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ALGORITHMIC JUSTICE FOR SCHEDULED CASTE'S AND SCHEDULED TRIBES- NEED OF AN HOUR.

Abstract

The paper examines the challenges and obstacles arising in the path of judiciary and judicial officers while tackling crime and criminal minds against the simultaneous increase in the number of victims belonging to the scheduled caste's and scheduled tribe's in India and will also help the readers to study the reason behind the increase in the pendency of criminal cases against scheduled caste's and scheduled tribe's in India. But in order to analyze the practical aspect of above-mentioned challenges there is a need to study the base of law, that is, the basic principles on which criminal justice system is based upon, which basically aims and help to curb crime. There are generally four principles of criminal justice system which are listed as follows:-

1. **Presumption of innocence:-** It is based on the legal principle of *Ei Incumbit probantia, qui dicit, non qui negat* which means a person is presumed innocent until he is proved guilty.
2. **Burden of proof:-** It is based on the legal principle of *onus*. It means that whoever is prosecuting, the person must supply enough evidence to prove their guilt.

3. Right to remain silent:- No person is obliged to answer the question put up by the investigating agencies, however, if the investigating agencies have reason to believe that the person did the act or about to commit crime, then that person is required to disclose its name and address to the police, when asked by them as per the provision of the section 42 of Crpc¹1973 and within certain ambits of BNSS as well.
4. Double jeopardy:- It is a procedural defence based on the Roman principle ie...Non bis in idem which means that a person cannot be charged twice for the same offence. This principle found its basis under Article 20(2) of the Indian constitution.

Keywords- Judiciary, Police, disobedience of principles of criminal justice system.

Introduction-

In all the societies from primitive to those which have reached the highest peak of civilisation- in one or other form there is a law. The differences between the laws of two societies is not only that of the stage of development but it is also in characteristics. However, the term law means and includes different things with the existence of various different societies. The corresponding word for the term law in Hindu system is Dharma, in Roman system it means Jus, in French system it is Droit, in Islamic system it is called as Hukum, in German system of existence it usually means Richt. These words convey different meanings and ideas. Any definition of law which fails to include all these meanings would not be a good definition. Prima facie, in context to study the challenges faced by judiciary and Police while curbing crime against the people belonging to the scheduled caste's and the scheduled tribes, a learner must have a knowledge of law, need of judiciary and Police etc. Judiciary is essential to maintain and protect the principles of criminal justice system which will further help to build a crime free society. It is essential to maintain a system of checks and balances to abide the functioning of other organs of the govt. of the State as per law as explained under Article 13 of the Indian constitution as well. Finally, it is essential to impart justice for criminal, civil and any other form of dispute. Taking reference from the National police commission² set up by the govt. of India in 1977 the duties and responsibilities of the police includes the power to endorse and safeguard public order, investigate crimes, identify problems that lead to criminal activities. According to Indian Police Act of 1861³, Police is a civil force used to investigate crime and acts as supportive element of Indian judiciary as well

¹ K.N. Chandrasekharan Pillai, The code of criminal procedure, 1973 (7th edn., EBC Publications, 2023), P.2.

² National Police Commission (recommendations), 1977

³ Bareact, Indian Police Act, 1961, Universal Law Publications, 2022.

as of Criminal justice system as well. Though the above referred principles of criminal justice system including the functioning of Police and Judiciary are boon for the existence of a peaceful society but still there are many no. of trials and cases which are yet to be decided by Indian judicial court complexes and are pending in their existing status. This raises question mark on the working system of Police and Judiciary as well. So in order to answer this question regarding pendency of trials in India, we have a need to perform a satisfactorily research to study challenges faced by Police and Judiciary while curbing crimes and after studying those challenges we have to find solution to sort out those challenges to make Indian system of investigation more efficient. The major challenges faced by Judiciary because of disobedience of principles of criminal justice system by police includes the following:-

1. Because of disobedience or either lack of knowledge of basic principles of criminal justice system, it is found that many times police delay's the filling of challans in the court of law on time.
2. Furthermore, because of this reasonable instance, Police further fails to produce the accused person on time in the court of law.
3. Thereafter, it has also been found that most of the individuals belonging to the police force are not so much trained to proceed with the aspect of lawful ambits unlike professionals of law such as Lawyers, Judges, Advocates, Researcher etc.

Furthermore, the challenges faced by Police because of disobedience of principles of criminal justice system by Judiciary includes:-

1. As we have discussed earlier also that many of the Policemen are not as much trained in the field of law. Thus because of this reason they sometimes fail to understand the complex procedure and ambits of court of law.
2. Many a times Police officials are not supported by prosecutors, Judges and any other trainee of law, even at instances where police officials need their help as well.

Thereafter, at instances it has been found that Judiciary has to interfere in the independent investigations being conducted by Police which clearly states that somehow Police officials lack certain knowledge of law, which is the major bane for present day world as a result of which pendency of cases, in numbers, is increasing day by day. The Supreme Court has held in Bhajan Lal case⁴ that the High Court can quash the FIR to protect the accused from malicious prosecution. It has quashed the criminal proceeding against the Bhajan Lal, the then Chief Minister of Haryana. When a criminal proceeding is instituted with mala-fide

⁴1992 Supp (1) SCC 335.

intention to harass the person, the court can quash the entire proceeding for the ends of justice. The Supreme Court has issued seven guidelines which should be followed by the Court in the exercise of its inherent power vested by section 482 Crpc⁵ and under section 528, Bhartiya Nagarik Suraksha Sanhita (BNSS)⁶,

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code of Criminal Procedure and under Section 175 of BNSS except under an order of a Magistrate within the purview of Section 155(2) of the Cr.P.C. and under section 174 of BNSS as well.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Cr.P.C. and under section 174 of BNSS⁷.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The High Court can quash the FIR if it does not disclose the commission of a cognizable offence. FIR relates with commission of a cognizable offence only. Officer in charge of the

⁵ Bareact, The Code of Criminal Procedure, 1973, Shree Ram Law Publishers, 2023.

⁶ Bareact, The Bhartiya Nagarik Suraksha Sanhita, Lawman's Publishers, 2023.

⁷ Bareact, The Code of Criminal Procedure, Shree Ram Law Publications, 2023.

police station cannot record any information (FIR) pertaining to the non-cognizable offence under sec. 154 of the CrPC and under section 173 of BNSS. Cognizable offences are serious offences. If FIR does not disclose cognizable offence, the investigation on such an FIR will impede the rights of accused. * In *Ramnaresh v/s. State of Chhattisgarh* (2012) it has been held by hon'ble court of law that the conviction of accused is unsustainable if the linking evidence is missing against the accused. The strength of every phenomenon is boon for that phenomenon plus it is boon for society at large and on the other hand, weaknesses of each and every phenomenon is a bane for that explanation and for society too. The Golden triangle rule of Indian constitution includes Article 14, 19 and 21 of our Indian Constitution⁸. Article 14, 19 and 21 of Indian Constitution primarily focuses on Right to Equality, Right to freedom of speech and expression and Right to Life and Personal liberty respectively, which also forms the basis of fundamental rights as well. Now the question arises that why only these rights are included within the ambits of Golden Triangle rule of Indian Constitution. This is so because as it is clear from the nomenclature of Golden Triangle rule itself, which includes Gold, which is itself a precious and valuable item or element and just like gold these Articles, that is, Article 14, 19 and 21 also forms the precious and valuable part of Indian Constitution and because of which these are known as Golden Triangle of Indian Constitution as well. Right to equality aims to take society away from the evil of biasedness, Right to freedom of speech and expression limits the liberty of every individual up to poke of its nose which means that everyone has to exercise his or her right to freedom of speech carefully, which saves the society from crime involving hate speeches which may further lead to crimes associated with Sedition, Defamation or provoking enmities against people or group and finally, Right to Life and Personal Liberty enables everyone to live with dignity within the territory of India and furthermore, in relation to this Article 21, the subject of Active Euthanasia is purely illegal in India and though passive Euthanasia found a place under the ambits of Indian territory after 2018 but still the laws are very strict with regard to the applicability of this subject as well. Thus, it is not wrong to conclude that Articles of Indian Constitution constituting to The Golden Triangle Rule forms the base to curb Criminal acts in India and somehow forms the base for Criminal Law of present time as well. The Articles constituting to The Golden Triangle Rule are also the basic constituents of the principle of Rule of Law which says that everyone is equal in the eyes of Law and no one is above Law. It is furthermore concluded that The Golden Triangle Rule is the subject which has established

⁸ P.N. Bhagwati, "Human Rights in Criminal Justice System" 27 JILI (1985).

an inter-disciplinary approach between Constitutional and Criminal Law as well. Though The Golden Triangle Principle is a boon for Indian people and Indian democracy but still many people of India including Law professionals are not familiar with this principle and hence, they are unknown to their own basic fundamental rights which are constituents of Golden Triangle Rule as well. Thus, various NGO's, Legal professionals have to take initiatives to create awareness amongst masses at large regarding the relevance of The Golden Triangle rule under the ambits of democratic set up of India. Furthermore, The Golden Triangle Rule helps to fulfil the basic theme of our Indian Constitution, which is to ensure Justice, Equality, Liberty, Fraternity to people of India by declaring India as a Sovereign, Socialist, Secular, Democratic and Republic State as well⁹, It has also been stated by Honorable Supreme Court of India in *Maneka Gandhi Versus Union of India* AIR 1978 SC 597 that the Articles constituting The Golden Triangle Rule are the base to ensure protection to the life of people of India and are also necessary for smooth survival of people within the State as well. It is very much clear that Man is a social animal and it is essential for a human's to live life with proper discipline and Golden Triangle Rule is a kind of divine force which is the base to ensure discipline.

