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HIGHLIGHTS

- LANDMARK JUDGMENTS: OLD AND LATEST
- LEGAL MAXIMS
- LATEST AMENDMENTS

TRANSFORMATIVE CONSTITUTIONALISM

Transformative constitutionalism has been used as an instrument in ensuring a more equitable society by the Courts over the last few years in India. Significant changes in the substantive laws and re-interpretations of the Constitution have ushered in due to the increasing use of this tool.

This concept has its origins in the post-apartheid South Africa. Desire for remedying the apartheid-era wrongs played the most important role in embracing the concept of transformative constitutionalism. The former Chief Justice of South Africa, Justice Pius Langa stated that:

This is a magnificent goal for a Constitution: to heal the wounds of the past and guide us to a better future. For me, this is the core idea of transformative constitutionalism: that we must change.

The concept of transformative constitutionalism proposes the idea that large-scale social change within a certain political system is possible through the process and instrumentality of the law. Transformative constitutionalism encourages a certain reading of the constitutional text that rejects formalism, pure positivism and legalism and lends an interpretation to strike at the hierarchical structures and power relationships within a society. The hallmark of a truly transformative Constitution is that it promotes and engenders societal change.

Transformative Constitutionalism and The Supreme Court of India

Prominent examples in this regard include the *NALSA*¹ judgment, which recognised the rights of the third gender. The Court observed that:

The role of the Court is to understand the central purpose and theme of the Constitution for the welfare of the society. Our Constitution, like the law of the society, is a living organism. It is based on a factual and social reality that is constantly changing. Sometimes a change in the law precedes societal change and is even intended to stimulate it. Sometimes, a change in the law

is the result in the social reality.

Other landmark judgments were the *Navtej Singh Johar*² case, which saw an end to decades of criminalisation of homosexuality; the decriminalisation of adultery in *Joseph Shine v. Union of India*³; and even the *Sabarimala*⁴ judgment of 2018. Justice AM Khanwilkar for then Chief Justice Dipak Misra and himself stated in *Navtej Singh Johar* that:

The whole idea of having a Constitution is to guide the nation towards a resplendent future. Therefore, the purpose of having a Constitution is to transform the society for the better and this objective is the fundamental pillar of transformative constitutionalism.

The transformative value of the Constitution to remedy historical caste-based inequalities was acknowledged in the *BK Pavitra II* case, wherein the Supreme Court upheld the constitutionality of the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018. Justice DY Chandrachud for Justice UU Lalit and himself, wrote:

There is substantial evidence that the members of the Constituent Assembly recognised that (i) Indian society suffered from deep structural inequalities; and (ii) the Constitution would serve as a transformative document to overcome them. One method of overcoming these inequalities is reservations for the SCs and STs in the legislatures and state services.

The transformative power of the Constitution, however, is not viewed as just a means to correct historical wrongs. As elaborated by former South African Chief Justice, Justice Pius Langa:

Transformation is a permanent ideal, a way of looking at the world that creates a space in which dialogue and contestation are truly possible, in which new ways of being are constantly explored and created, accepted and rejected and in which change is unpredictable but the idea of change is constant.

¹ *National Legal Services Authority of India v. Union of India* (2014) 5 SCC 438.

² *Navtej Singh Johar v. Union of India* (2018) 1 SCC 791.

³ SCC Online SC 1676.

⁴ *Indian Young Lawyers Association v. State of Kerala*, 2018 SCC Online SC 1609

LANDMARK CASE LAWS

CONSTITUTIONAL LAW

1. *Anuradha Bhasin v. Union of India*, (2020) 1 MLJ 574.

Case related to the right to internet.

Observation: The **Right to internet forms a part of freedom of speech and expression** under Article 19(1) (a) and ban of internet in the State of Jammu and Kashmir is violative of it.

Held: An order suspending internet services indefinitely is impermissible under the Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017.

In this case, the petitioners sought issuance of an appropriate writ for the immediate restoration of any/all modes of communication including internet, mobile and fixed line telecommunication services which had been suspended by orders of the Government.

Similar decision was given in *Faheema Shirin RK v. State of Kerala* (AIR 2020 Ker 35), wherein the court observed that **total restriction on mobile phone usage** including internet and its required surrender during study hours **was absolutely unwarranted**.

2. *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

Case related to freedom of choice and the right to marry.

