PROSPECTUS OF OCCUPATION/TRADE IN INDIA:

Introduction to the Prospectus of Occupation and Trade in India:

The only raison d’etre of Indian kingship in ancient India was maintainer and sustainer of the legal system kindled by morality. The traditional view of human rights limits them to civil and political rights as right to life, liberty and security. But the best way to ensure the progressive realization of human rights is “Violations Approach” whereby emphasis is on the protection and promotion of rights. For instance women’s rights means not only changing in and enforcing legal codes on gender equality and property rights, but also increasing women’s access to top paralegal services and local land and property title registration services. Sustainable human development is consistent with such a comprehensive approach.

Right to development is not a diversionary tactic designed to marginalize civil and political rights. At the same time, given the progress achieved in promoting civil and political rights, there is need of stressing the significance of the economic, social and cultural rights- components of right to development which in turn is not about charity, or redistribution of wealth of the developed nations but it is about shared responsibility of creating environment conducive to comprehensive enjoyment of all human rights.

On the conspectus of various decisions of the Supreme Court, the following principles are closely discernible on occupation, business and trades:

(i) While considering the reasonableness of restrictions the Court has to keep in mind the Directive Principles of the State Policy.

(ii) Restrictions must not be arbitrary of any of excessive nature so as to go beyond the requirement of the interest of the general public.

a) In order to judge the reasonableness of the restriction no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case also with regard to changing conditions, value of human life, social philosophy of the constitution, prevailing conditions and the surrounding circumstances.

b) A just balance has to be struck between the restriction imposed and the social control envisaged by clause (6) of the Article 19.

c) Prevailing social values as also social needs which are intended to be satisfied by restriction has to borne in mind.

d) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a nexus
strong then presumption in favour of the constitutionality of the statute will naturally arise. The extent and magnitude of the sanctity which any particular Fundamental right would derive from the constitution is a matter of judicial interpretation which have undergone radical change perceptible in the landmark judgments delivered by the Apex Court of the nation since 1970’s making a departure from the view taken earlier at the commencement of the constitution of India regarding the testing of the constitutionality of a law on the touchstone of Fundamental rights.

Supreme Court in Air India Statutory Corporation v. United Labour Union observed that the conventional method of interpretation should not be followed and shift to judicial orientation must be from private law to public law interpretation. In the context of the preamble to the constitution of India, the apex Court observed that Contract Labour (Registration and Abolition) Act 1970 is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of individual entrepreneur. It seeks to achieve a public purse, i.e. regulate the condition of contract labour and to abolish it when it is found to be of perennial nature. The individual interest can, therefore, no longer stem the forward-flowing tide must of necessity, give way to broader public purpose of establishing social and welfare democracy and the socio-economic justice can be realized by each and every workman when the judicial orientation shifts from private law principles to public law interpretation harmoniously infusing the interest of the individual entrepreneur and the paramount of the society.

1. AGRICULTURE

Agriculture is considered as backbone of Indian Economy. The Green Revolution seems to have lost its charm as evident from the spate of suicides continuing amongst the farmers of Andhra Pradesh and Vidarbha Region of Maharashtra, while the state Governments announced bail-out packages. The Union commerce and industry minister declare that the country is committed to protect the livelihood of crores of farmers. Agriculture is not only a sector or a commodity for us but also it absorb the largest part of unskilled labour force of India thereby giving them employment in it.

Despite the Cauvery dispute lingering in legal corridors for years, the state of Karnataka refuses to release Cauvery water to Tamil Nadu, it is no longer uncommon to see agricultural workers in the delta region (Mannargudi Tuluk near Thanjavur) hunting for rats to be stuffed with read chillies and salt and gobbled by the hungry farmers. The dispute of the Cauvery escalating rather then resolving. For a decade, there has been very less paddy cultivation as Karnataka do not release Cauvery waters to the Mettur
dam, even though Cauvery award abides them to open its shutters on June 12 every year to supply water to the farmer. Most of the farmers have already turned their backs on agriculture, acres of land are now covered with shrubs Many of the villagers are deserted as men and women have migrated to Kerala, Karnataka, to work in textile-dyeing units or as workers in other farms.

Meanwhile the food for work programmed is pending implementation in the villages. The black market has crippled the public Distribution System. While each card-holder is entitled to 20 Kg of rice a month at a rate of Rs. 3.50 a kg, most end up getting only half the amount. Much of the stock gets diverted and sold in the open market at Rs 22 a kg, which farmers cannot afford. Even the scheme like MGNREGA did not do much favour to farmers as the object of the scheme is to give 100 days employment in a year to villagers is defeated and scheme has engulfed in corruption and nepotism. The most fertile field of the farmers are acquisitioned by the city developers, town planners and other agencies for commercial purposes.

II. BIDI AND TOBACCO INDUSTRY

In Chintaman v. state of M.P. Prohibition of manufacture of bidis during agricultural season with the object to make available adequate agricultural labour in the bidis making industrial area was held void on the ground that the law, in effect, suspends all together the right of the manufactures of bidis during agricultural seasons. The labourers who have no relation to agricultural operations have also been deprived of their livelihood by prohibiting them from engaging in the business of bidi making.

Bidi and tobacco industry is serving as a back bone of the life for lakhs of people who are dependent on it for their livings, However, because of its unique disastrous health properties, this industry is under a regular and continuously ever mounting pressure to be completely eradicated.

1. As a result of extreme poverty, 60% of the tobacco is consumed through bidis and chewing tobacco. These products are produced largely in the unorganized sector. It is the poor section of men and women who are engaged in hand rolling and producing these products at home.

2. Almost 20 million marginal labor and 6 million farmers are engaged in tobacco cultivation, 4 million people are registered as bidi rollers and about a million poor tribals and rural people are involved in plucking tendu leaves.

3. Almost a million tribals in the poor state of Madhya Pradesh, Chhatisgarh and Orissa depend on plucking tendu leaves which is used for rolling bidis. The Tendu
leaves are grown on waste land and are valued at almost Rs. 300 million. The Tribals are mainly depended on tendu leaves for their livings.

If the tobacco industry is as such banned then it shall have a disastrous impact on the livelihood of millions of poor people. The tobacco market is a major source of revenue generator and a major employment absorbing industry.

On the other hand, the hazardous health diseases causes due to tobacco and smoking can not be straightaway dismissed. When this is the situation of the impact of the bidi and tobacco industry, then instead of curbing the occupational right of the poor completely, law should rightly and reasonably be restricted in use of tobacco but rights of poor must be protected. Prices can be raised, advertisements can be restricted, anti-smoking preaching can be boosted (rather than anti-tobacco industry), health concerns and awareness can be created. Through many other ways people can be make aware of the hazards of tobacco thereby making them conscious of taking minimal amounts of tobacco and related products.

Tobacco companies are to be forced to print colour photographs of lung cancer victims and diseased organs on the cigarette packets to act as shock tactic for smokers and increase their determination to give up. Canada and Brazil have already achieved appreciable progress in cutting the number of smokers. The further constraint banning the use of misleading descriptions such as “mild”, “light” are also proposed to be banned.

Attempt of Ireland becoming first European country to ban smoking is being opposed as the cigarettes and alcohol are treated as synonymous to Irish culture. Many countries in Western Europe are passing strict laws to battle smoking. Norway and Netherlands have approved prohibition on smoking in bar and restaurants. France has increased tax on tobacco to reduce the tobacco sales. United States is persuading its smokers to give up the habit or bypass it altogether. In 2003 WHO unanimously adopted a global treaty to aim at curbing tobacco-related deaths and disease, which now claim 5 million lives every year, and if left unchecked the number could double by 2020.

The Framework Convention on Tobacco Control [FCTC] negotiated under WHO auspices require countries to restrict tobacco advertising, sponsorship and promotion and to set new labeling and clean indoor air controls system. Legislation must clamp down on tobacco smuggling. The point is that not long ago the Supreme Court delivered a Judgment in a case of Chintaman regarding the right of manufactures of bidis. It stated that manufactures of bidis is an unorganized sector in comparison to cigarette industry. But for the poor manufactures of bidis, smoking pollution can not be allowed.
Victimization of helpless non smokers and the pollution caused by cigarette smoke and tobacco must be restricted.\textsuperscript{7} the manufacturing units of cigarettes are earning a livelihood in a legal manner but now it can face uncertain future because many people and NGOs in India are demanding a total ban on cigarette productions.

III. CALL CENTERS

The Americans are latching out at the practice of American corporate out sourcing in India in order to cut the costs however by doing this the unemployment rate has risen to 8.5 percent in America today. Americans are protesting against this and there were strong opposition in many part of America especially in New Jersey, Missouri etc .against the call centre business moving to Asia. The Senate State Committee of New Jersey unanimously has passed a bill with a full vote which clearly stated that any company awarded a state contract will be mandatory to employ only US citizens or those authorized to work in America.