What Is Caste- A Social Or A Religious Phenomenon- A lot of people while analysing the study of existence of caste based discrimination remained confused that whether caste has a social or religious origin. Though it may be concluded that the phenomenon of caste based discrimination has social existence but it is also associated with certain religious factors as well. Hence, just like Hindu marriage is a combination of both sacrament and contract at certain instances, in a similar manner, caste system is a sum of both social and religious origin as well. According to the view point of great European Scholars- "For Scheduled Caste's and Scheduled Tribes, Caste is a phenomenon which is compared with an iron chain through which people belonging to the said classes have to perform the similar work which their ancestors were performing already.", but a different set of definition has been imparted for people belonging to superior caste's by these European Scholars and for superior caste's- "Caste system is a phenomenon similar to golden chain which is placed around their neck and

⁹ Law Commission of India, The Seventy-Seventh report (1978), "Delay and arrears in Trial Courts" at p. 3 para1.10.

they can utilize it in the manner they like¹⁰.” Hence, these two definitions of Caste system delivered by European Scholars had created social distinction within the society and had clearly stated that people were and are still known with their caste’s and are even forced at certain places to work as per the existence of their birth and not on the basis of their optimistic hard work as well. As per Hindu religious ceremonial instances also, people were differentiated on the basis of their caste’s as well. For example- when agnate of hindu family dies within seven degrees, brahman would observe mourning for ten days while on the other hand, a man of fighting caste would observe mourning for twelve days, a person belonging to mercantile caste would observe mourning for 15 days and finally a sudra will observe it for entire month as well. These rituals of past paved a way towards the increase in the discrimination against the people belonging to Scheduled Caste and the Scheduled tribe’s via either by Social or religious ceremonial instances. Caste is not a phenomenon of study only but because of wide distinctions it has become an institution, which is the basic rationality behind the fact that this institution of caste attracted the attention of various great research scholars of this globe as well. Dr. Wilson, a great research scholar and social reformer had also criticized the existence of discrimination on the basis of caste. According to the words of Dr. Wilson, “The differentiation amongst Hindus on the basis of institution of caste system is the most fearful and pernicious development.¹¹” The most-worse situational instance or factor giving rise to caste-based discrimination is the most superior position being enjoyed by the Brahmana’s under Hindu Sect. Brahmana’s not only claimed divine honours but also discriminated and are still discriminating people belonging to the other caste’s as well. This subject of social as well as religious distinction is weakening the democratic ambits of present-day India as well. When any person met another person in India, then a large number of enquiries in the form of questionnaire is conducted from one another and these questions are also a form of harassment to one another because these questions led to judge a person on the basis of his birth. The set of such and such questionnaire is highlighted as follows-

- A.** From which religion, you belong?
- B.** From which Caste, you belong from?
- C.** From which gotra, you belong?

¹⁰ Law Commission of India, the Seventy-Eighth report (1979), on, “Congestion of under trial prisoners in jail” at P.14 para 3.7.

¹¹ Daniel J. Solove, “Conceptualizing privacy”, California Law Review, Vol 90, No 4, (Jul, 2002), 1087-1155 at p. 1101.

- D. From which Pravara, you belong from?
- E. From which Veda, you refer to?
- F. From which Sakha you belong?
- G. From which Sutra's, you belong from?

All these questions used to torture another person. But in the present day fastest growing world, instead of focusing upon caste-based discrimination, one must focus upon his or her bona fide work, which he or she can efficiently perform for the welfare of his or her society and nation as well to lead a progressive life full of developmental goals as well.

2. Equality Amongst All- A Building Block To Achieve Developmental Goals- All sections of society have desired to live with honour, dignity and decency. To live with human dignity and decency are the minimum requirement which must exist in every society for enjoyment of respectful life. The matter of rights have been seriously considered and debated upon by all societies. The Indian society right from the ancient times has been advocating the virtues of non-violence. Orientation towards furtherance of well-being of others vis-à-vis one's own has been accorded primary. India being the mother land of many cultures and civilization has been a great saviour of an individual's liberties and rights. Many countries evolved from this holy land which says that lofty principles of human life means that let all people be happy. The protection and promotion of human rights are possible only in a society where all people irrespective of their castes creeds, sex and religious, live happily. Torture or violence in simple words or in a layman's language means 'cruelty', 'atrocities', and 'hurt' deliberately causing great pain physical and mental in order to punish or to get information or to forcibly make one to confess to something. According to the dictionary meaning 'violence' it means behaviour which harms or damages physically and where a great force or energy is used. Torture inflicted upon the scheduled caste's and the scheduled tribes, means the infliction of intense pain to the body or mind to punish, to extract a confession or information or to be obtained sadistic pleasure. 'Torture' further means the action of causing great pain either as a punishment or to make him/her say or do something. When the violence or torture goes beyond the tolerable limit of the victim, it leads to death. However torture, torture has not been defined in the constitution of India or any penal law. The torture of any human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. The term of 'custody' is neither defined in the procedural laws nor in the

substantive laws. But it means protective care. According to dictionary, meaning, ‘custody’¹² is the legal right or duty to care of somebody. It is state of being guarded and kept in prison temporarily, especially by the police. Custody means care of control of a thing or person for inspection. When a judge grants custody over an offender to the correctional authority, it has power over the offender and this must be used to endorse the health of the offender. The word custody implies guardianship and protective care. Even when applied to indicate arrest or imprisonment, it does not carry any worrying symptoms of violence during custody. Custodial violence inflicted upon the people belonging to the scheduled caste’s and the scheduled tribes in the past refers to the means of any kind of violence occurring in the custody whether legal or not, which is not acceptable by the law of land. Violence may subtle or extreme like abusing, emotional or physical, thrashing and be judicial, police or under any institution obliged to take care of the inmates like hospitals homes etc. Human rights are rights inherent to all human beings, regardless, of race, sex, nationality, language, religion or any other status. Human rights includes the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Human rights are moral principles or norms that describe certain standards of human behaviour and are regularly protected as natural and legal rights in municipal and international law. They are commonly understood as inalienable, fundamental rights “to which a person is inherently entitled simply because she or he is a human beings, regardless of their age, ethnic origin, location, language, religion, ethnicity, caste or any other status they are applicable everywhere and at every time in the sense of being universal.”¹³ They are regarded as requiring empathy and the rule of law and imposing an obligation on person to respect the human rights of other, and it is generally considered that they should not be taken away except as a result of due process based on specific circumstances for example, human rights may include freedom from unlawful imprisonment, torture, and execution. Every crime against the people belonging to the scheduled caste and the scheduled tribe is a violation of human rights irrespective of its nature and motive behind it. No country is free from crime based upon discrimination of various sort. In fact, it is on an increase all over the world. As such violation of human rights is a universal phenomenon, against which all civilized countries, including India, are waging a relentless war. However when amnesty international talks about violations of human rights it is in the term of state sponsored atrocities or at least those aided and abetted by the state. The human rights have been described as the touch stone

¹² <http://www.dictionary.com>

¹³ Sunil Deshta and Kiran Deshta, Fundamental Human Rights, 2003, p. 4.

of a civilized political system and recognized as core principles essentially dignified for the human survival. In the absence of these rights men would be enslaved and subject to torture at the hand of state. Therefore, human rights are regarded as one of the basic tenets of a liberal democratic system. The human rights have not been created by any legislation or executive order. They are those natural products to which every man or women living in any part of the world is entitled by virtue of having been born as human being. The terms of 'torture' includes all types of physical and mental harassment inflicted upon a person belonging to the scheduled caste and scheduled tribe by the people belonging to the superior castes .¹⁴ It is crime against humanity and a naked violation of human rights. Torture and harassment have emerged a major issue of human rights concern and one of the root obstacles to democracy and development of human well being in contemporary societies. The practice of torturing in the developing countries like India, is however, more difficult and complex. A large number cases of police brutality take place not because of individual aberration, but because of systematic compulsions because sometimes, police also gets involved in such kinds of criminal instances by making abuse of their powers. The practice is widespread and gone unchecked since British days if there was no tacit support of senior police officials, bureaucrats, politicians and judiciary. In recent time such crimes against scheduled caste's and scheduled tribe's have drawn attention of public, Media ,Legislature, judiciary and even Human rights Commission. Nevertheless, judicial activisms ,widespread media coverage, initiatives taken by National Human Rights Commission as well as civil society intervention have shown their concern for combating torture and upholding human dignity. An offender has every right to be tried and punished in accordance with the law and any punitive action taken outside the ambit of law is illegal. Besides, no matter how heinous the crime be, and how so ever dangerous be the criminal, he or she has every right to be treated with human dignity. The court has even discouraged the practice of handcuffing the accused unless it is necessary because human rights are for all irrespective of any discrimination. Several international conventions universally recognize human rights as inalienable. There is ample evidence of increasing police deviance in India. Incidents of brutality, extortion and other crimes committed by people belonging to superior caste's in different part of the country are reported in Indian newspapers. The national human rights commission's data shows that the number of complaints relating to 'deaths of scheduled caste's and scheduled tribe's' is continuously increasing day by day. Torturing Scheduled Caste's and Scheduled Tribe's

¹⁴ R.S. Saini, "Custodial Torture in Law and Practice with reference to India", *Journal of the Indian Law Institute*, Vol. 36, No. 2, April-June 1994, p. 167.

primarily refers to violence. Besides death, rape, and torture are the two other forms of violence's. Violence is not a recent phenomenon. Sections 330, 331 & 348 of IPC, 1860 along with Sections 120 & 121 of Bhartiya Nyaya Sanhita, 2024; Sections 25 & 26 of the Indian Evidence Act along with Sections 23(1) & Section 23(2) of Bhartiya Sakshya Adhiniyam, 2024; Section 76 of CRPC along with Section 78 of BNSS, 2024 and finally, Section 29 of the Police Act, 1861 were enacted to curb the tendency of policeman to resort to torture to extract confessions etc¹⁵. Indian Constitution attaches great importance to human rights and emphasize on the respect for human dignity, under the Indian system of human rights protection is incomparable where human rights are constitutionally guaranteed & judicially protected. Human rights are those rights which are inherent in our nature. These rights are universal and practicable to all perspective of any distinctions. The 3rd part of the Constitution of India guarantees to the people certain fundamental rights against the state including its law enforcement agencies. The state and its law enforcement machineries cannot violate these basic rights. Part 4th of the constitution especially article 39-A imposes obligations on the state to provide free legal aid to all its citizens. India is a democratic society in which human rights have been described as the touch stone of a political system and recognized as essential for the dignified human survival. Since human rights are the rights which can be enjoyed by all human beings, therefore, prisoners, suspects and accused being a human being cannot be deprived of these rights. In absence of these rights men would be enslaved and subjected to violence by the Hand of the state and its agencies. The constitution of India accorded due recognition and respect of the protection of life & personal liberty of an individual. The right of Life and personal Liberty has been held to include the right to live with human dignity and this would be included within itself a guarantee against violence of any kind & assaults by the state or its functionaries. It is true that rights and liberty is not absolute, the reasonable restriction can be imposed upon the exercise of rights. Absolute rights and liberty would lead to anarchy and disorder. Individual can be enjoyed his rights only in state where proper social orders exists. He cannot enjoy his rights in a state of anarchy. Notwithstanding the enactment of laws relating to violence against scheduled caste's & scheduled tribe's and other matters, the factual position is distressing. Violence may takes place due to several reasons. The first and foremost reason is that police officials sometimes used to follow corrupt practices to torture people belonging to the scheduled caste's and the

