

#humanrights

HUMAN RIGHTS COMMUNIQUE

Your Quarterly Dose of Human Rights

CENTER FOR ADVANCED STUDIES IN HUMAN RIGHTS

| | |
|---|---|
| THE RIGHT TO PROTEST IN THE AGE OF UNREST..... | 2 |
| BUDGET AND HUMAN RIGHTS: AN ANALYSIS..... | 4 |
| THE YELLOW VEST MOVEMENT..... | 6 |
| REFERENCE IN SABRIMALA: INDIVIDUAL SUPREMACY OR GROUP SUPREMACY..... | 9 |
| INTERNATIONAL NEWS..... | 5 |
| NATIONAL NEWS..... | 8 |

Editorial Board

Prof. (Dr.) Paramjit S. Jaswal

Patron-in-Chief

Prof. (Dr.) Naresh Kumar Vats

Patron

Dr. Jaswinder Kaur

Editor-in-Chief

Vishwajeet Singh Shekhawat

Shrey Nautiyal

Student Editors





THE RIGHT TO PROTEST IN THE AGE OF UNREST

THE RIGHT TO PROTEST

Conflict has always been a defining characteristic of history. Humankind has stood witness to innumerable wars which have resulted in bloodshed and loss of life. However, as humans slowly began to evolve out of their bellicosity, they learnt that a constant state of conflict was not feasible or rather it was detrimental to the existence and survival of humanity. For instance, we can note that the World War I and II nearly wiped out humankind. It took human beings' loss of countless lives to realise that such a state of constant conflict was never and could never be the right approach to resolve disputes. This led to the evolution of the methods of peaceful settlement of disputes in the world.

If we look at the *status quo* prevalent in the world, conflict- in all its forms still exists in the society. However, the manner in which such conflict has been approached with, in an attempt to address or resolve disputes has generally been non-violent, especially in democratic countries. Having stated that, it is also pertinent to take into consideration cases where disproportionate and excessive force-based approaches have been used by countries to address and resolve internal conflicts.

In the case of democratic countries like India, the right to dissent is vital especially in times of disagreements and conflicts. As stated by *Justice Chandrachud*; dissent is the safety valve of a democracy. If dissent is not allowed, then the pressure cooker may burst. The right to dissent may manifest in any democratic form broadly ranging from freedom of speech and expression to mass non-cooperation movements in extreme cases. It also imperative to take into consideration the reasonable restrictions placed within the *vires* of the Constitution of India.

Throughout the history of India, we have seen that people have expressed their dissent by protesting against the people who paid no heed to their voices. For instance, we can look at the Emergency period where dissent and the means to express it were curbed. People resorted to protests which helped their dissent and discontentment reach the then ruling government. Thus, as evident throughout history, the right to dissent has been expressed in the form of protests.

At this point it is also important to understand that the protests are inextricably linked with the democratic right to dissent as protests are but an expression of dissent. At the same time, it is equally important to question whether the right to protest is a fundamental democratic right. In order to answer this question, we must take into consideration the contemporary situations. Democratic countries, including India, have resorted to the authoritarian methods in order to curb free speech and expression and particularly, the right to dissent. These include traditional methods of excessive use of force and new methods like internet shutdowns.

The use of authoritarian means to curb lawful dissent within the *vires* of the Indian Constitution patronizingly contradicts the fundamental fabric of constitutional democracy and the exercise of democratic rights of the citizens. In such circumstances, if people resort to protesting in a peaceful manner in accordance with their fundamental rights, guaranteed by the Indian Constitution, to oppose authoritarian methods employed by governments, who disdainfully choose to disregard constitutional and democratic values by employing such methods, then such peaceful protests can be said to be a democratic way of exercising one's dissent. The right to peacefully protest subject to just restrictions is now an essential part of free speech and the right to assemble. In fact, to the extent that it is an affirmative and positive obligation of the State to make exercise of this right effective.

Therefore, such a method of peacefully protesting against authoritarian methods and undemocratic elements, if employed cannot be said to be in contravention to the Indian Constitution or be wrongfully contorted into a source of conflict in society. It should rather be looked at as an attempt to start the process of resolving conflict in the society.

