several places.

When the day came a huge crowd gathered to meet the cricketing icon. The star guest's arrival sent fans into a frenzy, with people jostling to click selfies with the skipper, only to realise that Ghavate had arranged for a look-alike of Kohli instead of the real deal. The real Virat Kohli, meanwhile, had no idea that his name was being used to pull in voters. Fans, however, were only too happy to bring his attention to the entire episode.[3] This resulted in his victory in the panchayat election.

We also have the example of Smriti Irani who was persistent with her hard work in politics even after she lost the Amethi seat in 2014 and ultimately defeated Rahul Gandhi in 2019. Recently, she attended the cremation of her close aide who was shot dead in the constituency. This act was appreciated on social media and hailed as a beacon for women empowerment. It also has another politically meaningful message for those who forget their workers after ascending the throne of power.

According to the above circumstances it can be seen how celebrities actually influence the elections.

People representation Act in India

Section 123 (1) of the people representation act provides for the election should be without corrupt practices but the court is still not able to provide the wide interpretation of the corrupt practices.

There is a need for the evolution of new laws by the day. Because the endorsement of celebrities in election campaigns can lead to misconception.

The courts have put a narrow construction on the statutory provision of Section 123(1). They have often been subjective in their conclusions and have even differed when facts were the same. Again, law wants the voter to vote without fear of either physical injury, social deprivation or divine displeasure. Of course abuse of influence is the law's target only. However, judicial

[3] Panchayat candidate promises Virat Kohli as chief guest, Brings duplicate instead, May 28, 2018, 10:56 AM

interpretation has been restrictive and has called for evidence difficult to obtain. That was Section 123(2). Clause (3) of Section 123 rules against divisive factors in electioneering and prohibits arousing sectarian or religiously centered irrational passions.

CONCLUSION

Now it is high time to reconstruct the provisions of election in India because celebrity endorsement leads to misconception of the Indian citizen. This is not the aim of democracy.

“Elections belong to the people. It's their decision. If they decide to turn their back on the fire and burn their behinds, then they will just have to sit on their blisters.” This quote of Abraham Lincoln said in itself the role of the people in election. There are many corrupt practices prevalent under the shadow of celebrity campaigns, they charge huge amounts from the political party to address the election campaign.

In the Indian political system, the influence of celebrity is like an open market or game. Celebrities are taking politics as a second career. Except few exceptions (Like Jai Lalita, Shatrughan Sinha) no Celebrity has adopted politics in its real sense and spirit.

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ANALYSING THE COMPETENCY OF PARTIES TO BE IN A CONTRACT UNDER SECTION 11 OF INDIAN CONTRACTS ACT 1872

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INTRODUCTION

Indian Contract Act, 1872 has provisions in regard to every step of a contract. It consists of many sections which brief us about different issues up to a varied range related to the constituents of contract. Further, discussing about section 11 of Indian Contract Act 1872, the focus revolves around the qualifications of a person or party to be competent for a contract:

- **AGE**

The first criteria for being competent enough to be a part of a contract is the 'Age factor' i.e., the person needs to be a major. This particular concept of who is minor or major is governed by section 3 of Indian Majority Act (1875), according to which a person is a major after attaining the age of 18 in India. However, if a person is appointed with a legal guardian for their supervision, the age of majority may exceed to 21 years. And anyone below this age limit is considered to be incompetent to form a contract and such a contract will be considered void-ab-initio which means void from beginning and can't be enforced in the court. Such a criteria is designed because minors are considered to have underdeveloped common sense and they are more prone to the cases of getting cheated or misrepresented.

In a landmark case, "Suraj Narayan v. Sukhu Ahir",[1] the minor defendant borrowed money from the plaintiff, money lender, and in return of it a promissory note was provided by the borrower to return the money. After attaining the age of majority, the promissory note was reassured in respect of the original amount of money borrowed and an addition of interests over loan as well. The entire case was taken to the hon'ble court and a judgement for the same was made which states that 'when the parties came into the contract, one of the parties was minor and incompetent to form an agreement so the entire contract made results null and void'. And the reassured promissory note provided by Sukhu Akhir after attaining the age of majority can't be allowed on the ground that the particular case was void. Also, in the second promissory note there was no consideration from the end of plaintiff. Hence, restitution can't be applied in this case and the amount can't be recovered. Also, in "Raj Rani vs Prem Adib Case Law,1948",[2] the judgement stated that a "minor has no power to sue anyone in any contract because the contract is itself void."[3]

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[1] Suraj Narayan v. Sukhu Ahir, (1928) ILR51ALL164.

[2] Raj Rani vs Prem Adib Case Law, (1949) AIR 1949 Bom 215.

[3] Ankita Jha, Contract by Minor, LAW TIMES JOURNAL (JULY 25, 2021, 10:30 A.M), http://lawtimesjournal.in/contract-by-minor/.

- **UNSOUND MIND**

An unsound person can be of two different types that is: 1) Idiot 2) Lunatic.

Here, Idiot is the one who is of retarded mind since birth, having mental health same as that of a 3-year child. Thus, such a person is incapable to come into a contract and bide with the circumstances or conditions of the contract.

While, Lunatic personality is the one having mental instability for a particular shift of time. So, any contract signed while being in a state of sound mind will lead to a valid contract and even if the person become unsound later the contract will be valid, on the other hand getting into a contract while being in unsound mind will lead to a void contract. The onus of providing proof relies over the plaintiff in such a case.

In "Campbell v. Hooper",[4] mortgagee accused the mortgagor to repay the debt given. The evident later proved that the mortgagor was lunatic at the time of coming into the contract but the mortgagee was unaware of the same. And thus, the judgement delivered the fact that English Law focus on the knowledge of mortgagee before coming into a contract and lunacy can't be a justifiable reason for the contract to be invalid. Also, in "Nilima Ghosh v. Harjeet Kaur",[5] the judgement was drawn on the fact that the person needs to be proved in a condition of unsound mind when the contract was made. Further, the case would be qualified as void if the person was not at a stable mind and incompetent to form a contract.

- **INSANITY**

The person willing to form a contract needs to be in a proper conscious mind, so anyone incorporated with a heavy dosage of alcohol or drug makes him/her incompetent to get into a contract because under a strong influence they won't be able to realize the consequences of contract they are getting in as briefed under section 12 of Indian Contracts Act 1872, while he/she can be into a contract if the influence of the substance is light.

- **PERSON DISQUALIFIED UNDER LAW**

Any person who is specially obligated to come into a contract due to disqualification under any aspect of law is incompetent under section 11 of Indian Contracts Act 1872.

There are many numbers of factors which may lead to disqualification of a person to come into contract, which are:

1. Alien Enemy- Any contract is held void when made between people of two different countries at the time of war set between both the countries according to the section 83 of

[4] Campbell v. Hooper, Civ. Action No., 11-091-GMS (D. Del. Jun. 14, 2011).

[5] *Nilima Ghosh v. Harjeet Kaur, (2010) AIR 2011 DEL 104.*

Civil Procedure Code. Also, any contract can't be formed with an Indian person staying in that country at the time of war. While, the contract made earlier the war may get discarded or revived after the end of war.

2. Convicts- Any person who is a convict in any dispute can't come into a contract with anyone during his/her period of judicial sentence. Thus, any convict forming a contract in the Jail will be considered void and unenforceable in the eye of law. The power to regain the efficiency of being into a contract can be exercised after being acquitted from the court.

3. Foreign Sovereign- Any diplomat or ambassador of a foreign country can't be sued in the Indian Court and have an immunity for the same. They can be sued only if they agree to it in the court of law. However, they can sue the party of Indian origin easily.

Also, in case of Companies in Partnership or contractual basis, competency is an essential element. The companies make sure to know about the competency status of each other before getting into a contract. If they're not competent, they don't do a share in the deal with each other and in case of any cheat or fraud, a compensation could be demanded.

COMPETENCY: INDIAN LAW OR AMERICAN LAW

There is a wide scope of competency conditions laid down for the parties to be in a valid contract. In the case of minor getting into a contract, Indian Law is still in a ambiguous. After Mohiri Bibi v. Dharmodas Ghosh case, it was stated that if any minor indulges into a contract, such a contract will be considered as void-ab-initio. But this concept is still a matter of confliction and controversy. While on the other hand, England Law states that a minor can't be into a contract but after attaining a major age, they can either enforce or terminate the entire contract based on their personal will. Also, a mentally unsound person is competent to contract in England where he/she can also claim for a remedy by satisfying the court stating that they were not properly aware and understood with the facts of contract. While, an unsound person is incompetent to get into a contact in India.