Observation: The **right to marry a person of one's choice is integral to Article 21** of the Constitution. The Constitution guarantees as a fundamental right to each individual to take decisions on matters central to the pursuit of happiness.

Held: The Supreme Court of India set aside the order of High Court while holding that “intimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry, lie outside the control of the State.”

In this case, marriage of one Hadiya Jahan *alias* Akhila Ashokan with Shafin Jahan was annulled by the High Court of Kerala while exercising *parens patriae* jurisdiction under the pretext that Hadiya converted her religion and married Shafin Jahan

involuntarily and that she was weak and vulnerable even at the age of 20. Thereafter, an appeal was filed with the Supreme Court of India.

3. *The Secretary, Ministry of Defence v. Babita Puniya*, 2020 SCC OnLine 200.

Case related to permanent commissions to women officers in the Indian Army.

Observation : While granting permanent commission to the women officers in Indian Army, the Court observed that reliance on the “**inherent physiological differences between men and women**” rests in a **deeply entrenched stereotypical and constitutionally flawed notion** that women are the “weaker” sex and may not undertake tasks that are “too arduous” for them. The judgement also allows granting permanent commission for women officers in ten streams where women were only granted short service commission previously. The decision guarantees long term job security and equal opportunity for women in the Indian army.

4. *Mukesh Kumar v. The State of Uttarakhand*, 2020 SCC OnLine SC 148.

Case related to reservation in promotions.

Observation: Article 16(4) of the Constitution gives a discretionary power to the State Government to allow reservation to the people who are not adequately represented in services in such appointments. It is not a mandate on the State and **it cannot be claimed as a matter of right as Article 16(4-A) of the Constitution is an enabling provision**.

Held: L. Nageswara Rao, J., pronounced that reservation in promotions in public positions is not a fundamental right and no *mandamus* can be issued by this Court to the State Government to provide reservation.

CRIMINAL LAW

5. *Harsh Mander v. Union of India*, W.P.(C) 10498 / 2009 & CM Appl. 1837/2010

Case related to decriminalisation of begging.

Observation: **Begging is a symptom of a disease**, of the fact that the person has fallen through the socially

created net. Criminalizing begging ignores the reality that people who beg are the poorest of the poor and marginalized in society. **It violates the fundamental rights** of some of the most vulnerable people in our society.

Held: Sections 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the Bombay Prevention of Begging Act, 1959, as extended to Delhi, were declared as unconstitutional and were struck down as being violative of Articles 14, 19 and 21.

6. *Tofan Singh v. State of Tamil Nadu, 2020 SCC OnLine SC 882.*

Case related to section 67 of the NDPS Act.

Observation: The officers of the Central/State Government, inquiring into NDPS cases, are indeed 'police officers' and statements given to them are not admissible at trial. The Court held that the mere fact that these officers under NDPS do not file a charge-sheet at the end of the investigation does not militate against the fact that essentially, they are police officers, function-wise.

The judgment may have great implications with respect to investigation under other statutes too, such as the Companies Act and the Prevention of Money Laundering Act, under which the Serious Fraud Investigating Officer and Enforcement Directorate, respectively, can record statements even of suspects which can then be relied upon by Courts at the time of trial.

7. *District Collector, Alappuzha v. District Legal Services Authority, Alappuzha, WP(C) No. 7250 of 2014(E).*

Case related to section 357A of the Code of Criminal Procedure, 1973.

Observation: The avowed purpose of the philosophy of victim compensation is not to award damages analogous to those in cases of tortious liability, but to give solace, by way of compensation out of the public purse, for the injury sustained, whether the offender had been brought to trial or not. **State has a humanitarian responsibility to assist crime victims.**

Held: The Kerala High Court held that the provisions of section 357A(1),(4) and (5) are substantive in character and the victims under section 357A(4) of the Cr.P.C. are entitled to claim compensation for incidents that occurred even prior to the coming into force of the said provision.

EVIDENCE LAW

8. *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, Civil Appeal No. 20825-20826 of 2017*

Case related to section 65 of the Indian Evidence Act, 1872.

Observation: Certificate under Section 65B (4) of the Evidence Act is essential for admissibility of electronic records. The certificate constitutes evidence for identification of an electronic record and oral evidence in the place of such certificate cannot possibly suffice as Section 65B (4) is a mandatory requirement of the law.