Unfortunately, recent experiences have shown that the political establishment encourages the use of police powers to render weak and otiose the exercise of such rights. Police discretion has been used to discourage people from using such sites for organizing protests. The coercive power of the state has been used to disperse peaceful protesters using disproportionate force, water cannons, *lathi* charge and tear gas shell.

A number of international covenants clearly articulate the right to protest, albeit with certain limitations. These include the International Covenant on Civil and Political Rights, 1966 (ICCPR) especially in Articles 18 to 22. Its Article 9 enunciates the right to freedom of thought, conscience, and religion. Article 10 enunciates the right to freedom of expression; Article 11 enunciates the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. However, the rights of freedom of assembly, association, and speech are subjected to certain limitations. For instance, the ICCPR prohibits ‘propaganda of war’ and advocacy of ‘national, racial or religious hatred’. Under Articles 20 and 21, it allows the restriction of the freedom to assembly if it is necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The European Convention on Human Rights, 1950 (ECHR), also enunciates similar rights particularly in Articles 9 to 11.

INTERNET SHUTDOWNS AND THE RIGHT TO PROTEST

On 11th January, 2020, the Supreme Court remarked, that the freedom of speech and expression and the freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection under Article 19(1)(a) and Article 19(1)(g), in relation to the crippling internet shutdown in Jammu and Kashmir, which was placed in August 2019. While the right to access to internet is not covered in this scope, it is a rather ground-breaking moment for the right to protest in the country. The right to protest blooms from the right to freedom of speech and expression, and hence, in this age, the most important medium to exercise this right, is the internet. In an effort to break the flow of communication to control the spread of protests, the government has many a time

resorted to internet shutdowns. The country prides itself on democracy; however, the fact that it has experienced the highest amount of internet shutdowns in the past year speaks the contrary.

An internet shutdown is like a modern-day mechanism equivalent to a siege, forcing people into submission. Like a siege, an internet shutdown strikes the spirit of free speech, forcing people to yield and break away. With information being the most dangerous tool in the present age, it is not uncommon for authorities to feel threatened by the liberal control the masses can tend to have over it.

The line between law enforcement and violation of basic rights becomes blurred when the use of internet shutdowns is evidently for creating hindrances in the flow of dissent. In light of the recent uprisings regarding the Citizenship (Amendment) Act, a similar pattern of internet shutdowns, as an effort to break dissent and protests, was observed. Coupled with the conditions in Jammu and Kashmir, internet shutdowns often take the shape of blanket bans, seriously crippling the ideals of democracy.

Before placing such bans, the authorities should thoroughly check their necessity and proportionality. Drawing from the principle of reasonableness of laws, the bans too need to be sufficiently scrutinised. It is of utmost importance that the objective of internet shutdowns is not covered under vague terms like national security, public safety and spread of misinformation, but is rather clear and doesn’t leave room for exploitation and misuse. However, what remains the most worrisome, and rather ironical, is having this high expectation of neutrality and objectivity from the lawmakers themselves. The court remains as an effective platform to raise disputes against the shutdowns placed by these very law makers, but the damage is done when these laws are placed. Therefore, the narrative should not focus on what to do in an internet shutdown, but as to why there is a necessity of irresponsible and undemocratic internet shutdowns.

A WAY FORWARD

When legislations and orders on a right so intrinsic fail to meet its standards, paradoxically what one can do best is, protest. The right to protest is one such right that has to be nourished constantly, by liberally and reasonably exercising it. Because this right does not exist in isolation, but in a well-developed nexus of other rights like of speech and expression and dissent, the onus to uphold it and preserve its importance becomes great. The right to protest is in the hands of the people, the protesters and dissenters, and cannot be expected to be granted, but rather rightfully taken.



