

SOCIALISM IN PRESENT SCENARIO

Robert Owen and Saint-Simon used the word in their writings. Thomas More was the first one to talk about socialism in his writings. In the 42nd amendment, the term 'socialist' was added to the preamble of Indian Constitution. Hence, India became a "democratic socialist" country. India's socialist pattern of society will be classless and casteless. India's first Prime Minister, Jawaharlal Nehru, was an M.A. in Agricultural Economics. He devoutly studied Karl Marx and Lenin, but he favored the socialism which co-existed with democracy and capitalism, as in the U.S.A., the U.K. and the Scandinavian countries. A comprehensive policy of social reorganization has been taken up in the form of Panchayat Raj, Co-operative Farming and community Development Projects to accelerate progress towards Socialism and strengthen parliamentary democracy. Opportunities of education and power are not centered with a particular group or section of society. A son of a worker can achieve highest education and sit on the seat of power. Anybody can contest elections by winning the favour of his supporters. There are opportunities for the hard working and the skilled to go higher and higher in their performances and nobody is going to stop. In this new era of globalization which is our present scenario a developing country cannot be totally a socialist or totally a capitalist. In our country India we have so much income disparities. In order to reduce this government has to control some of the production activities so as the needs of all the people can be fulfilled. On one hand we have many people who are not even having access to basic necessities whereas on the other hand we have many rich people who are enjoying all luxuries of life. A country to get developed needs to give chance to private enterprises so as to raise the competition level. When there will be competition among companies, each company will try to provide best quality of products in order to attract consumers. This will also give rise to innovations and technological advancement which is very important.

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Section 377 of Indian penal code, 1860 (45 of 1860) talk about unnatural offences. Before going to section 377, firstly talk about LGBT. LGBT is an abbreviated form of Lesbian, Gay, Bisexual and Transgender. Initially this community was known as Gay Community. The word Gay refer to those people who attracted to people of same gender and be in a relationship with same gender people. But Lesbian Bisexual and Transgender are not come under the category of Gay community. A Lesbian generally refer to women who are sexually attracted to women only. Gay also known as Homosexuals, it generally refer to a man who are sexually attracted to men only. A Bisexual person means who is attracted to both of sexes, that person also known as Heterosexual. And Transgender is one whose gender identity differs from that usually associated with their birth sexes.

Section 377 read as follows: Unnatural Offences- whoever voluntary has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. Recently in case of Navtej Singh Johar and others v. Union of India constitutionally bench of five judges of supreme court give verdict on section 377. Court decriminalize the section

377 of Indian Penal Code and allowed gay sex among consenting adult in private and court also ruled that consensual adult gay sex is not a crime saying sexual orientation is natural and people have no control over it. This judgment overruled the earlier judgment of Suresh Kousal and another vs. Naz Foundation and another (2014) 1 SCC 1. This judgment struck down the section 377 partially because this section is in force if any person who has done carnal intercourse with child, animal and without consent of adult because court only decriminalize the consenting sex between adults.

And Court also said that section 377 of IPC also violated the provision of Article 14 and 19 (1) a) of Indian Constitution. And in Article 21 Right to Life include right to sexuality, right to sexual autonomy and right to choice of sexual partner. And in another landmark judgment in Justice K.S.Puttuswamy and Another vs. Union of India court held that right to privacy as fundamental right under Indian constitution in Article 21. And the court also said that equality and prohibited the discrimination and stated that the protection of sexual orientation come under fundamental right and the right of LGBT community are real and founded on this doctrine.

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Custom is a habitual course of conduct observed uniformly and voluntarily by the people concerned. When people find any act to be good and beneficial, which is agreeable to their disposition, they practice it and in course of time by frequent observance and on account of its approval and acceptance by the community for generations, a custom evolves. In all societies of the world, custom has enjoyed a very high place in varying degree in the regulation of human conduct. Customs arise whenever a few human beings come permanently without adopting consciously or unconsciously, some definite rules governing reciprocal rights and obligations. Custom is to society what law is to the state. A Custom is any established mode of social behavior within the community. Various dimensions of human behavior which are prescribed by the community or society hint at the conceptual frame of custom. It is considered as one of the mechanisms of social control and an appropriate direction for humans to live in the community and to allow the society to perpetuate. Custom has been defined and opined by various scholars, jurists and authors. "The word custom" as defined by Sapir, "is used to apply to the totality of behaviour patterns which are carried by tradition and lodged in the group, as contrasted with mere random personal activities of the individual." Radin states that "customs are regarded as habitual ways of conduct among social groups." While Carter maintains that,



