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**AN INTERDISCIPLINARY PEER-REVIEWED HALF YEARLY JOURNAL
OF
DISPUR LAW COLLEGE**

Editor-in- Chief: Dr. Jintu Borah



DISPUR LAW COLLEGE

**AFFILIATED TO GAUHATI UNIVERSITY & RECOGNIZED BY BCI
DHARMANANDA DAS AVENUE,
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At the time of publishing the journal, **DLC Image-Pratibimba**, we have to thank the Principal of the college Dr Gargi Dutta Paul madam and Vice-Principal Dr Swapna Manindranath Deka madam for their great help and encouragement to us. We have also to thank our co-editors, Dr. Indrani Medhi, Dr. Pallabi Baruah and Mr. Kamal Medhi and all the members for their help. I have also to mention Mrs. Pallavi Neog, Librarian of the College library and technical editor of the journal for her great help. We have also to thank our student members for their support. At last, we have to thank our contributors, without their writings it will be not possible to publish the journal.

Thank you all.

Dr. Jintu Borah

ABOUT THE JOURNAL

‘DLCIMAGE: প্রতিবিম্ব’—is an interdisciplinary bilingual (English & Assamese) journal where the researchers can submit their articles of any discipline. This is the second issue of the journal. The research articles will be peer reviewed. We have received the ISSN and soon we will apply for UGC Care list. The researcher can choose the topic of their own related fields like English, Political Science, Sociology, History, Law, Economics, Public Policy and any other Social Science.

EDITORIAL MESSAGE

Editorial DLC Image-Pratibimbo, 2024 (Vol-II, Issue-II, June to December Issue)

We are happy to greet you for the Vol-II, Issue-II of the research journal, DLC Image-Pratibimbo. This time, we publish it on time. The research journal has been publishing by the blessing of God and for the continuous support of the respected Principal and advisor, Dr Gargi Dutta Paul madam, respected Vice-Principal and advisor Dr Swapna Manindranath Deka madam, respected editors Dr. Pallabi Baruah, Dr. Indrani Medhi, Mr. Kamal Medhi, and faculties and members of the journal, Dr. Jyotshna Saloi, Dr. Suranjana Kalita, Dr. Chandamita Sarma, Dr. Plabita Saikia, Dr. Nijumoni Das and Technical-editor Mrs Pallavi Neog, and new faculties of the college, Dr. Punyag Pratap Bordoloi, Mr. Tanoy Paul, Mr. Banajeet Baruah and Ms. Kaberi Sonowal. And I have also to thank all the guest faculties of the college for their support for the publication of the journal. In future there is a scope to enlarge our editorial board.

Respected Principal, Dr Gargi Dutta Paul ma'am and Governing Body's President Dr Romesh Chandra Borpatra Gohain sir help and encourage us to release the fund for journal's website and they also encourage us to publish the hardcopy in future.

I have to thank our respected contributors of this issue, Vice-Principal the college and advisor of the journal Dr. Swapna Manindranath Deka, faculties of the College-Dr. Suranjana Kalita, Dr. Chandamita Sarma, Mr. Tanoy Paul, Ms. Kaberi Sonowal and guest Mr Sumanta Rajbonshi and Mr. Jordan Thapa and others who have done profound research on different topics and make the fourth issue of the research journal an informative and interesting one. Like the previous issue, this issue is also free from plagiarism. Every article is checked by Turnitin. We accept research articles which are of below 10 percent plagiarism which is an approved norm by the UGC. All articles are peer-reviewed, and I thank our faculties who have taken pain in reviewing the articles and handed over us on time. After having peer-reviewed, corrections are made by the authors as advised by the peer-review team. I also thank our web-designer for his prompt and excellent work.

Our research journal, DLC Image-Pratibimbo is now going to complete its second year. So, we want everyone's co-operation. It is like a tender sapling till date. Your contribution in the form of suggestions, providing research papers will take care of the journal to grow.

We will apply for the UGC Care soon. Response to the journal is now quite encouraging. We hope it will be enlarged and be developed in the coming issues. We will constantly strive for the improvement of the research-journal. Your support and suggestions will make our endeavor successful.

Thank You.



Dr Jintu Borah
Editor-in-Chief, DLC Image-Pratibimbo and
Assistant Professor of Dispur Law College.
Date: 1/7/2024.

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Understanding the Martial race theory and its effect on Social life with special reference to Nepali community

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Abstract:

By the end of Anglo- Nepalese war of 1814, the British officials admired the courage and braveness of Nepalese and decided to recruit them into British force. Nepalese who were regarded as Gorkhas were recruited in British military and by the end of 1850; many Gurkha Battalions were created in India. When Indian soldiers revolted against the British East Company during 1857, a new recruitment ideology was adopted by the British Officials called the Martial Race. In late 19th century, Martial race theory became one the most important criteria for recruiting soldiers in British military. The theory was based on physical characteristics and traditional racial prejudices. Though theory was racial but it was also a diplomatic strategy of British in India which created a division of races into two, warrior and non-warrior races. The Gorkhas was categorized into Martial race and the numbers of Gorkhas were recruited in British military not only in India but also for British Empire. Gorkhas of Nepal became important soldiers for the British even in European wars but the community of Nepalese were divided into two due to Martial race. Some few ethnic clans of Nepalese were regarded as warrior tribes and were listed as Martial race whereas Non martial race were those who were unfit for wars were and were regarded as Nepalis by the British. This paper is by no means an exhaustive or conclusive study rather it serves analyses on martial race theory and its effect on social life of Nepali community.

Keywords: Ethnic, Martial Race, Gorkha, Nepali and British

Introduction

Originally, the theory of Martial race was not purely a British invention but have several points of origin within both Indian society and British biases. Martial race was considered those ethnic, caste or Communities who were brave, strong and have skills in war or battles but most importantly loyal where as those who were regarded unfit for wars as soldier were considered as non- martial race by the British. After 1857, the British started to recruit large numbers of soldiers from those caste or community who were categorized as martial race by the British Officials. At first only few clans of Gorkhas of Nepal were regarded as Martial race but gradually few more clans were added and the British in India created numbers of Gorkha battalions by the end of 19th century. Gradually, British divided the recruitment processes into two, one in which only martial race was recruited and another in which mixed races were recruited; no doubt the martial soldiers were given more importance. The modern historians believe that the theory was designed to avoid the intellectual and nationalist soldiers from

recruitment and based on those who remains loyal towards the Government¹. The Martial race theory was originated in India during 1857 and by the end of 19th century it became one of the most important criteria for recruitment of soldiers in British military but the concept of Martial race is not a constant one but it evolved through the time². The basis of the theory is often ascribed to a notion that was summarized in a statement given by General George Macmunn “One of the essential differences between East and West is that, in East with certain exceptions only certain clans and classes bear arms”. His statements gave an idea of creating difference between the clans, caste or tribe and community regarding warriors and non-warriors. Soon the concept emerged as in the name of Martial race which had a profound impact in military recruitment processes during the Colonial period, the groups that were identified as martial race were regarded as warrior clans³. From the colonial powers perspective, the groups which were identified as martial race did provide the crucial support to the colonial government, not just as a soldier in the army but also in different military and civil departments. In post-colonial era, India continued with limiting the recruitment to few selected groups identified as martial race like the Gorkhas, Rajputs, Sikhs, Punjabi, Marathas and Jats. The British were much more focused on Gorkhas of Nepal generally not only because they were strong or skilful but because they were loyal, and after the mutiny of 1857, they British wanted to change their strategy. The British not only focused on recruiting Gorkhas into British military but they also wanted to recruit other Nepali communities for working in different economic sectors specially in Northeast India since they were skilful and hardworking labours. Another reason for recruiting Nepalese in economic sectors was that they were cheap labours just like the Gorkhas. The British not only divided the Nepali communities into two but they also created a large social gap between the ethnic and non-ethnic clans of Nepal.

Methodology

The study is based on secondary sources like published literature like books, journals and research papers. The sources from unpublished works are also used for analyses purposes only like local books and articles.

Objectives

This research paper aims to find out the concept of Martial race and its importance in military recruitment, also tries to understand the social effect of martial race theory on Nepali communities which was created by the British in India. This paper is beneficial for researchers and scholars for understanding the Martial race theory and history of Gorkhas in India.

Gorkhas as a Martial race

The term Gorkha have different origins and still a debatable topic among the historians, some believes the word Gorkha was the of a principality located in Nepal where as some contemporary scholars gives reference to the unification of Nepal under the command of King Prithvi Narayan Shah who regarded as Gorkha king of Gorkha Kingdom and his soldiers were known as Gorkhas⁴. During the 18th century, the kingdom of Nepal adopted the policy of

¹ Cardew, F. G. (1903). *A sketch of the service of the Bengal native infantry* (p. 139). Office of the Superintendent of Govt Printing, Calcutta.

² Captain W.J. M. Spaight, 'The History of Gurkha Recruiting', *Journal of the United Service Institution of India*, Vol. LXX

³ Caplan, Lionel (2000). *Land and Social Change in Eastern Nepal of Hindu-Tribal Relation*. Lalitpur: Himal Books

⁴ Bista, D.B. (2000). *People of Nepal*. Kathmandu: Ratna pustakBhandar K. (2076 B.S.). Pararastrakaapaatra, Kathmandu: Kitab Publishers.

extending the territories and gradually they created a territorial dispute with British India when they reached Kangra region⁵. The British East India Company of India declared war against Nepal on 1st November 1814 which is known as The Anglo-Nepalese war and by 1816, Nepal was defeated by the British force and the war ended up the Treaty of Sugauli. The treaty was aimed at putting a limit to expansion and restraining the Gorkhas military in power in Nepal. During the war, British officials were impressed by the bravery and brilliant fight skills of Gorkhas and due to which a request was placed before the Gorkha Kingdom regarding the recruitment of Gorkhas into the British military. Gorkhas in British Military was significant and the British pronounced them as Gurkhas who were largely consist of ethnic tribes like Magar and Gurung of Nepal. After British adopted the theory of Martial race in military recruitment, they divided the communities of Nepal into two categories in which tribes who were warrior in nature was regarded as Martial race and other tribes of Nepal were regarded as Non- Martial race. The tribes listed as martial race were called Gorkhas who were largely recruited in British military whereas tribes listed as non-martial race were called Nepalis and were employed in British economic sectors such as coal mines, tea gardening and working as coolies or labors. By 1885 to 1901, Gorkha recruiting depots were established in India and numbers of Gurkha Regiments were added to British military⁶. The numbers of Gorkhas were largely of ethnic tribes of Nepal at the beginning but gradually few more tribes were added in Gorkha regiments. Before Indian Independence, there were more than 55 battalions of Gorkha regiments and the Gorkhas were not only for India but were also forced to work oversea during which more than 10,000 Gorkha soldiers were dead in world wars⁷. In 1947, Nepal government signed tripartite agreement with the British and Independent India according to which the recruitment of Gorkhas from Nepal will be divided between India and Britain in which four Gorkha regiments will stay with British and six number of Gorkha Regiment will stay with India.