CIVIL LAW

9. *Vineeta Sharma v. Rakesh Sharma, MANU/SC/0582/2020 (SC).*

Case related to section 6 of the Hindu Succession Act, 1956.

Observation: The father's death does not affect the right of the daughter as a coparcener because the coparcenary right is a birth-right. Section 6 of the Hindu Succession Act, 1956, is retroactive in nature i.e., a provision that operates based on a characteristic or event which happened in the past or requisites which had been drawn from antecedent event.

Held: The amended section 6 confers status of coparcener on the daughter born before or after amendment in the same manner as son, with same rights and liabilities.

10. *Aruna Oswal v. Pankaj Oswal, Civil Appeal no. 9340 of 2019.*

Case related to sections 72 and 109A of the Companies Act, 2013.

Observation: Merely disowning a son by late father or by the family, is not going to deprive him of any right in the property to which he may be otherwise entitled in accordance with the law.

In this case, Mr. Abhey Oswal held majority of shares in a company and he appointed Mrs. Aruna Oswal as his nominee thereby making her the absolute owner of those securities. The questions before the Court were whether section 72 of the Companies Act provides that nomination overrides the general law of succession and secondly, in cases where there is a valid will and a valid nomination, what would prevail? The Court set aside the orders of the NCLT and NCLAT and held that the claim of the individual in this case having a better title over the shares than the registered nominee, by virtue of being a legal heir, is a matter of civil dispute and has to be decided by the High Court. The Court also clarified that when there is a valid will and a valid nomination, the nomination would sustain owing to the overriding nature of section 109A. However, the Court ordered Pankaj Oswal to wait for the decision of the civil court before applying to the NCLT afresh for oppression and mismanagement in the Company.

11. *Google India Pvt. Ltd. v. Visakha Industries*, AIR 2020 SC 350.

Case related to defamation in online medium and liability of intermediaries.

Observation: The Court observed that if defamatory imputations are communicated to the complainant himself, it is “making” of imputation and if communicated to some other person, it is “publishing” of imputation. The Court further observed that a person may be liable for defamation even if he had not made it but only published it.

Held: The intermediaries cannot claim protection from defamation under section 79 of the Information Technology Act, 2000 (IT Act).

12. *Rahmat Bano v. CPIO, Income Tax*, 2020 SCC OnLine CIC 1119.

Case related to the disclosure of husband's income under section 8(1)(j) of RTI Act.

Observation: When the seeker of information is a person who is a wife then information relating to

salary of the husband no longer remains confined to the category of personal information between the husband and wife.

Held: Central Information Commission allowed the wife to access information about the generic details of her husband's income within a period of 15 days. However, the details of income tax returns were exempted from disclosure to the wife.

In this case, a woman filed an RTI seeking information on her husband's income tax returns for the period 2017-2018. The request was denied by the Central Public Information Officer, therefore this appeal.

13. *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District*, Civil Appeal No. 3822 of 2020.

Case related to the right of a woman to secure residence under the Protection of Women from Domestic Violence Act, 2005.

Observation: The right of a woman to secure a residence order in respect of a shared household under the Protection of Women from Domestic Violence Act, cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act, 2007. The Court clarified that **both the Statutes are to be construed harmoniously** and observed that “the law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act, 2005 cannot be ignored by a sleight of statutory interpretation.”

Held: The Supreme Court set aside the order of the Karnataka High Court which affirmed the order of District Court for vacating the residential house.

In this case, a senior citizen couple filed an application under the provisions of the Senior Citizens Act seeking eviction of their daughter in law and grand daughter from their residential house.

14. *Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri*, (2020) 2 MLJ 189 (SC): LNIND 2019 SC 924.

Case related to order VIII, rule 6A of Code of Civil Procedure.

Observation: Order VIII, Rule 6A of Code of Civil Procedure does not put an embargo on filing counterclaim after filing written statement. However, this does not give absolute right to defendant to file counterclaim with substantive delay, even if limitation period prescribed has not elapsed.

15. *Sheela K.K. v. N.G. Suresh*, Mat Appeal no. 358/209.

Case related to section 10 of the Limitation Act, 1963.