CUSTOM IN INDIA

custom is the "uniformity of conduct of all persons under like circumstances." According to Holland, "custom is a generally observed course of conduct." The Hindu Code defines custom and usage as "Any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law in any local area, tribe, community, group or family, if it is certain and not unreasonable or opposed to public policy." Customs can be classified into 1) Customs without binding obligation and 2) Customs with definite binding obligation. Customs which are concerned with less important aspects of social life are covered in this category. Most societies have certain customs with respect to the kind of dress one is expected to wear on various occasions. For example, wearing a black dress at a funeral ceremony in England but, white in India. Well-established customs are observed at burials and other solemn ceremonies, etc. Custom with definite binding obligation "which in a more definite and stringent sense are regarded as the

specific duties and obligations of men. Such customs may regulate the obligation of marriage and the upbringing of children, the transmission of property at death, or the modes of consummating and fulfilling agreements. In the early stages of the society the customs are the most important, and in some cases, the sole source of law. The customs lie in the foundation of all the legal system. They come into existence with the existence of the society. Custom is the repeated practice of the primitive society. Custom is a rule or practice which is followed by the people from time immemorial. Customs are rationalized and are incorporated and embodied in legal rules. The influence of custom can be traced in any legal system. In Roman law the creative rule of the magistrates, in English law that of equity judges, and a galaxy of great writers on law from Bracton to Blackstone, in Hindu law that of the Smritikars, the Commentators and the Privy Council decisions have materially affected the form as well as substance of the customs. Custom is a valid source of law. But it must be a valid custom. The various factors which make a custom valid and binding are time immemorial antiquity,

reasonableness, continuity, peaceful enjoyment, certainty, conformity with public policy and statutes, and morality.

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THE REALITY OF FREE AND FAIR ELECTIONS IN INDIA

Being the country which is the world largest democracy, it comes as no surprise that India's voting population tops the charts. A staggering total of fifty-five crore thirty-eight lakh Indians voted at the 2014 General Elections. It was reported to be the highest ever voter turnout in the country and boasted a 32.71% increase in the number of voters from the 2009 General Elections. The herculean task of overseeing the election process rests with the Election Commission of India ("ECI").

The Constitution of India ("Constitution") established the ECI with the vision of directing and supervising elections in the country. The ECI constitutes of a Chief Election Commissioner and two other commissioners, all of whom are appointed by the President. Apart from the superintendence, the ECI's primary objective, inter alia, is to ensure free and fair elections. Democracy is best achieved when the highest degree of transparency is employed. Each voter should be able to freely cast his or her vote without any undue influence and each candidate should be able to come to office without resorting to unfair measures.

Article 327 of the Constitution empowers the Parliament to make laws for all matters relating to, or in connection with, the elections to the House of the Parliament and the Legislature of the State. It is in this backdrop that the Representation of the People Act, 1951 (the "RP Act") was enacted. The RP Act outlines various forms of corrupt practices including, but not limited to, bribery, booth capturing, false publication in relation to the conduct or



personal character of any candidate, and incurring election expenditure more than the prescribed limit, and penalties for involvement in the same which go as far as five years of imprisonment. Apart from the offences stipulated in the RP Act, the ECI has also conceptualized various schemes and protocols, to combat the menace of corrupt practices exercised by political parties and their candidates. However, despite the severe penalties imposed by the RP Act and the stringent measures initiated by the ECI at regular intervals, corrupt practices make the front page headlines during the course of every election campaign. Indian elections, with utmost certainty, are neither free nor fair. Free and fair elections are the essence of every democracy. The admirable feature of this particular form of governance is the ability and the entitlement of the common people to exercise a unique sense of freedom of choice. The efficacy of this freedom paves the way for the elected representatives to govern the country.