The Union Budget is the annual financial statement of the Government of India. Through the Budget, the Government presents its plan for the coming year and allocates financial resources accordingly to the Ministries and Departments. The Union Budget of 2020-21 revolves around three themes - inspirational India, economic development, and building a caring and humane society. The article shall analyse how the budget caters to the human rights obligations. The key sectors that shall be analysed are: education, food and nutrition programmes, women and child development; and health.

EDUCATION

The right to education has been recognised as a fundamental right under Article 21A of the Constitution of India and also a human right under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The resource allocation to the Ministry of Human Resource Development (MHRD) has been increased from Rs. 94,584 crores to Rs. 99,312 crores while another 3,000 crores have been earmarked for skill development. The Budget has also proposed new initiatives such as a PPP model in district hospitals to meet the shortage of doctors, bridge courses for teachers, nurses etc.; apprenticeship embedded courses in over 100 institutions, among others. Although the allocation is an increase in absolute terms, the share of the MHRD has decreased, compared to last year, by 0.2%. Moreover, the Government has also not offered any tax cuts in the education sector and has also failed to make higher education affordable; however, it proposes to announce the New Education Policy to improve the existing fallacies in the present education policy.

HEALTH AND FAMILY WELFARE

Article 25 of the UDHR provides that everyone has a right to a basic standard of living adequately for health and well-being of himself and his family and Article 21 of the Indian Constitution also provides for right to life as a fundamental right which includes in its ambit a right to healthy and decent life. Keeping the same in mind, the government has launched various schemes like *Pradhan Mantri Jan Arogya Yojana* (PMJAY), National Health Mission, *inter alia*.

The allocation to health and family welfare has been increased by 3.9% in relation to previous year's budget and stands at Rs. 67,112. The PMJAY scheme has been allotted Rs. 6,400 crores and this infusion of money in the scheme would increase the insurance coverage of the secondary and tertiary healthcare. Also, a health cess of 5% has been levied on certain medical devices imported to India, so that the money so obtained here can be utilised for financing of health infrastructure and services. The National Health Mission has also been allotted an amount of Rs. 33,400 but this is with a marginal decrease in comparison to the Budget 2019-20. The allocation though has increased in its value but as a component of the GDP, it still stands close to 0.3% only.

NUTRITION AND FOOD SUPPLIES

Continuing in the same thread is the need for effective food and nutrition arrangements. These basic necessities ensure a healthy and decent living and contribute to a better standard of living. The Government has allocated an amount of Rs. 36,500 crores for various nutrition-related schemes like Prime Minister's Overarching Scheme for Holistic Nutrition (POSHAN) Abhiyaan, among

others. Food subsidy has also been reduced, if compared with the budget estimates of 2019-20. But has increased in comparison to the revised estimates of 2019-20 by 6.3% and stands at Rs. 1,15,570. Though there has been an increase in food subsidy, the poor public food distribution systems are still plaguing any financial infusions in this area as there are numerous leakages and exclusion and inclusion errors. Even if alternative systems are used, storage problems still form a bottleneck.

WOMEN AND CHILD DEVELOPMENT

For the Ministry of Women and Child Development, the Budget has allocated Rs. 30,000 crores, which is a hike of 14% from the last year. In particular, the 'One Stop Centre' scheme of the Government has seen a major boost from Rs. 204 crores to Rs. 385 crores. This scheme seeks to provide medical aid, police assistance, legal aid and psycho-social counselling to women affected by violence, including sexual assault. The allocation for *Pradhan Mantri Matru Vandana Yojana* (PMMVY), a maternity benefit programme, has been increased from Rs. 2,300 crores to Rs. 2,500 crores. Under this programme, Rs. 6,000 is given to pregnant women and lactating mothers for the birth of the first living child. Moreover, the allocation for Working Women's Hostel scheme has been tripled from Rs. 45 crores in 2019-20 to Rs. 150 crores in 2020-21. The allocation for the Child Protection Services Programme under the Integrated Child Development Services has been increased to Rs. 1,500 crores from Rs. 1,350 crores.

On the other hand, another key project of the Government, the *Beti Bachao, Beti Padhao Abhiyan* has seen a dip of 21.4% in its funding. Moreover, the share of child focused allocations in the total Union Budget has declined from 3.29% in 2019-20 to 3.16% in 2020-21.