Observation: In the case of ornaments, which are given in the form of dowry, or otherwise by the wife which do not form a part of dowry, definitely, a statutory trust is created and **there is no statutory limitation period for the wife/divorced wife to claim property entrusted with husband/in-laws.**

Held: The Court ordered the Registry to place the appeal for hearing before the appropriate court. The question before the Kerala High Court was whether trust created by a wife entrusting her property to her husband gets extinguished after the dissolution of marriage and whether she can initiate proceedings invoking section 10 of the Limitation Act, 1963, without any limitation of time.

Did you Know?

The original copies of the Constitution of India which were signed by the members of the Constituent Assembly were written in Hindi and English.

LEGAL MAXIMS

1. *Cessant ratione legis, cessat ipsa lex*: When the reason for a law ceases, the law itself ceases.
2. *Salus populi est suprema lex*: The health (welfare, good, salvation) of the people should be the supreme law.
3. *Ubi jus ibi remedium*: Where there is a right, there is a remedy.
4. *Vox populi*: Voice of the people or the opinion of the majority of the people.
5. *Actus Curiae Neminem Gravabit*: An act of the Court shall prejudice no man.
6. *Lex Posterior Derogat Priori*: A later law

repeals an earlier law.

7. *Nova Constitutio Futuris Formam Imponere Debet, Non Praeteritis*: A new law ought to be prospective and not retrospective, in operation.
8. *Res Integra*: An entirely new or untouched matter.
9. *Vigilantibus et non dormientibus jura subveniunt*: Law aids the vigilant and not the dormant or laws aid/assist those who are vigilant, not those who sleep upon/over their rights.
10. *Res Sub judice*: A matter or case under consideration of a Court or a judge.
11. *Pro bono publico*: For the public good.
12. *Parens patriae*: Parent of the nation.
13. *Amicus Curiae*: Friend of the court.
14. *Jus necessitates*: Necessity knows no laws.
15. *Onus probandi*: The burden of proof

Did you Know?

The World Justice Project's Rule of Law Index, 2020 has named Denmark the best judicial system in the world measured by rule of law.

KNOW YOUR CONSTITUTION: THE FORTY-SECOND CONSTITUTION (AMENDMENT) ACT, 1976:

The forty-second amendment to the Constitution of India is considered as one of the most controversial amendments till date. This amendment was the outcome of the Swarn Singh Committee. Almost half of the constitutional provisions were amended by this amendment Act. The true intention behind the forty-second amendment was to claim supremacy under the Constitution and to nullify the *Kesavanand Bharti*⁵ judgment. It sought to severely restrict the power of judicial review of the higher courts. The significant changes introduced by the amendment are as follows:

1. The addition of 'Socialist', 'Secular' and 'Integrity' in the preamble of the Constitution. The Constituent Assembly never intended to include 'socialist' in the Preamble.

⁵ *Kesavanand Bharti v. State of Kerala*, (1973) 4 SCC 225: AIR 1973 SC 1461.

2. Articles 32A and 226A were inserted which provided that the Constitutional validity of State laws and Central laws not to be considered in proceedings under Articles 32 and 226 respectively.
3. Article 368 was amended to add clauses (4) and (5). Clause (4) of Article 368 provided that no constitutional amendment could be challenged in any court, as it is an exercise of constituent power of the Parliament. Clause (5) provided that the power of amendment would not be subject to any limitation whatsoever.
4. Article 31C was amended which accorded precedence to the directive principles over the fundamental rights.
5. Article 31D was inserted for saving laws in respect of anti-national activities, taking precedence over fundamental rights.
6. Four new DPSPs (Directive Principles of State Policy) were added to the existing list of DPSPs:
 - (a) To secure opportunities for the healthy development of children (Article 39)
 - (b) To promote equal justice and to provide free legal aid to the poor (Article 39A)
 - (c) To take steps to secure the participation of workers in the management of industries (Article 43A)
 - (d) To protect and improve the environment and to safeguard forests and wildlife (Article 48A)
7. Article 131A barred High Courts making judgements on the Constitutional validity of Central legislation, giving exclusive jurisdiction for such laws to the Supreme Court.
8. Article 144A required that the Supreme Court could only declare a Central or State law as unconstitutional if the decision was made by a bench with at least 7 judges, and backed by a special majority of two-thirds of the bench.
9. Article 228A required that a High Court could only declare a State law as unconstitutional if the decision was made by a bench with at least 5 judges, and backed by a special majority of two-thirds of the bench.
10. Article 74 was amended so as to make the President bound by the advice of the council of ministers.
11. The interval at which a proclamation of Emergency under Article 356 required approval from Parliament was extended from six months to one year.
12. Article 357 was amended so as to ensure that laws made for a State, while it was under Article 356 emergency, would not cease immediately after the expiry of the emergency, but would instead continue to be in effect until the law was changed by the State Legislature.
13. The amendment extended the term of the members of Lok Sabha and Legislative Assemblies from five to six years, by amending article 172 (for MLAs) and Clause (2) of Article 83 (for MPs).