¹⁵ See The Indian Penal Code, 1860 ; The Bhartiya Nyaya Sanhita, 2024 ; The Code of Criminal Procedure, 1973 ; The Bhartiya Nagarik Suraksha Sanhita, 2024 ; The Indian Evidence Act, 1872 ; The Bhartiya Suraksha Sanhita, 2024 (Universal law Publications and Lexis Nexis Publications).

scheduled tribe's. They consider it necessary for to fulfil the desire of their greed of money. For this police officials get support from the public also. The police admit that they occasionally use brutal methods. Most of brutal violence is committed by the police under pressure to solve criminal cases. Pressure of work and desire for quick results, are also the reason of violence occurring in maintenance of law and order, situation particularly while dealing with The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Act, 1989¹⁶. Based upon the study, violence has been classified in two types – torture, sexual harassment and rape. India has assigned its consent to convention against torture but hadn't ratified it. Torture is virtually a worldwide phenomenon inflicted upon individuals regardless of caste, sex, age, of stage of health. This worst from of human rights violation has become a very serious and alarming problem in third world countries like India. In case of terrorists, dacoits and other hardened criminal, police like to take confessions resorting to third degree methods as it is easy. Torture especially against Scheduled Caste's and Scheduled Tribe's has become so common in these days that not only police and bureaucracy but people also take it as a routine practice of interrogation. Violence is not a defined in any penal law of India. The prevention of torture bill 2010 is pending and yet to see the light of day. In Indian constitution enshrines human rights in part 3rd of the constitution of India. Though articles 20,21 and 22 of the constitution of India provides the basic human rights. There is no specific right against the torture hence, the burden has fallen in the Supreme Court to develop a right against torture through a process of interpretation. In **Sunil Batra v . Delhi Administration**,¹⁷ the court observed that, the treatment of a human being which offends human dignity, imposes avoidable torture and reduce the man of the level of a least would certainly be arbitrary and can be question under Article 14. In the case court observed that: if the prisoner break down because of mental torture, psychic pressure of physical infliction beyond the licit limit or lawful imprisonment of the person, administration shall be liable for the excess. Sexual harassment especially against women belonging to the scheduled caste's and scheduled tribe's may start with the verbal abuse and which may lead to rape. Rate of crime committed against women has increased tremendously. Women belonging to scheduled caste and the scheduled tribe are considered to be a weaker sex in male dominated society and she is expected to be, by nature, passive, tolerant and Patient. Therefore, she has been victimized by her male counterpart and this is going on for ages. Custodial rape is a rape in the custody of police, jail or in the custody of public servant, or in the custody of hostel

¹⁶ See Bare-act, The Scheduled Caste and the Scheduled Tribe (Prevention of Atrocity) Act, 1989.

¹⁷AIR 1980 SC 1579.

superintendent, remand officers etc. Women belonging to weaker sections of society are raped in police custody where they are beaten up or they are threatened relating to their relatives and dear ones that compel the women to give her force consent. There are many provisions in the Indian penal code and Bhartiya Nyaya Sanhita, 2024, relating to a sexual intercourse by public servant, remand home or by any member of management staff of judicial custody with any women belonging to scheduled caste or scheduled tribe in their custody. Section 376(c), IPC and Section 68 of BNS, 2024 deals with sexual intercourse by superintendent of the manager of the jail, remand house, hostel, private house etc. In the famous Mathura rape case a Dalit labourer was raped by a police constable within the police premises while she was in the police station along with her brother and a fellow labourer. In aftermath of the Mathura case in 1983 an amendment to the rape law was brought in which among other things increased the minimum punishment in case of custodial rape to 10 years and the onus proof in all cases was sifted to the policeman involved who was innocent under section 114A of the Indian penal act. The same amendment also brought a change in the cases of custodial rape if states her evidence before the court that she did not consent. It is for the accused policeman to prove the contrary. The particular manner in which this clause is phrased lead to glaring loopholes. The presumption is not made absolute but is made subject to proving the contrary. One of the most insidious evils in this model age is the continued practice of torture upon individual being amounting to inhuman degrading treatment. The investigative agencies, in their anxiety to follow shortcut and to obtain a confession often resort to inhuman treatment. Victims are forced to do things against their ideological or religious convictions leaving them devoid of self-respect or self-esteem. At times victims are interrogated in terrifying ways and the interrogation used inhuman treatment to elicit false confessions from them. Supreme Court in **Prem Shankar v. Delhi Administration**,¹⁸ held that Punjab police rules were violating Article 14, 19 and 21 of the Constitution of India and Krishna Iyer, J. delivered the majority Judgment that rules providing that every under trial who was accused of a non-bailable offence punishable with more than three imprisonment would be handcuffed is violating the said article. It is a practice of keeping under trails and convicts in correctional homes, which is in human and mental torture to inmates. In the **Bhagalpur Blinding Case (Khatri v. State of Bihar)**¹⁹ was a glaring example of cruel and inhuman treatment to the prisoners insulating the spirit of constitution and human value as well as Article 21. Supreme Court in this case tackled the blinding of under trial prisoners by

¹⁸AIR 1980 SC 1535.

¹⁹AIR 1981 SC 928.

the police by piercing their eyes ball with needle and pouring acid in them. This case illustrate key aspects of the pattern of torture, sanction of torture by state and local judicial authorities, the routine concealment of torture, failure to conduct proper inquiry and the inordinate length of judicial proceeding. Court described the issue involved in this case to be of the greatest constitutional importance as they exploit right to life and personal liberty of weaker sections of society as well. Ten years after the blinding of under trials the court quashed the charge against the victim. There have been some instances where the over enthusiastic police officers physically tortured the accused in their custody, but court in our country have condemned their inhuman approach in their judgment. Under various Indian panel laws powers have been given to police force. They very often misuse these powers and commit custodial violence against people belonging to scheduled castes and the scheduled tribes as well. For example, under criminal procedure code powers of arrest available to the police give scope for harassment and humiliation of person, prompted by malafide consideration. Similarly there is virtually no facility for the scientific investigation and detection of crime in most of the police stations, so the police rely on violent use of force against detainees. Custodial violence and exercise use of force against weaker sections is restricted in a civilized society, order and safety which the thing which have been the top priorities of an effective police system. In fact, to establish law and order in the society, to detect crime and to enforce the process of social legislations rests on effective police system. The police was considered to secure law and order to the citizens, to safeguard life and property, to protect the innocent against deception, the weak against oppression and to respect constitution rights of all men to liberty, equality and justice. Law authorized the police to use force under certain circumstances. Interrogation of accused / under-trials and suspected persons is an area of police concern where serious violations of the rights of an individual belonging to scheduled caste and the scheduled tribe occur. In fact, the police have faulty approach towards the rights of criminals and helpless person in their custody. Violation of the rights of an individual by the police occurs partly because of the functions they have to perform and their manner of performance. The police certainly have no rights to inflict brutality on a helpless person under its custody ignoring every law of the land. A person in custody in any civilized society cannot be reduced to the status of non- person because he is in police and jail custody. Any use of force, threat, psychological pressure, etc. the person in the custody by the authorities is termed as custodial violence²⁰. Custody means actual

²⁰ www.legalservicesindia.in, accessed on 12th September, 2024.

confinement or detention of a person charge with crime. Violence is abuse of force which is employed against law and public liberty. It can be said that violence unauthorized use of force accompanied by fury. In general when a person in custody is subjected to inhuman treatment either by physical and mental torture, it is known as custodial violence, it can be explained that, when a person in police is denied any of his rights, it is custodial violence. It is also explained as use of physical and mental pain on the person in his custody and it amounts to custodial violence. Custodial violence is very broad term which, custodial torture, rapes, illegal arrests, detentions, sexual abuses, custodial death, false implications as well as other police excesses. These custodial violence are some favourites of law enforcement authorities and jail authorities in India. The guidelines for arrest, set out in the **D.K. Basu v. West Bengal**,²¹ case by the Supreme Court emphasized time and again for compliance from appropriate state authorities to involve themselves in the task of investigations and custodial management of the detainees. Full use of scientific techniques and forensic science should be made to obviate resorting to physical torture during interrogation. Use of torture by police against weaker sections for the purpose of extracting of confession from the accused in a routine affair in India during criminal investigation by police very often inflict torture on to the offender in order to extract information from them. To extract required information from criminal element, third degree methods are considered most appropriate, especially against weaker sections. Similarly, in many countries, rape and other sexual violence are common methods of torture used by police. Again rape or sexual molestation and threat of rape may be inflicted for various reasons, such as to extract confession or to intimidate humiliated or punish. Rape always involves the intentional infliction of severe psychological as well as physical suffering. Rape of women belonging to weaker caste's as detainees by Jail or police officials is always torture. Similarly, illegal detentions, unlawful arrest false implications by police are torture. The reason is that they bring with them physical and mental pain and agony. In fact, torture causes a traumatic experience to the victim of custodial creates a deep wound in his psyche. Torture is strictly infliction of gradually increasing pain for the purpose of extracting confession or accusation but, it is also used in secondary sense of those cruel and unusual punishments. It is to be explained that torture usually denotes intense suffering, physical, mental and psychological aimed at forcing someone to do or say something against his and her will. It means breaking down under severe physical pain and extreme psychological pressure. The suspect is detained in some isolated place beyond the reach of

²¹(1997) 1 SCC 416, AIR 1997 SC 610.

family, friends and legal assistance. Besides these definitions of the concept of torture, torture has also been defined in a number of international treaties and conventions. The 1975 United Nation Declaration on the Protection of all person from torture and other Cruel and Inhuman or Degrading Treatment or Punishment defines torture as *“any act by which severe Pain or suffering, weather physical or mental is intentionally inflicted by or at the instigation of a public official on a person for such purpose as obtaining from him or the third person information or confession punishing him for an act he was committed or is suspected of having committed or intimidating him or other person”* Similarly torture has also been defined in another significant convention against adopted by the general assembly on 10th December, 1984. *“For the purpose of this convention, the term ‘torture, means any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or a confession, punishing him for an he or a third person has committed or intimidating or coercing him or a third person, or for any reason waste on discrimination of any kind, when such pain or suffering is inflicting by or at the investigation of or which the consent or acquiescence of a public official or other person acting in official capacity”*. Thus, torture refers to infliction of severe bodily pain or mental suffering either tangible or intangible as punishment or as persuasion to give evidence. According to the Torture Commission in 1853, the most common physical tortures are beating with the sticks, twisting of the rope tightly roughed entire arm or leg so as to impede circulation, lifting up by the mustache, suspending by the arms while tied circulation, lifting up by the mustache, suspending by the arms while tied behind the back, searing with hot irons, placing scratching insects such as carpenter beetle on the naval scrotum and other sensitive parts, prevention of sleep, nipping the flash with pincers and putting pepper or red chilly in the eyes or introducing then into the private parts of men/women. Besides these physical-torture, these are some other form of psychological torture such as threats, pain, torture execution, isolation and uncertainty about release, sensory deprivation, mock execution, forced witnessing of beating, rapes or executions of friends or families, interrogation for hours, etc²². Torture in police custody is the widest form of violation of human rights at the hand of those who are paid to protect them. Human rights are basic rights vested in every human being which are essential in every civilized society and able them to live dignified life. The concept of human rights often lost their meaning and importance in the context of person who have committed some wrong sentenced to