There are estimated 2,48,000 Indians who are in temporary jobs in information Technology sector. Temporary jobs entail a tripartite contract between employees (called associates), Companies (Clients) and the intermediary (recruitment firm). The recruitment firm hires people for its clients for a fixed tenure ranging between 45 days to one year. The associates work for the clients but they remain employees of the recruitment firm. This marks a drastic shift in the Indian labour market. A large proportion of white collar jobs, most of them in unorganized sector have always been temporary. But short-term white-collar employments are now becoming common. The temporary jobs allow companies to increase or decrease staff without hassles. Companies can focus on core functions than worry over staff; the as temporary staff means lower pay and overloads of work. A short-term project of this kinds of employers gives the flexi-job with insecurity and problems. Certain benefits and perks like personal loans and club membership are not available to temporary employees. There is no job security in the market today but the employees have stated perceiving that it is performance and permanence that counts.

IV. CHIT FUND

The Supreme Court upheld the constitutional validity of the chit funds Act 1982 In Shriram Chits and Investments v Union of India\textsuperscript{8} held that the regulatory Measures are for protecting the subscribers interest as such they are reasonable restriction imposed to protect the subscribers interest. The Court held that Section 4 of the said Act is discretionary providing guidelines to grant sanction or refuse for commencement of the chit fund which is regulatory in nature and not violative of Article 19 (1)(g).Similarly, the
ceiling on discount under section 6 (3) is neither arbitrary nor unreasonable. Section 11 of the said Act provides for prohibition against carrying any business other than chit fund and the said provision was held to be regulatory in measure providing sufficient guidelines to protect subscriber’s interest. The aggregate amount of chits as provided under Section 13 was held not being violative of Article 19 (1)(g) of the Constitution.

V. COACHING:

The rise of the twin veils of tuition and coaching has occurred mainly because of two factors first is the decline of the old educational system and second is the new rise in global competitiveness. Gone are the halcyon days of just 20 years ago when ‘tuition’ was supplementary, a last resort to help students considered weak. Today, many teachers make several times their entire salary from tuitions and hence rarely put the same kind of effort into their regular teaching jobs. Irked by this trend, Scholar Amartya Sen even suggested that tutoring offered by salaried school teachers be banned The lakh of rupees spent by the parents on coaching is seen as investment. This investment can be worthwhile only when costs are recovered. Cost recovery for the average middleclass son is through two traditional venues- one is public sector jobs and another is dowries. In other words, coaching enhances and encourages existing corrupt practices. Irrespective of judgments of the Supreme Court on education not being a Trade, the Coaching Centers are flourishing every where, with about 200 of them having acquired the status of International and national Universities. Coaching has flourished mostly in last decade only and recent decision of Union Human Resources Development Ministry conducting teacher eligibility test for the basic teacher across the country from year 2011 onwards has forced the lakh of student to attend the coaching classes. It seems by its decision that instead of curbing coaching Ministry is promoting the concept of coaching.

VI. CONSUMERISM

In today’s scenario of cut-throat competition and maddening race, vying for more and still more. Mumbai’s mushrooming casting agencies say that they get at least ten applications every day from parents keen on a modeling career for their children. Child modeling means big bucks today, the successful one becomes stars, and is much sought after by ad-film makers. Most ads today use children to push products and they also go on to become role models for other kids. Consumerism is our bread and butter and yet, should we start converting the kids to consumerism at the age of three or five? Prahlad Kakkar Genesis Film production throws a light on the new- age marketing mantra. Pester Power is the new buzz word in marketing circles and the country’s business houses have
realized that the child is the key to loosen his parents’ purse-strings. A number of children’s channels are waiting to take off in the next few months—they are sure to find brands eager to advertise on them, which mean good money. Children are better consumers of advertising. Their minds are not cluttered as adult minds and so they can assimilate the message faster. The receptiveness translates into pester power. “Kids are responsible for making an ad a hit or flop” says Prasoon Joshi of Mc Cann Erikson, the man behind the “thanda matlab Coca-cola” campaign. If a kid likes an ad, he remembers it and keeps repeating it. Soon enough the parents are humming the tune as well. Parents tend to buy peace at home by buying their kids things. The issue of whether it is fair to target children as consumers is only beginning to be debated here, in UK, USA, TV ads for sugary cereals, snacks and other foods shown to young children results in their begging for and eating such food, which in turn is contributing to the obesity epidemic among children. The Kaiser Family foundation, a non-profit group in the US that studies health care issues, backed this saying “Ten billion dollars in food industry advertising aimed at kids is a powerful counterweight to parents trying to get their kids to eat a balanced diet.” British Newspaper the Guardian once reported the results of a poll it conducted on the ads on food items and found that over 80 percent of Britons want food ads aimed at children to be banned as the manufacturers are irresponsible. Ad man Prahlad Kakkar accepts commercial are getting more and more sophisticated and children don’t have the power to rationalize. Today’s advertisements interface with the traditional value system of our children. In our country, there are no standards as yet so far as advertising for children is concerned. It is not a black and white situation as one cannot sit on a judgment on whether consumerism and having more choices is a good or bad thing in a society where values are changing fast.

VII. ENTERTAINMENT

Providing entertainment is implied in the freedom of expression guaranteed under Article 19 (1)(g) of the constitution subject to that the freedom must be balanced against competing societal interests, it is true that providing entertainment is a form of exercise of freedom of speech and expression. But the activities involves the combination of two rights i.e. business and speech sub-clause (g) and (a) of Article19 (1) of the Constitution. There is no reason why the business part of it cannot be taxed. If tax can be levied upon the entertainment provided by cinemas, if tax can be levied upon the press, it is not understood why tax cannot be levied upon the entertainment provided by cable Television. It has been held that levy of entertainment tax is not invalid on the ground that
it violates the freedom of speech and expression guaranteed to the cable operators by Article 19 (1)(a) of the Constitution\textsuperscript{10}

The restriction imposed prohibiting the licensee of the video games from admitting the school children or college students attending the games during the school or college hours is neither unreasonable nor capricious and such restriction is in the public interest for the education of the children and the student. It cannot be termed as violative of Article 21 of the Constitution. The requirement of license to run video games irrespective of the space used for running the games is not unreasonable restriction\textsuperscript{11}

Regulation of the video games and even prohibition of some of video games of pure chance or mixed chance and skill is not violative of Article19 (1)(g) or Article of the Constitution. The restriction imposed on film maker is not unreasonable, unfair or unjust\textsuperscript{12} CBFC bans small-budget films on four pronged objections, they are: vulgar, obscene, anti-national and derogatory to Indian woman hood. On the flip side, 300 industry people find employment per film. More than 90 percent of the second level actors make additional money through these films. Every body cannot depend on four or five block busters a year for bread and butter on a regular basis.

The Filmmakers are harassed on account of ‘frivolous litigation’ filed by people in small towns for publicity or money. This is because most of the filmmakers prefer to settle the matter out of court in order to avoid litigations at distant places. The litigation takes place after the Censor board clears the film. Harmesh Malhotra, who has made films like Nagina, Dulhe Raja, has spent 15 years doing the rounds of a Ratlam Court. Someone has filed a case against him in Ratlam claming a song in the film (Nagina), written by Anand Bakshi, had actually been written by him, for years he faced immense mental anguish and spent lakhs of Rupees in litigation. The case was wrapped up finally after it was proved that the petitioner never met him. Filmmaker David Dhawan was dragged to a Bareilly court on a Complaint that his film Kyonki Mein Jhoot Nahin Bolta portrayed lawyers in poor light.

Suggestion-Some notification be issued that frivolous litigation against the filmmakers be limited to the competent court of Mumbai alone or any place where the respective censor certificate has been granted. This will save the filmmakers the trouble of running to remote places every time a case is slapped against them

\textbf{VII.I. Circus:}

At the time of Buddha in the 6\textsuperscript{th} century B.C., People amused themselves in fairs and carnivals where animal-fights, and magical feats, dances and dramatic performances
were held for entertainment. Prostitution, Gambling drinking were common vices. But today the Government bans animal fights in the name of their torture. The monkeys shown are banned. Circus is frowned at for the ill treatment being meted out to the animal. The rights of life of animals are being weighed against the Right of livelihood of madari, circus employees. The Majority of Mahants from Guwahati to Mangaldoie in Assam are jobless since the ban and they are left with no option but to beg for alms along with their elephants who have no other role. Where do such elephants and other wild animals go who are released from their services? No organization takes up any step to ensure that they are in safe custody for lifetime. Repeated rapes, very little food, back breaking work and child exploitation are the order of the work in circuses. In a circus a band of around 100 persons perform various activities many of them are minors. They are often rescued by NGO and cases are registered against the circus owner under the pressure form NHRC or social activities like Swami Agnivesh and others. Minors who works in circus is against the law. The circus owners exploit the adult workers too, they are being paid Rs. 100/- or less than Rs. 100/.