In *Minerva Mills v. Union of India* (AIR 1980 SC 1789), the forty-second amendment was challenged before the Supreme Court, which by 4 to 1 majority struck down clauses (4) and (5) of article 368 inserted by the forty-second amendment on the ground that these clauses destroyed the essential features of the basic structure of the Constitution.

Aftermath:

In 1977, the Janata Party came to power. It tried to undone what Indira government had done by enacting the forty-third and the forty-fourth amendments to the Constitution. The policy of Janata Party was to amend the Constitution “to restore the balance between the people and the Parliament, the state and the Centre, the citizen and the government.”⁶ The forty-third amendment repealed six articles – 31D, 32A, 131A, 144A, 226A and 228A inserted by the forty-second amendment thus restoring the original powers of the Supreme Court.

The amendment Act provided that emergency can only be proclaimed by the President when the security of India or any part thereof is threatened by war or by armed rebellion. Internal disturbance not amounting

⁶ Eur, The Far East and Australasia 475,476 (Psychology Press, 2002).

to armed rebellion could not be a ground for the proclamation of emergency. Civil liberties of the people were restored including press censorship. Article 359 was amended to provide that during emergencies, fundamental rights guaranteed under Articles 20 and 21 cannot be suspended.

The Janata Party government strengthened the powers of President by the forty-fourth Constitution amendment which empowered the President to return back the advice of the council of ministers for reconsideration. The term of assemblies was restored back to the original 5 years.

The forty-fourth amendment repealed Article 19 (1) (f) which contained the right to property and also took out Article 31(1) and made a separate Article 300A in Ch IV of Part XII of the Constitution.

Did you Know?

The Constitution of India was neither typed nor printed but was handwritten by Prem Behari Narain Raizada.

LATEST LAWS, BILLS AND AMENDMENTS

The Consumer Protection Act, 2019:

On July 20, 2020, the Consumer Protection Act, 2019 came into force replacing the earlier Act of 1986. Following are the changes introduced by the new Act:

1. Establishment of the Central Consumer Protection Authority to protect, promote and enforce the rights of consumers. It will be assisted by an investigating wing headed by a Director-General of Investigation.
2. The State and District Commissions can now review and execute their own orders. E-filing of complaint and video-conferencing for hearing has now been permitted. Engaging a lawyer is optional. Complaints can now be admitted automatically if not decided within a period of 21 days.
3. Alteration in the pecuniary jurisdiction of

Commissions:

- District Commission can hear matters where value of products or services paid doesn't exceed ₹ 1 crore.
 - State Commissions can hear matters where value of products or services paid is more than ₹ 1 crore but less than ₹10 crore.
 - National Commission can hear cases above ₹10 crore, from the earlier threshold of ₹1 crore.
4. The Act provides the consumer the rights to: be protected, have information, choose, be heard, and be aware.
 5. Establishment of the Consumer Disputes Redressal Commissions (CDRCs) at the national, state and district levels.
 6. Settlement of consumer disputes through mediation outside the Consumer Court is encouraged under the new law.
 7. No fees are required if the claim is less than 5 Lakh rupees.

LABOUR CODE

The Parliament has passed three Labour Code Bills: The Industrial Relations Code, 2020; The Occupational Safety, Health and Working Conditions Code, 2020 and the Code on Social Security, 2020.

(a) The Industrial Relations Code, 2020:

The Code combines the features of three earlier laws- The Trade Unions Act, 1926; Industrial Disputes Act, 1947 and the Industrial Employment (Standing Orders) Act, 1946.