CONCLUSION

Competency has always been a major concern when a contract is made and covered by a defined set of laws. Moreover, Indian law is majorly borrowed from English Law but shows a large deviation in the characteristics in both as English Law has enough clarity with the procedure or regulation of a contract. Precisely, laws made for betterment in civil issue like 'contract' are efficient but a varied range like English law needs to be wrapped up under the provision of Indian law for a more appropriate hold over the issue of 'contract'.

CHILD LABOUR IN ADOLESCENT STAGES IN INDIA: SOCIAL AND LEGAL PERSPECTIVES

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INTRODUCTION

Child labour refers to the employment of children in any work that deprives children of their childhood, interferes with their ability to attend regular school, and that is mentally, physically, socially or morally dangerous and harmful. This practice is considered exploitative by many international. Legislations across the world prohibit child labour. The Nation bears the deadly consequences of this curse of the society. Children under fourteen comprise 3.6 per cent of the total labour force in India. Nearly Eighty-five percent are engaged in the traditional agricultural sector, less than nine percent in manufacturing, services and repairs and about 0.8 per cent are in factories. Child labour is work that harms children or keeps them away from attending schools. Around the world and in the U. S., growing gaps between rich and poor in recent decades have forced millions of young children out of school and into work. A growing circumstances is using children as domestic workers in urban areas. The conditions in which children work is completely unregulated and they are often made to work without food, and for very low wages, resembling situations of slavery. There are cases of physical, sexual and emotional abuse of child domestic workers. The argument for domestic work is often that families have placed their children in these homes for care and employment. The elimination of child labour is a priority and is being implemented at the grass roots level in India. A large number of non-governmental and voluntary organizations are involved in this process along with national and international organizations. Various policy options are considered, including those which improve the incentives to education relative to labor, remove constraints to schooling, and increase education participation through legislation.[1]

HISTORICAL BACKGROUND

Child labour refers to the exploitation of children through any form of work that deprives children of their childhood, interferes with their ability to attend regular school, and is mentally, physically, socially and morally harmful. Such exploitation is prohibited by legislation

[1] The child labour (prohibition and regulation) Act,1986

worldwide, although these laws do not consider all work by children as child labour; exceptions include work by child artists, family duties, supervised training, and some forms of child work practiced by Amish children, as well as by indigenous children in the Americas. Child labour forms an intrinsic part of pre-industrial economies. In pre-industrial societies, there is rarely a concept of childhood in the modern sense.[2]

Children often begin to actively participate in activities such as child rearing, hunting and farming as soon as they are competent. In many societies, children as young as thirteen are seen as adults and engage in the same activities as adults.[3]

The work of children was important in pre-industrial societies, as children needed to provide their labour for their survival and that of their group. Pre-industrial societies were characterised by low productivity and short life expectancy; preventing children from participating in productive work would be more harmful to their welfare and that of their group in the long run. In pre-industrial societies, there was little need for children to attend school. This is especially the case in non-literate societies. Most pre-industrial skill and knowledge were amenable to being passed down through direct mentoring or apprenticing by competent adults. In precapitalist society, the work place of the child was often confined to the family environment as relationships were very informal and the child was not exposed to hazardous environment. Work was considered as the Central aspect of their socialization and training. This conception, however, underwent a dynamic change with the advent of capitalism in industrialization in several European countries particularly England industrial revolution took place first during the 18th Century and child labour designated as a social problem. This concern development of industrialization gave a new turn of the history of making and brought a change in the over all socio-economic order. In ancient India trade with children of downtrodden did exist. Kautilya in his book Arthasharta noted that the trade of children as slaves was not prohibited in mlechchas as they were backward and uncivilized. Thus, in ancient India the child labour did exist. However, this problem has been aggravated in recent years, because their number has increased considerably and their economic position is miserable. The worlds population of working children has yet to be counted accurately. Because it is often, illegal and clanderline, child labour lies beyond the reach of conventional labourstatistics. The International Labor Organization estimates that 215 million children between the ages of 5 and 17 currently work under conditions that are considered illegal, hazardous, or extremely exploitative. Underage children work at all sorts of jobs around the world, usually because they and their families are extremely poor. Large numbers of children work in commercial agriculture, fishing, manufacturing, mining, and domestic service. Following are the few incidents of child labour in our country.

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[2] https://study.com/academy/lesson/child-labor-in-india-history-laws-facts.html

[3] Jaiswal P. child Labour a sociological study, New Delhi Shipra Publication,2001.

INCIDENTS:

Meatpacking

Early August 2008, Iowa Labour Commissioner David Neil announced that his department had found that Agriprocessors, a kosher meatpacking company in Postville which had recently been raided by Immigration and Customs Enforcement, had employed 57 minors, some as young as 14, in violation of state law prohibiting anyone under 18 from working in a meatpacking plant. Neil announced that he was turning the case over to the state Attorney General for prosecution, claiming that his department's inquiry had discovered "egregious violations of virtually every aspect of Iowa's child labour laws." Agriprocessors claimed that it was at a loss to understand the allegations. Agriprocessors' CEO went to trial on these charges in state court on 4 May 2010. After a five-week trial he was found not guilty of all 57 charges of child labour violations by the Black Hawk County District Court jury in Waterloo, Iowa, on 7th June 2010.

Global Action Programme[4]

Few thinkers are of the opinion that some GAP products had been produced by child labourers. GAP acknowledged the problem and announced it is pulling the products from its shelves. The report found that GAP had rigorous social audit systems since 2004 to eliminate child labour in its supply chain. However, the report concluded that the system was being abused by unscrupulous subcontractors. GAP's policy, the report claimed, is that if it discovers child labour was used by its supplier in its branded clothes, the contractor must remove the child from the workplace, provide them with access to schooling and a wage, and guarantee the opportunity of work on reaching a legal working age. In 2007, The New York Times reported that GAP, after thechildlabour discovery, created a $200,000 grant to improve working conditions in the supplier community.

Silk Weaving

Another report claimed that children as young as five years old were employed and worked for up to 12 hours a day and six to seven days a week in the silk industry.[5] These children, HRW claimed, were bonded child labour in India, easy to find in Karnataka, Uttar Pradesh, and Tamil Nadu.In 2010, a German news investigative report claimed that non-governmental organisations (NGOs) had found up to 10,000 children working in the 1,000 silk factories in 1998. In other locations, thousands of bonded child labourers were present in 1994. After UNICEF and NGOs got involved, the child labour figure dropped drastically after 2005, with the total estimated to be fewer than a thousand child labourers. The report claims the released children were back in school.[6]

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[4] Here-in -after referred to as GAP

[5] A Human Rights Watch report, 2003.

[6] Dorman P" ChildLabour in Development Economies, Geneva: ILO-IPEC working paper, 2001

Abuse of juvenile domestic workers

Child abuse is harm resulting from intentional human action. The most fundamental attribute of child abuse is that it is harmful to the child and detrimental to his/her well-being. There is also an important difference between unintentional and intentional harm. "It has been observed that what is so destructive about child abuse and neglect (as opposed to other forms of injury) is that the betrayal of the child's trust leads to defective socialization." Child abuse is correlated with unemployment and poverty. "Rates of abuse and neglect can be thought of as indicators of the quality of life for families, and maltreatment can be viewed as a symptom, rather than a cause, of difficulties in family and individual functioning."

Physical Abuse

Across the globe a large number of children suffer physical punishment in their homes, and it is estimated that up to 1 billion children aged 2–17 years have experienced physical, sexual, or emotional violence or neglect during the past year. Physical abuse can range from minor bruises to severe fractures or death as a result of punching, beating, hitting, shaking, or otherwise harming a child.

Emotional Abuse and Neglect

Emotional abuse is behavior that impairs a child's emotional development or sense of self-esteem. It may include threats, constant criticism, as well as withholding love, support, or guidance. Neglect is a pattern of failing to provide for a child's basic physical and emotional needs. Neglect is a very common type of child abuse, and according to Child Welfare Information Gateway, more children suffer from neglect than from physical and sexual abuse combined.[7]

Sexual Abuse and Child Prostitution

Child prostitution "involves offering the sexual services of a child or inducing a child to perform sexual acts for a form of compensation, financial or otherwise." Worldwide, approximately 1 million children are forced into prostitution every year, and it is estimated that the total number of child prostitutes is as high as 10 million. "Generally children do not commit child prostitution but the adults who engage in prostitution or offer a child's sexual services to others force them. It is estimated that at least 1 million girls worldwide are lured or forced into this scandalous form of child exploitation. Child prostitution is more frequent in developing countries such as Brazil and Thailand where more than 200,000 children are exploited. "Sexual Health: Child prostitutes are at a high risk of contracting HIV. HIV infection rates in prostituted children range from 5% in Vietnam to 17% in Thailand. One study reports that 50-90% of children rescued from brothels in

[7] The Factories Act, 1986

[8] Here-in-after refereed to as STD.