Therefore Fundamental Rights against exploitation alone will not suffice. The judicial bodies, Human Rights Commission, NGOs have to make their presence felt to make the things rolling for protection of human rights and elimination of child labour from India.

VIII. ESSENTIAL COMMODITIES:

Notification fixing stock limit of any cereal to be possessed by wholesale dealers, at any time at a fixed number of quintals does not amount to unreasonable restriction. The restriction, on the contrary is essential in order to obviate hoarding or black-marketing. The traders of the essential commodities always runs the risk of their freedom of trade being drastically restricted or regulated by the Government with a view to arrest the price line or to prevent the black marketing and hoarding of essential items. Under the Essential Commodities Act, the Government is competent to introduce restriction or regulation of the trade in essential items to ensure equitable distribution of the commodity at a fair price to the consumer. The Government may impose ceiling on the stock which the trader can hold or impose a levy. In Suraj Mal v Union of India the Supreme Court upheld the fixation of ceiling of 200 quintals on an essential item (wheat) which a trader can possess in their stock at a time. The court observed that the object of the order was to ensure supply and distribution of the essential item at a fair price for the interest of the consumers and to prevent hoarding.
There is no power in Government, under the Essential Commodities Act, 1955, Sec. 3 (2) (F), unless that law is amended, to order a stockholder to sell. The fundamental right under Article 19 (1)(g) is not violated merely by canceling appointments of wholesale distributors of rationed articles and authorizing Food Corporation of India to do wholesale distribution. The point is that no one has a fundamental right to trade in a stock of goods held by another.\textsuperscript{15}

The constitutional validity of Section (3c) of the Essential Commodities Act was challenged in H.S.S.K Niyami v Union of India\textsuperscript{16} it was held that since the Act has been brought within the protective umbrella of Art. 31C of the Constitution read with 9th Schedule, it is immune from the attack that the Act is ultra vires of the fundamental rights enshrines under Article 19 (1)(g) and the right to property under Article 19 (1)(f) of the Constitution. The earlier decision of the court in Sri Sitaram Sugar Co. v. Union of India\textsuperscript{17} was followed. The right under Article 19 (1)(g) being not absolute, a direction to dealer carrying on food grains business under a license to stock 500 quintals of wheat by a particular date, under condition of the license is not violative of Art 19 (1)(g), since food grains are an important essential commodity and the condition to have a buffer stock for times of scarcity would be reasonable in the interest of the general public.\textsuperscript{18}

**IX. FIREWORKS MANUFACTURES**

Article 19 (1) (a) of the constitution provides fundamental rights to the citizens to the freedom of speech and expression and this right was only subjected to restrictions imposed under Art Article 19 (2) of the Constitution on India. It was held in Om Biraugana Religious Society\textsuperscript{19} that the freedom of speech and expression guaranteed under Art Article 19 (1) (a) is subject to the reasonable restriction imposed under Art. Article 19 (2) of the constitution. This means, by necessary implication, includes the right not be listen and/or to remain silent. This right includes right to leisure, right to sleep, right to read and speak with others and even right to worship in his own way and that it was held that sound is a known source of pollution and by means of sound through loudspeaker or others, citizens cannot be made captive listeners. The Court directed the police authorities, the administrators and the pollution Control Board to maintain Noise Level Register which could be permitted by use of microphone or any other sound gadgets. The Pollution Control Board accordingly fixed up the Noise Level in four different zones (a) Industrial, (b) Commercial, (c) residential and (d) Silence zone. The silence zone included Hospitals, Nursing Homes, School, Collage and The Courts etc.
where the noise level was fixed at lower level but in the Industrial area the noise level was fixed at higher level.

In Consonance with the direction of the Court the Government of West Bengal vested the power in the Commissioner of Police by notification no. 2890 P and AR dated 31st October 1996. The commissioner of Police accordingly to prevent manufacture, possession, transportation, trading, sale and discharge and use of fireworks generating noise level of about 65 decibels. The manufacturers, sellers and the distributors moved the High Court in Burrabazar fire Works dealers Association challenging the violation of their fundamental right to manufacture, sell and deal with fire works. The court held that there is no inherent or fundamental right in a citizen to manufacture, sell and deal with fire works which will create sound beyond permissible limit and which generate pollution which would endanger the health and the public order, Article 19 (1) (g) of the Constitution of India does not guarantee the fundamental right to carry on trade or business which creates pollution or which takes away safety, health and peace of the community. A citizen or people cannot be made a captive listener to hear the tremendous sounds caused by busting out from a noise of fire works. Article 19 (1) (a) read with Article 21 of the Constitution of India gives the citizens right to live peacefully, right to sleep at night and to have to leisure which all necessary ingredients of the right to life guaranteed under Article 21 of the Constitution. The court held that a restriction imposed on the transportation, trading, sale and discharge and use of fireworks generating noise level of 65 decibels was reasonable.

X. FISHERMEN’S RIGHT TO FISHING

The Government of Kerala with a view to regulate fishing in territorial waters imposed ban on using mechanized nets like purse, seines, ring seines, pelagic and mid-water trawls, the constitutional validity of such prohibition was challenged in State of Kerala v Joseph Antony as violative of their right to business and trade. The court held that the restriction imposed by the notification is reasonable and not violative of Art 19 (6). The Court reasoned that the operators of purse seines are few and rich with enough resources at their command and they do not ordinarily form part of the fisherman population properly. Fishing is not their traditional source of livelihood and they entered the field only to make profit. The ban on fishing by mechanized nets like purse seines, ring seines, pelagic and mid-water trawls is necessary firstly for protection of the source of livelihood of the already impoverished mass of fishermen in the state and also to save
the pelagic fish wealth within the territorial waters form depletion and eventual total destruction.

**XI. FLORISTS**

Traders procuring flowers from distant places like Hyderabad, Bhopal, Ahmedabad and Jaipur say that their business is declined because of blistering heat at 48 degrees Celsius in these cities. There is no cold storage facility in the flowers wholesale market in these cities despite repeated pleas to the Municipal Corporation thus depriving the traders the chance to increase the shelf life of the flowers.

**XII. INCREASE IN HOLIDAYS**

In a significant judgment\(^2\) the Supreme Court has ruled that compulsory closure of Industry on national holidays cannot be treated as unreasonable and thus cannot violate the Fundamental right to carry on trade and business. The ruling was handed down by a Division Bench comprising Mr. Sagir Ahmed J. and Mr. Justice B N Kirpal while dismissing an appeal by MRF Ltd challenging the constitutional validity of Kerala Industries Establishments (National and Festival Holidays) (Amendment) Act 1990. The Judges observed: we are of the opinion that the Act by which the national holidays have been increased is fully constitutional; and does not in any way infringe the right of the appellant to carry on his trade or business under Article 19 (1)(g) of the constitution. The compulsory closure of the industrial concern on national and festival holidays cannot be treated as unreasonable. Judiciary several times rejected the contention that the increase in the number of national holidays was violative of their Fundamental Right and were also arbitrary in as much as it was compelled to pay to its labour and other employees even for closed days on which they did not work.

**XIII. LEGAL PROFESSION**

It is held that in the name of safeguarding the rights, privileges and interest of the advocates on its roll, the Bar Council cannot do something which will take away, even though temporarily the statutory and constitutional right of an advocate to practice, except under the provisions of Section 35 of the Advocate Act. Compelling an advocate to cease work not only amounts to invasion of his statutory right but it amounts to an invasion of fundamental right of an Advocate as guaranteed under Article 19 (1)(g) of the Constitution. The resolution calling upon the advocate to cease work and penalizing the members who chose to ignore such call is violative of Article 19 (1)(g) and Article 21 of the Constitution.\(^2\)
The lawyers have no right to go on strike or token strike or to give a call for boycott. The Lawyers while holding vakalat for the clients cannot abstain from Courts in pursuance of a call for strike or boycott Bar Association or Bar passing any Rule or legislation for prevention of holding strikers or Dharnas by the Advocates and legal Practitioners shall not be violative of Right to Profession under Art 19 (1)(g) and it shall amount to reasonable restriction under Article 19 (6). It was further held that only in rarest of rare cases involving dignity, integrity and independence of the Bar or the Bench, the Courts may ignore a protest abstention from work not exceeding one day. However it is for the courts to decide as to whether the issue involves such aspects. The lawyers holding vakalat of a client and abstaining from court would be personally responsible for the costs, in addition to liability to damages towards his clients for loss suffered by his client.