The division in Nepali Community due to Martial race

The British created differences within Nepali community by the end of 19th century, that tribe who were listed as Martial race was called Gorkhas and other tribes were regarded as Nepali. The Gorkhas were mostly consist of ethnic tribes such as Magars, Gurungs and Newars where as other Nepali communities like Bauns, Sarki, Sonars etc were regarded as Nepali. No doubt, the Gorkhas were very skilful, strong and brave warriors but they also proved to be very loyal towards the British government due to which the demand for Gorkhas increased day after day. By 20th century, some new tribes from Nepali community were added in Martial race like Limbu, Rai and Chhetry and in other hand tribes who were categorized as non-martial race of Nepal was hired for working in economic sectors⁸. The non-martial races of Nepal were also beneficial for the British government in India since they were skilful labours but most importantly cheap and loyal. British forced both Gorkhas and other Nepalese community to settle in Northeast India during the early 20th century and created job opportunities in different economic sectors like coal mines, working in tea gardens, Petroleum etc. for Nepalese and for Gorkhas, they created battalions. The Nepalese were also hired for working in construction sites and household where as Gorkhas were working overseas like in Europe and Africa for British military purposes. The ethnic tribes who were listed as martial race became more important for British during world wars and this also created a huge social gap between the

⁵ Adhikari, B. (2015). The Dibya Upadesh of Prithvi Narayan Shah retrieved from spotlightnepal.com

⁶ Bellamy, C. (2010). *Gorkhas special force* (pp. 45-48). John Murray London.

⁷ Rajit K. Mazumder, *The Indian Army and the Making of Punjab* (New Delhi: Permanent B

⁸ Banskota, P. (1944). *The Gorkha connection, a history of the Gorkha recruitment in the British Indian army* (pp. 30-35). Cambridge University Press.

communities of Nepal. The ancient caste system of Nepal which was largely based on Hindu Varna system changed into martial and non-martial race. The difference between Gorkhas and other Nepali communities increased year after year since both were going through socialization, adopting new culture and traditions since they were living in different parts of India. The traditional dresses and languages of ethnic tribes were different than the other Nepali communities since ancient time but after they were divided by the British according to martial race theory, the difference gave a pure picture where one can differentiate martial and non-martial community⁹. The Nepali communities including ethnic tribes like Magars and Gurungs were once under the same nationality and same system but their cultural behaviours changed since settling in India for different purposes as ethnics were more into living as a warrior life¹⁰. A large number of Nepalese settled in India during the 20th century and after Indian Independence, there was still a social division between martial race and non-martial race. The ancient living conditions of Nepalese changed since they were living under the commands of British even their infrastructure of houses, and food habits changed according to settlement. Even after Indian Independence, Nepalese in India are still divided into Gorkha and Nepali but since all the Nepalese regard themselves as Gorkha as they belonged to Gorkha land of Nepal, other Indians still believes that the martial races are the only Gorkhas whereas Nepalese are results of Migrations and British Settlements.

Conclusion

As observed traditionally, Martial race theory which was adopted by the British officials after the mutiny revolt of 1857 in India and became the most initial part of British military system. British divided the communities on the basis of Martial and Non Martial race due to which many communities were divided into two. The Gorkhas were categorized as martial races who were generally strong, skilful and loyal warriors like Magar, Gurung, Rai, Limbu and Newars where as non- martial races were unfit for battles and wars like Bauns, Sarki, Sonars etc. according to British. The division of communities created a huge social effect on Nepali communities who were originally from Nepal. Both martial and non-martial race from Nepali communities were settled down in India for British beneficial in military and in economic sectors. The culture and traditions of both the communities of Nepali changed gradually after the settlements and became different from each other from one way to another. Even after Indian Independence, Nepalese who were settled in India didn't understand that both the ethnic tribes who were regarded as Gorkhas and Nepali belong to same community. Many Nepalese in India proclaim themselves as Gorkha since they belong to same ancestral land which was called Gorkha or Gorkha kingdom but for other Indians, only the soldiers of Gorkha regiments are termed as Gorkha due to which Nepalese lost their real Identity in India since they are regarded as outsiders who were migrated and settled by the British.

⁹ Baral M. K. (1992). PalpaTanahun Ra Syangja ka Magar Haruko Sanskriti. Kathmandu: In Pragya Royal Nepal Academy.

¹⁰ Macfarlane Alan (1976). Resources and Population: A Study of Gurungs of Nepal. Cambridge: Cambridge university press

Revisiting the Doctrine of Basic structure: Shankari Prasad to Kesavananda Bharati

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Abstract:

History shows that constitutions have been repealed many a times in order to suit to the different regimes that ruled these countries. Some of these nations were France, Belgium, Mexico, Greece, Italy, Russia and China to name few. The authors of the modern democratic constitutions knew that the Constitution was intended to serve for generations. Hence they included provisions for making amendments in the Constitution. The authority to add, vary or repeal any constitutional provision vested in a superior legislature like Parliament. This superior legislature could amend by simple majority or by special majority consisting of two-third majority. Article 368 of Constitution of India defines the procedure as well as the power to amend. In India, the power to amend has come into conflict with judicial review. Consequently, the basic structure doctrine today is like a touchstone for testing constitutional amendments violating any fundamental rights. This doctrine has been inspired from Germany. Provisions 1 to 19 are the principles for the foundation law for the nation of Germany. Today, not only in India this doctrine also finds appreciation in neighboring Bangladesh and Pakistan but also in faraway Kenya and Uganda.

The purpose of this study is to analyse as how the basic structure doctrine has evolved from Shankari Prasad to Kesavananda Bharati as the country celebrates 50th Anniversary of this landmark judgment. The study also intends to find out the reasons for evolving the basic structure doctrine by judiciary.

Key words: Constitution of India, Parliament, Amending power, Judicial Review, Basic Structure.

I. Introduction

It has been more than 50 years since a doctrine known as basic structure was first formulated in *Sripadgalvaru Kesavananda Bharati vs Government of India* on 24th April 1973. Once propounded the doctrine became the weapon of the Apex Court of India to test constitutional variations for violating the essential features of the Constitution of India. Rights to own, possess and dispose property was a basic right till 1978. This basic right was modified by the First Constitution Amendment Act, 1951 inserting three new provisions - Article 31A, Article 31 B and Schedule Nine. New Clause A in Article 31 protected laws providing for taking away of certain lands by the State or modification of the rights therein. The certain lands included *jagir, inam, muafi* and any *janmam* right in the states of Kerala and Tamil Nadu. These saved laws were not invalid for the reason that it conflicts with basic rights mentioned in Article 14 or Article 19(1) (f). Article 14 deals with the basic right to equality before law and against unequal treatment before law. Article 19 (1) (f) provides for proprietary rights. The Ninth

Schedule is a protective covering for these saved laws. The second new B of Article 31 made the laws specified in the new Schedule not subject to judicial review for violating any provisions of Part III. The primary aim of the First Constitution Amendment Act, 1951 intended to create social revolution, to end poverty and to abolish distinction and exploitation among the various sections of the Indian Society.ⁱ

II. Shankari Prasad

In pursuance of First Amendment made in the Constitution in 1951, a law known as *Zamindari Abolition and Land Reforms Act, 1951* was passed. Section 23(1)(b) of the Act derecognized the transfer of any estate for any purpose made after July 7, 1949 consequently the transferor losing the freedom to dispose of his property. Shankari Prasad was one such Zamindar from Bihar whose right was affected by the impugned law. He challenged the First Amendment Act, 1951 which prevented the judicial review of the impugned law. The issue was whether the Parliament had the authority to pass constitutional amendments amending the fundamental rights and whether such amendments can be subject to judicial scrutiny for violating the basic rights. A five judge constitution bench of the Court expressed unanimous opinion of Parliament having a constituent power to pass constitutional amendments through Article 368 for amending fundamental rights and whether such amendments can be examined through judicial review. It is to be noted that the Parliament which made the first Amendment was a provisional Parliament hence its competency under Article 368 was questioned as it did not consist “both the Lok Sabha and the Rajyasabha of the Union Parliament and the Head of the Union Executive” as required for passing amendments under Article 368. Question was also raised as to whether there was any demarcation between ordinary law making power and amendments made in the Constitution. Unanimously, the highest court adopting the literal interpretation upheld the Constitution First Amendment act, 1951. The Bench remarked that constitutional amendments made through Article 368 are different from ordinary law making power made under Article 246. Amendments made in the constitution are a constituent exercise of power and hence immune from judicial review under Article 13.

III. Bella Banerjee

In *Bella Banerjee*, the validity of the West Bengal State law known as *West Bengal Land Development and Planning Act, 1948* was challenged by Bella Banerjee. The impugned law provided for acquisition of land for settling refugees from East Pakistan (Bangladesh). In exchange for land the legislation provided for compensation to be paid to affected land owners; the rate of compensation not to exceed the value of property at market rate prevailing on 31st day of December, 1948. The highest court said that compensation to be given by the State should not have any relation to the market rate of acquired land as on mentioned date. The Supreme Court further clarified that “compensation to be paid” meant “jus and equivalent” of what the land owner actually deprived of. The adequacy of such compensation was justiciable issue to be decided by the Court.