Southeast Asia are infected with HIV. Prostituted children are also at a high risk of acquiring other STDs. For example, one study found that child prostitutes have sexually transmitted disease[8] rates in Cambodia of 36% and in China of 78%, compared to the 5% yearly incidence of STDs in adolescents worldwide.[9]

FACTORS LEADING TO THE CHILD LABOUR:

Non-affordability of schools

Lack of meaningful alternatives, such as affordable schools and quality education, according to ILO,is another major factor driving children to harmful labour. Children work because they have nothing better to do. Many communities, particularly rural areas where between 60–70% of child labour is prevalent, do not possess adequate school facilities. Even when schools are sometimes available, they are too far away, difficult to reach, unaffordable or the quality of education is so poor that parents wonder if going to school is really worth it.[10]

Economic disparities leading to child labour

Macroeconomic causes encouraged widespread child labour across the world, over most of human history. They suggest that the causes for child labour include both the demand and the supply side. While poverty and unavailability of good schools explain the child labour supply side, they suggest that the growth of low-paying informal economy rather than higher paying formal economy is amongst the causes of the demand side. Other scholars too suggest that inflexible labour market, size of informal economy, inability of industries to scale up and lack of modern manufacturing technologies are major macroeconomic factors affecting demand and acceptability of child labour.[11]

Inherited child labour

Some view that work is good for the character-building and skill development of children. In many cultures, particular where the informal economy and small household businesses thrive, the cultural tradition is that children follow in their parents' footsteps; child labour then is a means to learn and practice that trade from a very early age. Similarly, in many cultures the education of girls is less valued or girls are simply not expected to need formal schooling, and these girls pushed into child labour such as providing domestic services.

CONCLUSION:-

Child labour is highest among schedule tribes, muslims, schdule castes and children of other backward classes. The persistence of child labour is due to the inefficiency of law, administrative

[9] https://www.scirp.org/journal/paperinformation.aspx?paperid=68374

[10] U.N convention On prohibition of child labour 1909

[11] Child labour in India by Narendra Shukla

system and because it benefits employers who can reduce general wage levels. It can be argued that distinction between hazardous and non hazardous employment is counter productive to the elimination of child labour.Various growing concerns have pushed children out of school and into employment such as forced displacement due to development projects, special economic zones, loss of jobs of parents in a slow down, farmers suicide, armed conflict and highest cost of health care .Girl children are often used in domestic labour with in their homes. There is a lack of political will to control and combat the menace of child labour in our society. The directives enshrined in our constitution for combating child labour are to be implemented by enactment of laws which is a job of legislature. This means that the members of parliament and state legislatures are directly responsible for combating and controlling the problem of child labour. They should be made accountable if they are failing in their duty. The constitutional goals must be implemented and one of the goal amongst them is toatal prohibition of child labour.

SUGGESTIONS:-

- **Requirement of new Social Security Measures:** Some new social security measures are to be introduced for those who are below poverty line.
- **Educated and awared parents:** Parents should be educated regarding pros and cons of child labour.
- **Proper schooling of children:** Parents should send their wards to the school at appropriate age so that right to education of the child is not violated.
- **No drop-out mission for children:** Parents should take special care regarding drop out children. Such students must be sent to the school again.
- **Effective role of States:** The state shall endeavour to provide early childhood care and education for all children untill they complete the age of six years. Mothers should also take the responsibility to teach at home if the children are below six years of age.
- **More vigilant administration:** Adminstration should also take the responsibility to implement the Directive Principles contained in our constitution and other legislations relating to right to education and Prohibition of employment of children in any factory or mine or establishments engaged in other hazardous employment if the child is below fourteen years of age.

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FARM LAWS IN THE ADVENT OF THE PANDEMIC - AN IMBROGLIO BASED ON LEGITIMATE CONCERNS?

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INTRODUCTION

On September 14, 2020, the Farmers Produce Trade & Commerce (Promotion and Facilitation) Bill, Farmers Empowerment and Protection Agreement, and Farm Services Bill with the Essential Commodities Amendment Act, 2020 were introduced in parliament to reform the agricultural industry. The draconian restrictions have resulted in adjustments to farm produce storage and marketing outside of the regulated market, as well as the encouragement of contract farming.

The Acts are a step toward privatizing the farming industry across the country by allowing corporations with greater bargaining power than small farmers to enter.

The current Acts allow for commerce outside of the Agricultural Produce and Livestock Market, which cannot be taxed, making the APMC Mandal superfluous. In summary, the Bills seek to eliminate government intervention in agricultural trade by establishing trading zones free of government taxes and middlemen outside of APMCs, as well as abolishing prohibitions on individual stockholding of agricultural produce.

Lack of Consultation – Resulting in Mistrust among Stakeholders

The deputy chairman of Rajya Sabha violated many parliamentary rules by evading all vote demands in order to approve critical laws, despite constant opposition demands, which may be described as simple bravado. The voting procedure regulations state unequivocally that if a voice vote is challenged, the division of votes must take place. Even if only one member objects, a division of vote must be held, regardless of the chairman's decision. The argument that parliamentarians were not in their positions at the time of the demand for a vote division, refusing the same on this basis, is ludicrous in the extreme.

In any instance, regardless of which party has a parliamentary majority, voting is essential in establishing parliamentary legitimacy and cannot be reduced to a benevolent instrument by the chairman. The quick rejection of the motion for a vote division set a new downtrend in legislative history.

It was also a mistake not to comply with opposition's request to have the bill sent to a select committee, which was a very real and valid request. The administration did not consider it necessary to listen to even the opposition views when enacting these bills. A conspiracy against

our democracy was perpetrated by the deputy chairman's method of passing the Bills. To protect the people's interests, which should be of utmost significance, the government has been elected, and the farmer's community, who helped build this country, should have responded with greater humility.

Bills aren't the only thing at stake in this case; it's also the process by which they've been forcedly passed. While trying to engage diverse stakeholders, such as middlemen and farmers, the government has failed terribly. Even though agriculture and commerce are listed as state issues, there is distrust among many stakeholders, including state governments. According to the farmer community, this measure is nothing more than a pathetic effort at corporatizing agriculture.

Despite the fact that the administration has repeatedly emphasized that the Bills do not seek to eliminate the Minimum Support Price system, there is a legitimate worry that the government's true intentions. Frustration among farmers is not unwarranted, considering the government's track record on important issues like demonetization and Goods & Services Tax (GST).

Legislative Competence & Federal Challenges

Federalism entails the state and the center cooperating in their respective areas. It is the fundamental essence of our country's constitution. The challenged Acts are a sneaky attempt to usurp the sovereignty of state governments to make laws. Such Acts violate the fundamental foundation of our Constitution. Agriculture is covered under Entry 14 of List II of the constitution, which grants states the sole right to legislate on behalf of the state, courtesy of Article 246. (3). Furthermore, entries 18, 28, 30, 45, 46, 47, and 48 clarify the scope of agricultural legislation.

The endeavor of the center to infiltrate the state's legislative power undermines the constitution's core premise of cooperative federalism. The Supreme Court ruled in S. R. Bommai vs. Union of India [1] that both the states and the central government have equal access to the sovereign authority granted by the constitution. The Supreme Court remarked that the Indian Constitution is nominally federal and is distinguished by the intuitive elements of the federal system, such as the division of powers between the Union and the States.[2] [3]

In the case of Kesavananda Bharati vs. State of Kerala [4], it was determined that the basic structure of the constitution, such as democracy, secularism, federalism, and the distribution of powers between the union and states, could not be changed. There are two important phases in the law-making process: first, the issue must be scrutinized, and second, there must be broad and strong debate on the floor of parliament, both of which were missing. There is no question that the culture of consultation and deliberation must be reestablished.