Rule restricting enrolment as an advocate for person carrying on other profession: considering the nature of the legal profession, the state Bar Council of Maharashtra and Goa is justified in framing a rule prohibiting the entry of a professional who insists on carrying on other profession simultaneously with the legal profession. In Indian Council of Legal Aid and Advice v. Bar Council of India a case decided under Article 14 of the constitution Rule 9 in chapter III of Part VI of the Bar Council of India Rules added in 1993, prevented a person who had completed the age of 45 years, on the date he submitted his application for his enrolment as an advocate, from being enrolled as an advocate. The Supreme Court struck down the Rule as discriminatory, arbitrary and unreasonable. It is further unreasonable and arbitrary as the choice age of 45 years is made keeping only certain group in mind ignoring the vast majority of other persons who are in the service of the Government and quasi-Government or similar institution at any point of time. The rule therefore violates the Principle of equality enshrined in Article 14 of the Constitution. To have a chamber within the Court premises can not be regarded as integral part of the right to practice as an advocate, but subject to Advocate Act

The refusal of permission to a blind legal practitioner to have the recording of proceedings with the help of a tape-recorder to enable him to conduct the case cannot be held to be one imposing an unreasonable restriction on the fundamental right of a lawyer to carry on his profession under Article 19 (1)(g) it was held that a certain amount of solemnity is attached to the proceedings of a court which are likely to be affected if they are permitted to be tape-recorded or filmed But Video- Conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away,
with the same facility and case as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video-conferencing both parties are in the presence of each other. So long as the accuse and/or his pleader are present when evidence is recorded by video-conferencing, that evidence is being recorded in the presence of the accused and would thus fully meet the requirements of section 273 of Cr. P.C. Recording of such evidence would be as per procedure established by law.

XIV. MIGRATION

General Assembly of UNO in its convention urged all countries to adopt international treaty that protects the rights of more than 3 million living and working in countries other than that of their birth, calling migrants, unsung heroes of their homelands and families. In its statement Assembly said that it is needed to recognize the huge but often unseen contribution that millions of migrants make to the economies, societies and cultural advancement of countries throughout the world. Not only the migrants help to enrich the fabric of their host countries but they also bring back the valuable skills, knowledge and experience when they return to their countries of origin. But the fate of many migrants lies in stark contrast to the aspirations reflected in the Universal Declaration of Human Rights, to be paid low wages, receives few or no benefits and work without minimal safety and health. The UN General Assembly adopted a resolution in 1990 in its international convention on the Protection of the Rights of all Migrants workers and members of their families to establish a comprehensive framework to uphold the rights and safety of the migrants, but it urged the governments to make the tools to discourage unauthorized migrants. It also narrated that there is abundant evidence that migrants, and in particular women and unaccompanied children, are often subject to physical, psychological, sexual abuse, prevented from reuniting with their families, detained in conditions that violate the international human rights standards and make them vulnerable to networks of smuggling and trafficking in persons.

It is observed that the suffering endured by migrants is often compounded by bigotry. Discrimination may be both implicit, in lack of mechanism of protection for migrants, and explicit, in the form of discriminatory national legislations and outright acts of racism or xenophobia. According to UN in 2009 an estimated 200 million people lived outside their country of birth, of these, most of them were deemed international migrants, while 21 million were recognized refugee fleeing a well founded fear or persecution. In
war torn Libya up to the May 2011 thousands of people flew from Libya to refute themselves in other Arabian countries.

There’s growing global backlash against Indian IT engineers. from the US to Europe to East Asia, our techies are facing the ire of local co-workers, policy makers and powerful unions. So, whether it’s a case of pushing through new legislation or plugging holes in existing ones, several governments are aiming to curtail Indian firms from expanding their tentacles, because Indian success has led to these resistances.

Whatever the phrase we use ground realities are stark. In the US, senators and lobbyists are working on bills to restrict outsourcing and plug loopholes in the existing visa regime. In the UK, unions are pressuring corporate not to shift backend offices to South Asia. In Asian Countries, Indian professionals are routinely rounded up by local police.

XV. MILK DAIRIES

Mostly dairies from Delhi are shifted in the suburbs. Delhi Government’s earlier plan was to develop the diaries areas in each district, but the DDA has refused to provide the land. Now the development department has proposed relocation of all dairies in the NCR area. People whose livelihood is affected are worried because shifting dairies outside Delhi have deprived the people of a constructive medium of disposal of vegetable wastes at home as earlier people use to give it away at dairies near their houses but now there are no such cows or buffaloes to be found in the cities. The Delhi Development Authority opines that since the city is getting fully urbanized dairies may not fit in the new scheme of things.

XVI. PRIVATE PRACTICE

No Government doctor can claim right to private practice. In Dr.Y.P. Singh v State of U.P. it was argued that if the Government doctors are restrained from doing private practice, then the public will be deprived of their service which would not be in the public interest. The high Court turned down the argument and held that the restriction is in the public interest and not unreasonable. The Court took into judicial notice of the resolution of the India Medical Council dated 24th March 1976 which recommended to the State Government that all the posts of teachers of the Medical colleges should be declared full-time and non-practicing in order to ensure high standard of medical education and research. The rules do not prevent a graduate in medicine and surgery from practicing his profession. It, in effect, only provides that if such a graduate has become a
Government doctor and draws salary from public exchequer, then he shall not be entitled to do private practice for pecuniary consideration while remaining in Government service.

Section 9 of the West Bengal State High Service Act 1990 prohibited private practice by the doctors engaged in teaching and the constitutional validity of the said restriction was challenged on the ground of being violative of Art 14 and Article 19 (1)(g) of the Constitution. The Supreme Court upheld the Constitutionality the west Bengal Medical Education Service as reasonable restriction in the public interest. The Court reasoned that once the doctor takes employment, he has to abide by the terms and condition of employment and the Act incidentally restricts the privileges of those who join the services created under it. As in the instant case those who join the Government service with the full knowledge that they will have no right to practice the profession privately, agrees to give up their right as private practitioner in consideration of their security, status and privilege as a Government servant. The restriction imposed by Section 9 of the Act is not on the freedom of practice of medical profession but on such practice while one continues to be a member of Public service. The nature of duties of Government servants may certainly differ from those of private and other citizens, and restriction by Government can be imposed upon Government servants by or under the service rules prohibiting them not to engage in any other occupation, business or profession, for example, prohibiting a medical officer from engaging in private practice. Such restrictions, once they ensure during the period of active service, do not amount to abrogation of the right under Article 19 (1)(g) but amount only to reasonable restrictions, provided the restriction is not harsh, unreasonable or excessive.31

XVII. PRINTING

The classification of newspaper establishment on all India bases for the purpose of fixation of wages is not bad in law. Such classification cannot be said to be violative of the petitioners right under Art 19 (1)(a) and 19 (1)(g) of the constitution. Financial capacity of all India newspaper establishments has to be considered on the basis of gross revenue and the financial capacity of all the units taken together.32 The petitioners in India Express Newspaper (p) Ltd. v Union of India33 challenged the amendment of Section 2 (d) and Section 10 (4) of the working journalist and other newspaper Employees (Condition of Service) Act 1955 on the ground that such amendment is violative of Arts. 14 and 19 (1) and 19 (1)(g) of the constitution the Supreme Court in view of the fifth and sixth propositions for the law laid down by the Court in the Express newspaper case held that the unit of newspaper establishment which has branch all over India, can be clubbed.
together for the purpose of fixation of wages on all India basis, Since all the units of the establishment are not expected to fare similarly, uniform pay scales for the employees in all India units can be prescribed by taking into consideration the financial capacity of the establishment as a whole. The classification of newspaper establishment on all India bases for the purpose of fixation of wages is not bad in law and did not violate the rights under Art 19 (1)(a) and 19 (1)(g) of the Constitution. The Financial capacity of all India newspaper establishments has to be considered on the basic of gross revenue and the financial capacity of all the units taken together.

XVIII. PUBLIC UNDERTAKINGS

It is noticed large number of Delhi Transport Corporation (DTC) ex-employees get paid for doing nothing, not even reporting for work-why? Because DTC’s legal cell does not seem, interested in pushing DTC’s interests hard enough (choosing instead to rob the taxpayers) Secondly because the Corporation’s administration has found a novel way of milking it. Ex employees is getting pay-without work has been going on in the DTC for several years. DTC sacks some of its employees on flimsy grounds like misconduct. The case goes to an industrial Tribunal for approval. The tribunal takes its own time to come with a decision; in the meanwhile the DTC appoints replacements even before they are actually dismissed. In most cases, the Tribunal disapproves the DTC’s decision to sack the employee (usually the reason of dismissal being flimsy as absent from Duty), making them eligible to claim back wages. But instead of taking the employees back, DTC takes them to court. Now the court usually sides with the employees as there is a legal provision for the employees to claim back wages. So DTC ends up paying two people for the same job.- The person who had been ‘dismissed’ and the new person who has been hired as replacement.