Contrary to the prevailing state of affairs in the country, with respect to the electoral process, this indispensable facet of democracy is completely vitiated owing to every man's greed for money and political power. The unhealthy rivalry between candidates and political parties result in the extensive use of corrupt practices for unethical political gains, thereby defeating the true spirit of a democracy, i.e., to be the voice of the people. Although the government is constantly encouraging new eligible voters to cast their votes, conducting election drives for supporting the people to come forward to vote in large numbers, the existence of corrupt practices is proving counter.

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COLLECTIVE BARGAINING

Simple rule of demand and supply applies to almost everything and as the demands increases workload on the industries increases; sometimes it is possible that employers fail to take care of the demands and requests of the work-men or employees. These demands can be regarding anything, including the environment in which the workers are working or the working hours, or the salary of the workers. Basically, issues can be regarding anything which is related to workmen and that can be resolved by the employer.

When such demands and requests arise, workmen take action and starting from strike to resigning these actions can be anything. While all these hurt workmen and employer, one method for resolving these issues where both the parties can sit and present their issues then finally can come to a conclusion without hurting anyone's business, this process is called Collective Bargaining.

Supreme Court defines collective bargaining as "the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion"

The workers or employees are generally represented by the trade unions to their employers. Trade unions play an important role when it comes to collective bargaining, instead of approaching industry or employer individually if workers approach them as a whole or in a group through trade unions the chances of getting deals are better than in the former form.

Collective Bargaining is generally an effective system as it usually results in employers undertaking actions to resolve the issues of the workers.

For the success of collective bargaining the process must begin with proposals rather than demands and the parties should be ready and willing to compromise otherwise the whole idea of collective bargaining would be frustrated. In Indian context, the problem lies in the fact that in the absence of any statutory provisions at Central Level for the recognition of a representative trade union by an employer affects the bargaining

power of the trade union. Even though the legislature shows its lukewarm attitude while implementing and working for collective bargaining, courts and trade unions have used this concept for the betterment of relations between the workmen and the employers.

Mr. Ravi Rai
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MERCHANT BANKING IN INDIA

The word merchant bank does not have a settled definition as this term is utilized distinctively in various nations. In United States these are called as "Investment Banks" and in UK they are called as "accepting and issuing houses". In India there are many different definition some of the main legitimate definition for the term Merchant Banker' has been given in the -Principle 2 (e) of SEBI (Merchant Bankers) Rules, 1922. Accordingly, ? A Merchant Banker implies any individual who is occupied with the business of Issue Management either by making courses of action regarding selling, buying or subscribing to Securities as Manager, Consultant, Adviser of rendering Corporate Advisory Service in connection to such Issue Management". Sec/5 (b) of the Banking Regulation Act, 1949 defines Banking as ? accepting, to lend or investment of stores of cash from general society, repayable on demand or generally and withdraw able with a money order, draft, arrange or something else

There are certain suggestions are Merchant banking administrations reinforce the financial advancement of a nation as they go's about as sources of assets and information for enterprises. Considering the manner in which the Indian economy is growing, the job of merchant banking administrations in India is crucial. These financial institutes additionally go about as corporate warning bodies to help organizations appropriately get involved in different financial exercises. The need of merchant banking administrations in India emerges from the way that abnormal state industrialization is taking spot in the nation. The merchant banking administrations assist the business visionaries with coming up with industrial setups in these territories. In addition, the merchant banks help the business visionaries to investigate the joint endeavor openings in the outside business sectors. Difficulties looked by Merchant Banker in India SEBI guideline has confined their tasks to Issue Management and Portfolio. Management to some degree because of which the extent of work is constrained. The total assets necessity is high in classifications I and II particularly such a significant number of professionally experienced individual/associations can't come into the image. Poor New issues advertise in India is drying up the business of the merchant bankers.

Naincee Jain
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KARAN GARG
Former Assistant Registrar,
Supreme Court of India

Q.1) How is your journey so far?

Though I started my career in judiciary as the assistant registrar of Supreme Court, I was always on the lookout to start something of my own. Despite working in judiciary as well as administration I never gave up on my idea of launching a startup. It always looked lucrative and enticing.