The Supreme Court correctly remarked in A.K. Roy vs. Union of India [5] that the government should refrain from abusing its legislative power in a malafide way and that there should be free and open debate on a Bill, which is the core of the democratic process. Agricultural is on the state

list under the Constitution, therefore it is outside the Rajya Sabha's competence to make any law on agriculture, which is the exclusive province of the state government, so exceeding constitutional jurisdiction. The seventh schedule of our constitution grants the state government the authority to act on agricultural issues.

The Supreme Court addressed the notion of repugnancy in I.T.C. Ltd. vs. State of Karnataka & Ors.[6], holding that any law coming entirely under the seventh schedule would be the exclusively competency of the state legislature. Furthermore, In Union of India Vs. Shri Harbhajan Singh Dhillon[7], the Court noted that if a Central Act is challenged as being outside the capacity of the parliament to enact, it might be declared constitutionally unconstitutional on this basis. As a result, a clear conclusion may be reached that parliament cannot legislate on the state subject and the state cannot legislate on the core topic; if either breaches their constitutional authority, the legislation becomes ultra-virus.

Stumbling Blocks Associated with the Acts

The condemnation of APMCs and different intermediaries that promote such trading in these mandis indicates a lack of comprehension of the functioning of agricultural markets. Despite its limitations, the majority of farmers are familiar with the operation of the APMCs mandis and regard it as an important component of the trade. While the Acts do not abolish the APMCs mandis, the bias for corporate interests over farmer interests must be reconsidered. Furthermore, the lack of any kind of regulation regarding Non-APMCs mandis is grounds for severe worry and should be examined.

The lack of compliance and regulation with regard to Non-APMCs mandi is seen as a precursor to the removal of the assurance of MSP-based procurement. Furthermore, when we consider the literacy rate of farmers, they become highly vulnerable to corporate exploitation; the prospect of corporate monopolization of the sector cannot be ruled out, and thus a rigorous legislative framework governing contract farming is urgently required.

Since it is immune from mandi charges and tax, the majority of trading is bound to take place outside of the APMC market. So, in the event that the APMC market fails, Act has anticipated an alternative for a big market for price signals. As a result, rather than uniting the market, consumers may wind up with disparate pricing, thus undermining farmers' interests. There is no monitoring outside of the APMC mandi, and no transactions are recorded. There is a mechanism of grievance redressal and transaction documentation in the APMC mandi, ensuring farmers receive a fair price for their goods.

In other words, introducing a clause for Least Support Price for Non-APMC Market will not be an appropriate answer since private participants cannot be taught to a certain price to deal with, which is self-defeating for the goal of private participation and Minimum Support Price. Even if we were to pursue MSP legislation, it would necessitate consultation, which is currently lacking

in our federal system.

There are gaps in the Acts; there is a lack of regulation and regulatory monitoring. Second, it is perplexing to have marketing legislation that do not include any governmental participation in agriculture policy. The Acts make the mistaken premise that private players do not exist, which is incorrect.

To execute their own trading, private players turn to the APMC reference price. It is an attempt by the government to establish an alternative that is outside of the APMC, where you do not have to pay mandi taxes or fees, which may result in one of two results. To begin with, APMC continues to establish the reference point, which is absurd if stakeholders continue to look to APMC for a point of reference; in that situation, the notion of removing the inefficiencies of the APMC market does not hold true. The primary source of worry in this respect is the breakdown of Non-APMCs mandis in Bihar in 2006. Farmers got lower prices when mandis were abolished, on average, than the minimum support price for most crops. Despite its flaws, farmers would see APMC as a continuation of MSP-based procurement.

CONCLUSION

The current farmer protest shows the farmers' skepticism of the reforms' goal as a result of a lack of engagement. The current Acts may not be blatantly unconstitutional, but they do have weak legal legitimacy. Now that the case has been heard by the Apex Court, the farmers' trust will be based on the Apex Court's willingness to call a spade a spade. It is past time for the administration to reestablish people's trust and parliament's efficient functioning. The destiny of the farmers has been left to the goodwill of private actors. It is a reasonable demand to incorporate procurement and rules, which would alleviate many farmers' worries. While changes were intended to benefit farmers, a lack of protections is a source of concern that must be addressed by the implementation of a regulatory framework.

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HOW FUNDAMENTAL IS 'RIGHT TO DRINKING WATER'? REFLECTIONS FROM 21ST CENTURY INDIA

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We are witnessing a time where the fight for water is becoming more real than the right to water.

On June 8, 2021 the news of a 6-year-old girl in Rajasthan's Jalore district who died 'crying for water while walking with her grandmother through a desert area' was surfacing everywhere (Wadhawan, 2021). The story resonates with the plight of 600 million lives[1] that face the threat of water scarcity in India.

The modern era has proudly dissociated itself from the past claiming its superiority over traditional societies with its advancements in science and technology. With newer technologies in place, we are thriving to find and shift life to other planets. Despite such advancements, water, that makes life possible on earth still remains inaccessible to many. On the contrary, in some places it is over-exploited, wasted and polluted by anthropogenic activities. Globally, the modern welfare State that claims to govern on the principles of equality, both legally and socially, leaves "three to four million people dead each year, and a billion people with no access to clean drinking water." [2]

In India, the inequalities that exist in establishing access to safe drinking water are only soaring. Historically, the issues of caste, geography, & natural disasters played a significant role in hindering one from establishing access to drinking water. But today, privatisation of water has led to the understanding of treating water as a 'commodity' which contradicts the idea of treating water as a 'public good'. This has created a new set of inequalities based on 'class'. Even after 75 years of Independence, India has not been able to provide the access to safe drinking water to its population. A WaterAid report in 2016 ranked India 'among the worst countries in the world for the number of people without safe water' with an estimated '76 million people having no access to a safe water supply' (Dutta, 2017). With such a situation, it becomes imperative to emphasize on the fundamentality of Right to Water and map out the factors that contribute in materialising such inequalities that leave many devoid of their basic human right.

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[1] The numbers in article titled, 'The great Indian thirst: The story of India's water crisis, solutions to tackle it' are reference from a report by NITI Ayog, 2018. Read more at https://www.indiatoday.in/magazine/cover-story/story/20210329-the-great-indian-thirst-1781280-2021-03-20

[2] See facts about water provided by World Health Organisation at https://rehydrate.org/water/

Firstly, 'jal hi jeevan hai' (water is life) is well recognized as a phrase, but water as a fundamental right finds no mention in the list of Fundamental Rights in India. Constitutionally, the Right to Life under Article 21 reads as "No person shall be deprived of his life or personal liberty except according to a procedure established by law" (Constitution of India. Article 21). It is through jurisprudence that the Right to Water, time and again has been brought under the umbrella of Right to Life by the Courts of law. But such a positive approach does not guarantee the enforceability. "The National Commission that reviewed Indian Constitution recommended in its report, the inclusion of a new right in the form of right to safe drinking water, to avoid ambiguity and also to bring clarity by constitutionalizing the provision." (Mishra, 2015, p. 4) As Upadhayay observes, 'the right to water is more basic than right to education…There is no reason why drinking water being more fundamental than even elementary education – and similarly judicially circumstanced as education – should not follow the same route' (Upadhayay, 2011, p. 57).

Secondly, the road to development, in the names of privatisation and liberalisation, has outrightly rejected the idea of commons[3] and affected many communities and their relationship with water. Historically, water has been celebrated as a 'gift' across many cultures and has been preserved, conserved and shared. The coming of industrialisation and its decentralisation transformed lives (especially in traditional societies) and the way they perceived water. Global giants like Coca-Cola and Pepsi have been in news for having depleted groundwater resources of communities and generated huge profits from it. Taking the case of Kaladera village of Rajasthan, a Coca-Cola plant was found to be paying 'only 14 paise per thousand litres of groundwater extraction to the state government' (Singh, 2012, p. 14). It is surprising that it pays such insignificant amounts for the groundwater extracted on one hand and on the flip side, charges 20 rupees for one litre bottle of Kinley (a product of Coca-Cola). Such commodification leaves ample room for inequalities based on the criteria of affordability when it comes to a basic need, as basic as drinking water. Also, it raises many questions that relate to the Corporate Social Responsibility (CSR) of these multinationals that make such huge profits by dispossessing the rural communities from their only source of drinking water, that is, groundwater. There is a dire need to regulate the prices at which these multinationals obtain water and also make it mandatory for companies to recharge the areas (through rain water harvesting structures and other water conservation techniques) where they operate. This needs to be followed by regular checking and monitoring of such structures by government agencies, which India lacks currently.