CONCLUSION

While the role of allocation of funds for meeting goals and ensuring social justice cannot be denied, it is also important to keep in mind that the funds so allocated are utilised properly. For instance, the Cybercrime Prevention against Women and Children under the Ministry of Home Affairs which meets its resource requirements from the *Nirbhaya* Fund has reported zero utilisation. It is the duty of the Government to ensure that these resources are utilised in a proper manner for the benefit of the society. Additionally, an amount of Rs. 4,400 crores have been allocated for states to work towards cleaner air, however, only time will tell, whether such allocation would be truly utilised for the said purpose or not.

The resource allocation would be effective only if the benefits received by the people are in proportion to the amount of allocation and there is a proper trickle-down mechanism. For example, though food subsidies and PDS systems have been infused with money, the bottlenecks still exist which prevent the benefits from reaching the desired groups. The budget has indeed upped the level of monetary infusion as compared to the previous year, but measures need to be devised in order to keep a check on the actual expenditure made by the different Ministries and Departments.

INTERNATIONAL NEWS

High Court of Hong Kong Partially Upholds the Prohibition of Face Covering Regulation as Constitutional

The High Court of Hong Kong has held that legal provisions which bar the use of masks or facial covering while participating in a lawful public meeting and public procession are unconstitutional. However, in reference to unlawful processions, the ban still remains under Section 3 of the Prohibition on Face Covering Regulation, 2019.

Cambodia's State of Emergency Law: A Violation of Human Rights

Cambodia has passed a State of Emergency law that allows the government to monitor communications, control media, restrict distribution of information that could generate public fear or unrest, or that could damage national security. The ICJ had warned that Cambodia's State of Emergency bill violates basic rule of law principles and human rights, and called on the government to urgently withdraw or amend the bill.

Lack of Transparency in Indonesia during the COVID-19 Outbreak

The authorities have been charging people under abusive criminal defamation laws for their online comments about the coronavirus and the government's response. There has been seriously underreporting the infections and deaths to prevent criticism of low rates of testing.

Political prisoners should be among first released in pandemic response

The decision by many Governments to release prisoners to slow the transmission of new coronavirus, was welcomed by the UN's top rights official. The development comes after an appeal from the High Commissioner for Human Rights to prevent "catastrophic" rates of infection.

COVID-19 stoking xenophobia, hate and exclusion, minority rights expert warns

UN Special Rapporteur on minority issues reported that politicians and groups are exploiting fears surrounding the disease to scapegoat certain communities, leading to a rise in violence against them.



THE YELLOW VEST MOVEMENT

BACKGROUND

The yellow vests movement which is also known as the yellow jacket movement, which translates to movement des gilets jaunes in French, refers to the countrywide mass protests that materialized in the streets of France on 17th November, 2018, with approximately 280,000 demonstrators participating. Although the number of protestors taking to the streets has declined since then, the movement is still continuing to this day. The masses still gather every Saturday in major French cities to bring attention to their issues. It is a leaderless movement that was organized mainly through social media platforms with online petitions and videos posted by common working men. It is a true grassroots movement without the backing of trade unions, political parties or particular leaders. The movement derived its name from the usage of the high visibility yellow safety jackets by the protesters that have been taken from the provisions of French law. As per the provisions of this law, it is necessary for all drivers to carry these jackets for use in the event of an emergency, which became the symbol of their movement. Now, anyone who joins the protests dons a yellow vest, irrespective of whether they are a driver or not.

The movement began as a protest against the hike in fuel prices and increased fuel taxes. However, that was just the tipping point. The French populace had been left frustrated because of the high unemployment rate caused by a stagnant economy. The taxes were introduced by the French President Emmanuel Macron in order to fight climate change by persuading people to move away from cars that use diesel and other fossil fuels and use electric cars. This did not go down well with the already irked poorer sections struggling to make ends meet, who felt that the president was arrogant and out of touch with the lives of the common people. Initially, the protesters were the people from rural and suburban areas of France who lived outside cities, did not have access to public transport and had to rely on their cars for their long daily commutes. They could not afford the fuel at increased rates and wanted Macron to scrap the Green Tax. The protesters blocked highways and fuel depots throughout France, setting up barricades and deploying slow-moving convoys. Even the young populace took part in the demonstrations. High school and college students blocked their schools and universities in protest.