The Code has increased the threshold of workers to three hundred for obtaining the consent of the concerned government in cases of lay off, retrenchment or closure of the establishment, The Code also introduces the concept of deemed certification of standing orders. The Code recognises a Sole Negotiating Union in an establishment where 51% of the workers are members of that Union. Where there are several trade unions in an Establishment and none of them have minimum 51% of workers as their members, then their representatives shall constitute a

Negotiating Council.

(b) The Occupational Safety, Health and Working Conditions Code, 2020:

The Code consolidates thirteen Acts regulating health and safety of workers. The Code has changed the threshold for coverage of establishment in order to secure benefits to the maximum number of workers. However, the State Governments have been empowered to exempt any new factory from the provisions of this Code.

Daily work hour limit has been fixed at eight hours. Women are now entitled to work in any kind of establishment. The Code has made it obligatory for the Central as well as the State Governments to maintain proper records of the migrant workers. It also provides that any amount collected as penalty under the Code will be credited to the Social Security Fund set up by the Central Government under the Code on Social Security, 2020.

(c) The Code on Social Security, 2020:

The Code combines nine earlier laws related to social security thereby replacing them. This Code is applicable to all kinds of establishments. It states that the Central Government will set up a Fund for unorganised workers, gig workers, and platform workers and provides for their registration. Similar fund has to be set up by the State Governments. The Code mandates that a National Social Security Board will be Constituted for the welfare of the above mentioned three categories of workers. Definitions of some terms have also been amended including 'employees', 'inter-state migrant workers', 'platform workers' and 'audio-visual productions.' Penalties of certain offences have also been changed. New Clauses have been added by the Code keeping in view the ongoing pandemic such as the Code empowers the Central Government to defer or reduce the employer's or employee's contributions under the Provident Funds or Employee's State Insurance for a certain period.

AGRICULTURAL REFORMS

In order to reform agriculture in India and to cope up with increasing indebtedness, stagnation of trade and migration patterns, the Government of India passed three Acts namely, The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020; The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Service Act, 2020 and The Essential Commodities (Amendment) Act, 2020.

(a) The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020:

It provides that the Farmers' Produce can now be traded intra-state and inter-state, outside the physical premises of market yards run by market committees formed under the State AMPC Acts and other markets notified under the State MPC Acts.

The Act permits the electronic trading of farmers' produce thereby reducing the role of intermediaries. To facilitate the above, the Act has prohibited the State Governments from levying any market fee, cess or levy on farmers, traders and electronic trading platforms for trade of farmers' produce.

The Act creates an artificial distinction between 'trade areas' and 'market areas' thereby increasing the risk of dual regulatory market. The State Governments will now be deprived of mandi tax which is one of the major sources of revenue for the states like Haryana and Punjab.

(b) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Service Act, 2020:

The Act provides for a farming agreement for a maximum period of one crop season or one production cycle of livestock between a farmer and a buyer even prior to the production or rearing of farmers' produce. The prices of the farming produce as well as the process of price determination are to be mentioned in the agreement. It also has a provision which mandates that an agreement must have a conciliation board

as well as a conciliation process for settlement of disputes. The Act also provides for an appeal mechanism in case a party is not satisfied with the decision of the Board. However, farmers are not required to have a written contract with the company, making it difficult for the farmers to prove terms and to have dispute settled in her/his favour.

(c) The Essential Commodities (Amendment) Act, 2020:

The Act empowers the Central Government to regulate the supply of certain food items including cereals, pulses, potatoes, onions, edible oilseeds, and oils, only under certain circumstances which may include war, famine, extraordinary price rise and natural calamity. According to the Act, price rise will determine the imposition of any stock limit on agricultural produce.

Experts in this field have expressed their apprehensions about the legalisation of hoarding because of this Act.

All these three Acts have been intended to benefit the farmers in many ways. However, the farmers are sceptical about these Acts. They fear that these Acts will pave way for dismantling the Minimum Support Price (MSP) system.

The Companies (Amendment) Act, 2020:

The amendment decriminalises certain offences under the 2013 Act which relate to the non-compliance of the orders or the National Company Law Tribunal. It also reduces the amount of fine payable in certain cases. Companies issuing specified classes of securities can be excluded by the Central Government from the definition of 'listed company' in consultation with the Securities and Exchange Board of India. The Act exempts companies with a CSR (Corporate Social Responsibility) liability of up to Rupees 50 Lakh a year from setting up CSR Committees. Benches of the National Company Law Appellate Tribunal have been sought to establish in New Delhi by the Amendment Act.