Thirdly, and concomitantly, one needs to understand that 'roughly 80 percent of India's 1.35 billion residents depend on groundwater for both drinking and irrigation' (Schneider, 2019). This

[3] A commons resource has a feeling of sharing attached to it. It is a resource that is managed and shared by the community. The presence of many water architectures like wells, stepwells and handpumps reflect how water was shared in the past.

makes groundwater a very crucial source which links humans with life by providing them their basic human need for survival. Understanding and acting on the facts raised by data scientists who are, since a decade, hinting on India's groundwater crisis becomes all the more relevant. Lalwani notes, "There is currently no Central law on groundwater regulation…There is, however, a British-era law called the Indian Easement Act, 1882 which gives landowners the right to "collect and dispose" of all water under the land within their own limits" (Lalwani, 2019). It is here to be emphasised that while land is fixed, water beneath the land is a mobile resource and exploitation of it snatches away the water of other(s). Hence, India needs to regulate and control over-exploitation of groundwater because 68.8 percent[4] of her population that lives in poor conditions, cannot afford the commodified version of drinking water.

The advancements in science and technology need to be married with the socio-legal fabric of India (both rural and urban, keeping in mind its varied geography) in a way that appreciates diversity in management and governance of water, hence, allowing best practices to evolve in generating equitable access to safe drinking water. As for 'right to safe drinking water' is concerned, India should make sure that a bare minimum amount of water should be accessible, affordable and available to all under all circumstances. Although judicial activism and liberal interpretation of the Constitution have led to developments in guaranteeing the right to drinking water as a basic human right, until the right to drinking water does not find its presence explicitly in fundamental rights, many will continue to suffer, especially the marginalized. The State must acknowledge the value of drinking water and the havoc its absence can create and act urgently in order to ensure that such a crisis does not materialise. That said, the onus lies with each one of us to make sure that we conserve water as much as we use it. If not, it would be a pity to conform to what Benjamin Franklin had once anticipated, 'We will not appreciate water until the well runs dry'.

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[4] It is estimated that 'Two-third of people in India live in poverty and 68.8% of the Indian population lives on less than $2 a day'. Read more at https://www.soschildrensvillages.ca/news/poverty-in-india-602

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8. Constitution of India (Article 21)

DECRYPTING THE RULING OF TATA CONSULTANCY SERVICES LIMITED V. CYRUS INVESTMENTS PVT. LTD. AND ORS.

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INTRODUCTION

Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd.[1] and Ors is considered to be one of the most noteworthy legal battles in the corporate world. The tussle erupted in October 2016 between Tata and Mistry when Cyrus Mistry (The second-largest shareholder in the Company) was removed from the position of executive chairman of Tata Sons and it eventually resulted in a laborious saga of litigation which mainly revolved around the dogma of "Oppression and Mismanagement", envisaged under Chapter XVI (Section 241 to 246) of the Companies Act, 2013.

The Supreme Court on March 26, 2021, pronounced a hoped-for verdict to this long-drawn scuffle that went in favor of Tata Group. The verdict was pronounced by a three-Judge - bench headed by the then Chief Justice S A Bobde and also including Justices V. Ramasubramanian and Ajjikuttira Somaiah Bopanna. The Apex Court's 282-page, sternly asserted judgment indicates that the law is resoundingly in favor of the Tata Group. Moreover, it cleared the air of corporate governance issues raised by respondents against Tatas and also delved into the operability of the National Company Law Appellate Tribunal order dated December 2019. This present case commentary embodies the background, facts of the case, issues and judgment at the length.

Background

Tata Group is a global enterprise headquartered in India. This multinational conglomerate leads the nation in ten different business verticals. The consolidated market capitalisation of the Tata group of companies amounts to INR 9.3 trillion as of the last financial year. This legal saga involves the most value-based business enterprise, the Tata Group as the appellants and the Shapoorji Pallonji business group as the respondents. Two companies by the name Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited, controlled

[1] Tata Consultancy Services Ltd. v. Cyrus Investment Pvt. Ltd. & Ors 2021 SCC 122

by Shapoorji Pallonji Group separately purchased forty-eight preference shares and forty equity shares of the Paid-up share capital of Tata Sons, from an existing member by the name Mrs Rodabeh Sawhney. Today, approximately 18% of the equity share capital is controlled by the Shapoorji Pallonji Group, whose legatee is Cyrus Mistry.

Cyrus Mistry's removal from the designation of Executive Chairman via a resolution dated October 24, 2016 kickstarted the events in motion which culminated in the resignation of Cyrus Mistry as a result of a flurry of resolutions at subsidiary companies stripping him of his Directorship. Aggrieved by the above events, two companies by the name Cyrus Investments Limited and Sterling Investment Corporation owned by SP group, filed a company petition invoking Sections 241 and 242 read with Companies Act,2013 alleging oppression, mismanagement and unfair prejudice.

The complainant companies along with a miscellaneous application under Section 244 for waiver of the *de-minimis qualification* prescribed in Section 244 (1)(a), an application for a stay against a scheduled EGM which proposed to remove Cyrus Mistry from the Directorship of Tata and Sons was made. National Company Law Tribunal (hereinafter referred to as NCLT) however, did not grant the stay and subsequently, Cyrus Mistry was removed from directorship via a Resolution dated February 16, 2017.

NCLT initially dismissed the petition as not maintainable owing to the petitioners not satisfying the de minus criteria prescribed in Section 244 (1)(a). However, an intervention by NCLAT (hereinafter referred to as NCLAT) ensured that the petition was heard by NCLT on merits and accordingly dismissed by an Order dated July 09, 2018. This Order was challenged by the two complainant companies via an appeal. Cyrus Mistry also appealed against the same. Both these appeals were allowed by the Appellate Tribunal and the following reliefs were provided via a final Order dated December 18, 2019.

- The sixth meeting of the Board of Directors of Tata Sons limited held on Monday, October 24, 2016 was held to be illegal and set aside to the extent of removal and other actions taken against Cyrus Mistry. The appointment made to replace Cyrus Mistry was also set aside with the restoration of Cyrus Mistry's directorship.
- Ratan N. Tata and other nominees of the trusts were ordered by the Tribunal to not take any decisions which required a majority assent of the Board of Directors in the Annual General Meeting.
- Powers under Article 75 shall be exercised only in exceptional circumstances in the interests of the company while recording the reasons for the same. Taking into account the 'prejudicial' and 'oppressive' decisions over the last few years the Tribunal barred the

Board of Directors and the Shareholders from using Article 75 against the appellants and other minority members.

- The decision of the Registrar of Companies changing the nature of Tata and Sons from public to private was also held to be illegal and set aside.

Facts and Procedural History

In October 2016, Cyrus Pallonji Mistry was removed as the executive chairman of Tata Group by a board resolution passed in the meeting. Mistry was replaced with Ratan Tata as the interim Non- Executive Chairman of the Tata Sons. Soon After this unprecedented event, Mistry approached the NCLT on December 20, 2016 by filing a Company Petition on the grounds of prejudicial conduct of company's affairs, oppression and mismanagement. On April 17, 2017, NCLT dismissed the petition filed by Mistry and hence moved the NCLAT by way of an appeal. By an Order passed in December 2019, the NCLAT overruled the NCLT bench judgment and upheld the claims of Mistry by reinstating him as the executive chairman of Tata Group. Aggrieved by this order of NCLAT, Tata Sons had favored a Civil Appeal No.13-14 of 2020 challenging the Appellate Tribunal's order. Subsequently, a total of fifteen Civil Appeals were filed in the Hon'ble Supreme Court regarding the impugned order. Independent Civil Appeal Nos.19-20 of 2020 was favored by Ratan Tata alleging similar contentions made before the NCLAT. Two trustees which had a lion share in the Tata Trust i.e. *Sir Ratan Tata Trust* and *Sir Dorabji Tata Trust* had also preferred two independent appeals. Furthermore, separate appeals in Civil Appeal Nos.440-441 of 2020, 442-443 of 2020 and 448-449 of 2020. Was filed by those Tata Groups of Companies that were mentioned during arguments before the Company Law Tribunals. Hence fourteen Civil Appeals were filed by the Tata Group before the Hon'ble Supreme Court of India.