²² P.B. Sawant, Mass Media in contemporary society (1998), at p.5.

imprisonment. They are called prisoner and by do be forget one thing that just because a person done something wrong or undergoing trails or being convicted. We cannot deny him basic human rights as a person being prisoner does not cease to be human being. Although our Constitution provides ample provision in preamble, fundamental rights and directive principles securing equal justice and dignity to individual. Law has prohibited use of custodial violence unmistakable terms. Although India Constitution does not mention any specific provision against custodial violence but Article 21 i.e. to rights to life and personal liberty incorporates several rights which relate with prevention of custodial violence. Apart from protection provided in Article 21, the Constitution under its Articles i.e. 19, 20, 22, 39-A, 32 and 226 also provided safeguards against police torture custodial violence.²³ Article 20 imposes prohibition relevant to the criminal proceeding. Clause(1) is concerned with the substantive law of criminal liberty and penalty where no person shall be convicted of any offence except for violence of law in force of the time of commission of the act charged as an offence. Article 20 (1) in corporates prohibition on exposed facto penal law for example ex post facto law, Article 20(2) incorporates ‘double jeopardy’, Article 20(3) protection against, ‘testimonial compulsion’. The word person used in each clause is applicable to a corporate which is accused, prosecuted, convicted or punished or offence. Article 21 say that no one has rights to take any other person’s life or personal liberty, not even the state. Article 22 of constitution of India provides those procedural requirements which must be adopted and included in any procedure enacted by the legislature. Article 22 deals with to separate procedural matters: one is when person is arrested under the ordinary law of crime and the other when are as follow: (i) the right to be informed as soon as may be of grounds of arrest (ii) the rights to consult and to be represented by a lawyer of his choice (iii) the right to be produce before a Magistrate with in twenty four hours (iv) the freedom from detention twenty four hours except by order of the Magistrate. Human rights Act, 1993 was passed by the parliament to meet the national and international demand to have a law to protect human rights and punish violations of the same. An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in states and human rights courts for better protection of human rights and for matters connected therewith or incidental there to. Human rights are provided in Section 2(1)(d) of the protection of human rights Act. In terms of Section 2 of the protection of human rights Act, 1993-“Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the

²³ Narendra Kumar, Constitutional Law of India, p. 35.

constitution or embodied in the International covenants and enforcement by courts in. There are 14 jails in the state of Himachal Pradesh. Two Model Central Jails, one at Nahan(Sirmour) & another at Kanda(Shimla). Two District Jails, one at Dharamshala& another at Chamba. One Open Air Jail at Bilaspur& six extended facility at Nahan, Shimla, Chamba, Dharamshala, Mandi and Solan .One Borstal Jail at Mandi. Eight Sub Jails, one each at Mandi, Kullu, Bilaspur, Solan, Kaithu(Shimla), Una, Nurpur(Kangra) and Hamirpur. Today custodial violence has emerged as a major issue of human rights concern and one of the root obstacles to democracy and development of human well-being in contemporary world. Custodial violence has devastating effects on physical and mental as well as social functioning of the individuals, their children, families, communities and society at large. Suraj, an accused in Gudia rape and murder case, was killed in the Kotkai police station in July 2017. **Santosh kumari v. State of H.P And Ors**²⁴, Court voiced its concern about the growing tendency of custodial violence. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. The National Human Rights Commission receiving complaints regarding custodial violence including torture, deaths, rape, false implications and illegal detentions from various parts of India. The commission dealt with the violations of human rights committed by the police officers. The commission in the several cases issued appropriate directions and guidelines to state governments. To check the incidents of custodial violence, in police station/jail. It also in the number of cases provided adequate relief to the effected victims of custodial violence. The prevention of custodial violence can only be achieved when the animal instinct in human being are tamed. That is now the biggest challenges before the mankind.

Role Of Non-Governmental Organizations To Dominate Caste Based Discrimination

From India- The existence of Caste System even after more than 75 years of Independence is a bane for the democratic development of India. Though earlier during Vedic period, there was existence of Varna System and in this system of existence, people were living with equality but with the introduction of Caste System, people of upper castes started dominating people belonging to Scheduled castes and Scheduled tribes and even after teachings of many great scholars such as Guru Nanak Dev Ji, Mahatma Gandhi, Dr. B.R. Ambedkar, which clearly stated that in order to develop India, there is a need to abolish caste system, but still there is existence of caste system due to which still India is a developing nation. Thus, the

²⁴ www.latestlaws.com, visited on 24th September, 2024.

established fact is that Prima facie, there is a need to remove the existence of Caste System of India by creating awareness, especially amongst young minds, for which Non-Governmental Organizations & Social activists have to come in front to lead the movement against Caste System and after the removal of Caste System, there is a need for the govt. of India to grant reservation on the basis of economic criteria because a person belonging to any caste can be a poor person, who is or must be in an urgent need of reservation as well, but this would be possible if the roots of Caste system are to be uprooted from India as well. The Caste System has deep roots in the history of India. The word Caste took birth from the Spanish or Portuguese word Casta, which further means lineage, pure or chaste, breed or race.¹ The reference to Caste System has been found in almost each and every epic and religious happening of Hindus. The quality of national civilization can be largely measured by the respect shown for the protection and promotion of minorities in India. The protection of the Scheduled castes & the scheduled tribes is of national concern and it cuts across all ideological, political & cultural boundaries. The rampant occurrence of violence against the Scheduled castes & the scheduled tribes, especially in the State of Punjab, even after 75 years of Independence strikes a blow at the world's greatest democracy & raised eyebrows of public at large and shaken the, every faith in democracy. The research work to be undertaken will try to address the issues which concerns the administration of the criminal justice system²⁵. It will further explain the impact of existence of caste system on the over-all development of a nation & hence, it is a bane for our democratic ambits. The National Commission for Scheduled Castes and scheduled tribe has pointed out that it is a serious matter of concern to take actions to curb violence against the backward classes. Furthermore, National campaign on Dalit Human Rights (NCDHR) of 2008 clearly stated that looking at the instances of past, Dalits were not allowed to study, work with dignity and freedom but instead they were and are still the victims of violence at some places or more. The campaign originated to grant equal rights to work, right to just and favorable conditions of work, right to adequate standard of living, right to education and to uplift their status in the society as also stated in Equal remuneration Act, 1976 as well. Every coin has two faces, in a similar manner, this issue which is pertaining to the protection of the Scheduled castes & the Scheduled tribes under The Scheduled Castes & the Scheduled tribes (Prevention of atrocities) Act of 1989 has two faces. One face deal with the existence of violence & discrimination against these minority classes & the other face deals with the misuse of the rights & powers

²⁵ Alan F. Westin, "Social and Political Dimensions of Privacy", Journal of Social issues, Vol. 59, No. 02, 2003, pp. 1-37 at p.27.

granted to the people belonging to these communities. Hence, there is a need to tackle both problems by providing solutions to resolve these issues to strengthen the democracy, so that India will focus on its development in every sphere of life and will become, “SONE KI CHIDIYA” again. Furthermore, sometimes Police officials fail to tackle the increasing violence against Scheduled Castes and Scheduled tribes and also fails to register F.I.R. against such & such violence, hence there is a need to create awareness amongst people and Police officials with regard to the aspect of curbing these issues, for which NGO’s and social activist can play their great role. Talking about Ramayana, Lord Rama has been criticized till date, by many Hindu people because he visited the residential place of a poor lady who further belonged to lower caste, that is, Shabri. Furthermore, there was another character in Ramayana, that is, Kewat, who faced a lot of discrimination because people were of the view that whosoever would touch him, had to go for a bath, which was clear aspect and symbol of untouchability, but Bharat ji (brother of Lord Rama), when visited forest to meet his brothers, that is, Lord Rama and Laxmana, then he hugged Kewat, in order to change the mind set of people of society against the aspect of discrimination on the basis of caste as well. But the reality is that, from past to present, all writings, statutes, religious epics have failed to remove discrimination on the basis of Caste as well²⁶. Furthermore, looking at the instances of Mahabharata, there also existed discrimination on the basis of castes. Putting attention towards the incidence, when Rishi Parshurama introduced curse against his student (Shishya) that is, Angaraj Karana because he gained the knowledge and skills from Rishi Parshurama in a fraudulent manner. The fraud associated with the entire incidence is based on the aspect of caste discrimination, because Rishi Parshurama’s school of thought was based on the principle that he would only grant his skills to Brahmins and Angaraj Karna, on the other hand was Kshatriya, which was the main reason of Rishi Parshurama to introduce curse against Karana, which ultimately proved right when he was fighting a battle (so called Yudha) against Arjuna. Hence, from the above-mentioned incidence of Tretayuga and Dawaparyuga, it is concluded that caste system has deep roots in India. Rigveda’s had successfully explained that under the Hindu religious system, there used to exist four pillars of castes which includes Brahmins, Kshatriyas, Vaishyas and Shudras. Of the many cultures that flourished in India the literary records of the Indo-Aryan culture are not only the earliest but contain the first mention and a continuous history of the factors that make up caste.² Hence, it is not wrong to conclude that, “There wasn’t any era, time, place, event in the history where

²⁶ www.researchgate.net.in , visited on 7th September, 2024.

and when the caste system had been excluded.” During 150 B.C., Patanjali (the great Brahmin) wrote, “the physical characteristics of a Brahmin were fair skin, and tawny hair.” Patanjali declares them to be the intrinsic traits marking a Brahmin and black color of the skin, that of a non-Brahmin. The above referred statement of Patanjali and from the historical aspects taken from the epic Ramayana (of Tretayuga) and the epic Mahabharata (of Dawaparyuga), it is clear that Brahmins were considered and were granted the highest bonafide status and are compared equal to God, thereafter the second position is enjoyed by Kshatriyas, followed by Vaishyas and finally, comes the Shudras, who were and are still dominated by the people belonging to upper castes under the ambits of Hindu religious group, within the territory of India. Looking back to the history, the people belonging to the category of Shudras were completely discriminated in each and every sphere²⁷. They were not allowed to touch people belonging to upper castes and were not allowed to enter inside their homes and many people of upper castes used to force Shudras to clean their washrooms and toilets, which was inhuman practice and such kind of practices are still prevalent in certain places of 21st century India, as well.⁴Howsoever, taking instances from past to present, it is a clear aspect that these Hindu castes are further divided into sub-castes and these sub-castes are furthermore, the great source of sub-division of Hindus, which gives rise to much more discrimination as well. People used to categorize themselves into sub-castes in order to increase and enjoy much more status amongst the members of society. Howsoever, different scholars have different views on the subject of sub- castes. According to Sir Anderson & Parker²⁸, “Caste is that extreme form of social class organization in which the position of individuals in the status hierarchy is determined by descent and birth.”⁵ Though the Parliament of India enacted THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT of 1989, which was framed because of ineffectiveness of The Protection of Civil Rights Act of 1955 and its basic purpose was to make a society free from atrocities against the Scheduled Castes and Scheduled tribes and it also strengthened Article 15(4), Article 16(4) of Indian Constitution.