Countering the activist decision of highest appellate Court, the Union legislature passed the Fourth Constitution Amendment Act, 1955 amending Clause 2 in Article 31 for questioning the rate of compensation a non-questionable issue. Clause A of Article 31 was later modified by the Seventeenth Amendment Act, 1964 modifying the meaning of word “estate” in Clause (2) of Article 31. The Seventeenth Constitution Amendment Act, 1964 inserted new forty-four ceiling laws of different States in the new Schedule which was challenged in *Sajjan Singh*.

IV. Sajjan Singh

The question of amendability of fundamental rights remained dormant for the next thirteen years until *Sajjan Singh* happened. ⁱⁱ *Sajjan Singh* was a ruler of the princely state of Ratlam

which was integrated into the Indian Union. His rights and privileges were affected by *The Rajasthan Land Reforms and Acquisition of Estates Act, 1963*. In *Sajjan Singh*, the petitioner challenged Seventeenth Amendment Act of 1964 which inserted certain State ceiling laws in the new Ninth Schedule. Issue was also raised regarding the procedure to be followed in passing such constitutional amendments requiring the involvement of the State legislatures.ⁱⁱⁱ The requirement of ratification by one half of the State legislatures was also an issue since this amendment intended to effect the High Court's judicial review under Article 226.

In response to these questions, the Supreme Court by a ratio of 3:2 upheld the precedent of *Shankari Prasad* case and held that amendments made to the constitution cannot be prone to judicial review as they are not an exercise of ordinary law making power but are a constituent power. Amendments are made to the constitution by the Parliament through its constituent power which cannot be questioned by the courts. The Seventeenth Constitution Amendment Act, 1964 had added forty-four State laws in the Schedule making these immune from judicial scrutiny. However, minority opinion given by Justice Mudholkar and Justice Hidayatullah justified that definition of "law" in Article 13(3) included amendments made to Constitution also. Hence they are subject to judicial review through the filter of fundamental rights. Justice Hidayatullah wondered whether the majoritarian Union Parliament can play with the basic rights. The two minority opinion in *Sajjan Singh*'s case were seminal for further discussion on the amenability of fundamental rights.

V. Golok Nath

Golok Nath v Government of Punjab overruled precedents set in *Shankari Prasad* and *Sajjan Singh*. The minority opinion of Justice Mudholkar and Justice Hidayatullah turned out to be major issues in *I.C Golok Nath v. Government of Punjab*. In *Golok Nath*, an eleven judge bench considered the Seventeenth Amendment Act made in 1964. The majority bench of 6 to 5 ruled that the Union Parliament cannot amend the fundamental rights. Focusing on the language of Article 368 as originally enacted Chief Justice Subba Rao opined that Article 368 is the procedure to amend the constitution. The procedure lies somewhere else. It lies in Entry 97, List I as a residuary power. However, the Court was careful not to offend the constitutional amendments passed till now since it would upset the socio-economic policies of the Government. This was done by applying the doctrine of prospective overruling. It was now clear that since *Golok Nath* the Parliament would no pass amendments that would restrict or violate or modify the fundamental rights.

To counter the decision passed in *Golok Nath*, the Union Parliament made the Twenty fourth Amendment Act, 1971. This Amendment provided four major changes in Article 368. First, it inserted a new clause *i.e.*, Article 368 (3) which includes the provisions relating to judicial review in Article 13 are not applicable to constitutional modifications made through Article 368. Second, title of Article 368 which was "Procedure for amendment of the Constitution" is replaced by a new title "Power of the Parliament to amend the Constitution and the procedure thereof." Third, Article 368(1) was modified giving the Parliament "constituent power for amending by three different ways- adding, modifying or deleting any constitutional provision including the Basic Rights." Fourth, it made compulsory for the President to agree to the Bill already cleared by the two Houses of the Union legislature suggesting constitutional amendments.

VI. Kesavananda Bharati

The Twenty four Constitution Amendment Act, 1971 along with the Twenty five Amendment Act, also in 1971 and the Twenty nine Amendment Act in 1972 was challenged in by the petitioner in *His Holiness Shripadgalvaru Kesavananda Bharati v. Government of Kerala*.^{iv} The petition was placed before a thirteen judge bench considered as one of the longest judgment

in the constitutional history of independent India. As regards the Twenty Fourth Amendment Act, 1971, the Bench unanimously upheld its constitutionality. But there was a divergence of opinion with regards to the extent of Article 368. The majority bench expressed that scope of Article 368 was not unlimited but restricted by the basic structure doctrine. The doctrine says the Union legislature cannot change the Constitution to destroy its essential features. Though majority bench did not define the doctrine of basic feature but different features like Sovereign, Democratic, Republic and Parliamentary Democracy were added to the list of basic features.

As regards the Twenty Fifth Amendment Act made in 1971, bench unanimously upheld the changes brought in Article 31 (2) substituting the term “compensation” with “amount”. However, the Court upheld the term “amount” was liable to scrutiny by the Court. The scrutiny will be open if the amount decided by the Act for requisitioning the property was illusory, irrelevant or fraud. Clause (C) of Article 31 inserted through 25th Amendment, Act also upheld. However, provision barring judicial scrutiny of a law for having a connection with the directive principles enumerated in clauses (b) and (c) Article 39 was struck down.

Regarding the Twenty Ninth Amendment Act made in 1972 the Bench validated it unanimously. But six out of the thirteen judges made it clear that the laws added in the new Ninth Schedule shall be invalidated or violating the essential features of the Constitution.

Consequently, this landmark judgment resulted in the supersession of judges. Chief Justice S.M. Sikri was to retire after the *Kesavananda Bharati*’s case was disposed. Shelat, Hegde and Grover were in line of succession as the next Chief Justice of India. They all had given majority opinion against the Parliament’s amending power under Article 368. Justice Ajit Nath Ray was promoted as the next Chief Justice of India superseding three senior judges on 25th April, 1973. The three senior judges were Shelat, Hegde and Grover. They resigned in protest. This mass resignation was a grievous blow to the Judiciary’s independence to act without fear or favour.

VII. Indira Nehru Gandhi

The doctrine was first used in *Indira Nehru Gandhi vs. Raj Narain*.^v The petitioner appealed to the highest Court expressing her dissatisfaction over Allahabad High Court judgment against her. The High Court invalidated her elections to the Lok Sabha. Raj Narain had brought charges of corrupt election practices against her which were restricted by election law known as *The Representation of Peoples Act, 1951*. Consequently, an appeal filed by Indira Gandhi set the motion before the Supreme Court. When the appeal was pending, the Government with the Union Parliament allowed Thirty Ninth Constitution Amendment Act in 1976 which inserted Article 329-A. Article 329-A intended to invalidate the judgment of Allahabad High Court. It also intended to withdraw the authority of all courts including that of Apex Court over disputes connected with the election of Prime Minister of India and Speaker of Lok Sabha. The appellate Court validated the election of Mrs. Indira Gandhi and invalidated Article 329-A (4) barring judicial review of election disputes of the Prime Minister and the Speaker of the Lok Sabha by applying basic structure formula. The Supreme Court added four new features to list of essential features. They were Judicial Review, Free and Fair Elections, Rule of Law and Right to Equality.

VIII. Conclusion

First Amendment Act, 1951 served as the historical background for basic structure doctrine. Right to property which was either modified or restricted by this constitution amendment was the main issue. The right to property went further restrictions under the Constitution Fourth, Seventeenth, Twenty fourth, Twenty fifth and Twenty Ninth Amendments. It is noteworthy that these amendments intended to disturb the right to property of a particular class of citizens. This

particular class belonged to the affluent class – zamindars, jagirdars, princes and also religious gurus having landed property in excess of the ceiling laws. In dealing with the cases involving constitutional amendments affecting the right to property the Court came into conflict with the Parliament. The Court remained submissive in *Shankari Prasad* and *Sajjan Singh* but assertive in *Golak Nath* and cautious in *Kesavananda Bharati*. New doctrines like overruling prospective and basic structure were applied by the Court to declare its supremacy of judicial scrutiny over constitutional amendments. The Parliament was not willing to succumb to the Court pressure. Hence it passed constitutional amendments like the Twenty Fourth Amendment Act, 1971 to neutralize the *Golak Nath* decision. *Kesavananda Bharati* decision where basic structure doctrine was formulated a reply to the Twenty Fourth Amendment Act, 1971.

The basic structure doctrine acts a weapon to invalidate any constitutional amendment on the touchstone of violating any fundamental right. *Post Kesavananda* this doctrine has been used many a times to invalidate a constitutional amendment for violating any fundamental right. Today, it is a Brahmashta for the Judiciary to assert its supremacy over the Parliament as the guardian of the basic rights.

Over years, different facets of basic structure evolved though the judiciary still seems to be reluctant to define exactly what the basic structure actually is. Consequently, understanding the doctrine of basic structure seems both difficult and elusive and prone to criticisms. Its interpretation and application continues to be the subject of discourse till date.

Endnotes

ⁱ Granville Austin, *Working a Democratic Constitution* p. 69 (Oxford University Press, New Delhi, 2003).

ⁱⁱ M p Jain, *Indian Constitutional Law*, p. 1734 (Lexis Nexis, Gurgaon, Haryana, 8th ed., 2018)

ⁱⁱⁱ AIR 1965 SC 845.

^{iv} AIR 1973 SC 1461.

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Treatment of the Themes of Sexuality, Identity and Politics in Shyam Selvadurai's *Funny Boy*: An Analysis

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Abstract:

Set against the backdrop of Sri Lanka's turbulent socio-political landscape, the novel Funny Boy by Shyam Selvadurai tells the poignant story of Arjie, as he navigates the complexities of growing up gay in a conservative society. Selvadurai masterfully intertwines personal and political narratives, shedding light on the intersections of individual identity and broader societal forces. This novel explores the intricate interplay of sexuality, identity, and politics. Through Arjie's journey, the novel delves into the challenges of self-acceptance and the societal pressures that shape and often suppress sexual identity. By situating Arjie's story within the larger context of Sri Lankan politics, Selvadurai underscores the interconnectedness of personal and political struggles. The novel's portrayal of the Tamil-Sinhalese conflict serves as a backdrop to Arjie's personal growth, illustrating how political turmoil exacerbates the marginalization of already vulnerable groups, including the gay community. Selvadurai's nuanced narrative invites readers to reflect on the ways in which personal and political realms intersect, influencing and shaping individual experiences and identities. This study examines how Selvadurai portrays the tension between personal desires and societal expectations, highlighting the pervasive influence of heteronormativity and cultural norms on the formation of sexual identity.