The Cyrus Investments (P) Limited and Sterling Investment Corporation (P) Limited, who were the Complainants in the Company Petition filed before the NCLT preferred a cross-appeal, was seeking additional reliefs than what had effectively been allowed by the NCLAT. They pleaded for a proportionate representation on the Board of Directors of Tata Sons Limited and in all Committees formed by the Board of Directors. Additionally, they have one more grievance, namely that the Appellate Tribunal ought to have deleted the requirement of an affirmative Vote in the hands of select Directors under Article 121 or at least ought to have restricted the affirmative vote to matters covered by Article 121A.

Along with the Civil Appeal Nos. 13- 14 of 2020, Tata Sons have also come up with two more appeals in C.A.Nos. 263 and 264 of 2020 challenging an order by the NCLAT on January 06, 2020 in two interlocutory applications filed by the Registrar of Companies ('ROC'), Mumbai, seeking amendment of the final order passed by NCLAT in the main appeals for the removal of

some remarks against the ROC for having given an altered incorporation certificate to Tata Sons by striking off the word “Public” and inserting the word “Private”. But the NCLAT dismissed these two interlocutory applications made by the ROC Mumbai. Therefore, Tata Sons have come up with these two appeals in C.A.Nos. 263 and 264 of 2020.

Issues Involved:

This case involved numerous questions of facts and mixed questions of facts and law. The issues assessed by the Hon'ble Supreme Court are: -

- Whether reinstatement of Cyrus Mistry into the Board of Tata Sons conforms with the power envisaged under Section 242 of the Companies Act, 2013?
- Whether the Appellate Tribunal can stretch out its power to mask Article 75 of the Articles of Association of Tata Sons?
- Whether Section 14 of the Companies Act, 2013 have to be complied with while re-converting the Tata Sons from a publicly owned to a privately owned company?
- Whether the characterisation by the Tribunal, of the affirmative voting rights available under Article 121 to the Directors nominated by the Trusts in terms of Article 104B, as oppressive and prejudicial, is legally valid and even after the challenge to these Articles have been given up expressly and also whether the Appellate Tribunal could have granted a direction to Ratan Tata and the Nominee Directors of Tata Trusts virtually invalidating the effect of these Articles?

However, a significant issue of law was as follows:

Whether the formation of opinion by the NCLAT that the company's affairs have been or being run in a way prejudicial and oppressive to some members and that the facts, in any case, justify the winding up of the company on just and equitable ground, is on top of the all settled principles and parameters, particularly in the light of the fact that the findings of NCLT on the factual matrix were not individually and specifically overturned by the Appellate Tribunal?

Arguments advanced by the Tata Group ('Appellants')

Belaboring the judgment of NCLAT, Tata Groups has made the following contentions: -

- The disputed judgment has failed to dwell upon the detailed findings of the facts furnished by the NCLT.
- For determining oppression as stated under section 241 of the Companies Act, the NCLAT has applied imprecise and specious methods.
- The replacement of Ratan Tata was wrongly attributed by the NCLAT and granted reliefs to Cyrus Mistry which they never prayed for.

- The NCLAT went against the fundamentals of corporate democracy by amputating essential rights and privileges of the shareholders.
- There was no proof in regards to the unlawfulness of Article 75 of Article of Association and still, after all, that the bench trimmed it down.
- The impugned judgment's analysis of affirmative voting rights envisaged under Article 121 of Article of Association is reasonably and lawfully off-base.
- Undermining the role of the majority, the NCLAT directed the Appellants to consult the SP Group on all future appointments to the directorial positions. But this could create a dreadlock by giving minority shareholders a veto power.
- The functionality of the right of the Tata Trusts to nominate directors under Article 104B of the Articles of Association will be muted, even though its legality was not under challenge before NCLAT.
- All the procedural aspects of the Companies Act have complied while removing Cyrus Mistry from the board of Tata Consultancy Services Limited.
- There existed no prior quasi partnership between Tata Group and the Pallonji Group. In this way, the respondents never had the right to participate in the management nor a right that could be derived from such a partnership.

Arguments advanced by the Pallonji Group ('Respondents')

- Proprietary right is a right in rem, however, interference by the majority shareholders that infringes upon the Board's self-sufficiency and independence is a gross infringement upon the proprietary rights of minority shareholders.
- Bestowing the right to the majority shareholders to seek pre- Consultation before the matter could be put before the Board meeting is completely contradictory to what is stated in Article 104B, 121 and 121A of Articles of Association.
- The conversion of the company into a private company was aimed at avoiding a higher standard of scrutiny statutorily required for public companies. The conversion also adversely affected the ability of Tata Sons to raise funds, thereby increasing borrowing costs. Therefore, the conversion of the company into a private company lacked probity and bigoted the proprietary rights of small shareholders.
- Article 121B of the Articles of Association gave more haul to the voice of a director. It articulated that any director of the company could guarantee a consultation on an issue, provided the board was given fifteen days prior notice. Conversely, the removal of Mistry was in non-compliance to the position of this article.

- Restraining Ratan Tata and the nominees of Tata Trust from taking any decision in advance.
- The finding of the NCLAT is that Mistry had attempted three times to implant a governance structure before the Board of Tata Sons. But this became the principal cause for his removal. Hence this very same finding cannot be set aside by the Hon'ble Supreme Court.
- In the committee meeting held on June 28, 2016, the Nomination and remuneration Committee had explicitly requested clarity and precision on the working of the board of Tata Sons in connection with the Tata Trusts as well as its role towards the group companies.
- Infringement of a legal or proprietary right is also considered for invoking the 'just and equitable clause for winding up.

ANALYSIS

The control of a corporate organization always plays to the will of majority shareholders. This majoritarian democracy in a company often ends up being oppressive to the interests of minority shareholders. To tackle the issue of oppression and mismanagement faced by the minorities, the Companies Act, 2013 (hereinafter 'Act') concocted many provisions which are in favor to protect the interests of minority shareholders. To begin with, the terms oppression and mismanagement are not defined anywhere in the Act, it is the sole discretion of the courts to find out on a case-by-case basis whether the facts of a case amount to oppression.

Quoting Lord Keith's definition of oppression, it is the lack of morality and fair dealings in the affairs of the company which may be prejudicial to some members of the company.[2] The Indian Company Law regime is quite serious about protecting the rights and interests of minority shareholders. They can fall back on remedies stated under Chapter XVI of the Companies Act 2013 for Prevention of Oppression and Mismanagement, which relates to sections 397 and 398 of the previous Companies Act, 1956. Section ranging from 241 to 246 under the said chapter of the Act comprises the power of Company Law tribunal to adjudicate matters about oppression and mismanagement, application to the tribunal by the aggrieved shareholder(s), class action suits etc. Immediately after these provisions were notified and enforced by the Ministry of Corporate Affairs, they confronted a try-out in this present high-priority corporate fight. The Pallonji Group immediately instituted legal action in NCLT Mumbai under sections 241 and 242

[2] Elder v. Elder & Watson Ltd 1952 SC 49 (Scotland)

of the 2013 Act against Tata Group and two Tata Trusts, being its majority shareholders. Conversely, the tribunal spurned the reliefs prayed for by the minorities.

Fortunately, the Appellate Tribunal overruled the NCLT judgment, which had not discovered an instance of oppression in the affairs of the board and majority shareholders of the Tata Sons. The corporate community who wished for a higher judicial intervention in this remarkable legal tussle was very delighted when this case came before the Supreme Court for hearing. Also, in evaluating the fortitude of these provisions under the Act, it provides an occasion for the Apex Court to explicate and develop the scope of the oppression and mismanagement in the Indian legal system. Given this situation, keeping aside the extensive consequences of a decision in this present case to the corporate community, it is sensible to expect from the Supreme Court a clearer depiction of the layouts of oppression and mismanagement remedies in India.

The jurisprudence of provisions related to oppression and mismanagement both through the lens of English and Indian law has largely been dynamic with changes made in subsequent enactments. The Hon'ble Supreme Court however has rightfully noted a common factor in the enactments made in both India and England. Concerning India, Section 153C(4) of the Indian Companies Act of 1913, Section 397(2) and 398(2) of the erstwhile Companies Act of 1956, Section 242(1) of the currently in force 2013 Act homogeneously contain the words "intending to bring to an end to the matters complained of " The English Acts of 1948, 1985 and 2006 also exhibit the same. The Hon'ble Supreme Court, therefore, observed that while granting relief in an application under these provisions, the Court should introspect whether the order will put an end to the matters complained of.