XIX. QUARRY WORKERS

Facing unemployment and the resultant poverty, thousands of quarry workers in Rajasthan are protesting a recent Supreme Court judgment that orders the closure of 600 stone quarries in the state on ecology and health grounds. The Supreme Court ruled that mining was damaging the desert region’s mountains, besides seriously endangering the health of workers involved in quarrying the world famous Rajasthan Marble. According to the state government figures, permanent closure of the Rajasthan mines and quarries will render 7,00,000 people jobless. Not only will the miners lose their jobs but those involved in other aspects of the business will also be affected. The rickshaw-pullers, cart-pullers and other concerned will also loose their livelihood. The villagers are not aware of
the consequences of (working in) these quarries that do not comply with the pollution rules. Environmentalists allege that mine-owners pay little heed to pollution control and health and safety standards because lack of enforcement mechanisms makes them easy to bypass pollution laws. Workers and their families, who live in shanties close to the mines, of mineral deposits including Zinc, lead, cadmium, marble and other precious and semi-precious stones are suffering of many ailments permanently, therefore pollution free environment is must for all.

XX. RIGHT TO WORK AS AVAILABLE TO TRIBALS

Drought like climatic conditions in 2009 denuded the tribal farmers in District Gadchiroli in Maharashtra of their meager resources. They had to sell off even their crop seeds which they had kept aside for sowing. The only means of livelihood left with them was to work as labourers on other farms but drought had hit all farmers so hard that the conditions were same elsewhere in the district. Even the tribal youth of the area don’t want to work on the farm lands though they want jobs. But when the highly educated youth are unemployed in cities, how can the 12th pass or under graduate tribal youths find any jobs in this backward area unless secured and reserved for them by statues. After treating a newspaper report as a PIL, the Bombay High Court bench has ordered the Nagpur Divisional Commissioner to pay regular visits to the Binagunda area in Maharashtra to understand the needs of the over 600 Madia-Gond tribals there. For the tribals at Binagunda in Maharashtra, the sight of a state transport bus has been a distant dream, forget about telephone or TV. The tribals are surviving mainly on shifting cultivation and the animals they hunt. These areas are Naxalites affected areas which have been shut down from the outside world. The tribals complain that even they demand bore wells from the government these are denied to them as the government officials justify their stand saying that naxalites do not allow them to work there; therefore first and paramount work is to free the tribals from naxalite activities and bring them in mainstream life. MG NREGA which provide 100 days employment in these areas too has failed to check tribal’s exodus to naxalite activities.

Indigenous and tribal people in Indian have been at a disadvantage having lived as secluded life, groups-secluded by their own distinctive socio-cultural ethic Character, secluded by geographical limitations. Rapid globalization has further compounded the problem for them and widened the gap, leaving the tribal in their remote backward homesteads way behind the advancing economic milieu. Various NGOs Government schemes are helping the tribal in MP, Gujarat, Bihar, Orissa to overcome their poverty
through income generating activities based on available natural resources and traditional occupations which the people could relate to, for tribal development and poverty alleviation and search for the market potential for their natural resources etc.  

XXI. DISABLED PERSON

“Disability is first and foremost a human right issue” Article 41 makes effective provision for securing the Right to work to person suffering from disability. Further, in view of the provisions contained in Article 36 and 37, it is apparent that Article 41 is mandate both to the Legislature and the Court. The maintenance & welfare of Parents and Senior Citizens Act 2007 makes the provision for maintenance and welfare of parents and senior citizens. Section 9 of the Act order for maintenance, if children or relatives as the case may be neglect or refuse to maintain a senior citizen being unable to maintain him. The Tribunal or court on neglect or refusal may order such children or relatives to make a monthly allowance for the maintenance of such senior citizen or parents. Job security is an ingredient of the Right to work in view of the philosophy of socio-economic justice. Invoking this Article. It has been held in many cases that if a person becomes “disabled” during the tenure of his service for any reason whatsoever, he cannot be thrown out of service; he has to be provided alternative job. In 1971, the General Assembly adopted the “Declaration on the Right of Mentally Retarded person” whereby the mentally retarded persons were to be accorded the same rights corresponding to their needs in the medical, educational and Social fields.

On 1st December, 1992 the Economic and Social Commission for Asia and Pacific Region convened a meeting at Beijing and decided to launch “1993-2002 as the Asian and pacific Decade of Disable person”. A proclamation was also adopted on the full participation and equality of people with disabilities in that region. India as Member of the parliament enacted the Person with Disabilities (Equal opportunities, protection of Right and full Participation) Act, 1995 (Act 1 of 1996). The parliament also passed the National Trust for Welfare of person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 with the object of “to give maintenance allowance for the persons with disability. It provides for empowering the handicapped persons to live independently, while living within their own families. It may be mentioned that prior to the commencement of the 1993-2002 Decade, as adopted in the Beijing Conference, the Indian Parliament had already passed the Rehabilitation Council of India Act 1992 (Act No. 34 of 1992) for regulating the training of
rehabilitation professionals and the maintenance of a Central Rehabilitation Register for matters connected therewith or incidental thereto.

Taking suo motu cognizance of the death of 25 chained inmates in an asylum fire in Tamil Nadu, the Supreme Court issued directions to the Cabinet Secretary and the Union of India to indicate the policy, if any, framed under section 8 (2) (b) of the persons with disabilities (Equal opportunities, Protection of Rights and Full Participation), Act 1995. A scheme was proposed by the Union of India for medical check up and treatment of visually-handicapped person. The Supreme Court held that the scheme deserves to be adopted by all states and Union Territories so that check ups and treatment could be made available to all visually handicapped persons and no one was denied corrective surgery. The Supreme Court directed the Government of India and Union Public Service Commission to permit blind and partially blind eligible candidates to compete and write Civil services Examination in Braille-script or with the help of scribe. The Government of India was also commended to decide the question of providing preference/reservation to the visually handicapped persons in groups “A” and “B” posts in Government and public sector undertakings expeditiously.

In Sheela Barse v Union of India directions were issued by the Supreme Court that physically and mentally retarded children and abandoned or destitute children shall be lodged in protective observation homes and if such children are accused of any offence, the investigation and trial against them be expedited by setting up juvenile courts in each District and a cadre of trained magistrates for dealing with such cases be formed. In Godawari Bai v. DDA appropriate directions were issued by the Supreme Court for out of turn allotment of flats made by the DDA to the handicapped persons including the blind lady. In Daya Ram Tripathi v. State of U.P. it was held by the Supreme Court that if in an advertisement, issued by the U.P. Public service Commission, one post in the provincial Civil Service (Executive Branch) was reserved for physically handicapped persons and the appellant, namely, Daya Ram Tripathi, who was such a handicapped person, appeared in the Combined state Service Examination. held in 1982, pursuant to such advertisement he was declared qualified in that Examination, the Government could not deny him a suitable post in the PCS (Executive Branch). It was further observed that the government could not later create needless hurdles. The cadre of the PCS (Executive Branch) was large enough to easily accommodate physically handicapped person in suitable posts. Two decision of the Delhi High Court may also be referred. One is Pushkar Singh & Ors. v. University of
Delhi and the other is Smt. Shruti Karla v. University of Delhi. In the first case the Executive Council of the Delhi University had decided that there would be without relaxation in required qualification 3% reservation for blind and orthopaedically handicapped candidates in teaching posts in the University and Colleges. The petitioners contended before the Delhi High Court that in spite of resolution of the Executive Council of the Delhi University, there was no reservation made for teaching posts, inasmuch as, no appointment of the physically handicapped had been made except in Dr. Ambedkar College. The high Court while allowing the Writ petition directed the respondents to comply with the Resolution of the Executive Council of the Delhi University with effect from the date of resolution so that the number of posts which have to be reserved for visually and orthopaedically handicapped persons are calculated subject wise and after ascertaining the number of posts, steps should be taken to fill up those posts from amongst the handicapped persons by adopting the regular selection procedure. It was further provided that if such posts have already been filled up by candidates other than the physically handicapped persons the university would create superannuary posts so as to give effect to the reservation made in favour of blind and orthopaedically handicapped candidates.

The next case, i.e. the case of Shruti Kalra, was a case of discrimination meted out to a disabled person by non-disabled. Shruti Kalra, even without any vision/proper vision since birth, not only pursued her studies but also passed her Senior Secondary Examination with distinction in Accountancy as well as in Economics. She joined B.A. (Hons.) Degree Course in Instrumental Music and topped the Daulat Ram College of the Delhi University in all the three years. She was also awarded All India post Graduate Scholarship for Instrumental Music by the University of Delhi. She topped in M.A. (Instrumental Music) and was awarded Lala Jugal Kishore Jagdish Prasad Memorial Prize. She also completed here M. Phil from Delhi University in first division. In 1995, two posts of Lecturer (Instrumental Music) in Shyama Prasad Mukherjee College (for women) of the Delhi University were advertised. Shruti Kalra applied for one of the posts and was interviewed by the Selection Committee but was not selected. She approached the Delhi High Court with the writ petition which was allowed on the ground that the selection procedure was not proper as the mandate for reservation policy was ignored. It was further directed that the Shruti Kalra would be considered for the post of Lecturer in Instrumental Music keeping in view the mandate of the Disability Act, 1995 and Delhi University Resolution dated 16th July, 1994 which
provided that at least one disabled person would be appointed in each college in the academic year 1994-1995.