Disaster Of Un-Filled And Vacant Posts Of Judicial Officers In India- An Obstacle In The Path Of Implementation Of Constitutional Provisions And In The Effective Implementation Of The Scheduled Caste And The Scheduled Tribe (Prevention Of

²⁷ Joginder Nath Bhattacharya, “Hindu Castes and Sects” 16 GBC, (1896).

²⁸ A Michael Fromkin, “The Death of privacy”, Stanford Law Review, Vol. 52, No-05 (May, 2000), pp. 1461-1543 at P. 1463.

Atrocity) Act, 1989- The disaster of vacant posts of judicial officers in India is not a very new phenomenon, but instead, we are facing this bane-full situation regularly after Independence and after the formation of Constitutional framework of India. Justice TS Thakkar, former Chief Justice of India appealed central govt. of India to introduce large number of judicial officers within the geographical ambits of Indian legal system to ensure effective and speedy justice to people at large. Focusing on the report of The Times of India, in-spite of passing of large number of decades after framing of Indian Constitution and even pendency of more than 42.80 crores of cases in India, the hon'ble Apex Court have achieved only 2% increase in filling up vacancies of Judicial officers from the year 2002 to 2016, that is, near about 20% to 22% only. Not only Justice Thakkar, but while representing a conference in February 2022 at New Delhi, the then Chief Justice of India, that is, Justice NV Ramana stated that present day India demands increase in the recruitment processes of judicial officers in India. The above referred statements of various Chief Justices of India states that India is suffering tsunami of vacant posts of Judicial officers, which is ultimately bane for democratic establishment of India because it is the ultimate cause of delay in imparting Justice to people in fair manner. As per the data received from National Judicial data grid for district and taluka courts in India-

- More than 15% of cases which are pending in lower courts are pending since five to ten years back.
- More than 61% of all the pending cases are pending since more than one year.

As per the report of 2012, the ratio of judges in India was 13 judges per million people. Various people used to blame legal professionals for delay in imparting Justice to people at large, but actually, it is not the fault of legal professionals because it is difficult for every single human being to control million people and to impart Justice to them, which definitely resulted in delay in imparting Justice to all. As per the report of India today, near about 5850 posts of judges were lying vacant at District courts in 2022. Not only the lower Courts, but even appellate courts are also facing the similar situation. As per the report of India today, Minister of Law and Justice, Kiren Rijiju, on 19-12-2022, told that, against the sanctioned posts of 34 Judges in honorable Supreme Court, 28 are working presently and six posts are lying vacant. Similarly, 1108 posts of Judges were sanctioned for Judges of various High Courts, out of which only 775 judges are working and there is a vacancy of 333 Judges as well. According to the report of Indian Justice Report (IJR) of 2022, Uttar Pradesh had highest average of pending cases at High court level with an average of 11.34 years,

following West Bengal for 9.9 years and the lowest average of pending cases at High court level is in Tripura for 1 year, following Sikkim for 1.9 years, and Meghalaya for 2.1 years. In 2018-2019, there were only four High Courts which had 100% of Case clearance rate (CCR) and in rest of the High Court most of the cases were lying pending. Pending cases not only results in delay in imparting Justice to the parties to the cases, but even though as a result of it, people have started loosing faith on democratic set up of India and it is a sort of mental harassment to the masses at large. Many a times, it has been found that people dies, but still there case is pending in the court and they would not be able to receive Justice for their entire life, so the factor explains that what sort of harassment Indians are facing! As per the report of Economic Times, more than 26% of posts are still vacant in the lower judiciary in the year 2023. From past to present, India is continuously demanding appointment of large number of Judicial officers. In *Malik Mazhar Sultan Vs. UP Public Service Commission, and Others*²⁹, the question which has been dealt with is that when the system does not address problems, extraordinary steps are necessarily to be taken to curb the problem. It has been stated in this case, that pendency of cases is the result of increase in the number of vacant posts of judicial officers which furthermore, results in causing frustration to parties involved to the matters which are sub-judice. Further in *Hussainara Khatoon Vs State of Bihar*³⁰, it has been held by honorable court of law, that it is the fundamental principle that each and every person approaching court, must get fast, fair and speedy justice but as per the present-day situation of vacancy of judges, India is unable to fulfill the landmarks stated in this judgement. So, it is clear situation that vacancy of posts in Indian Judiciary results in-

1. Delay in Justice.
2. Frustration to people.
3. Harassment in various forms.
4. Weakens democratic set up.
5. People started loosing faith on legal framework of India.

Further, vacant posts of judges is not only harming parties to the trial or suit but instead, it is also creating pressure and is increasing the workload on the judges working presently, to deal with much more number of cases, which is also making them over-burdened. So, large number of vacant posts of judicial officers had teared apart the Judicial system of India. Usually, Courts are compared with the temples because just like people have faith in God and

²⁹ www.casemine.com, visited on 15th September, 2024.

³⁰ 1979 SCR (3) 532.

God is equal for all, in the similar manner people were having faith on Judicial system to get justice, but with the increasing number of delay's in imparting justice people have now fear in their mind to approach the court of law because approaching the Court today, is a kind of frustration. Appointment of Judges in lower judiciary is a combined process adopted by the Govt. on the recommendation of High Court of the state. Thus, both the government and the High Courts have to take a great initiative today to fill up the vacant posts of judicial officers. India's population is roughly 1.4 billion and as per the requirement of this population, we need 65,000 judges to meet the need of at-least 50 judges per million people. The another factor which has resulted into vacancy of posts of judicial officers is the introduction of wide private firms. The private legal firms are offering great job opportunities and good level of salary packages and as a result of which many judges have resigned from their posts and the upcoming lawyers are also not focusing towards becoming a judge, but instead they are focusing towards corporate sector because of much more level of facilities and advantages. So to curb this problem, there is a need to enhance salary package and facilities for Judges at lower judiciary level, so that law professionals would be attracted towards this sort of legal fraternity to become a judge. The National Judicial data grid presently, is not collecting relevant data which also resulted in weakening of faith of people on Indian Judiciary. National Judicial data grid is only focusing on the number of pending cases and on the number of vacant posts of judicial officers in India, but instead it is not focusing on these principles, which will help to analyze the factor that how much time a particular judge has spent on a particular case, while dealing with that case. Furthermore, the National Judicial data grid is also not focusing on the reasons for delay in imparting justice for a particular case, which might be because of the fault of one of the parties. India is a purely democratic country, with three basic organs of government, that is, Legislature, Executive and Judiciary. The third organ enlisted, that is, Judiciary, is an independent organ which aims to impart Justice to masses at large and keeps the check and an eye over the functioning of other two organs of the government. But because of various problems being faced by the Indian Judiciary at lower and higher levels, the democratic establishment has been teared apart³¹. Every coin has two faces, in a similar manner, judiciary is utmost important component of Indian democracy, but on the other hand certain lacunae to our Judicial system is weakening the progressive pathway of Indian democratic ambits. There are following questions which are needed to be answered to curb the problem of increasing number of vacant posts of Judicial officers at

³¹ M.P. Tandon, Public International Law, Allahabad Law Agency (15th Edition) (2003).

lower and higher judiciary levels and to tackle the problem of pending number of cases at large-

1. What are the causes of increasing number of vacant posts of judicial officers in India!
2. Whether increasing number of vacant posts of Judicial officers is a boon or a bane for Indian democratic ambits!
3. Whether increasing number of vacant posts of judges is responsible for delay in imparting justice to masses at large!
4. Whether increasing number of vacant posts is responsible for the cause of loose of faith of people on Judiciary!
5. What are the effects of increasing number of vacant posts of judicial officers in India!
6. What are the solutions to curb the problem of rapid increase in the vacancies of Judicial officers in India!

Answers to all the questionnaire will help the various organs of government to work in an effective manner to tackle the problem of rapid increase in the vacancies of judicial officers in India and the filling of these vacant posts will lead to the effective implementation of all the constitutional provisions along with statutory provisions because these vacant posts are the major causer for delay in imparting justice to all especially to the people belonging to the scheduled caste's and scheduled tribes as well.

6. Right To Information Act, 2005- Boon To Preserve The Human Rights And Dignity Of Scheduled Caste'S And Scheduled Tribe'S In India- To enhance Indian democratic set up and to build up a strong democratic example throughout the globe, govt. of India had introduced the Right To Information Act in 2005 which came into force on 12th of October, 2005 and as a result of establishment of this Act, every citizen got an opportunity to demand specific data from any concerned department relating to public welfare and public affairs, which led to the introduction of transparency in one of the effective democratic set up of the world. The word transparency used herewith is directly proportional to the subject of Social Justice because with the introduction of transparency through RTI Act, 2005, each and every individual, whether he or she is rich or poor got a right to demand fairness in any matter of public concern, which led to an ultimate reduction in corruption-based policies of certain public welfare governmental officers by creating fear in their mindset. Furthermore, because of the introduction of RTI Act of 2005, an obligation has been introduced upon all the govt. officials to complete their entire work and maintain their all the official records within specified time because if someone would seek any information then such an officer

would have to send him the required information within thirty days of filling of RTI as per the norms and provisions of RTI Act of 2005. This Act of 2005, that is, Right to Information Act is a boon for the democratic establishment of India and has rightly proved that the ultimate power lies in the hands of, “We the people of India” which has clearly being stated in the preamble of our Indian Constitutional aspect as well. Right To Information has not only helped to reduce corruption, but instead, this Act has also helped to reduce exploitation of various workers or labourers working in the various departments under the ambits of government of India. There was an era in the past when India was well-known by the name of, “SONE KI CHIDIYA”, but with the passage of time a downfall came and as a result of which India lost the title of, “SONE KI CHIDIYA.” But this Act of 2005, that is, Right to Information Act of 2005 is working efficiently and will definitely help Indian democratic set up to get back the title of, “SONE KI CHIDIYA” again, in a very short span of time³². Hence, it is not wrong to state that Right To Information Act of 2005 is a building block for growing India. Right To Information Act is not only an Act but instead, it is based on the principle of, “State Political Morality”, which establishes a rightful balance and helps various departments to work according to their jurisdictional powers and not more than that. It has furthermore strengthened the fundamental principle of equality before law without any discrimination of any sort. Though it is right to say, that the introduction of the subject of Right To Information within the Constitutional ambits of Indian State is the backbone to enhance and increase the efficiency of Indian democratic ambits but now the question arises that what is the practical process to seek the information under Right to Information Act of 2005 from various departments working under the ambits of govt. of India and under the ambits of various State governments within the territory of Indian State³³. This is a question of great concern because though Right to Information as a subject has helped to reduce various discriminations, not only against labour classes but against each and every citizen of India. Now govt. of India has done its job by implementing this efficient law by introducing the Act of 2005, that is, Right to Information Act of 2005 but still there are many people still surviving in our nation who want to seek information relating to their matter of interest under Right to Information Act of 2005 but fails to collect it because they are not aware about the pattern that how to file objectionable question to seek information under Right to Information Act of 2005? Furthermore, there are many researches presently existing in India, on the subject, that What

³² See the bare act, The Right to Information Act, 2005.