The Apex Court has featured how the remedies mentioned under Sections 241 and 242 of the Act to be very inadequate. Also, Section 242 places a hardship on the aggrieved shareholder(s), as they should evince two conditions. Firstly, the affairs of the company should be oppressive and prejudicial to any member(s) or the interests of the company and secondly, the winding up of the company results in unfair prejudice to such member(s). So, in the present case, the Apex Court adopted the ruling in *Loch vs. John Blackwood*[3] which held that to justify winding up, there should be an absence of credence in the conduct and management of the affairs of the company. Furthermore, the Privy Council had put forth a test to determine whether to wind up the company on the just and equitable ground. The test suggests three provisions to satisfy: -

- The business in which a shareholder invests shall be limited to certain definite objects.
- These objects shall be carried on by certain persons elected in a specified way.

[3] Loch v. John Blackwood (1924) AC 783.

- The business shall be conducted in accordance with certain principles of commercial administration defined in the statute, which provide some guarantee of commercial probity and efficiency.

Applying these tests to the present case, it will not fall anywhere near the just and equitable standard because of the reason that the complaining minority was not only given a position on the Board of Tata Sons but was also elevated as the successor to the Office of chairman. Thus, the Apex Court held that Mistry's removal from the Board was not oppressive and prejudicial to the rights and interests of minority shareholders. The Court concluded that this issue did not qualify the required specifications to justify the winding up of the company also, the bench strongly indicated the faults of the Appellate Tribunal for the failure that occurred while adjudicating this matter.

The contention that Tata and sons were a quasi-partnership was not of any merit as the Court indicated that S. P Group joined the company halfway without a history of any relationship between the company and the shareholders. It is a well-settled position that a company will be presumed to be run by the Articles rather than the vagaries of a quasi-partnership. The existence of a quasi-partnership alone does not warrant the winding up.

As duly pointed out by the Supreme Court, in *Needle Industries (India) Ltd and Ors vs. Needle Industries Newey (India) Ltd*,[4] it was held that profitability had no bearing provided the just and equitable standard is fulfilled and the test is whether an act is oppressive and whether it is lawful. A functional deadlock as observed in *Lau vs. Chu*[5] was also considered to be a scenario worthy of invoking the just and equitable clause.

In the instant case, oppression cannot be a ground for winding up as the Supreme Court already disproved it. In relation to a functional deadlock, the major deadlock seems to be Cyrus Mistry whose conduct has jeopardized the company, who has rightfully been removed from the post of director. What exists is a lack of confidence between Cyrus Mistry and Tata Sons and RNT. However, the Court has affirmed that a mere lack of confidence between the majority and minority shareholders would not be sufficient too as held in *S.P Jain vs. Kalinga Tubes Ltd.*[6]

Towards the end, the Supreme Court emphasized the philanthropic nature of Tata Sons where shareholders are not merely in it for the dividends, which came as a misnomer as it should not act as a cushion to cover up bad corporate governance. However, in this specific case, there was not any visible bad conduct from Tata and Sons.

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[4] Needle Industries (India) Ltd and Ors V. Needle Industries Newey (India) Ltd (1981) 3 SCC 333.

[5] Lau V. Chu [2020] 1 WLR 4656.

[6] S.P Jain V. Kalinga Tubes Ltd AIR 1965 SC 1535.

Removal of Cyrus Mistry

The Tata-Mistry fiasco began when Cyrus Mistry was removed from the post of Executive Chairman by a resolution dated October 24, 2016. He retained directorship despite his removal from the abovementioned designation. Cyrus Mistry on the very next day wrote mail alleging a lack of corporate governance and the director's failure in fulfilling fiduciary duties. Although the mail was labeled as 'confidential' it managed to reach media houses and caused quite an uproar.

Tata and sons owing to the publication of sensitive matters had to issue a press conference on November 10, 2016 and proceeded to remove Cyrus Mistry from the directorship of Tata International Limited, Tata Consultancy Services, Tata Technologies. Cyrus Mistry resigned from certain other companies as a consequence of his removal decision and the complainant companies (S.P Group) filed a petition under Sections 241 and Section 242 read with 244 of the Act. Meanwhile, the Income Tax department sent a letter asking Tata and sons to furnish necessary particulars under Section 133(6). Claiming the mail was earmarked to him, Cyrus Mistry sent the requested particulars including allegations of regulatory risks and Ratan Tata's private jet being funded by Tata and sons. Thereafter, after furnishing a letter of protest, Tata and Sons served a legal notice to Cyrus Mistry stating there was a breach of confidentiality and lack of authority, to which Cyrus Mistry sent a legal reply stating he had a statutory obligation to do so.

However, The Hon'ble Supreme Court was not pleased with the conduct of Cyrus Mistry.

NCLT recorded that Cyrus Mistry must provide a satisfactory answer for these incidents. Cyrus Mistry being unable to do so, by section 106 of the Indian Evidence Act a nexus was established between Cyrus Mistry and the allegations made against him. The response made by Cyrus Mistry to the Income Tax Authorities was considered by the Hon'ble Supreme Court to be conducted which disqualified his participation in the board. It was also pointed out that while filing the petition Cyrus Mistry had been removed only from the designation Executive Chairman and not his Directorship when the petition was filed by the complainant companies and it was Cyrus Mistry's further conduct that led to his removal. In the words of the Court, “Cyrus Mistry himself invited trouble by, declaring an all-out war, which led to his removal from Directorship”.

The Hon' ble Supreme Court also held that “in a petition under Section 241, the Tribunal cannot ask the question whether the removal of a Director was legally valid and/or justified or not. The question to be asked is whether such a removal tantamount to conduct oppressive or prejudicial to some members.” The Hon'ble Supreme Court took the stand that relief under Section 242

cannot be granted even if the removal was not in accordance with the law unless a larger design to oppress or prejudice the members were found. Similarly, if oppression and prejudice are found even when the removal was lawful, Section 242 can be invoked to the petitioner's rescue.

The above affirmation by the Court rendered the contentions of the removal being contrary to Articles 118, Article 105(a), second proviso to Section 179(1) and Article 122(b) and the remarks of the Nomination and Remuneration Committee futile. It was held that "The Company Tribunal is not a Labour Court or an Administrative Tribunal to focus entirely on the matters of removal of a person from Directorship"

Allegations of Mismanagement

There were grave allegations of mismanagement being flung at Mr Ratan Tata and the management of Tata and Sons and its various subsidiaries. The apex court upheld the findings made by NCLT concerning the Nano Project issue, Air Asia issue, Mr Mehli issue, Corus issue and Tata Teleservices Limited. All these issues were devoid of merit as most of them were managerial decisions that did fit the definition of mismanagement. They were made under the watch of Mistry himself and never had he raised these issues before the board when he was the Chairman. NCLT did not find any merit in the allegation of Mr Ratan Tata funding terrorism through Air Asia Ltd and Vistara which oddly the petitioner was also part of. It is also worthy to note that mismanagement is not a single occurrence and is a continuing process. The charges of mismanagement in the past, even if proved, may not be enough to establish an existing injury to the interest of the company or public interest.

Reinstatement of Cyrus Mistry

The Company Petition filed by the Pallonji Group never sought reinstatement of the Mistry into the Board of Tata Sons. But the Appellate Tribunal directed the restoration of Mistry as Executive Chairman of Tata Sons and as Director of Tata Group of Companies for the rest of the tenure and the said relief was extremely difficult to support the impugned order by the Appellants. In this instance, the Apex Court went out by interpreting Now this issue of reinstatement in the backdrop of the outline of section 242(2) and the nature of the orders that could be passed by the Tribunal. In the opinion of the Hon'ble Supreme Court, the Appellate Tribunal failed to take into account that the appointment of Mistry as the Executive Chairman was from a period of 5 years i.e. from April 04, 2012 to March 31, 2017. Interestingly, at the time of passing the judgment by the NCLAT which was on December 12, 2019, nearly a year had passed from his appointment. The Supreme Court was perplexed in understanding how the Appellate Tribunal had allowed a relief that was not sought for and how could a reinstatement be possible when Mistry's tenure had already been elapsed from the date of appointment. In this context, the Court referred to a decision in *Raj Kumar Dey vs. Tarapada Dey*,[7] whereby it was

held that, If NCLAT directs reinstatement of a Director of a company even after the expiry of his/her tenure of office as a remedy, it is completely in denial of matters coming within their jurisdiction.