Key words: Sexuality, Identity, politics, ethnic conflict, societal norms, personal growth

Introduction

Shyam Selvadurai was born in Colombo, Sri Lanka, in 1965 to a Tamil father and a Sinhalese mother. This bicultural background profoundly shaped his writing, offering a layered perspective on identity and belonging. Selvadurai's experiences as a gay man in a traditional society also influence the novel's examination of sexuality and acceptance. *Funny Boy* by Shyam Selvadurai is a pivotal work that weaves together themes of sexuality, identity, and politics against the backdrop of Sri Lanka's civil war. This novel not only tells the personal journey of Arjie Chelvaratnam, a young Tamil boy coming to terms with his homosexuality, but also presents a broader view of the socio-political upheaval in Sri Lanka. *Funny Boy* is divided into six linked stories, each portraying different stages of Arjie's life. The narrative begins with Arjie's childhood interest in feminine activities, moves through his teenage years marked by his developing sexuality, and ends with his family's involvement in the political

chaos of the civil war. The novel poignantly captures the intersections of personal growth and political conflict. This paper aims to explore how Selvadurai intricately weaves these themes, highlighting the significant impact of societal norms and political conflict on personal identities.

Historical and Political Context of Sri Lanka

The novel is set during the 1970s and 1980s, a time of increasing ethnic tensions between the Sinhalese and Tamil communities, which eventually led to the Sri Lankan civil war. Understanding this historical context is essential for grasping the novel's exploration of personal and political struggles. Shyam Selvadurai, born in Sri Lanka and later moving to Canada, draws from his personal experiences and the socio-political landscape of his homeland. The novel offers a poignant commentary on the intersection of personal and political struggles, reflecting Selvadurai's own journey as a gay Tamil man.

Sexuality

Arjie's sexual awakening and his path toward self-acceptance are central to the narrative. From a young age, he is drawn to feminine activities, setting him apart from other boys and leading to confusion and conflict within his family. In the opening story, "Pigs Can't Fly," Arjie prefers playing bride-bride in his mother's sari rather than engaging in typically masculine games. Arjie says, "The funny thing about being in a sari was that people's reactions made me aware of the extent to which I was no longer a boy." This early expression of his gender non-conformity leads to a significant family confrontation. Arjie's journey is marked by societal condemnation and internal conflict, reflecting broader issues of acceptance and identity. He writes, "The realization hit me that in the world I lived in, such a love was not only forbidden but would also never be understood."

As Arjie grows older, the pressure to conform intensifies. The family's desire to suppress any signs of non-heteronormative behaviour is evident in various incidents throughout the novel. One significant moment is when Arjie's father insists that he plays cricket with the other boys instead of participating in the girls' games. This forced engagement with traditionally masculine activities is a microcosm of the broader societal effort to enforce binary gender roles and heterosexual norms.

Arjie's interactions with his extended family further highlight the societal constraints imposed on individual expressions of sexuality. Characters like his grandmother and aunt embody traditional values, often reinforcing the notion that deviation from accepted norms is unacceptable. These familial expectations are mirrored by societal attitudes in Sri Lanka at the time, where homosexuality is not only stigmatized but also criminalized.

Arjie's relationships with Shehan sheds light on how the protagonist's realization of his sexuality was complicated further. Their bond evolves into a romantic relationship, providing Arjie with a sense of understanding and acceptance he does not find elsewhere. In "The Best School of All," Arjie and Shehan share intimate moments, despite the oppressive environment of their school and society. His relationship with Shehan Soyza, a fellow student, marks a significant moment of self-discovery and acceptance. "In the softness of Shehan's skin, I found the comfort and understanding I had been seeking all my life."

The educational setting in *Funny Boy* plays a crucial role in shaping Arjie's understanding of his sexuality. At school, he faces bullying and ostracism due to his perceived effeminacy. These experiences highlight the pervasive nature of homophobia in institutional environments. The school serves as a microcosm of the larger society, where rigid norms and prejudices are enforced through peer pressure and authority figures.

A pivotal character in Arjie's school life is his principal, Mr. Lokubandara, who represents the authoritative voice of societal norms. His attempts to discipline Arjie and steer him towards more 'acceptable' behaviour reflect the broader societal effort to suppress any form of sexual and gender non-conformity. This institutional oppression is a significant barrier to Arjie's journey of self-acceptance, illustrating the difficulties faced by those who do not fit into prescribed societal molds.

Identity

The novel delves into various facets of identity, including gender, sexuality, ethnicity, and personal growth, against the backdrop of political turmoil and cultural conservatism. From a young age, Arjie exhibits behaviors that deviate from traditional gender norms. His preference for dressing up as a bride during family gatherings is a significant early indication of his exploration of identity. This innocent play is met with varying degrees of acceptance and disapproval from his family, reflecting the broader societal discomfort with non-conformity. His father's insistence on engaging in activities deemed appropriate for boys, such as playing cricket, highlights the external forces that seek to shape and restrict individual identity. He writes, "My father's disapproval was a constant reminder that my love for dressing in saris was something shameful." Arjie's father plays a pivotal role in shaping his understanding of identity. His attempts to mold Arjie into a 'normal' boy are driven by a combination of love and societal pressure. This dynamic creates significant tension, as Arjie strives for his father's acceptance while also seeking to understand and embrace his true self. The conflict between parental expectations and personal identity is a recurring theme in the novel, illustrating the challenges faced by individuals who do not fit into prescribed societal molds. Arjie's initial foray into understanding his identity is marked by a sense of curiosity and innocence, which is gradually overshadowed by the realization of societal expectations. Arjie's sense of otherness is compounded by his family's expectations and societal pressures to conform to traditional Tamil values and norms. "I realized that there were many ways in which I was different, and I began to discover that there were also many ways in which I was the same," Arjie says.

Arjie's relationships with other characters in the novel are instrumental in his journey of self-discovery. His bond with Shehan, a fellow student, marks a significant turning point in his understanding and acceptance of his sexuality. Through Shehan, Arjie experiences romantic and sexual attraction, which, despite the fear and secrecy surrounding it, provides him with a sense of identity and belonging. Their relationship is both a source of joy and anxiety for Arjie, as he grapples with his feelings in a society that condemns such expressions of love. This duality underscores the internal conflict faced by many individuals as they navigate their sexual identities within hostile environments.

The exploration of identity in *Funny Boy* is intricately linked with the ethnic tensions between the Tamil and Sinhalese communities in Sri Lanka. Selvadurai juxtaposes Arjie's personal struggles with his sexual identity against the backdrop of increasing political violence and ethnic strife. This intersection adds layers of complexity to the narrative, illustrating how personal and political identities are often intertwined.

The ethnic conflict serves as a metaphor for the internal war that Arjie experiences regarding his identity. Just as the country is divided along ethnic lines, Arjie's sense of self is fractured by the conflicting demands of his desires and societal expectations. The violence and upheaval that characterize the ethnic tensions mirror the turmoil in Arjie's personal life, emphasizing the theme of displacement and the search for a place of belonging.

Arjie's identity is also influenced by the political tensions surrounding him. His family's experiences with ethnic violence and their involvement in the political conflict shape his understanding of who he is and where he belongs. The ethnic conflict and its impact on Arjie's

family are depicted in the story “Riot Journal: An Epilogue.” He writes, “Caught between two worlds, I felt the weight of my dual identity pressing down on me.”

Politics

The political background of the Sri Lankan civil war is crucial to the story, affecting the characters' lives and choices. The ethnic strife between the Sinhalese and Tamil communities adds another layer of intricacy to Arjie's personal challenges. The political turmoil and aggression directly affect Arjie's family, as demonstrated in the story “Small Choices,” where his family is compelled to face the reality of the ethnic conflict. Arjie states, “The violence that had been rumbling in the distance had finally come to our doorstep.”

The interaction between Arjie's personal identity and the broader political environment emphasizes the interconnectedness of personal and political issues. In the concluding story, “Riot Journal: An Epilogue,” Arjie's perception of his identity is significantly influenced by the political violence and the displacement of his family. “As I navigated my own journey of self-discovery, I realized that my identity was deeply entwined with the political landscape of my country.”

Arjie's family, although privileged, cannot avoid the effects of the political unrest. Selvadurai examines how political tensions intensify personal challenges, with the civil war acting as a catalyst for Arjie's ultimate understanding of his identity and place in society. The civil war impacts their lives profoundly, highlighting the overlap of personal and political struggles: “Our lives, once so secure, had been turned upside down by the violence and hatred around us.”

Selvadurai portrays the daily manifestations of ethnic bias and discrimination, showing how these attitudes infiltrate various aspects of life, from social interactions to educational and professional opportunities. The novel demonstrates the insidious nature of systemic racism and its impact on individuals, particularly the Tamil characters who are frequently subjected to suspicion, marginalization, and violence. Selvadurai also explores the impact of political conflict on family dynamics. Arjie's family, like many others, is deeply affected by the political turmoil. The tension between maintaining personal safety and upholding one's principles becomes a recurring theme. Arjie's father, for instance, prioritizes the safety of his family and often adopts a pragmatic approach to the political situation, which sometimes leads to moral compromises. Conversely, Arjie's mother and other family members exhibit a range of responses, from passive acceptance to active resistance. This variety of reactions within a single family underscores the complexities of navigating a politically charged environment and the difficult choices individuals must make.

The novel also underscores the role of education and social institutions in sustaining political ideologies. Arjie's experiences at school reflect the broader societal tensions and prejudices. His interactions with teachers and peers reveal how educational settings can reinforce ethnic divisions and political biases. The school environment becomes a microcosm of the larger political landscape, where power dynamics and social hierarchies are played out in micro-interactions. This setting allows Selvadurai to critique the role of institutions in shaping and maintaining societal norms and political attitudes.