The Foreign Contribution (Regulation) Amendment Act, 2020:

The Act prohibits election candidates, editor or publisher of a newspaper, judges, government servants, members of any legislature from accepting any foreign contribution. Transfer of foreign contribution to any person can be made only if he is registered to accept foreign contribution. Foreign contribution can only be received in an account designated by the bank as 'FCRA Account' and can be used only for the purpose of accepting or depositing foreign contribution.

DNA Technology (Use and Application) Regulation Bill, 2019:

The Bill seeks to regulate use and application of DNA technology for the purposes of only establishing the identity of certain categories of persons. It is permitted in respect of offences under the Indian Penal Code, civil matters such as paternity suits and for establishing the identity of the persons such as the victims, missing persons, offenders etc.

Following are the key Features of the Bill:

1. The Bill contains consent provisions for arrested persons which is required in cases where the offence carries imprisonment for less than 7 years. It is required to be obtained in a written form.
2. Establishment of National and Regional DNA Data Banks to prepare the DNA Data.
3. Establishment of National Regulatory Board to supervise DNA Data Banks and laboratories.
4. DNA profiles of the following persons can be removed from the DNA Data Banks:
 - A suspect if a police report is filed or upon a court order,
 - An undertrial upon a court order,
 - On a written request, for a person who is not a suspect, offender or undertrial.
5. The Bill also contains penal provisions for offences like unauthorised disclosure, obtaining,

use and access of DNA samples, destruction, alteration, contamination or tampering with biological evidence etc.

However, the Bill has been criticised for it has immense potential of institutionalising a “surveillance state.” Similarly, there is no law for the protection of personal data and privacy in India and lack of such laws would only make India vulnerable to misuse of DNA samples and profiles as DNA profiles can reveal extremely sensitive information of an individual.

Draft Environment Impact Assessment Notification, 2020:

The Union government has recently proposed a draft EIA notification in March, 2020. While the notification introduces certain beneficial changes such as comprehensive list of definitions, Technical Expert Committee, amendment of prior Environmental Compliance, online mode of applications and appeal to the National Green Tribunal etc., it is also not free from loopholes. Following are the changes which are controversial and need reconsideration:

1. The draft notification takes away the voice of people by exempting the stage of public consultation from a range of projects. It also reduces the time period for filing written objection from 30 days to 21 days.
2. The notification provides an opportunity to all the industrial units and projects, which were operating illegally without environmental clearances to turn into legal units just by submitting a remedial plan and by paying the prescribed penalty. However, this provision will not be able to undo the harm caused to the environment by these industrial units and projects.
3. Entry 42 of the schedule proposes to increase the threshold area for the projects which do not require EIA from 20,000 sq. kilometres to 1, 50,000 sq. kilometres.

This means that a larger number of projects now will not require EIA. It is however, a fact that mostly small-scale enterprises and medium

enterprises are the ones which cause more damage to the environment than the large scale industries.

4. The draft notification also changes the current requirement of filing a compliance report from every six months by the industrial units and projects to just one yearly report.
5. The notification also gives an unbridled power to the Central Government to declare any project as “strategic” which protects that project from public consultation and allows the government to keep all the information relating to that project, a secret.

Therefore, the notification is yet another attempt of the government to make the EIA process pro industry and anti-people. The EIA process which itself was not strong enough has been diluted to an extent that if the notification is passed it will cause a monumental shift in the way clearances are obtained in the country. The *ex post facto* approvals are also a blatant violation of the precautionary principle and is contrary to the basic idea of EIA framework.

Pesticides Management Bill, 2020

The Bill seeks to replace the Insecticides Act, 1968 and to regulate the manufacture, import, sale storage, distribution, use, sale and disposal of pesticides in order to ensure the availability of safe pesticides and minimise the risk to humans, animals and environment.

The Bill defines 'pest' and 'pesticides' and provides for constitution of a Central Pesticides Board to advise the Governments, both Central and State on scientific and technical matters arising under the proposed Act.

The Board has also been empowered to advise the Central Government in formulating standards under the proposed Act.

Did you Know?

M. Fatima Beevi was the first female judge of the Supreme Court of India to be appointed in 1989.

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