With time, the movement became bigger, and against the government itself. It now included the working and middle classes who complained about the social inequality prevailing in their country as seen from the extremely high cost of living and the fact that their incomes were too high to qualify for social welfare benefits but too low to make ends meet. The protesting masses directed their frustration towards Macron as the source of their problems, believing that he is a president only of the rich because of his earlier reforms to loosen labor laws, which made it hire and fire policy for the staff of Companies liberal, and cutting down of France's wealth tax. Macron was accused of favoring and benefiting high income families. The demonstrators hoped to pressurize the government into overturning the taxes favoring the rich and take measures to help the poor.

IMPACT

The initial protests across France were peaceful in nature, but the demonstrations in Paris turned violent and led to riots. The rioting protesters vandalized monuments and destroyed public property, including the Arc de Triomphe and the Tomb of the Unknown Soldier, looted shops and clashed with the police. Cars were torched and slogans against the government were scrawled on walls. The continued demonstrations hurt the French economy, with trade-in shops, hotels and restaurants being affected severely. France's tourism sector suffered greatly due to the protests. Hotel owners reported fewer customers and fewer commissions. All of this combined with the loss of business in the 2018 Christmas shopping season forced Emmanuel Macron's hand. Despite his stance of not caving in to the demands of protestors, Macron relented and withdrew his proposal for the carbon tax. This, however

was not enough to satisfy the protestors, who now also demanded an increase in salaries, pensions, social security payments and the minimum wage. As a result, Emmanuel Macron promised to increase the minimum wage of workers by a hundred euros per month beginning from 2019, not to tax overtime pay, and to cancel a previously announced plan to increase the tax for low-income pensioners. He also launched a national debate, which was a series of town hall debates across the country, five months later in order to collect public opinion on matters like taxation, public services and shifting toward a greener economy.

However, because of all this chaos, the environment had to take a back seat. The crux of the demands of the protestors was the withdrawal of the carbon tax, which Macron introduced in order to fight climate change. Acting against climate warming is a necessary struggle but it must not pit the problems of the end of the world against the problems of the end of the month, Macron wrote to the protesters complaining of being unable to afford the fuel after the increased prices, conceding that environmental concerns would have to be addressed in a much better manner that doesn't make the lives of French citizens unsustainable.

In the budget for the year 2020, he offered the taxpayers tax cuts of up to ten billion dollars, a move that would benefit low income households. This concession appears to have been made to prevent any future unrest, and is directly influenced by the yellow vest protests. The issue of police brutality was also brought to the fore during the protests. Hundreds of protesters have suffered serious injuries at the hands of the French police, who employ tear gas, rubber bullets and grenades at almost every protest. Amnesty international called upon the French police to 'end the use of excessive force against protestors and high school students.'

The gilets jaunes also received a lot of international coverage, with protesters from around the world adopting the yellow vest as a symbol of their resistance. The revolt first spread to French speaking Belgium, and as far as Taiwan, where approximately ten thousand demonstrators demanded lower taxes wearing yellow vests. Anti-government and anti-establishment movements inspired by the yellow vests popped in numerous countries including Iraq, Israel and the United Kingdom.

The demonstrations that began in France in December of 2018 not only brought broad themes of social inequality and sustainable environmental development to the fore, but also came a long way in reminding those who are paying attention about the need to stay connected to the people.

REACTION TO THE PROTEST AND STATUS QUO

This protest came up as the first crisis under the presidency of Emmanuel Macron's and received varied reactions from different sects. It left a scar on Macron's image, whose own novice political movement, La République En Marche, was

initiated to listen to the call of people. The movement undertook a positive face and surveys held in the month of November, 2018 exhibited that the movement had gained extensive encouragement in France around 73% to 84% of the population was in support of it.