Selvadurai's treatment of politics in *Funny Boy* is also characterized by a sense of loss and displacement. The political conflict forces many characters to confront the fragility of their sense of belonging and identity. The violence and upheaval lead to a sense of dislocation, both physical and emotional. An early example is the story of Daryl Uncle, a family friend and journalist. Daryl's investigation into government-sanctioned violence against Tamils brings him into direct conflict with the authorities. His mysterious death, widely believed to be a

murder orchestrated by the government, serves as a grim foreshadowing of the dangers that lie ahead. This incident exposes the ruthless lengths to which the state is willing to go to suppress dissent and highlights the precariousness of speaking out against injustice. This theme is poignantly illustrated in the final chapters of the novel, where the family's decision to leave Sri Lanka reflects a broader narrative of exile and the search for a safe and accepting environment. This sense of displacement is a powerful commentary on the human cost of political conflict and the enduring impact of such experiences on individuals and communities.

Conclusion

Selvadurai masterfully intertwines the themes of sexuality, identity, and politics, demonstrating their interconnectedness. Arjie's personal growth is depicted against the backdrop of political upheaval, showing how external conflicts mirror internal ones. Key scenes, such as Arjie's realization of his sexuality and the violent political clashes, are interwoven to highlight the interplay between the personal and the political. This thematic analysis reveals how Selvadurai uses the novel to comment on broader societal issues. Selvadurai employs various literary devices to enhance the thematic depth of "Funny Boy." His narrative style is intimate and evocative, drawing readers into Arjie's world. Symbolism and motifs, such as the sea and traditional Tamil rituals, are used to reflect the characters' inner turmoil and cultural heritage. Selvadurai's use of language, blending Tamil and English, adds authenticity and emphasizes the cultural duality experienced by the characters.

The novel's enduring relevance and critical acclaim underscore its importance as a literary work that bridges personal narratives with broader socio-political themes. *Funny Boy* by Shyam Selvadurai is a profound exploration of sexuality, identity, and politics. Through Arjie's journey, Selvadurai sheds light on the intricate interplay between personal and societal struggles, offering a nuanced perspective on the impact of political turmoil on individual lives. The novel's enduring relevance and critical acclaim underscore its importance as a literary work that bridges personal narratives with broader socio-political themes, as evident in the words of Arjie: "In the chaos of war and the quest for acceptance, I found that my journey was not just about discovering my sexuality, but also about understanding my place in a fractured world."

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A Glimpse of Indian Copyright Laws with a Delineation of its Infringement

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Abstract:

Indian law provides a kind of intellectual property protection known as copyright. This privilege is bestowed to those who have authored unique literary, dramatic, musical, artistic, cinematic, or sound recording works. All works of original composition are protected by the Copyright Act of 1957. What we mean by "original" here is that there is no evidence of plagiarism. Instead than protecting ideas, copyright rules safeguard how those ideas are expressed.

Through this study, the authors have made an earnest attempt to analyze the copyright laws in India which is an important branch of the Intellectual Property Right (IPR), especially focusing on the Copyright Act, 1957 and its various amendments till date. The necessity and strict application of this branch of law has also been discussed throughout this paper. A few reflections are also there regarding the term of copyright protection in this paper. Besides, a discussion on the infringement of copyright and the reasons for it has also been provided through this write-up. To explain it properly a few important judicial pronouncements have been examined by the authors. Finally, a few workable suggestions are brought out through the concluding remark.

Key Words- Copyright, Intellectual property right, original work, ideas, infringement.

1.1 Introduction

The copyright laws of India are on level with those of other countries as outlined in the TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement, which is overseen by the World Trade Organization (WTO). India is a party to both the Universal Copyright Convention (1952) and the Berne Convention for the Protection of Literary and Artistic Works, 1886. The Indian Copyright Act, 1957, as amended in 1999, 2002, and 2012, fully reflects both conventions. Indian copyright law has been updated by the Copyright Act, 1957 to reflect changes in the IT sector, including innovations in digital technology, computer software, and satellite transmission, in response to the worldwide need for copyright harmonization.¹ An integral part of IP rights, copyright grants the exclusive legal right to an author's work in his creation.² Intellectual property rights has been categorized into many branches like patent, trademark, copyright, plant breeders' right, utility model or design, trade secrets, geographical indication etc. Of these, copyright stands out as a special legal privilege bestowed to creators or collectives of creators to prevent others from making a copy, altering, translating, distributing, or performing their work publicly without their express consent.³

1. Vijay Pal Dalmia, *Copyright Law in India- Everything You must Know*, available at: www.mondaq.com (visited on February 4, 2020).
2. N.M. Anjaneya & Aswath Lalitha, "Understanding Copyright Laws: Infringement, Protection and Exceptions", *International Journal of Research in Library Science* (2455-104X), 2016 3. 3.
3. <https://www.lawstreamed.blogspot.in/2011/10/intellectual-property-rights.html>, (visited on February 5, 2020).

The copyright system is in place to protect and compensate the public for the writers' efforts, which result in a finished product. As a result, writers and artists are motivated to consistently generate new works.

1.2 Copyright and Copyright Law: A Brief Concept

Copyright is a kind of authorial property that applies to certain kinds of creative works. Everything that is novel in terms of writing, art, music, theatre, film, or sound recording is protected by copyright. While registration is not required, copyright protection begins the minute a work is created.

This privilege has also been extended by India. Published works outside of India that are protected by the International Copyright Order, 1999. However, for additional safety, getting a registration is usually a good idea. Even if the work is first published in India,⁴ copyright protection is accessible in other nations throughout the globe, which is one of the greatest benefits. Therefore, works first published in India are eligible for copyright protection in other countries even without a formal application. In addition, the International Copyright Order, 1999 grants this protection to works published outside of India by the Indian government.⁵

Despite the fact that libraries are legally able to utilize copyrighted content for academic and research purposes without the owner's consent, this does not always happen. However, problems may arise if library patrons do not utilize the resources fairly.

Thus, copyright law prevents the unauthorized copying of a work exactly as it is. However, copying the ideas in those works is not prohibited. The holder of copyright may often pursue enforcement in a civil court, however many nations have criminal infringement provisions. In a nutshell, copyright is a legal protection that grants the owner of creative works (such as books, movies, scriptures, pictures, songs, poems, websites, etc.) the authority to dictate the use that such works may have by others.

1.3. Copyright: Why Needed?

Copyright protects the expression of ideas and it encourages people to create through various medium. The expression of ideas belongs to people as much as the other important household properties they bought. Creative works are recognized under copyright as a distinct kind of intellectual property. Any original concept, whether it takes the shape of a book, art, writing, poetry, theatre, etc., may be owned in the same way as physical things like cars and houses.⁶ However, unlike other properties, copyright ownership is for only a limited duration and eventually expires. But this type of protection is very essential, because the sense of satisfaction gained through a creative process is the result of the creator's hardships, time and effort. One's creation is one's asset. No matter what others may say, it is still a potential asset. So such works must be protected.

1.4 An Overall Analysis of Indian Copyright Laws

Aspects of copyright, related rights and neighboring rights are regulated by the Intellectual Copyright Order of 1999 in India, as well as the Copyright Act, 1957 and regulations established there under. There is no common law right to copyright; rather, copyright is given and protected according to the Act.⁷ Concerning copyright, the Indian Constitution places the topic under Entry 49 of List-I, the core list. Parliament alone has the authority to legislate on this matter as it pertains to Central Law. The Indian Parliament codified the Copyright Act of 1957 in response to a global demand for protection of creative works, literary masterpieces, and other forms of intellectual property as a result of public support for such rights around the world.⁸

4. <https://www.legalservicesindia.com/article/1195-Copyright-Law--in-India.html> (visited on February 5, 2020).

5. *Ibid.*

6. David Sarokin, *Why are Copyright Laws Important?*, available at <https://smallbusiness.chrome.com/copyright-laws-important-52601.htm> (visited on February 5, 2020).

7. *Manojah Cine Production v. A. Sudarshan*, AIR1976 Mad 22.

8. *Indian Performing Right Society Limited vs. Eastern Indian Motion Pictures, Assam*, AIR1977 SC 1443 (1453).

The Indian Copyright Act, 1914, which was based on the Copyright Act, 1911 of the UK, contained the copyright laws in place before 1957. However, it was believed that India's newly-formed constitutional standing did not align with the UK Act. In view of the increasing awareness of the importance of copyright, it was deemed essential to establish a separate copyright law. At long last, it seemed that a comprehensive overhaul of the current legislation was unavoidable, and the Copyright Act, 1957 was born. A person's business monopoly and conflicting interests were the driving forces behind the legislature's decision to pass this Act.

The Act of 1957 was, in effect, the first copyright law passed by an independent Indian legislature. In addition to having procedural and substantive provisions, this Act also offers legal recourse for the enforcement of the right. Consequently, it is evident that any nation that wants to encourage its artists, composers, writers, etc., to enrich its cultural legacy, must establish strong copyright protection.⁹ Despite the fact that the Indian Copyright Act of 1847 was the first regulation that applied to India, the Indian Parliament finally passed a complete law on the matter in 1957.

Therefore, a few salient features of this Act must be mentioned here. Such features are as follows¹⁰:

- a) categories of works that are subject to copyright,
- b) extent to which the law grants the author or creator certain rights,
- c) terms of copyright for different categories of work,
- d) rules concerning the transfer of ownership and the granting of licenses for copyrights, including, in some situations, mandatory licenses,
- e) transmission privileges,
- f) description of copyright violation,
- g) exclusive rights of the writer,
- h) remedies for copyright infringement, including civil and criminal,
- i) the establishment of a Copyright Office and a Copyright Board to assist with copyright registration and the resolution of specific types of disputes that may arise from the Act, etc.

The Act of 1957 was further amended for a number of times. An outline of a few such important amendments can be drawn as follows:

1.4.1 Copyright (Amendment) Act, 1983

The Universal Copyright Convention and the Berne Convention served as the foundation for the Copyright Act, 1957. However, all of these international accords experienced revisions in 1971, and in 1983. Hence, Indian copyright law was also significantly changed. Developing nations may now legally force the translation and reproduction of foreign works for academic purposes, classroom use, or systematic instructional activities by granting compulsory licenses under this revised version.