³³ Recommendations of the National Knowledge Commission, for further details visit, www.nationalknowledgecommission.gov.in

is the significance of Right to Information Act of 2005, but amongst all these there are many few, which talks about the process of filling a rational question to seek information from any concerned department under the Right to Information Act of 2005. Because a person, whether he is rich or poor, will get justice in respect of certain matter only, when he will have a satisfactorily information with respect to the matter in issue which he or she will get through filling of RTI, and furthermore, if he or she is unknown to this fact then it would be difficult for him or her to get justice in respect of matter or instance in issue. So, by providing answer to this question, researcher want to ascertain the fact in-front of a layman that in order to seek information under the Right to Information Act of 2005, prima facie, a a layman has to collect an IPO-Indian Postal Order of Rupees ten only, from any Post office being established within the territory of Indian State and being recognised by the govt. of India and has to fill all the genuine details being asked in it and then has to attach a simple letter seeking information along with that IPO-Indian Postal Order and thus, has to post this Registered AD at the postal address of that specific department from where information is in need and by completing this process he or she will get an answer to its information being required within a span of thirty days of filing of this RTI as well and if the concerned department fails to provide such an information then he or she can take disciplinary action against the concerned department as specified under the ambits of Right to Information Act of 2005. It is not wrong to call that Right to Information Act of 2005 is a blessing for all the other laws along with all the departments working under the ambits of Indian democracy, as stated earlier, because the Act of 2005 has introduced fairness in the working of various departments of Indian govt. Various labour laws implemented by govt. of India in favour of employees includes The Industrial disputes Act, 1947, The Minimum wages Act, 1948, The Employees State Insurance Act, 1948, The Factories Act, 1948, The Plantation Labour Act, 1951, The Mines Act, 1952, The Employees Provident Funds and Miscellaneous Provisions Act, 1952 etc., and many more. Though we have many efficient labour laws implemented by govt. of India to reduce exploitation of various workers working with various departments but it is the Right to Information Act of 2005 which provides backbone to all these Acts by providing right in the hands of various employees to seek information from the employer that whether employer is working bas per the regulations established by govt. of India or not³⁴. The basic and ultimate aim of establishment of the Right to Information Act of 2005 is listed as follows-

1. Administrative actions can be questioned by any citizen of India as a matter of right.

³⁴ www.livelaw.in, visited on 7th August, 2024.

2. To restrict authoritarian rule of any department of govt. of India.
3. To restrict arbitrary power of any govt. official.
4. To give direction to all the govt. departments to work in a legal and fair manner.
5. To direct various governmental departments that, “Law is Supreme.”
6. Equal implementation and application of all laws without any discrimination of any sort of status/rank.
7. It aims to protect individual and their rights.

To understand the subject of Right to Information Act, 2005, *prima facie*, there is a need to analyse the fact that who is a Public Information Officer? Earlier we have discussed the process of filling of RTI to seek information from any of the concerned department and the one who will file such application to seek information under the Right to Information Act of 2005 is an informational seeker and, the person associated with the concerned department against whom such an information is being required and who is obliged to provide this information to such an information seeker is called a Public Information Officer as well. To understand the subject of Right to Information Act of 2005, it is essential to know that who is a Public Information Officer because he is an essential element of this subject of study. The basic function of Public Information Officer is to provide satisfactorily information being required by such seeker within a span of thirty days of filling of such an application as per the regulations/provisions of Right to Information Act of 2005, keeping national interest confidential. Both the subjects of Right to Information Act of 2005 and the subject of Social Justice are directly proportional to each other and are based on the principle of, “*la principe de legalite*” which means a govt. based on the principles and appropriate provisions of laws. According to the great jurist, Sir Aristotle, “Man is a social animal”, and as a result of which a man needs society for its existence but to lead a progressive life full of developmental elements such a society must be disciplined one but to lead a disciplined society there is a need to impart equality in each and every sphere of life which contributes to the subject of Social Justice as well. Right to Information Act being implemented in the year 2005 is related to the subject of social justice in the manner that it provides certain rights in the hands of citizens of India to get a genuine information in any perspective associated with their matter of interest from any governmental department, which introduced fairness in the working of certain governmental departments as well³⁵. On the basis of prior research by the researcher it is not wrong to conclude that the sum of Right to Information Act of 2005 and the subject of

³⁵ The Indian Express newspaper, accessed on 11th September, 2024.

Social Justice contributes together to the subject of Rule of Law, which is based on the ascertainment of supremacy of law, equality before law and the pre-dominance of the legal spirit as well. Hence, the following formulae in the form of mathematical manner can be drawn for the subjects enlisted above-

Right To Information + Social Justice = Rule Of Law = Strong Indian Democratic Set Up.

Furthermore, it is correct to state that Right to Information Act of 2005 has not only provided a strong backbone to all the Indian labour laws but instead it is a backbone for the golden triangle rule of Indian Constitution as well. The sum of Article 14, 19 and 21 of Indian Constitution constitutes to the subject of golden triangle rule which is a base to establish peace, discipline and social justice within the territories of Indian State as well. Hence, Right to information Act of 2005 is directly proportional to the subject of golden triangle rule to establish the title of Social justice in an appropriate manner. It is not wrong to state that if a pen is to paper, then in a similar manner Right to Information Act of 2005 is to Indian democracy. Right to Information not only help people at large to collect information relating to their matter of interest in dispute but instead it is also providing a platform to various researchers doing research in their specified fields to collect data from various governmental departments in a very simple, easy and cheap form, as it is not very much expensive to approach any governmental office of a particular department through Public Information Officer of that department to collect a particular data as well. The subject of Right to Information Act of 2005 is an effective foundational stone to implement various principles of Human rights by providing strength to the provisions of equality, good conscience etc. The idea of implementation of the Right to Information Act of 2005 has taken the charge of administrative powers of various governmental departments working under the ambits of the govt. of India and that is the basic reason for implementation of this Act of 2005. It is correct to state that Right to Information Act of 2005 is the great tool to establish the principle of supremacy of law within the territory of the largest democracy of the entire globe and that is, Indian State as well. Many times, various laymen reach's a stage of confusion that whether Right to Information Act of 2005 is associated with the subject of Right to privacy being referred within the Constitutional ambits of India or not³⁶. By providing a satisfactorily answer to this question, a researcher wants to enlighten the fact that both are two different and independent subjects of study. Though at certain instances of time, both the subjects get

³⁶ Muhammad Aslam Hayat, "Privacy and Islam: From the Quran to Data protection in Pak", Information & Communication Technology Law, Vol. 16 No-02, June 2007, 137-148 at p. 137.

in touch with each other, but it depends upon various circumstantial factors as well. Right to Privacy on one hand, is the right to protect one's personal interest while Right to Information Act 2005 imposes an obligation upon all the govt. Departments to provide required information by various citizens of India. But there are certain instances, as referred earlier also, where Right to privacy interferes into the provisions of Right to Information Act of 2005 and that instance include the question when certain person asks a question under the Right to Information Act of 2005 from a public information officer relating to the aspect which will harm someone's personal interest or privacy in the futuristic instance of time span. So, the ambits stated in the Right to Information Act of 2005 clearly states that a public information officer is not obliged to provide such an information to any person who has filled RTI to seek certain information which will harm someone's reputation or is against the interest of national integrity and unity and such a public information officer has the right to file a refusal in a humble manner to such information seeker by concluding that it is against his jurisdictional character to impart such and such information as well. Not only the Constitution of India but certain Inter-national organisations are also working on the subject to enlighten the fact that Right to Privacy is an independent subject of its own and is not dependent on any other subject of study. Article 12 of Universal Declaration of Human Rights states that no one has any personal right to attack on the reputation and privacy of other person and the same fact has also been ascertained under Article 17 of Inter-national Covenant on Civil and Political Rights. Thus, Right to Privacy is not to be confused with the subject of Right to Information act of 2005 as well.

Whether Right To Information Act, 2005 Is Implemented At Ground Reality Or Not!