Thus, granting relief not sought for without any foundation in pleadings or prayers in the Petition is completely unfounded. In Law, a wrongful and malafide dismissal is treated as *'effective*' and can seek damages.[8] The fabrication of Section 242(1) of the Act cannot be construed as granting any implied powers on the Tribunal for reinstatement of Directors or any other officer of the company who has been ousted out from the office. Hence the Hon'ble Supreme Court obliterated the reinstatement of Mistry.

Validity of Article 75 of the Articles of Association ('AoA')

The Supreme Court observed that Article 75 merely provides an exit option to an unwilling partner. Article 75 was observed to be in conformity with the jurisprudence of oppression and mismanagement, which favors a safe exit by putting an end to the commercial turmoil. The averments made by the complainant companies were not able to establish an instance of oppression as a result of Article 75 and their reliance for oppressive conduct was based on the possibility of it happening in the future.

The Supreme Court firmly held that likelihood of future bad conduct is not a ground to delete an article and the same is impermissible after scrutinizing Article 75 and the law applied by NCLAT. Section 242(1)(a) was to be invoked in relation to past, present or present continuous conduct and not for conduct that may arise in future.

Article 75 was not a recent phenomenon. It existed while the S.P group acquired shares of Tata and Cyrus Mistry was party to the amendments made to Article 75. It was with his consent that the Article was molded to its present shape on a unanimous amendment made on 13.09.2000. Taking this into account the Supreme Court asserted that *"A person who willingly became a shareholder and thereby subscribed to the Articles of Association and who was a willing and consenting party to the amendments carried out to those Articles, cannot later on turn around and challenge those Articles. The same would tantamount to requesting the Court to rewrite a contract to which he became a party with eyes wide open."*

The Supreme Court made some comments on the procedural infirmities despite Tribunals not being constrained by the Code of Civil Procedure 1908 and the Evidence Act 1872. There was a visible lack of clarity in the reliefs sought due to the existence of an Amendment and Memo

[7] Raj Kumar Dey vs. Tarapada Dey (1987) 4 SCC 398.

[8] Dr. S.B. Dutt vs. University of Delhi (1959) SCR 1236.

contradicting each other in terms of its position with respect to Article 75.

Although the issue went in favor of Tata and sons, if it were not for the convenient conversion that took place as the issue unfolded, it would have been a bit more difficult to make a strong case as public companies are not generally supposed to impose restrictions on the transfer of its shares as well settled in *Western Maharashtra Development Corpn Ltd vs. Bajaj Auto Limited.*[9]

Affirmative Voting rights and Tribunal's Characterisation

The Articles of Association of Tata Sons provides affirmative voting rights to two mammoth philanthropic trusts who hold around 65% of the company i.e., Sir Dorabjee Tata Trust and Sir Ratan Tata Trust which acts jointly. They also have a right to nominate 1/3rd of the Directors on the Board. The Directors thus nominated by the trusts are vested with veto rights available on specified matters as stated under Article 121A and one such matter is "*any matter affecting the shareholding of the Tata Trusts in the Company",* this very same article cast clouds in Misty's mind and the Pallonji Group demand for a similar affirmative right in the company.

The Apex Court while clarifying this issue noticed that if affirmative rights are bad then how it turns out to be good if granted to Pallonji Group. Also, the Court pointed out that the paradigm shift occurred from 'Corporate Majoritarian Democracy' to 'Corporate Governance and the importance of fairness in every action of the Board. As contended by Mistry, the affirmative voting rights disabled the nominee Directors from performing without any favoritism and in the best-suited interests of the company. They also pleaded that the pre-consultation preclearance requirement disabled the Directors from effectively discharging their fiduciary duties under Section 166 of the Companies Act, 2013.

Conversely, the Hon'ble Supreme Court found out that all the contentions made by the Pallonji Group are deceiving because they in general disregard one essential fact that Tata Sons is not a company engaged either in any manufacturing activity or in any trading activity they are not involved in any direct business activity. Also, the Court upheld the legality of affirmative voting rights by stating that these rights enjoyed by the nominees of an institution(s) are an accepted global norm. Article 121 only confers a limited right upon the Directors nominated by the Tata Trusts as under Article 104B. Hence all the allegations made by the Pallonji Group were rejected.

The re-conversion of Tata Sons from 'Public' to 'Private' Company

With effect from January 02, 1975 on account of Section 43A (1A) of the erstwhile Companies Act 1956, even though Tata Sons was a Private Limited Company, it was deemed to be a Public

[9] Western Maharashtra Development Corpn Ltd vs. Bajaj Auto Limited AIR 2015 BOM 479.

Limited Company. However, with the advent of the Companies (Amendment) Act 2000, this deeming notion was repealed. Therefore, the Tata Sons in its ninety-ninth Annual General Meeting passed a resolution favoring the alteration of Memorandum and Articles and inserted the word 'private' in the company's name clause. While allowing the appeal preferred by the Pallonji Group, the Appellate Tribunal affirmed the measure of the Registrar of Companies, Mumbai ('RoC') in allowing the alteration in the name clause of Tata Sons is incorrect and also with an additional instruction to the RoC to show the Tata Sons as a public company.

In this issue, the Hon'ble Supreme Court interprets the legislative intent behind Section 43A of the 1956 Act. At the time of Notification of this particular section, only a single stipulation was mentioned, which was that *a private company having not less than 25% of the total paid-up share capital held by the one or more body corporates shall be treated as a public company.* As an auxiliary stipulation which came into being by the Companies (Amendment) Act of 1974, *a private company whose average turnover is not less than a prescribed amount, shall be a public company.*

This deeming concept can only be revoked with the approval of the Central Government ('CG') and in accordance with the prescribed provisions of the Act. Later the Companies (Amendment) Act 2000 came into existence. The amendment to section 3(1)(iii) rewires the above-said stipulations and it became a rigorous affair for those companies who wished to reconvert themselves to a private company. This particular section mandates that the four prescriptions are to be present in the Articles of Association namely;

- *Restriction on the right to transfer shares*
- *Limitation on the number of members*
- *Prohibition of an invitation to the public to subscribe for shares/debentures and*
- *Prohibition of any invitation or acceptance of deposits from persons other than members/Directors Or their relatives.*[10]

With the commencement of the Companies Act 2013 the countenance of the game changed. It washed out the concept of deemed public companies and also recouped the definition of the term 'private company' as that of the same position stated in the erstwhile Companies Act. Despite this revamped feature, the 2013 Act created one doubt. Even though the definition of private company as stated in Section 2(68) is exhaustive and adequate, the criteria for a 'private company' under Section 2(1)(iii) of the 1956 Act alive until January 30, 2019 and the same were envisaged under Section 465 of the 2013 Act. Accordingly, there existed two definitions to the

[10] The Companies (Amendment) Act 53 of 2000, Section 3(1)(iii)

expression of a private company. Understanding this infeasibility, the Apex Court presumed the Section 465(3) and Section 2(68) overrides Section 3(1)(iii) of the 1956 Act. Also, the AoA of Tata Sons contained all the restrictions prescribed in the new Companies Act and it was and it keeps on being a private company.

Now, analyzing the action of ROC Mumbai which issued an amended incorporation certificate stating Tata Sons as a private company, the Hon'ble Supreme Court rightly pointed out that the incorporation certificate issued by the ROC is merely a recognition of the Status and the determining factor is not the records maintained by the competent Registrar but the Articles of Association of the Company that decides the status of the company.[11] In the present case, the Apex Court concluded that the Tata Sons was righteous in deciding its status.

CONCLUSION

The tussle between Tata-Mistry will set a precedent for the corporate world and also the rights of minority shareholders will be engraved in letters of gold as the Apex Court turned the Tribunal's verdict down on its head. The judgment is in tune with well-established doctrine in cases of oppression and mismanagement that a mere lack of confidence between shareholders is not a ground to allege oppression. It was also made clear that corporate democracy cannot be diluted to benefit the unruly minority who acted in contravention to the company's interests at the time of filing this petition. The Apex Court overturned the Tribunal's Order and reiterated that the Tata Group was well within its rights to remove Mistry from the Board. The integrity of the Articles of the company was upheld and the lofty allegations of mismanagement were thwarted by the Apex Court. It is clear and evident from the judgment that the Court's pragmatic wisdom broke through the superficial arguments made by Mistry's Counsel. This precedent will act as a guardian against one-dimensional vexatious application of Chapter XVI (Prevention of Oppression and Mismanagement) and preserve corporate democracy.

[11] Ram Parshotam Mittal Vs. Hillcrest Realty 25 (2009) 8 SCC 709.

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