In cases when the author is unknown or deceased, there are provisions for publishing their unpublished works. This is because it might be difficult to determine who owns the copyright in such cases. The introduction of some copyright requirements for publicly given lectures, addresses, etc., and for the publishing of copyright register entries is another significant change brought about by this amendment.

¹¹These are a few major amendments brought out by the Act of 1983.

1.4.2 Copyright (Amendment) Act, 1984

In response to new and more severe technical obstacles that arose after some time had passed, lawmakers amended the copyright law once more. This 1984 addendum version dealt with video film inclusion, duplicate equipment introduction, computer programme protection, police search powers, enhanced penalties, copyright infringement statement, and other relevant rights.¹²

9. S. Alikhan, "The Role of Berne Convention in the promotion of Cultural Creativity and Development: Recent Copyright Legislation in Developing Countries", 28 *Journal of Indian Law Institute* 423(1986).

10. P. Narayanan, *Intellectual Property Law*, 23-24 (Eastern Law House, Kolkata, West Bengal, 3rd edn., 2001).

11. 11. Samuel Israel, "Copyright in India: National and International: The 1983 Amendment of the Indian Copyright Act, 1957", 47 *Economic and Political Weekly*, 18 (Nov. 19, 1983).

12. 12. <https://en.m.wikipedia.org>, (visited on February 5, 2020).

1.4.3 Copyright (Amendment) Act, 1992

In 1992, an adjustment was made that was both minor and significant; it prolonged the duration of copyright for 10 years. The overall duration of copyright protection was thus extended to life plus sixty years as a result of this.¹³

1.4.4 Copyright (Amendment) Act, 1994

The main Act of 1957 was amended, bringing about several significant modifications. This restructures the Copyright Board and its authority, redefines “adaptation” and “author” as they pertain to cinematograph pictures, and more. There have also been changes to the copyright owner’s rights, as well as copyright assignments and licenses. It also established “author’s special rights,” redefined what does not constitute infringement, and replaced “performing right societies” with copyright organisations.¹⁴

1.4.5 Copyright (Amendment) Act, 1999

Sections 38, 40-A, 42-A, 52, and others were the primary targets of this addition. By this amendment, the performer’s right was extended to 50 years which was for 25 years in the earlier law. The second major change this Act introduced was the authority of the federal government to enforce the provisions of Chapter VIII of the Act on broadcasting organizations and performers in specific nations.¹⁵ In light of this change, the Central Government may, by order, specify that certain provisions of this Act shall not apply to broadcasting or performers if it determines that a foreign country does not provide sufficient protection to the rights of broadcasting organizations or performers.¹⁶

1.4.6 Copyright (Amendment) Act, 2012

The copyright regulations were announced in March 2013 after the amendment of 2012, which came into force on June 13, 2012. There have been several positive developments brought about by the 2012 modifications, which have garnered tremendous praise. Important things include, but are not limited to, recognition of performers’ moral rights, mandatory licensing for foreign works, fair dealing expanded to all types of works covered by Section 13, border security measures beefed up, special accommodations for people with disabilities, and the introduction of provisions for digital rights management.¹⁷

1.4.7 Draft Copyright (Amendment) Rules, 2019

In these Rules, the government has suggested changes to rules pertaining to accountability and openness, allowing the copyright office to communicate electronically and revising fees.¹⁸ This would be the government’s plan to update the copyright structure to reflect the rapid development of digital technology.

Draft Copyright (Amendment) Rules were announced on May 30, 2019, by the Department for Promotion of Industry and Internal Trade (DPIIT). Current copyright legislation in India is the Copyright Act, 1957 with the Copyright Rules, 2013 as revised in 2016 and 2021.¹⁹

1.5. Copyright Infringement: A Brief Analysis

The monopoly right to profit from one’s work may be exercised in a variety of ways by the owner of copyright.²⁰

13. *Ibid.*

14. *Supra* note 12.

15. <https://www.fakongjian.com>. (Visited on February 7, 2020.).

16. *Ibid.*

17. <https://www.ip-watch.org/2013/01/22/development-in-indian-ip-law-the-copyright-amendment-act-2012>, (visited on February 3, 2020).

18. <https://www.medianama.com/2019/06/223-highlights-copyright-amendment-rules-2019> (visited on February 7, 2022).

19. *Ibid.*

20. *Supra* note 10 at 51.

Infringement occurs, however, when someone uses another person's copyright without their permission to make money off of the original work in any way, including but not limited to making copies, public performances, or communication.²¹ Some remedies for avoiding infringement are also provided for in the Act of 1957.

The unlicensed and illegal duplication of another person's work is called infringement. In violation of the copyright in a work, as stated in Section 51 of the Act 1957, the following may happen: i) someone does anything that the owner of the copyright has the exclusive right to do, or ii) someone allows for profit any place to be used for communication of the work to the public where such communication violates the copyright in that work. This can happen when someone does not have a license from the owner of the copyright or the Registrar of copyright, or when a license's conditions are violated, or where a person –

(i) submits, trades, displays, or offers to sell or hire an infringing copy of the work; (ii) distributes, displays, or sells any infringing copy of the work; (iii) brings any infringing copy of the work to the public eye; or (iv) imports into India, with the exception of one copy for the importer's private and domestic use, any infringing copy of the work.²²

Therefore, it is an infringement of the copyright in the work if anyone conducts any of the aforementioned acts without the proper authorization.

1.5.1 Essential Ingredients of Copyright Infringement

Infringement can entail any combination of the following elements, depending on the type of protected content:

- i) making a physical copy of the piece,
- ii) the work's release,
- iii) dissemination of the works to the general population,
- iv) performance of the work in public,
- v) working on the work's translation and adaptation, or
- vi) subjecting a substantial portion of the protected work to any of the aforementioned actions.²³

1.5.2 Propositions related to Copyright Infringement

The Supreme Court in *Anan v. Deluxe Films*²⁴ has laid down the following propositions:

- Ideas, subjects, concepts, narratives, historical or legendary truths, and so on cannot be protected by copyright.
- Similarities are inevitable when multiple ways of developing the same idea are derived from the same common source. In such a situation, the court needs to decide if the similarities are in the copyright work's form of expression or in some basic or important traits.
- If a spectator or viewer has read or seen both works and has a clear impression that the later work looks like a duplicate of the original work, then there has been a copyright violation. This is the surest and safest way to know for sure.
- There can be no claim of copyright infringement when two works that share a same concept are rendered substantially distinct by presentation and treatment.
- No copyright infringement occurs when, in addition to similarities, there are significant and wide dissimilarities between the original and follow-up work that negate the intention to duplicate the original.
- Since copyright infringement is tantamount to piracy, there needs to be convincing proof of it.
- It gets more challenging for the plaintiff when the issue is whether or not the film director or producer infringed upon the copyright of a theatrical play. The existence of a copyright infringement may be established if, after viewing the film, the spectator perceives it as a faithful adaptation of the original play.

21. The Copyright Act, 1957(Act 14 of 1957), s.52

22. *Supra* note 10 at 52.

23. *Supra* note 10 at 321.

24. AIR 1978 SC 1613.

1.5.3 Statutory Exceptions to Infringement of Copyright

Infringement occurs when someone other than the copyright owner uses a copyrighted work. But the Act does acknowledge some things that would not be considered an infringement. To enable reproduction of the work for specific public reasons, such as the advancement of education and the encouragement of private study and research, those activities are recognized as legislative exceptions to copyright infringement.²⁵

The following exceptions can be pleaded in defence by the defendant in an action for infringement of copyright. Section 52 of the Act lays down those statutory exceptions. They are:

- a. an honest exchange involving a piece of art, whether it be a piece of literature, a play, a song, or a computer programme, for purposes such as study, critique, or evaluation,
- b. generating executable files for specific software applications, covering breaking news through print, broadcast, and photographic media,
- c. duplication of a court case and related documents. The only people who should be able to utilize such a reproduction are legislators.
- d. public performance of readings or recitations from works of literature or theatre,
- e. under specific conditions, publishing in a compilation for usage in educational institutions,
- f. duplication by either the instructor or the student during the delivery of lessons or in the preparation of examinations,
- g. reproducing an article from a current affairs, social, political, or religious publication in specific contexts,
- h. publishing in a journal or periodicals a synopsis of a public talk,
- i. producing no more than three copies of an item for distribution to public libraries, etc.²⁶

These are not the only possible counterarguments to an infringement claim; there are a few additionally:

- a) the claimed infringing work does not have copyright,
- b) the purportedly protected work lacks originality,
- c) the defendant's work is distinct from the plaintiff's and does not infringe against any public policy, the plaintiff's work is not morally or seditious characterized,
- d) the suit is barred by limitation,
- e) the plaintiff is guilty of estoppels, acquiescence or consent,
- f) the infringement is innocent.²⁷

1.5.4 Remedies for Infringement of Copyright

In the event of copyright infringement, the parties may pursue either criminal or civil remedies under the Copyright Act, 1957. Additionally, administrative remedies may be used in some instances.

1.5.4.1 Civil Remedies

In the event of copyright infringement, the owner of the right shall be entitled to all remedies given by law, including but not limited to injunction, damages, and accounts, as stated in Section 55 of the Act. An injunction to prevent the defendant from further infringement-inducing conduct is the primary remedy in the majority of instances.²⁸ If the defendant can show that he had no knowledge or reason to believe that copyright was present in the work on the day of the violation, this is their exclusive recourse. A court may find that the defendant has profited unduly by selling copies that infringe on someone else's work and compel him to pay the plaintiff all or part of that profit.²⁹ In the case of *Gramophone Company of India Ltd. v. Santi*

25. *Supra* note 10 at 328.

26. *Id.* at 328, 329.

27. M.K. Bhandari, *Law Relating to Intellectual Property Rights*, 321 (Central Law Publications, Allahabad, 6th edn., 2021).

28. The Copyright Act, 1957(Act 14 of 1957), s. 55(1).

29. *Supra* note 18 at 208.