Today's world is an era of 21st century which deals with digital world, advance technology etc., but in this fastest growing world of 21st century, still there are many people in the developing and under developed nations who are still illiterate and are not aware about their rights, duties and obligations towards their State as well. One of such State is India, which is facing the similar challenge. Most of the population of Indian State is still illiterate, backward and is unaware about their rights which is an obstacle in the path of implementation of Right to Information Act of 2005 at ground reality. Government of India is introducing great policies, day by day, as per the advancement in the society but the major drawback being faced by Indian State is that, most of its population is unable to understand the objectives of various subjects being introduced by govt. of India in the form of various Acts and regulations for the benefit and welfare of its citizens as well, and one amongst these Acts in,

the Right to Information Act of 2005. But every person, every organisation and every nation on this earth wants to focus towards its personal growth and in a similar manner, govt. of India is launching these Acts and regulations to improve its existing situation. Thus, instead of crying on a particular situation, one needs to focus upon various alternatives to improve its situational aspects³⁷. In a similar manner, to tackle the major challenge being faced by Indian State, that is, illiteracy, to implement the laws such as the Right to Information Act of 2005 in a proper and effective manner, all the literate and prudent citizens of India have to come in front and have to take initiative to join hands with the govt. of India to help all those illiterate one's by creating awareness amongst them through legal aid awareness camps regarding their rights and obligations towards their own State. Furthermore, various Non-governmental organisations have to come in front to organise seminars at ground level to create awareness of similar level. This will help to improve the democratic status of Indian State and will help in the implementation of all the policies, regulations, rules and statutes being introduced by govt. of India at ground zero. Another obstacle which comes in the path of implementation of the Right to Information Act of 2005 is that, India is a wide country with large number of population throughout the globe and as a result of which it would be difficult for bureaucrats to tackle records of large number of population because bureaucrats are very few in number as compared to the data of population surviving within the entire State, which sometimes results in missing of governmental files as a result of which certain public information officers fails to provide information to the information seekers under section 6 of the Right to Information Act of 2005 as well. Thus, in order to curb this issue an obligation has been raised on the govt. of India to generate much-more number of posts or vacancies of bureaucrats to tackle large number of population as well. In *Saurav Das Vs. Union of India*, the bench of Justice MR Shah and CT Ravikumar, stated clearly and precisely, that each and every record under the ambit of governmental department is not to be accessed by public. Hence, the subject of RTI is applied only to seek such information's which are not against the national interest. Further, in *R. Rajagopal & Anr. Vs. State of Tamil Nadu*, the apex court of India stated that the Act of 2005, that is, the Right to Information Act is not violative of Right to privacy and is not a bane, but instead it is a boon for Indian democratic ambits as well. Prima facie, researcher had conducted a non-empirical study and found that Right to Information Act of 2005 is a boon for all the existing labour laws implemented in the entire State to protect the interest of labourers working under the ambits of govt. of India. But to

³⁷ G. Mishra, *Right to Privacy in India* (1994), at P.47

study RTI Act of 2005, in depth, there is a need to get familiar with Section 8 of the said Act of 2005. Just like ozone layer is to earth, in a similar manner, Section 8 of the RTI Act of 2005 is to Indian Labour Laws³⁸. This is so because Ozone layer protects the earth from UV rays and in a similar manner, Section 8 of Right to Information Act of 2005 protects the Public Information Officer from giving information under the said Act which is in the interest of national security and whose pronouncement may lead to lack of national security as well. Over all, if we talk about RTI Act of 2005, we may conclude that it is not a backbone for labour laws established in our State but it is a backbone to improve the functioning of each and every statute, government department, State machinery established and working under the geographical ambits of Indian State as well. In the landmark judgement of *Raj Narain Vs. The State of Uttar Pradesh*³⁹, the Supreme court of India held that right to seek information under the is to be considered as fundamental right under Article 19 of Indian Constitution. The Right to information Act of 2005 also imposes a penal liability in terms of monetary relief upon government office which lacks to provide information to the information seeker under the Right to Information Act of 2005 as well. Furthermore, if any public information officer fails to deliver the required information by any information seeker or applicant within time then, such a public information officer of concerned department has to provide information free of cost to such applicant and in case, applicant or any information seeker is not satisfied with the reply being filled by such and such public information officer then he or she has the right to file an appeal to the appropriate appellant authority and it is the duty of such an appellant authority to satisfy the applicant within thirty days of filling of appeal and in exceptional circumstances, the appellant authority can extend this time limit of thirty days to forty five days for disposal of such an appeal as well. Thereafter, if the applicant or any information seeker is still not satisfied from the disciplinary action being taken by such appellant authority then he or she has the further right to file appeal against the order of such appellant authority in front of Central Information Commission, commonly known as CIC as well, whose decision would be final for the same. The above referred hierarchy of filling appeals as per the provisions of the Right to Information Act of 2005 clearly states the effectiveness in the implementation of the Right to Information Act of 2005 by the government of India, which is clearly strengthening the democratic set up of our country, to make India-The Great Bharata as Sone Ki Chidiya, once again in this fastest growing world of 21st century era as well. Though we have learned the importance and significance of the

³⁸ M. Glenn Abernathy, *Civil Liberties under the constitution*, at p. 95 (1977).

³⁹ AIR 865 SCR (3), 333 1975 SCC (4) 428.

Right to Information Act of 2005 to enhance the democratic set up of India, which is the ultimate objective of the establishment of this Act, but there are various researches still existing on the similar subject which are explaining the same instance, but many researches have failed to discuss the elements which practically helps in the effective implementation of the Right to Information Act of 2005 as well, and one of such an essential element is any of the Post Office being established within the territory of Indian State by govt. of India to begin with the procedure of filling application under the Right to Information Act of 2005 through offline platform and the other element is Internet because application for Right to Information can also be processed through online platform as well. Hence, both these elements play's a vital role in the successful implementation of the Right to Information Act of 2005 and are proved to be a boon for the Act of 2005. India is the largest democracy of the world where ultimate power resides in the hands of common people, so in such a country like India people have the right to know as per Article 21 of our Indian Constitution, that what their elected representatives are doing for their welfare as well and to overcome this challenge, the Right to Information Act of 2005 has been introduced by the govt. of India. Furthermore, all the tax payers have the right to know the process of implementation of deduction of taxes, which they can access through the Right to Information Act of 2005 after the year, 2005. But it is correctly stated by someone that every coin has two faces and a thing which has a lots of merits, has some demerits also. In a similar manner, it is not wrong to state that the Right to Information Act of 2005 has a lots of merits and is a boon for Indian democracy, but sometimes people seeking information under the said Act of 2005, tries to misuse their power being given to them to seek any information from the concerned governmental department by seeking irrelevant information and to protect such and such information, which cannot be disclosed to public at large due to certain rationalities based on protection of national interest, the govt. of India has given a clear cut instructions to all the public information officers of concerned departments that not to disclose any such information to any citizen or third party seeking information under the Act of 2005 as well, because it has been clearly stated under the ambits of golden triangle rule of Indian Constitution that the freedom of every citizen of India is limited up to the poke of its nose and one has no right to interfere in the personal interest of others or he or she has no right to interfere in any matter of national security or of national concern as well⁴⁰. Hence, it is not wrong to state that Right to Information Act of 2005 is not imparting an absolute power in the hands of citizens of India to seek any

⁴⁰ Prabhsahay Kaur, "Freedom of Press vis-à-vis Responsible Journalism", available at <http://www.legalserviceindia.com>, visited on 1st January 2011.

information as it is restricting them to seek certain information's relating to matters of national security, other's reputation etc. But although, looking at an overall aspect of study, the Right to Information Act of 2005 has proved to be a boon and is a sort of blessing for Indian democratic ambits as well.

Existence Of Ethical Challenges Against Scheduled Caste'S And Scheduled Tribes- A Bane

The question arises, that even after the introduction of various advanced technologies, and in the era of development when India has reached at moon, why Indians are still believing in the existence of Caste based discrimination. The answer to this question is that, the government of India is somehow, directly or in-directly responsible for this ascertainment. Prima facie, whenever any person applies to take part in any government-based activity or any citizen want to apply for any sort of govt. job, he or she is usually asked a question that to what category he or she belongs. Though earlier, reservation was granted only for ten years after Independence to develop the lifestyle of people belonging to such category, but still even after 75 years of Independence, govt. of India has failed to uplift the standard of such people belonging to Scheduled Castes and Scheduled tribes. Furthermore as per the statement of Justice BR Gavai (Judge at Hon'ble Supreme Court of India), extension of reservation policy is directly or indirectly also affecting the development of Indian State in a worse manner because for an instance, if a person is working as an I.A.S. officer and is getting a good salary package but furthermore, he or she belongs to Scheduled Caste or Scheduled tribe and is getting the benefit of reservation police introduced by govt. of India and thereafter he or she has two sons who completed their entire studies by studying at convent schools and colleges, but when his or her sons have to apply for any govt. job, they are also getting benefit of same reservation policy which is a sort of curse upon our Nation because children's born to an I.A.S. officer have good supportive backbone from his or her parent as well, throughout their life⁴¹. Secondly, a person who is a labourer, but belonging to general category has two children's who completed their entire studies by studying at govt. school and borrowed books from others while completing their studies are not been provided with any sort of reservation. Thus, NGO's and social activists have to come in front today, to lead an effective role to bring this fact in front of govt. of India that today's India is demanding reservation on the basis of economic pillars and not on the basis of caste. But prima facie, on the other hand, there is a need to remove caste-based discrimination which is still very prevalent in various

⁴¹ Robert Trager and Donna L. Dickesson, Freedom of Expression in the 21st century (1999), at p. 194.

parts of India, and it is to be dominated or removed by abolishing sur-names behind the nomenclature of each and every citizen of India. So, various Non govt. organizations are required to lead such kind of role to bring in front their various suggestions in front of govt. of India to make India – A caste free and fully developed State as well. Furthermore, researcher had also tried to understand the basics behind the obstacles to develop our State, which we will come across with an example. For an instance, in any of the competitive exam, whose difficulty level is same, many aspirants are appearing at the same time and all have human minds of similar nature, but in India few aspirants who scores less are given preferences on the basis of reservation policy of Indian State, though the difficulty level of the exam was similar. Though the researcher is not against the reservational grants, but such grants are to be given on the basis of limited priorities such as concession in filling fee for these competitive exams by the aspirants belonging to special category is a welcome legislation by the govt. of India, but when question comes as to testing knowledge of aspirants, the same criteria undertaken by the govt. of India is to be abolished and preferences are to be given on the basis of knowledge and not on the basis of reservation. But to implement this set of principle, the researcher again want to enlighten the fact that, prima facie, there is a need to abolish the roots of caste system from India, for which, government of India has to take initiative to implement much more strict statutes and policies and furthermore, non-government organizations have to come in front to shake hands with govt. of India to implement these statutes in the futuristic era to come across⁴². Thereafter, the question arises that why India is still facing such kind of bane-full instances even after so many years of Independence. The answer to this question lies in the fact that there are many more non- governmental organizations in India which are just tiger on paper, which means they are not working practically at ground zero, but instead are only working in papers and are earning money through various funds, either generated by the appropriate govt. or by any private individual or company. So, today there is a need to bring this issue and ascertain the data in front of appropriate govt. of our State, regarding the list of such and such non-governmental organizations whose basic purpose is to do the business and not to serve the nation and furthermore, it would be an obligation upon the appropriate govt. of our State that to take strict actions as per the established statutes against all those persons associated with such and such non-government organizations as well. But now the question furthermore arises that who is going to ascertain this list of fraudulent nongovernment organizations. By

⁴² Law Commission of India, “Consultation paper on Witness identity protection and Witness Protection Programme”, August, 2004, p.1.