The callous and negligent attitude of the society towards persons suffering from disability is illustrated. A blind attendant working in the press information Bureau, lived in a Government flat where the Assistant Engineer and the junior Engineer (Electrical), Central public works Department, came with a contractor to start underground cable laying work in his flat. Within two days of digging out cables and opening of the switch panels, the contractor left the work. The wires were hanging naked and the switchboards were lying exposed. Each time he approached the assistant Engineer or the Junior Engineer, he would be asked to come again, On persistent query, a CPWD officer reportedly said,” why do you need light? You are blind.” This came as a shock to him. He told the officer that the person must have electrical power to run the fan and other electrical gadgets and welcome visitors not in darkness, but with light on in his house. Should he live in the dark house just because he was blind and visually handicapped? Handicapped persons are indecisively living in darkness of their pigeon hole in India, there are almost 50 Million differently unable people. Fifty per cent of them living below the poverty line are unable to pay for their treatments: 4.6 million people need artificial limbs to walk and 1.4 million require crutches and canes; only five per cent of people with mobility problems receive any kind of artificial limbs; 80 per cent of rehabilitation facilities are in the big cities and towns; 78 per cent of people with disabilities live in the remote countryside from these facilities; only 0.1 per cent of people with disabilities have jobs in government institutions; only five per cent of children with disabilities go to school. For this vast segment of population, the Act of 1995 enacted by the parliament, has many shortcomings and flaws as , for example, deafness as defined, covers only a hearing impairment. Speech impairment is omitted from the list of disabilities The National Human Rights Commission has already reviewed the working of the Act and suggested a number of amendments to this legislation.

The commission has requested the Centre to:-

1. Rehabilitate disabled child beggars
2. Provide social security for women with disabilities.

The commission has also requested the states to :-

i) Formulate a state Disability Policy and plan of Action
ii) Carry out vertical integration of schemes of all departments relating to the disabled.

iii) Provide employment opportunities for the disabled in accordance with the provisions of the Disabilities Act.

iv) Carry out capacity building/sensitization programmer for administrators and field functionaries.

v) Enforce the provisions of the Mental Health Act, 1987.

The Convention (No. 159) of ILO is concerning Vocational Rehabilitation and Employment (Disabled persons): the goal to provide effective measures at the international and national levels for the realization of the goals of “full participation” of disabled persons in social life and development, and of “equality” in opportunity and treatment to all category of disabled persons, in both rural and urban areas, for employment and integration into the community, and decided upon the adoption of certain proposals with regard to vocational rehabilitation while being determined that these proposals shall take the form of an international Convention, it adopted the Convention, cited as the Vocational Rehabilitation and Employment (Disabled persons) Convention, 1983; wherein Article define the term “disabled person” as individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duty recognized physical or mental impairment. Article 4 provides for the application of the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective quality of opportunity and treatment. Between disabled workers and other workers shall not be regarded as discriminating against other workers.

“The persons with Disabilities (Equal opportunities, protection of Rights and Full participation.) Act, 1955” is a significant step in the direction of ensuring equal opportunities for people with disabilities and their full participation in the nation building. The Act provides for both preventive and promotional aspects of rehabilitation like education, employment and vocational training, job reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc.
1. Employment: 3% of vacancies in government employment shall be reserved for people with disabilities, 1% each for persons suffering from: Blindness or Low vision Hearing Impairment Locomotors Disability & Cerebral palsy.

2. Suitable schemes shall be formulated for Regulating the employment. Health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed.

3. Government Educational institutes and other Educational Institutes receiving grant form Government shall reserve at least 3% seats for people with disabilities.

**XXI.I Affirmative Action**

* Factories by Entrepreneurs with Disability Non-Discrimination
* Public buildings, rail compartments, buses, ships and air crafts will be designed to give easy access to disabled people.
* In all public places and in waiting rooms, toilets shall be wheel chair accessible Braille and sound symbols are also to be provided in lifts.
* All the places of public utility shall be made barrier-free by providing ramps.

Research and Manpower Development mechanism is necessary to sponsored and promoted Job Identification and unemployment allowance must be granted to people with disabilities registered with the special employment exchange for more than a year and who could not be placed in any gainful occupation.

Online Recruitment is beating Racism. Disabled people and jobseekers from ethnic minorities feel that the interest offers them better chance of finding work, eliminating racism and discrimination in employment. the other hand the MNCs have also started feeling that there is a powerful business case for promoting diversity. Disabled people, women, ethnic minorities and older people are important customers and should be represented in the workforce.

There is growing recognition, reflecting the UN Declaration on the Rights of Disabled persons, that disabled people must enjoy exactly the same rights and opportunities that are taken for granted by able members of society. The right to work is the right to enjoy a full social life with the realization of their potential as individuals. But quite often, consideration remains at the level of compassion, and provisions made for disabled people are seen more as welfare and charity than as the restoration of rights that disability takes away.
A legislative Act 1995 provides for both preventive and promotional aspects of rehabilitation like education, employment, vocational training, reservation, research and manpower development, barrier-free environment and social security for persons with disabilities. It talks of non-discrimination in employment and affirmative action in the areas of housing, business, special recreation centers, research centers and factories for persons with disabilities. Yet all these stories of discrimination cited earlier are of incidents that have taken place after the date of the passing of the Act, showing the gap between good intentions and the reality the disabled face everyday.

**XXII. SEWER WORKERS.**

Medical tests for sewer workers (who work in Gas chambers of Methane, Hydrogen sulphide, Carbon dioxide, Carbon monoxide) in the Capital have thrown up alarming results, with many of them found suffering from various ailments. The order for the tests had come by the Chief Executive of DJB only after NHRC highlighted the lack of safety measures for sewer workers.

**XXIII. SPORTS PERSONS**

With population of more then a billion people we cannot boast to have at least one true world champion in India? Why because it is a common complain of an Indian that there is fame in the field but there is no money in it. Our wrestlers, weight lifters, Rugby players-all of them have to live off their parents’ earnings or run from one nook to another, looking for a respectable (forget well earning) job. The situation is worse in all sports because the sport persons don’t get any sponsors and are often forced to take up loans from private financiers to go abroad to play. Absence of sports culture, poor infrastructure, officials dangerous selection policies, no support from the corporate sector, parental apathy, inadequate diet, even unsuitable climate are few of the valid reasons for the pathetic state of sport in the country. But does it mean that our little boys and girls have to beat the system, before beating the rest of the world? Therefore Indian spots person need their rights for livelihood be secured for lifelong then we can see many champion in all sports field.

**XXIV STREET/FOOTPATH TRADING**

Unauthorized occupation of pavement owned by corporation. Court held in Footpath Khyudra Byabasai Sangha. Bhuneswar v. State of Orissa and ors. that eviction of hawker’s occupation without permission is not the infringement of legal rights. The street hawkers are frequently looked upon as a menace and accused of causing congestion and obstructing vehicular and pedestrian traffic. The roll of the middle and upper class
has been anti hawkers even though they also depend on them for certain shopping necessities. The various citizens’ for a, environment conscious groups, heritage protection groups, and other elitist organizations are active in clearing the way. They have extravagant concern for trees, animals, nonliving things or their immediate surroundings and a great apathy towards human beings not from their class. The builder lobbies indirectly manipulate these citizen’s initiatives and government mechanisms to claim the spaces within the city by clearing tenements and edging out this non-statutory encumbrance’. The comfort and the profits of progress are only for the oligarchic middle classes and upwards.

There is an omnipresent illegal touch in this type of work activity also. Thus, in New Delhi, the records of the Municipality Department show that there are only 90,000 tehbazaris or licensees to hawk the city but unofficially MCD officials admit that there are as many as 5 lakh hawkers on the streets in Delhi. To swell the numbers from 90,000 to 5 lakh is a story of greed and corruption. A tehbazari license costs Rs 500 in MCD, but in the black market it may cost as much as Rs 5,00,000 lakh depending on the location.