Films Corporation Ltd., however, the Supreme Court emphasized the need of including precise charges in the plaint about whether the plaintiff's case would be covered by a specific provision of the Act.³⁰

Damages and Account of Profits is the next significant legal remedy. Damages and account are also available as civil remedies under Section 55 of the Act. You may combine the remedies of injunction with damages or account for profits, but you cannot combine accounts and damages. That much was said in the matter of *Ramkrishna Pictures v. Pillalamari Lakshmikantan and others*.³¹ The plaintiff forfeited all right to seek relief after damages were granted and the decree of damages became permanent.

In the matter of P.N. Krishnan Murthy, the plaintiff sought exemplary damages for copyright infringement on the grounds that the defendant willfully kept the lawsuit from being brought to a close for twenty-five years. The court, however, concluded that it is unfit to issue an exemplary damages award since the books in question were given out to the impoverished youngsters at no cost as part of a charitable public service effort. Thus the decision of the court regarding this civil remedy depends on facts and circumstances which may vary from case to case.

Besides, Section 55 of the Act recognizes some other remedies like Anton Pillar Orders, Mareva Injunctions etc.³² These orders can be made in most extreme cases. These are a kind of preventive measures.

The District Court with jurisdiction must have exclusive authority to hear and decide any civil action or lawsuit alleging copyright infringement.³³

1.5.4.2 Criminal Remedies

The criminal code also provides for punishments for anyone found guilty of infringement. The plaintiff has the option to initiate both civil and criminal proceedings against the infringement. Since copyright infringement is both a civil wrong and a criminal offence, there are limited criminal sanctions for this kind of violation.

The offences of copyright infringement as laid down in the Act can be laid down as under:

- i) Knowingly infringing or abetting the infringement of the copyright in a work, or any work given by the Act. The minimum term for this crime is 6 months and the maximum is 3 years, with a fine of at least Rs. 50,000.³⁴
- ii) For a second and subsequent conviction for the offence stated above, an imprisonment of minimum 1 year or maximum 3 years or a fine of minimum 1 lakh or maximum 2 lakhs may be imposed.³⁵
- iii) Using illegal software with the intent to cause harm is punishable by a fine of at least Rs. 50,000 and up to 2 lakhs or by imprisonment for at least 7 days and up to 3 years.³⁶
- iv) A person may also be fined or jailed for up to a year if they are proven guilty of making false entries in the Register of Copyright etc.³⁷
- v) One year in prison, a fine, or both may be imposed for making a false statement with the intent to deceive or influence any official.³⁸
- vi) Violation of section 52-A, which deals with audio and video piracy, may result in a fine or up to three years in prison.³⁹
- vii) In addition to being a punishable offence by a fine and/or imprisonment for up to two years, possessing plates or other materials used to make unauthorized copies is also prohibited.⁴⁰

30. AIR 1997 Cal 63.

31. AIR 1981AP 224.

32. *Supra* note 18 at 224.

33. The Copyright Act, 1957(Act 14 of 1957), s.62

34. The Copyright Act, 1957(Act 14 of 1957), s.63.

35. *Id.*, s. 63-A.

36. *Id.*, s.63-B.

37. *Id.*, s. 67.

38. *Id.*, s. 68.

39. *Id.*, s. 68-A.

40. *Id.*, s.65

The criminal process outlined in the Criminal Procedure Code 1973 may be used to commence proceedings in the court of Magistrate of the first class for any copyright infringement crime. Additionally, the trial court has the authority to order any police officer not lower than the sub-inspector level to confiscate, without a warrant, any and all copies of the work that infringe upon it, as well as any materials used to create such pieces.⁴¹

1.5.4.3 Administrative Remedies

In addition to the civil and criminal remedies mentioned above, the Registrar and Copyright Board also have some authority to prevent copyright violations.⁴² This is also called administrative or quasi-judicial remedy available under the Indian copyright laws.

The various remedies as analyzed are available for the owner of copyright for protection of this right, if their works are infringed illegally. However, under section 60, the party wronged may seek an injunction to stop the copyright holder from threatening the other party with legal action over any alleged infringement and also recover damages if the copyright holder threatens the other party through a circular, advertisement, or any other method. Unfortunately, this remedy will no longer be available if the individual who threatened has already filed a lawsuit. This was stated in the case of *Super Cassette India v. Bathala Cassettes (P) Ltd.*⁴³

1.6 Concluding Note and Suggestions

In order to address the issue of copyright protection in a way that keeps the interests and rights involved in check, one might take a variety of alternative ways. However, an achievable approach should use identifying techniques that incur a modest level of privacy invasion from the user, without endangering their rights.⁴⁴ Despite its rapid social and economic progress, India has stuck to its long-standing policy of prioritizing the public interest. From this vantage point, the absence of robust protects in India has made the issue of copyright infringement in many forms of creativity a serious challenge. Although a good number of amendments have been made in Indian Copyright laws till date, yet the practical implications of all these is still doubtful as because copyright infringement cases are increasing. We require fast action in all such cases, because delay means denial. Therefore, protection of copyright should not be subject to formalities, i.e., it is not to be acquired through a process of law.

Another serious issue is emergence of challenges to conventional copyright regime in the field of education. This is mainly due to the frequent use of digital technology which has reduced expression of knowledge, literature and arts into bits. This has made copying and dissemination faster which results into protection of copyright a very difficult proposition to enforce. Since this problem is the creation of technology, its solution should also be technology itself. As a result, technological measure of protection like encryption has been evolved. But the use and application of this measure is not found to be proper. Technological progress is always a boon, but on the other hand, it comes with a host of problems. Therefore, policies, programmes and laws have to keep track of technological process and make suitable amendments and modifications to make use of the best effects of such developments. This is absolutely true and must be followed to solve the menace of copyright infringement in India. Any creativity in any field is basically for the purpose of knowledge creation and educating others.

Thus, many organizations must immediately stop being indifferent to the creation of government policies and laws pertaining to copyright issues. It will help in maintaining the balance between the creator's rights and society's larger interest.

41. *Laxminarain Mehta v. Gramophone Co. of India Ltd.*, PTC (Suppl.) 91 Delhi

42. *Supra* note 18 at 87.

43. AIR 1994 Del 237.

44. M. Campidogilo & Franco Frattolillo, "The Copyright Protection Problem: Challenges and Suggestions", Fourth International Conference on Internet and Web Application and Services 525 (2009).

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Transition Towards Green Energy in the Energy Sector of India: A Study of Law and Policies

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Abstract:

The search for “green and clean energy” is viewed as a solution for the energy crisis and a comprehensive response to the challenge posed by climate change. The pursuit of energy from unconventional sources has been recommended as a solution for the issues raised with climate change and address the energy crisis during a period of economic growth and advancement.

The aim to achieve green energy can be strengthened by various ways like reducing carbon footprints, practicing the four R’s and recycling of natural resources. The Indian Government has been deliberately pursuing regulations in ensuring and meeting the goals of Sustainable Development through the green innovation processes whether adopted by different nations or through its own inventive standards.

This article provides a review of the evolution of “sustainable development” and “clean energy” internationally and in India, alongside an examination of the legislative framework concerning renewables within the electricity sector. Through the doctrinal study this article highlights the environmental implications in achieving sustainable growth and ecologically balanced industrial development both nationally as well as internationally.

Keywords: Green energy, Environment, Sustainable development, Regulations, Four ‘R’.

I. Introduction

Due to its expanding population and increasing standard of living, “India has emerged as the world's third-largest consumer of primary energy”,¹ following China and the USA. In order to meet its hydrocarbon requirements India not only depends on its domestic production but also imports from other countries. This over-dependence on imports makes India dependent on foreign reserves as well as this also have an adversarial impact on the environment.

¹ India has been ranked third largest primary energy consumer in the world, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1809204> (Last visited on July 23, 2024)

To address this problem there has been an increasing emphasis on exploring renewable energy sources with the aim of meeting energy needs from more environmentally friendly sources.

An appropriate legal framework and policies are essential to facilitate the necessary efforts to adopt sustainable energy sources within a nation. This study aims to explore the evolution of renewable energy, examining the legislative provisions and policy initiatives implemented by authorities to transition the nation's reliance from conventional to clean and renewable energy sources.

II. Clean and Green energy: tracing the history in India:

During the 1970s, a significant rise in oil prices, coupled with uncertainties surrounding its supply and detrimental effects on the balance of payments, prompted the government to recognize the importance of achieving energy independence.²

This led the government to revise its energy source strategies and delve into the realm of “non-conventional energy sources within the country”.³ Consequently, in 1981, the Commission for Additional Sources of Energy (CASE)⁴ was established within the Department of Science and Technology.⁵

In 1982, the Department of Non-Conventional Energy Sources (DNES)⁶ was established within the Ministry of Energy, which later in 2006, underwent a name change to become the Ministry of New and Renewable Energy.⁷

III. Mapping National & International Legal Framework On Green Energy:

In order to understand the rise of green and clean energy as a part of the sustainable development goals both national and international legal documents have been discussed in the following.

III.1 International Conventions

The 1972 United Nations Conference on the Human Environment in Stockholm, Sweden⁸, stands as the inaugural significant international convention addressing sustainable development.

The Stockholm Conference adopted the “Stockholm Declaration and Plan of Action”⁹, which put forth recommendations for environmental action involving human concerns. Additionally, the conference led to the establishment of the “United Nations Environment Programme (UNEP)”¹⁰, the first UN entity dedicated exclusively to addressing environmental issues.

² Ministry of New and Renewable Energy, *available at*: <https://mnre.gov.in/about-department/introduction> (Last visited on July 20,2024)

³ *Ibid*

⁴ *Supra* Note 2

⁵ *Supra* Note 2

⁶ *Supra* Note 2

⁷ *Supra* Note 2

⁸ United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm, *available at* <https://www.un.org/en/conferences/environment/stockholm1972> (Last visited on July 02,2024)

⁹ *Ibid*

¹⁰ *Supra* Note 8.

In 1992, the “United Nations Framework Convention on Climate Change (UNFCCC)”¹¹, colloquially referred to as the Earth Summit, took place in Rio de Janeiro, Brazil.¹² The UNFCCC was an international agreement to acknowledge that, among other things, the production and consumption of energy derived from fossil fuels contributes to climate change and is one of its solution[s] for adaptation and mitigation.¹³

In the Earth Summit, three significant agreements were adopted, i.e. Agenda 21, the Rio Declaration, and the Statement of Forest Principles. The United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, two legally binding accords, were also signed during this conference¹⁴.