Truckers were attacked by demonstrators, and in an open letter, the industry expressed its disappointment and discontent with the government's position. Two labor unions, first of all issued a notice for all truckers to gather and start a strike on December 9th, but later withdrew their appeal on December 7th after holding deliberations and consultations with the government.

Le Pen, who was Macron's opponent in the 2017 presidential election, and her Party were blamed for the violence on 24 November 2018, as it was reportedly, she who urged people to go to the place of strike. Le Pen defended herself by stating that the government should have been more careful and it was the responsibility of the government to maintain peace before it allowed people to assemble on the Champs Élysées and accusing the Minister of the Interior who allegedly made an effort to increase the tension in order to scandalize the movement.

The government on 4th December, 2018 announced that the decision to increase the tax would be put on a halt, stating that 'no tax deserves to jeopardize the nation's unity.'

Police Violence

Government and police authorities have rebuked protesters for causing massive material harm but have refrained accepting their own mistakes, including their responsibility for inflicting life-altering injuries. 'Do not speak of repression or police violence,' these words are, under the rule of law, unacceptable, as per President Macron. He further said there had been no irreparable abuse committed— apparently ignoring all those people who lost their body parts or were physically disabled. Prime Minister went to extremities and tagged down the group of non-violent protesters as thugs and extremists and recurrently denied the evil and wrong acts of police.

A truck driver who came to Paris to side with the movement, Patrice Philippe, he was unfortunate enough to lose one of his eyes at the very first protest of his life as the police was brutal. 'As a hauler, without my eye, I automatically lost my license, my job, my source of income. Then my partner left. I feel like I can't start over.'

Counter Protest or Foulards Rouges

A counter-demonstration was held in Paris on 27 January 2019. It was hosted by people who gathered, united as a group and identified themselves by the tag of foulards rouges i.e. the red scarves, that they chose to wear. 'We denounce the insurrectional climate created by the yellow jackets. We also reject the threats and constant verbal abuse (destined for

non-yellow jackets),’ this was their collective official statement.

Protests taken up outside France: Yellow Vests now a Symbol

The riots in France gained global attention. Although the French government postponed its imposition on fuel tax, the turmoil continued. Several countries supported the movement and condemned the French government for its brutality. Outside France the biggest ‘yellow vest’ rally was held in Taipei with more than 10,000 protesting in December, 2019. Their major concern was to get tax justice. Other protests in different parts of the world are basically related to the predominant issues adhering to the foundations of French movement like taxation, increase in living costs, lack of adequate legal and social representation, and disparity in economic state and income. Others major issues are connected principally by the adoption of the symbol to lay the foundations of the movements via symbol i.e. the Yellow Vests.

CONCLUSION

The fundamental point raised during the beginning of the yellow vest movement was that there was lack of mainstream leadership. Propositions of alliance of both labour or political unions and political parties were looked down upon. One or two who even tried to get hold of leadership were ferociously attacked.

The united left powers are with the Government but if the movement takes a surge again, it would lead to a risk to Emmanuel Macron’s presidency, leaving him with no ability to even act. This leaderless mass movement repeatedly proved to be the toughest challenge for the reformist ambitions of President Macron.

To curb the budding resentment amongst activists and brewing empathy among the French population that is the major vote bank, he had no other option but to stop the implementation of the policy leading rise in fuel tax and prices that sparked the inciting protest and compromise by offering supplementary methods like a reduction in pension tax and an increase in minimum wage. However, Macron has insisted that he will continue his agenda of reform and keep employing reformist policies. But the yellow vest protesters had a different socio-political impact, though they couldn’t alter the government’s policy or agenda. A group of unheard, invisible people among the French population have instituted a mode to gain recognition and have their voices reach the authorities and demands fulfilled.

Later on, Stephanie remarked, ‘For me personally, nothing much has changed, but it was a great human adventure. We rediscovered generosity, solidarity; people woke up. We found a real family.’