providing an answer to this question, we may conclude that, each and every prudent citizen of our nation, including various Researchers from various fields, Advocates, Police officials have to come in front to keep a check on such kind of fraudulent activities, being conducted by various non- government organizations and to ascertain the same in front of govt., as stated above. The research work undertaken has clearly stated the instance, that why India, that is Bharata, is a developing nation even after 75 years of Independence and this is so, because our state is not giving preferences to knowledge and skills but instead it is still paving its way towards reservation. Secondly, many of the non- government organizations are just tiger on paper and are cheating the entire country along with all countrymen as well. Furthermore, corrupt administration is also responsible for this stage of being a developing nation. Today, we need to analyse all these issues and have to look for solutions to curb these problems. So, in order to curb these instances, there is a need to promote various principles highlighted by various Indian epics of Historic era. We have to create awareness amongst the youths, especially, that we-Indians are the people who believe in the principle of Vasudev Kutumbakam and Unity in diversity. Hence, instead of focusing upon caste-based discrimination, we all have the need to focus upon the subject that Why still we are a developing nation at all? If we all will start finding an answer to this question and will work effectively together in a bona-fide and optimistic manner in our various fields and perspectives, then the day is not far when we are going to be declared as a super developed power of the entire globe as well. Thus instead of focusing on bane's, our focus should be upon boon's to establish a full fledged developed state and to furthermore, transform – “India, that is, Bharata” to “India, that is, Great Bharata.” Furthermore, there are various landmark judgements delivered by honorable apex court of India which are acting as a catalyst to remove Caste based discrimination. In Hussainara Khatoon Vs. Home Secy. State of Bihar⁴³, it has been held by court of law that timely justice is the need of hour and no one is to be harassed by consecutive delay in judicial proceeding as a result of any sort of discrimination because law is equal for all and is supreme in nature. Thereafter, In Kesavananda Bharti Sripadagalvaru Vs. State of Kerala and others, the court stated that any part of Indian Constitution can be amended with the change in circumstance and demand of time but basic structure of it is not to be amended because it is a foundation stone for social equality and social justice⁴⁴. In Bachan Singh Vs. State of Punjab⁴⁵, the subject of retributive principle of

⁴³ 1979 SCR (3) 532.

⁴⁴ AIR 1973 SC 1461

⁴⁵ 1980 (2) SCC 684 (10)

imparting punishment is shifted towards reformative principle and it is clearly stated by court that death penalty is only to be imparted in rare cases and punishment is to be based on humanity grounds to reform the personality of the accused. In *Union of India Vs. Raghubir Singh*⁴⁶, the court of law held that rule of law is the basis for achieving social equality and social justice because rule of law governs life of people and regulates functions of the State from the decisions of Superior courts as well.

Exclusive Role Of The Teachings Of Various Guru'S Of Sikhism To Remove Caste Based Discrimination Throughout The Globe-

The teachings given by various guru's of Sikh religion are similar to the teachings of Kabira to strengthen the path of equality within the ambits of existing societal instance. The path of enlightenment given by the founder of Sikh religion, that is, Guru Nanak Dev is based upon justice, equity and good-conscience. Guru Nanak was a Kshettri of the Bedi clan but still he focused upon the path of equality instead of, focusing upon the existing discrimination on the basis of Caste as well. The origin of Sikh religion is based upon the combination of Hinduism and Muslim religion to strive the path of equality amongst the society. The statistical data revealing the population of Sikh religion and the people who became the follower of Guru Nanak Dev, is about two million's. Of these many of them are Jats & Churahas. According to the words of Guru Nanak Dev, Karma is the supreme Dharma. It means that a person is to be judged on the basis of his work and not upon the basis of his caste and birth as well. The statement is very true because Dr. B.R. Ambedkar took birth into a family which, before his birth was a victim of caste-based discrimination but the achievements of Dr. B.R. Ambedkar through his work, has not only changed the life style of his family but has enlightened the whole world as well. The origin of Sikh religion has focused upon the principle that, "God is one" and no one is above to the God. This principle changed the mind set of various people and has brought up a new developmental change into the society at large. Further more the followers of Sikh religion celebrate their each and every festival including Guru-Purab's by distributing Halwa (Kadah-Prasad) and by distributing food, commonly known as Langar amongst masses at large. Not only the teachings and principles which were imparted by the ten guru's of Sikhism to the entire society contributed to reframe the society full of equality but even the serving of Halwa- Kadah Prasad and Langar teaches us many more things. The distribution of Langar teaches the path of good conscience because whenever Langar is

⁴⁶ www.indiankanoon.org, accessed on 30th August, 2024.

served either at Gurudwara's or at any other place, then it is not being asked from the person enjoying this Langar that from which religion, caste, creed, sex etc., he or she belongs from, but instead of it this Langar is served to masses at large with great prosperity and happiness. Thereafter, Guru-bani associated with Guru-Granth Sahib is the major subject of Sikh religion which guided people at large, that, god has created this universe by adopting the principle of-"AVAL ALLAH NOOR UPAYA KUDRAT DE SAB BANDEH, EK NOOR TE SAB JAGH UPJEHA KAUN BHALE KAUN MANDEH", which means that God is one and no one is above him and thereafter, it is the nature which has created all the human beings and God exists within the nature and instead of wasting our time upon the sort of discriminations on the basis of Caste, today's generation must focus upon the path of equality and must show their concern for preserving the nature at large. Further the Sikh religion is based upon the principle of, "SABAT DA BHALA", which means that instead of pulling one another's leg, today, we have a need to focus upon the welfare of each and every person, community, society, nation and universe in the end. If one thought of, to destroy other, then his Karma will destroy him first. So instead of focusing upon the path of destruction, there is a need to adopt philosophy of welfare⁴⁷. Sikhism has taught the entire world that one should follow the path of Sewa & Simran, which means that if one serves the humanity, then ultimately, he or she is going to serve the God because no one has seen the god and no one has met him ever but it is believed that God exists in the nature along with in the soul of each and every human being as well. Sikhism also focused upon the significance of Guru in the life of each and every human being. According to Sikhism, it is the Guru who is going to bring amendments in the life of a person. So one should adopt the bona fide principles in his or her life by focusing upon the path shown by his or her guru to him or her as well.

Role Of Indian Criminal Justice System To Curb Crime Against The Scheduled Caste'S And The Scheduled Tribe'S-

Criminal justice System of any country is the basis of establishing, peace and tranquility, which includes not only the judicial system but investigating machinery also. Equal respect for the rights of all sections of the society is necessary to obtain full human resource development respecting the basic human right of non-discrimination. The Criminal Justice System has the power to control crime, prevent crime and punish the criminals. Pre-trial procedure involves arrest and Investigation under the Criminal Procedure Code 1973 & under The Bhartiya Nagrik Suraksha Sanhita, 2024. Criminal Justice System is composed

⁴⁷ Bhai Jodh Singh, Gospel of Guru Nanak Dev Ji (3rd Edition, Language department, Punjab, 2021) p. 109.

mainly three vital organs, namely (i) Police, (ii) Judiciary and (iii) Prison. In the Hindu scriptures of Manu-Samiriti a harsh punishment is prescribed for the violators of law. With the passage of time it was realized that the victim should not be allowed to take law into his own hands for this purpose. The deterrent punishment was considered important to control crime during old days. After French revolution, it was realized that the deterrent punishment was ineffective to control crime and deter the criminals from committing the crime. Criminals are created by the society. The history of crime is as old as of mankind itself but in the primitive period "a tooth for a tooth", "an eye for eye" and "a life for a life" was the essence of criminal justice in those olden days⁴⁸. The crime was no longer considered an offence against the individual only, but a revolt against the norms of an organized society. In a modern welfare state, the purpose of criminal justice system is to protect the rights of individuals and punish the wrongdoer for the violation of basic norms of society. To insure that innocent persons may not be victimized the accused has been granted certain basic rights and privileges to prove his innocence. The quality of national civilization can be largely measured by the respect shown for the protection and promotion of minorities in India. The protection of the Scheduled castes & the scheduled tribes is of national concern and it cuts across all ideological, political & cultural boundaries. The rampant occurrence of violence against the Scheduled castes & the scheduled tribes, especially in the State of Punjab, even after 75 years of Independence strikes a blow at the world's greatest democracy & raised eyebrows of public at large and shaken the, every faith in democracy. The research work to be undertaken will try to address the issues which concern the administration of the criminal justice system. It will further explain the impact of existence of caste system on the over-all development of a nation & hence, it is a bane for our democratic ambitions. The National Commission for Scheduled Castes and scheduled tribe has pointed out that it is a serious matter of concern to take actions to curb violence against the backward classes. Furthermore, National campaign on Dalit Human Rights (NCDHR) of 2008 clearly stated that looking at the instances of past, Dalits were not allowed to study, work with dignity and freedom but instead they were and are still the victims of violence at some places or more. The campaign originated to grant equal rights to work, right to just and favorable conditions of work, right

⁴⁸ William A. Schabas, "An introduction to the International Criminal Court", Cambridge University Press (2001).

to adequate standard of living, right to education and to uplift their status in the society as also stated in Equal remuneration Act as well⁴⁹.

CONCLUSION

Though it is a matter of proud for we all as Indians that we have many excellent legislations, statutes, landmark judgements delivered by honorable apex court of India to curb violence against the people belonging to the scheduled caste and the scheduled tribe but still it is a matter of concern on the other hand that the criminal activities against the people belonging to the scheduled caste and the scheduled tribe are continuously increasing day by day and furthermore, seeking justice by relying upon the criminal justice system of India is itself a sort of harassment because of pendency of large number of cases under the ambit of The Scheduled Caste & The Scheduled Tribe (Prevention of Atrocity) Act, 1989 as well. Today, it is not a matter of blaming the government of India, and it is wrong to conclude that because of failure of government it has become difficult to impart justice to the people belonging to the scheduled caste & the scheduled tribe but instead of it, there is a lack of awareness amongst masses at large in respect of their rights, for which there is a need to organize legal aid camps, people induction and awareness programs, especially within the geographical ambit of rural areas as well⁵⁰. The objective of the proposed research work undertaken by the researcher is to generate and create high level of awareness amongst various stakeholders in respect of their rights and obligations being imparted under The Scheduled Caste's and Scheduled tribes (Prevention of atrocity) Act, 1989, for which various Non- Governmental Organization will act as catalyst⁵¹.

⁴⁹ Pope J, "National Integrity Programs" in P. Lengseth and K. Galt (eds), Partnership for Governance, Proceedings of a conference held in Copenhagen on 31st May 1996, pp. 23-26.

⁵⁰ See The Police and Criminal Evidence Act, 1984, Ss. 76, deals with confessions in England.

⁵¹ The Court Today, available at [www.icc-cpi.int/icc/docs/PTDS/publications/the Court Today Eng.pdf](http://www.icc-cpi.int/icc/docs/PTDS/publications/the_Court_Today_Eng.pdf) (last accessed on 10th July 2011).