Following 1992, the next significant advancement toward transitioning to clean energy was the Kyoto Protocol and Paris Agreement.¹⁵

The “Millennium Summit established the eight Millennium Development Goals (MDGs)”¹⁶ in 2000 with the aim of achieving these objectives by 2015.

The “Johannesburg Plan of Implementation”¹⁷ (also known as the "Johannesburg Plan") established the first intergovernmental strategy linking energy to energy security, climate change mitigation, and sustainable development in 2002.¹⁸

In 2013, the Millennium Summit's member states decided to convene again in September 2015 to adopt a fresh set of goals that would build upon the framework provided by the MDGs. The UN established 17 Sustainable Development Goals (SDGs) and decided to accomplish them by 2030 as a result of this summit in 2015.¹⁹ Out of these 17 SDGs’ access to affordable and clean energy(SDG 7) is one .

III.2 NATIONAL LEGISLATION:

"Electricity" is categorized in the concurrent list, or list three, of the three lists specified in the “Seventh Schedule of the Constitution of India”²⁰.

The role of renewable energy was acknowledged in the current Electricity Act of 2003. “Section 3(1)”²¹ of this Act allows for the integration of renewable and conventional energy sources through a number of provisions. According to Section 3(1), the Indian government will periodically draft the National Electricity Policy and Tariff Policy in collaboration with the State Governments in order to develop the power system based on the most efficient use of energy resources, including coal, natural gas, nuclear, hydro, and renewable sources.

¹¹ UN Climate Change Conferences, available at <https://www.un.org/en/climatechange/un-climate-conferences> (Last visited on June 31,2024)

¹² *Ibid*

¹³ Stuart Bruce, International Law and Renewable Energy: Facilitating Sustainable Energy for All? available at https://law.unimelb.edu.au/assets/pdf_file/page_no.18 (Last visited on July 20,2024)

¹⁴ *Supra* Note 11.

¹⁵ *Supra* Note 11.

¹⁶ Millennium Summit, 6-8 September 2000, New York, available at <https://www.un.org/environment/newyork2000> (Last visited on July 15,2024)

¹⁷ World Summit on Sustainable Development, 26 August-4 September 2002, Johannesburg available at <https://www.un.org/en/conferences/environment/johannesburg2002> (Last visited July 16,2024)

¹⁸ *Supra* Note 13, at.15

¹⁹ Background on the goals, available at <https://www.undp.org/sdg-accelerator/background-g...> (Last visited June 26,2024)

²⁰ The constitution of india, Art.246(Entry 38)

²¹ Electricity Act,2003[No.36 of 2003]

“Section 4”²² of this Act also requires the Central Government to create and notify the national policy on renewable energy and other nonconventional sources of energy for rural areas after consulting with the State Governments.

Apart from this Electricity Act of 2003, in India, the Environment Protection Act of 1986²³ was implemented to establish a regulatory framework aimed at controlling environmental impact and ensuring safeguarding measures.

The National Green Tribunal Act of 2010²⁴ established the National Green Tribunal to expedite the resolution of cases concerning environmental protection and conservation. The Energy Conservation Act of 2001²⁵ was enacted to enhance energy efficiency and minimize wastage, setting out energy consumption standards for equipment and appliances at both national and international levels.

IV. Government Policies for India’s Green Energy Transition:

As a signatory to both the “Paris Agreement (COP 21)”²⁶ and the “United Nations Framework Convention on Climate Change (UNFCCC)”²⁷ India is dedicated to fulfilling its nationally determined contribution in renewable energy targets and lowering carbon emissions.²⁸

India submitted its initial “nationally determined contribution (NDC)”²⁹ in 2015, which includes specific quantifiable objectives aimed at meeting these goals.³⁰ Such as - to decrease the emissions intensity of its GDP by 33 to 35 percent by 2030 compared to the levels recorded in 2005, achieve about 40 percent cumulative electric power installed capacity.³¹

In order to achieve its objective for clean energy the Government of India has launched certain schemes in recent years. A few of the following schemes are as follows.

A. National Green Hydrogen Mission:

The “*National Green Hydrogen Mission*”³² was launched on January 4, 2022, under the “*Ministry of New and Renewable Energy's (MNRE)*”³³ direction. The directive of the mission is to “accelerate the economy's shift to a lower carbon intensity, reduce dependency on imported fossil fuels, and establish the country as a leader in technology and market leadership in this emerging industry”³⁴. “Achieving a minimum yearly production capacity of 5 million metric

²² Ibid

²³ The Environment (Protection) Act, 1986 (Act No.29 of 1986)

²⁴ The National Green Tribunal Act, 2010 (No.19 of 2010) .

²⁵ The Energy Conservation Act, 2001,(No 52 of 2001)

²⁶ The Paris Agreement, available at <https://unfccc.int/process-and-meetings/the-paris-agreement> (Last visited July 08,2024)

²⁷ *Supra* Note 11

²⁸ Cabinet approves India’s Updated Nationally Determined Contribution to be communicated to the United Nations Framework Convention on Climate Change, available at: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1847812> (Last visited on June 19,2024)

²⁹ All About the NDCs, available at: <https://www.un.org › climatechange › all-about-ndcs> (Last visited on July 13,2024)

³⁰ Ministry of Environment, Forest and Climate Change, India achieves two targets of Nationally Determined Contribution well ahead of the time, available at <https://pib.gov.in › PressReleaseIframePage>, (Last visited on June 23,2024)

³¹ Ibid

³² National Green Hydrogen Mission, available at <https://mnre.gov.in/national-green-hydrogen-mission/> (Last visited on July 19,2024)

³³ *Ibid*

³⁴ *Supra*, Note 32

tons of green hydrogen by 2030 and reducing annual greenhouse gas emissions by roughly 50 million metric tons are important goals”.³⁵

B. Green Credit Programme:

The Green Credit Program (GCP) represents a pioneering market-driven mechanism strategically crafted to stimulate voluntary environmental initiatives spanning a broad spectrum of sectors, engaging multiple stakeholders including individuals, communities, private sector enterprises, and corporations.³⁶ Officially notified on October 13th, 2023, this initiative is overseen by the *Indian Council of Forestry Research and Education (ICFRE)*, which is an autonomous body under the purview of the Ministry of Environment, Forest and Climate Change.³⁷

In addition to these, the government has also launched several other schemes like “*Amrit Dharohar, Mangrove Initiative for Shoreline Habitats & Tangible Incomes, Energy Storage Projects, and the Renewable Energy Evacuation, Coastal Shipping*”³⁸ etc. in order to encourage clean energy and sustainable living.

V. Judgements in relation to green energy in India:

The Indian judiciary have emphasized on clean and green energy in the following recent judgments.

- ***M.K. Ranjitsinh vs Union Of India*,³⁹**

A writ petition in the public interest was filed to safeguard two endangered bird species, namely the Great Indian Bustard (GIB) and the Lesser Florican, facing imminent extinction. The petitioner emphasized the mortality of these birds caused by overhead power lines. In April 2021, the Supreme Court delivered a groundbreaking verdict requiring the installation of bird diverters on current overhead power lines and considering the transition of such infrastructure to underground systems for upcoming projects.⁴⁰

- ***Hindustan Zinc Ltd vs Rajasthan Electricity Reg.Commission*,⁴¹**

In this case, the Supreme Court endorsed the adoption of innovative co-generation methods for generating electricity from renewable energy sources.⁴² Accordingly the Supreme Court observed “the National Action Plan on Climate Change and Preamble of the Act of 2003 emphasizes promotion of efficient and environmentally benign policies to encourage generation and consumption of green energy to sub-serve the mandate of Article 21 read with Article 48A

³⁵ National Hydrogen Mission, available at: <https://static.pib.gov.in › jan › doc2023110150801> (Last visited on June 20, 2024)

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³⁷ *Ibid*

³⁸ Pallav Kumar Chittej, India Green Policy Push : Initiatives to Promote Energy Conservation and Energy Efficiency, available at <https://www.ies.gov.in/pdfs/pallav-kumar-article.pdf> (Last visited on June 10, 2024)

³⁹ AIR 2021 SC 20

⁴⁰ M.K. Ranjitsinh vs Union Of India on 19 April, 2021

Available at <https://indiankanoon.org › doc>, (last visited on 27.06.2024)

⁴¹ Civil Appeal NO.4417 OF 2015

⁴² Supreme Court - Daily Orders, Hindustan Zinc Ltd vs Rajasthan Electricity Reg.Commission on 13 May, 2015, Available at <https://indiankanoon.org › doc>, (last visited on 27.06.2024)

of the Directive Principles of the State Policy and Article 51A(g) of the Fundamental Duties enlisted under Chapter IVA of the Constitution of India. Further, the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) Regulations, 2007 and Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations 2010 are consistent with the International obligations of India, as India has ratified the Kyoto Protocol.⁴³

VI. Conclusion:

The shift from conventional energy sources to sustainable and environmentally-friendly energy signifies a major change for the country's economic, ecological, and societal conditions. This analytical study underscored India's dedication to sustainable development by incorporating environmentally friendly and renewable energy sources.

India's shift towards green energy involves not only implementation of new technology but also it entails reorganization of the energy system, promoting innovation, and developing favourable conditions for private sector involvement.

Though, this shift is not without difficulties. For an efficient and efficient transition, challenges including grid integration, energy storage, regulatory obstacles, and monetary limitations must be resolved. India possesses the potential to achieve global leadership in the extensive adoption of renewable energy by overcoming these challenges through strategic planning and fostering international cooperation.

In conclusion, India's transition to green energy is a shining example of advancement and the country's commitment to creating a sustainable future. India's status as a worldwide leader in the battle against climate change and a role model for other developing countries striving for Sustainable Development would be cemented by the country's successful transition to green energy.

⁴³ Hindustan Zinc Ltd. v. Rajasthan Electricity Regulatory Commission, *available at* <https://climatecasechart.com> › Non-US Cases (Last visited on June 30,2024)