NATIONAL NEWS

Death Row Convicts of 2012 Nirbhaya Rape case executed

Four death row convicts of Nirbhaya Rape case were hanged in the morning of March 20, 2020. The case had inter alia reignited the debate on many issues in criminal justice system of India, like deterrence of rape laws, media trail and death penalty.

Delhi Rioters identified using facial recognition technology

Home Minister Amit Shah had informed the Parliament that about 1,922 people who indulged in riots in Delhi have been identified using facial identification software. The videos of the riots were run through the database containing driving licenses and voter ids. He assured that people responsible for violence will be brought to book irrespective of their caste, religion and political affiliations.

Internet Access as a Fundamental Right

The Supreme Court ruled that Internet, as a form of expression, is a constitutional right as per Article 19. The petition came before the Apex Court in order to hear the matter in relation with the Internet blockade in the region of Jammu and Kashmir in spite of the revocation of Article 370 in the jurisdiction of the Union.



REFERENCE IN SABRIMALA: INDIVIDUAL SUPREMACY OR GROUP SUPREMACY

INTRODUCTION

In 2018, the Supreme Court struck down the law that barred the entry of women aged between 10 to 50 years in the Sabarimala Temple in Kerala, the abode of Lord Ayyappa and one of the busiest pilgrimage sites in the region. Dissatisfied with the decision of Supreme Court, numerous review petitions challenging this verdict were filed in the Supreme Court. It also staged the ground for the people from other communities to challenge the discriminatory practice in their religion. In November 2019 the Apex Court decided to frame seven questions, regarding the interplay of freedom of religion with other fundamental rights and the extent of the authority of the court to examine the validity of religious practices, to a larger nine-judge bench to facilitate the settlement of the matter. With the hearing before the nine-judge bench in process since 17th February, we shall try to understand some of the contentious topics of discussion these questions bring up.

BALANCING THE RIGHT TO FREEDOM OF RELIGION AND THE RIGHT TO EQUALITY

The two fundamental rights that seem to be in conflict in this controversial case are the right to freedom of religion and the right to equality, more specifically gender equality. The majority of judges in the 2018 judgment held that the practice was violative of Articles 14 and 15, as it discriminated against women of the same religion and relegated a somewhat lower status to them. Justice Chandrachud, in fact, linked it to the practice of untouchability. However, Justice Indu Malhotra, the only one with a dissenting opinion, held that this practice of barring the entry of women of menstruating age was not meant to oppress or discriminate as it wasn't about women of a particular age, but about the celibate nature of the deity. The practice, thus, came within the ambit of the right to freedom of religion, is a matter of faith and belief of the devotees – something that couldn't be encroached upon by the court.

It is important to note that Article 25 of the Constitution of India, which grants the freedom to citizens to practice and propagate religion, is not absolute. Article 14 of the Constitution protects all citizens from discrimination on any grounds by the State, including religion. Essentially, it guarantees equality to all, so while Article 25 guarantees the right to profess, practice and propagate one's religion, it is subject to the right to equality and the protection of dignity.

SCOPE OF 'MORALITY' UNDER ARTICLE 25

To be constitutionally valid, religious practices too must uphold these values. Moreover, Article 25 also subjects the freedom of religion to public order, morality, and health and to the other fundamental rights guaranteed under the Constitution. However, what does 'morality' mean here. Interpreting the word 'morality' used in Articles 25 and 26, Justice Chandrachud held in the Sabarimala judgment that morality refers to constitutional morality. Constitutional morality, however, is a somewhat elastic term. Its interpretation today mainly suggests that any practice must uphold the values of justice, liberty, equality and fraternity in order to be constitutionally moral since these values are the main pillars of the Indian Constitution.

If 'morality' only refers to social morals and values, it might be quite ambiguous and perhaps not give any principle that forms the basis for further cases to be determined. The diverse culture of various communities in India requires the skeleton which can be filled with flesh on the basis of the principles which might be answered by way of this reference question which includes the meaning of the term 'morality'. There is an inclination towards constitutional morality in interpreting the word 'morality'. So there arises need to understand what exactly the term 'morality' stands as in courts today.