The migrants from other states run kiosks, catering vans, dhabas on foot pavements in metropolis cities causing inconvenience to pedestrians and loss of revenue on the pretext of insufficient staff to check the licenses of these small illegal units while the political parties look the other way in view of their increasing vote banks, as the said illegal kiosks are source of livelihood to lakhs of migrants. One reason for the encroachment is that politicians are loathe to evict encroachers, who are permanent vote banks usually created by the legislators themselves. Civic officials also turn a blind eye as the encroachers are a source of additional income. The police not to be lagged behind are in the troika exploiting the mushrooming numbers. Be it the road, parks pavements, markets or public land taken over in the name of religion, the city is known for encroachments. The Delhi Police Commissioner says “we have to balance the requirements of pedestrians with the rights of vendors to a livelihood”. But an MCD official says- “call it livelihood for the poor or a vicious network in operation; the city’s public lands are being encroached on every day.”

Recent judgments related to street trading and squatters have considered reasonableness of restrictions imposed on street trading. It has been held by the Supreme Court that the Chopra Committee decisions on street Trading have to be treated as final and binding on squatters and M.C.D. both squatters that were found eligible by committee were directed to collect eligibility certificates from zonal office concerned. persons found
squatting without authorization were directed to be removed by M.C.D. with the co-op operation of the police if and when help was required.  

In case concerning the eviction of illegal squatters from railways and municipal properties are not removed, the Apex court directed to Railways or the State Government to provide sanitary facilities as an interim measure. It further held that High Court should take necessary steps to give effect to the orders of eviction passed by the competent authorities. The Supreme Court has also asserted that the Squatters have a Fundamental Right to hawking under Art 19, Subject to restrictions.

XXV. TOURISM

Tourism is suffering in Kashmir as there is no snow fall, no meter-long icicles and there is no minus five degrees Celsius temperature, as clear sun shine there. The Curse that plagues Kashmir since the insurgency began in 1989 seems to spell an ecological disaster. Add to it the Iraq war clouds which spelled the environmental disaster for the valley. Scientists have already linked the black snow fall in 1991 turning Dal Lake red. A decade long Gulf war has been reason of acing droughts in the valley for last 20 years. A leading environmentalist says that the ammunition used during the Kargil conflict and the intense bombardments of Afghanistan by American air crafts have affected snowfall and rains in the valley. Terrorism in Kashmir is affecting adversely the means of earning livelihood of the boatmen. It has a disastrous effect on the tourism and travel industries of Kashmir and in turn that of India.

In the year 1991 black snowfall had followed thick, black clouds from the burning oil wells in the Gulf, before Iraq retreated from Kuwait. The soul of Tourism killed in the nation. The 30 years long conflict in Sri Lanka has more to do with killing the Soul (and people) of that nation than tourism possibly could. Spain’s economy was on the brink of disaster before it started earning revenue through tourism. An island state like Maldives depends totally on tourism as a source of income; they have almost no other natural resources. Other successes include Singapore. Dubai both being restricted in terms of local and natural resources, but making sensible decisions to attract income through tourism. There are plenty of job-creation possibilities of a well functioning and burgeoning tourism in a country with an unemployment rate of over 40%.

XXVI. WOMEN EMPOWERMENT

Virtually in all societies and spheres the women are subjected to inequalities in law and in fact. The situation is caused and exacerbated by the existence of discrimination in the family, in the community and in the workplace. As recognized in the forward
looking strategies, equality is both a goal and a means whereby individuals are by equal treatment under the law and equal opportunities to enjoy their right and to develop their potential and talents and skills so that they can participate in national, political, economical, social and cultural development and can benefit from its results. For women, in particular, equality means the realization of rights that they have been denied as result of cultural, institutional, behavioral or attitudinal discrimination. Since equality is important for overall development and pace, these strategies are broadly-aimed at integration of the human rights of women into all activities as well as creating special mechanism to deal with violations of women rights. Crime against women are very high in India.50

The Fourth world Conference on women held at Beijing in China in 1995 represented a new watershed in the movement for securing equality development and peace for all women everywhere in the world. With the unanimous adoption of the Beijing Declaration and platform for action by representatives from 189 countries, it gave the world a new comprehensive plan of action to enhance the social economic and political empowerment of women. Human rights and fundamental freedoms are the birth rights of all human beings. Their protection and promotion is the first responsibility of Governments.

In the case of Vishaka v. State of Rajasthan51 the Supreme Court of India reiterated the principle that “it is now accepted rule of judicial construction that regard must be had to the international conventions and norms for construing domestic law. However there is no consistency between them and there is a void in the domestic law. In the absence of a domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all working places, the contents of international conventions and norms are significant for purpose of interpretation of the guarantee of gender equality, the right to work with human dignity in Article 14, 15, 19 (1) (g) and 21 of the Constitution of India. Any international convention consistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the Constitutional guarantee. This is implicit from Article 51 (c) and the enabling power of parliament to enact laws for implementing the international convention and norms by virtue of Article 243 read with entry 14 of the Union List in the Seventh Schedule of the Constitution. The Court also referred to the decision of the Australia High Court in case of Minister of Immigration and Ethnic Affairs v. Teoh52 where the High Court recognized the concept of
legitimate expectation in the context of observance of international law in the absence of a contrary legislative provisions and even in the absence of a Bill of Rights in the Australian Constitution. In Neelabati Behera v. State of Orissa\(^53\) a provision in the ICCPR was referred to support the view taken that an enforceable right for compensation is not alien to the concept of guaranteed rights, the Court observed, there is no reason why these international conventions and norms cannot be used for construing the fundamental rights expressly guaranteed in the Constitution of India, which embodies the basic concept of gender equality in all spheres of human activity.

In case of Vishakha\(^54\) the Supreme Court went further and relied on the official commitment made by the government of India at the fourth world Conference on women in Beijing. The Court observed that “reliance can be placed on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution”. In yet another case of Apparel Export promotion Council v. A.K. Chopra\(^55\) the Supreme Court directed the state parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour of them, yet crimes are still rising against women every year.\(^56\)

If there is one thing the women writers hate, it is being called a women’s writer. When a reviewer calls you a women’s writer, what he or she means that the writer is incapable of understanding the vicissitudes of life. It is a pejorative says Shashi Deshpande, who after 30 years of battling against the label, is now learning to live with it. When they say you are a women’s writer, they are suggesting you are something less than a writer. Mahasweta Devi, one of the few women writers in India to received the highest literary compliment wrote like a man. Virginia Woolf gave her famous prescription for women’s writing: “in a room of her own and 500 pounds,” that the time and space are the major constrains for women writer’s. There seemed to be only three options available for a woman writer: - 1} learn to squeeze time between other chores, 2} put aside writing until the children are in school, 3} live with the guilt of being a bad mother and wife. A fourth option has also been discovered i.e. stay single, or at least make sure you don’t have kids. The women writers have to snatch time from household chores, between roles as mother, wife, daughter, breadwinner or write late at night. Though being all these constrains women writers, not only write about the domestic dramas but also they intrude into the “male” space of sex, religion, politics, Writing carries a daring price for them. Women are greeted as feminine intrude in male arena and they are humiliated in writers.
field, even Arundharti Roy too felt senses of hostility. Manita Gokhale declares that all writing is androgynous, therefore she advocates writing like a man.

Unlike England, in India, cookery and football do not get together, judging by the fast undertaken by 50 women footballers in New Delhi saying they had no faith in the All India Football federation, which they alleged was partial to male footballers. The complaint is that they do not get an opportunity to show neither fitness nor prowess, Let alone getting a square meal from the Federation at par with the men, who dribble and shoot, the women accused that they were denied even the crumbs from the table; hence they forsook their meals, which would have affected their fitness.

Indian women’s cricket has its own association, which is kept at a distance by the board of Control for Cricket in India. The Board is for male cricketers, like its parent body International Cricket Council. For long, the home of cricket, the Lord’s in London kept women out of the pavilion. Means of earning a livelihood is an honorable manner booster of morale breaking stereotype of women being inferior to men. In automobile women mechanics can give their male counterparts healthy competition. The aim is to remove barriers that prevent women from working in sectors that remained a male bastion. But the male mechanics reaction to the women has been negative because they think that women can not work efficiently in workshops.

As per a survey conducted by the UN Department of Economic and Social Affairs, while globalization has given rise to new empowering opportunities to women. It has created economic conditions that are inimical to gender equality, including increased economic volatility, job insecurity and loss of livelihood. On the down side, globalization has limited government’s ability to deliver certain social services important to women. Conditions for women workers can be improved by implementing labour rights, ensuring equal pay for equal work, upgrading women’s skills so that they benefit from low to high technology. They need targeted measures for entrepreneurial training, better access to credit and resources, family-friend policies such as better sick leave. Then gender can no longer be a matters in economic growth, trade production and related services, and it can become an integral part of our planning for sustainable development.