Q.2) Can you tell us more about your startup?

My start up basically deals in Research and Litigation. The major focus is on the research work. Still in its infancy, it is an innovation-driven consulting group which focus on emerging laws, Corporate Advisory, Court Litigation and interface with Central & State Governments. It is a Solution & Delivery driven organization with out of the box ideas for managing corporate issues and investigations conducted by Central Bureau of Investigation, Directorate of Enforcement, Income Tax, Serious Fraud Investigation Organization and Court appointed SIT's.

Q.3) Any tips you'd like to give to aspiring lawyers of the country?

The budding lawyers should focus on research. Everyone should choose his own style of living during his law school life. Law school is always a trial and error method. My best tip to them is not to lose their "originality and creativity".

Q.4) How helpful Moot Courts are to law students?

The culture of moot court should be followed in all law schools as it gives a practical exposure to the students. They get to learn how to appear in front of the court after completing law. It gives a real time feel to the students in learning something they won't learn through books. Doing moots develop the research and oratory skills of the young law students and prepares them in a better way.

Q.5) Share your experience at Indore Institute of Law.

Word that comes to my mind when I talk about Indore Institute of Law is 'Excellent'. The institute with its fabulous infrastructure is the best in private colleges. The students are privileged to have not only these facilities but excellent faculty along with state of the art library which has a wonderful collection of books. The lush green lawn makes the view more appealing.

Interviewed by **Litson K Stephen**
B.A.LL.B., IX Semester, IIL, Indore

CURRENT EVENTS

- 1) Separate High Courts will start functioning for the states of Telangana and Andhra Pradesh from 1st January 2019. The High Court for Telangana is the 25th High Court in the country.
- 2) President Ram Nath Kovind has nominated Justice AK Sikri as Executive Chairman of National Legal Services Authority (NALSA). He will be replacing Justice Madan B Lokur. The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society.
- 3) The Parliament has given its approval for the Right of Children to Free and Compulsory Education (Amendment) Bill, 2018.
- 4) The Union Home Ministry has approved the proposal of the Uttar Pradesh Government to rename Allahabad as Prayagraj.
- 5) The government has introduced the Aadhaar amendment bill in Loksabha. The bill aims to provide legal backing for voluntary seeding of biometric Aadhaar ID for mobile SIM card and bank account authentication purposes.

- 6) The Union Cabinet meeting chaired by Prime Minister Narendra Modi has approved the amendment to the Trade Union Act, 1926. The amendment bill provides for inserting of section 10A in the Trade Union Act, 1926 to power centre and state governments to recognize trade unions.
- 7) Government of Uttar Pradesh has approved the construction of the Ganga Expressway. The government has said that it would be the longest expressway in the world.
- 8) The ruling coalition led by Bangladesh Prime Minister Sheikh Hasina of Awami League has registered a landslide victory in Parliamentary elections.
- 9) The Panel headed by IIT-Hyderabad chairman B V R Mohan Reddy has suggested All India Council for Technical Education (AICTE) not to allow setting up of new Engineering colleges from 2020.
- 10) The Supreme Court of India has reinstated CBI director Alok Kumar Verma, setting aside the Centre's order to divest him of his powers. The Supreme Court has restrained him from taking any major policy decision till the CVC probe into corruption charges against him is over.



26th January @ IIL 16th Gendalji Bam Ddebate Competition

On 26th January, 2019 Indore Institute of Law family celebrated India's 70th Republic Day. On this auspicious day the National Flag was hoisted by **Mr. Gaurav Basant Jain** (Executive Director, IIL). This was followed by an International level debate competition, in which 22 teams of various collages and schools participated. Every participant expressed their formidable performance on the topic

"क्या भारत के हित में है महागठबंधन 2019".

The Chief Guest for the Valedictory ceremony was **Mr. Vishal Jagdish Patel** (M.L.A. Depalpur, M.P.) accompanied by the guests from management **Mr. Kantilalji Bam** (Founder, Icon Education Society) and **Mr. Akshay Kanti Bam** (Chairman, Indore Institute of Law).



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