The biggest obstacle in applying this interpretation in matters relating to faith and religion is difficult. In the case at hand, the term was applied in two different ways. The majority judgment by the four judges laid emphasis on the value of equality, saying that constitutional morality includes equality and thus, a practice excluding a certain class of women could not be constitutionally moral. The dissenting opinion of Justice Indu Malhotra, though, was that constitutional morality would require every individual to have the freedom to practice his own religion and thus, the court should not interfere with it. Attorney General K.K. Venugopal expressed his concern over the possibility of using this concept to test laws.

How constitutional morality is to be defined, and to what extent it can be used to test the validity of religious practice, is seemingly a burning question of law because Dr. Ambedkar made it clear in the Constituent Assembly that the fundamental unit of the Constitution remains the individual. However, the Constitution of India does protect the community rights of the individual. Thus, declaring the community right as unconstitutional on the touchstone of 'constitutional morality' is needed to protect the fundamental rights of an individual.

THE BATTLE BETWEEN THE INDIVIDUAL AND THE COMMUNITY

The conflict of the Sabarimala Temple also gives way to another important debate – what happens when an individual doesn't agree with the community's religious practice and acts against it? How are their religious rights to be upheld in harmony with the individual right?

While the community has always played a very important role in Indian society - especially one's religious community - it has also been the source of social oppression or restrictions on one's freedoms in several ways throughout history. The Constitution strikes a precarious balance between the right of an individual to freely practice his or her own religion or faith, under Article 25, and the right of religious denominations to manage the affairs in religious matters, under Article 26. But how are these rights to be interpreted if an individual and his or her religious community are at odds with one another regarding religious matters? In such case, how can we determine which is superior, the individual or the community? Better yet, how do we find common ground between respecting the autonomy of religious groups, and upholding an individual's right to freedom of religion?

One way, perhaps, would be to ask whether the effect of the disputed religious practice is to cause harm to individual rights. As Dr. Ambedkar acknowledged in the Constituent Assembly, the fundamental unit of the Constitution is the individual. Group rights exist because individuals need communities to flourish, but their autonomy remains to the

point that their norms or practices do not cause harm to the dignity or rights of their members. Thus, the balance between the two is best-served by judging religious practices on whether they attempt to exclude any members of the religious sect, in any manner, which leaves them with lesser respect and freedom than others.

CONCLUSION

It is very clear that the Supreme Court is faced with a host of complex questions and competing interpretations of Articles 25 and 26. It is so because the Supreme Court has to balance between individual rights and group rights. Neither extremity of individual supremacy nor extremity group supremacy is in consonance with the values of the constitutional supremacy. Both, the dissent of an individual and the autonomy of the group are essential to the ingrained constitutional values. Whatever be the final decision regarding this contentious matter, it is sure to have ripple effects on matters of religious freedom and the right to autonomy of an individual in our country

Contributions are invited for the next issue of the CASIHR Newsletter. The last day is 15th July' 20 which can be mailed on casihr@rgnul.ac.in

-CENTER FOR ADVANCED STUDIES IN HUMAN RIGHTS (CASIHR)-

MEMBERS

| | | |
|----------------|----------------------------|-------------------|
| SHREY NAUTIYAL | VISHWAJEET SINGH SHEKHAWAT | PRIYA AGRAWAL |
| SWANTIKA | SHRISTI SHARMA | STUTI SRIVASTAVA |
| ADITYA VYAS | SOUMYA TIWARI | PRANAV AGARWAL |
| GUNJAN SINGH | KAUSTUBH DIGHE | KHUSHALI MAHAJAN |
| JESSICA KAUR | ROHAN G P SINGH | ABHIJEET VAISHNAV |



-HUMAN RIGHTS COMMUNIQUE-

VOL VI ISSUE II

CENTRE FOR ADVANCED STUDIES IN HUMAN RIGHTS

Rajiv Gandhi National University of Law, Punjab

[Accredited by NAAC with 'A' Grade]