It can be concluded that with no social security around, the women are having a terrible time, despite improvement in the country’s economy. The last two decades of economic liberalization accelerated the pace of development. But its good results are annulled by the bad-per capita income, so did the cost of living; rural economy saw a resurgence but increased imports played havoc with agriculture incomes. The number of
people who availed social security schemes has come down. Increasing longevity, high rural unemployment and large fiscal deficit which resulted in less government expenditure on development have compounded the issue.

The biggest social security is employment and hence the demand for a focus on income generation and income security rather than doing something as social security. Liberalization, which has resulted in a new socio-economic order, brought insecurity of income and job with it. The Female workers (muster roll), engaged by the Municipal Corporation of Delhi, raised a demand for grand of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services were not regularized and, therefore, they were not entitled to any maternity leave. The women employed on muster roll, which have been working with the Municipal Corporation of Delhi for years together, have to work very hard in construction projects and maintenance of roads including the work of digging trenches etc. but the Corporation does not grant any maternity benefit to female workers who are required to work even during the period of mature pregnancy or soon after the delivery of the child. It was pleaded that the female workers required the same maternity benefits as were enjoyed by regular female workers under the maternity Benefit Act, 1961. The denial of these benefits exhibits a negative attitude of the Corporation in respect of a human problem. It was held that Doctrine of social justice must be read into service contracts of municipal corporations.\textsuperscript{57} The court observed:

“An ideal system must look after social requirements such as children’s education, marriage, assistance in unemployment and retirement benefits. Social security is the biggest achievement of mankind, a commitment to take care of every worker, including those who cannot work for no fault of theirs”

XXVII. CONCLUSION

There is an ever going tussle between our Culture of times immemorial and modernization cum westernization. Lawyers and legal philosophers have long known that judicial decisions, as also legislation, have frequently been used to legitimize illegitimate political action or extra-constitutional activity. The infamous Dred Scott decision of the US Supreme Court in the late 19\textsuperscript{th} century imparted legal validity to the pernicious practice of slavery. In the sixties, Pakistan Supreme Court legitimized extra-constitutional coups by military dictators by invoking Austin’s Grundnorm and holding that when political reality and social fact changes, the law has no option but to recognize the new
reality, however illegal and tainted be its origin and whatsoever unconstitutional its existence.

This point can be illustrated by citing ADM Jabalpur decision by the Indian Apex Court wherein action under MISA regulations was validated by resort to some legal acrobatics holding { justice H R Khanna’s famous dissent notwithstanding } that even malafide detentions during an emergency proclamation would be judicially non reviewable. The US Supreme Court similarly upheld the segregation, exclusion and detention of US Citizens of Japanese descent during World War II in the infamous Korematsu decision in the wake of the attack on Pearl Harbour.

Since age’s individualism is subordinate to collectivism in Indian society, hence even today and in future we cannot give any priority to claims of individual rights at the cost of welfare of the society in trade, occupation. While the U N charter on Human Rights declare the availability and enjoy ability of the rights of a man wherever he be in the world, though the constitution of any nation is free to set due limits or reasonable restrictions on these rights even by setting apart some of the rights which will be available only to its own citizens as against other available to all persons, citizens or aliens. Government decisions taken in pursuant to Court orders are not implemented with full effect. An illustration lies in the activity area of Circus. Many circus owners want to surrender the wild animals as they have no use for them and keeping them is a financial resources drain, but the government says it has no place for them for very since the ban on performance of 5 species of animals-lions, tigers, leopards, bears, monkeys in 1998. Though lately government has set up few rescue centers to house the animals seized from circuses but these places are too less to accommodate all these rescued circuses animals.

In recent cases, the Supreme Court has shifted from the earlier strict interpretation regarding locus standi adopted in Nagar Rice and Flour Mills59 and Jas Bhai Moti Bhai Desai60 cases and a much wider canvas has been adopted in later years regarding a person’s entitlement to move the court involving writ jurisdiction. In the case of M.S. Jayaraj v. Commr of Excise61 it is held that in the light of the expanded concept of the locus standi, it would not be proper to nip the motion out solely on the ground of locus standi and to allow such an order to remain alive on the sole ground that the person who filed the writ petition had strictly no locus standi.

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CHPTER- 4
PROSPECTUS OF OCCUPATION IN INDIA.


2. AIR 1997 SC 645
3. Farmer fight snakes for meal in Cauvery delta.
4. AIR 1951 SC 118
5. PMK leader and former health minister S Ramdoss directed health ministry in June 2004 to undertake to ensure clean air for all and he sought the help of then speaker Somanth Chatterjee to ban smoking in the Central Hall of the parliament. Keen to see his proposals accepted but upset over actor Shah Rukh khan smoking while waiting for congress chief Sonia Gandhi on Anti tobacco Day, Ramdoss warned that actors should not smoke in public places.
7. Murli Deora v UOI; (2001) 8 SCC 765
8. AIR 1993 SC 2079
10. A Suresh; AIR 1997 SC 1889
11. It is feared that if steps to check child pornography is not taken seriously then there will be great social abuse. New technology as third generation Internet mobile phones with video streaming could make the problem worse. The internet going mobile can make many things worse and difficult to detect. The increased demand has made child pornography into big business. Here is involvement of organized crime in producing and distributing child porn on the web meant yet more children abusing in future, 3G spectrum auctioned in may 2010 will revolutionize the internet misuse and pornography problem will be challenged to society. The problem of pornography is aggravated when the board of the Internet Corporation for Assigned Names and Numbers(ICANN) owned a right in Brussels on June 25, 2010 to set up on line red light district to sell porn materials on xxx Internet address and will fetch a revenue of $ 60 million yearly, however it has created child protection initiatives from xxx internet ting and assigned the work to International Foundation for Online Responsibility(IFFOR).Now more child will prone to pornography through the xxx. Internet address.
12. Director of Film Festivals’s & Ors. V. Gaurav Ashwin Jain & Ors; AIR 2007 SC 1640.
14. AIR 1982 SC 130
15. Calicut Wholesale co-operative Consumers Store Ltd. v State of Kerla 1970 Kerla T 935
16. AIR 1990 SC 2128
17. AIR 1990 SC 1277; (1990)3SCC 220.

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Some Advocates of the Calcutta High Court challenged the resolution of the Bar Council of West Bengal dated 3rd May 1994, 6th May 1994 and 13th May 1994 wherein the Bar Council gave a call to all the advocates on the roll to cease work in connection with shifting of the criminal Courts building at Howrah and Alipore which are dilapidated. The question posed for consideration before the Court whether the call for cease works by the Bar Council binding on all the members and whether Bar Council can take to penalize the advocates who choose to ignore such call. Arunava Ghosh v Bar Council AIR 1996 Cal 331

A 5 Judge Bench (Consisting of G B Pattanaik –Chief Justice, MB Shah, Doraiswamy Raju, SN Variava, DN Dharmadhikari JJ.) of the SC in Ex Cant Harish Unnal v UOI (2003) 2 SCC 45

Haniraj L. Chulani v Bar Council of Maharashtra & Goa AIR 1996 SC 1708 (PARA 18-19); (1996) 3 SCC 342

AIR 1995 SC 691


State of Maharashtra v Praful B. Desai (Dr.) (2003) 4SCC601

AIR 1982 All 439

Sukumar Mukherjee v State of West Bengal; AIR 1993 SC 2335.

ILR 1969 AP 1152

Express Newspaper; AIR 1958 SC 578.


In Amata v State of A.P.;AIR 1997 SC 3297; the SC held that the fundamental right of the tribal’s to their social and economic empowerment is inherent in Article 21. 36Article 41 of the Constitution of India says that “The state shall, within the limits of its economic capacity and development, make effective provision for securing the Right to work to education and to public assistance in cases of unemployment old age sickness and disablement and in other case of undeserved want”

Jacob M. Puthuparambil v Kerala Water Authority; (1990) 1 SCC 28; AIR 1990 SC 2228

Daily Causal Labour employed under P&T Department v Union of India (1998) 1SCC 122


(1986) 3 SCC 632

(1990) supp. SCC 124

(1986) Supp. SCC497

2001(II) Apex Decision (Delhi) 749
45  2001(II) Apex Decision (Delhi) 582
46  New Trends in recruitment through web
47  AIR NOC 2010 Ori. 125.
48  Women and disability. The persons with disabilities (Equal Opportunities, Protection of Right and Full Participation Act 1 of 1995.)
50  Annexure ; A
51  AIR 1997 SC 3014
52  28 ALR 33
54  Vishkha v. State of Rajasthan; AIR 1997 SC 3014
55  AIR 1999 SC 625.
56  Annexure ; B
57  Municipal Corporation of Delhi v Female Workers (Master Roll) and another; (2000)3 SCC 224.
58  A.D.M. Jabalpur v S. Shukla; AIR 1976 SC1207.
59  (1970) 1SCC 575
60  (1976) 1 SCC 671
61  (2000) 7 SCC 552