AN APPRAISAL OF THE CONTEMPORARY INDIAN LEGAL LANDSCAPE

DME, NOIDA

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Research is the backbone of the academia and intelligentsia of any nation. In the field of law, which is so homogeneously entwined with other disciplines, research becomes an important tool to gather all the areas within the umbrella of critical legal analysis. The decades of 2000–2020 have been undoubtedly eventful. The world has experienced more than ten years of globalization and more than ten years of anthropocentric environmental consciousness. More than ten years have passed since the Human Rights regime shifted its focus from mathematical universalism to diverse individuals and their culturally diverse rights. The time, therefore, is ripe to indulge in critical thinking about India's legal environment and study how these global changes have affected it in the past decades. With this vision in mind, the Delhi Metropolitan Education has attempted to bring together in *An Appraisal of the Contemporary Indian Legal Landscape*, a collection of essays which covers all interdisciplinary aspects of India's municipal laws and examines them with the global perspective gained following the turn of the millennium.

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WHAT'S ON MY PLATE? A STUDY OF RIGHT TO CHOOSE FOOD FROM THE PERSPECTIVE OF OVER-CRIMINALIZATION

AKANKSHA MARWAH

1. INTRODUCTION

"Criminal sanction is the most powerful weapon in the state arsenal; the government can do nothing worse to its citizens than to punish them."[1]

Law is called the mightiest sovereign.[2] It is the greatest tool in the hands of the state to govern the masses and while performing its role, it acts as a double-edged sword. Not only can it be used to protect the interest of the people, but it can also be used to impose restrictions upon them which might not just be in their interest but could also put forward a particular set of ideology.

Criminal law, particularly, deals with the acts and omissions of grave nature. Since application of criminal law has serious repercussions in terms of sanctions and restrictions on rights of the accused, state needs to give out a clear message to the public regarding what acts or omissions shall be dealt with by the state rigorously. Thus, it is inevitable that inclusion of acts and omissions in criminal law is done very carefully. In the last few years, there has been an increasing criminalizing culture towards the eating habits of people, particularly relating to slaughter of cattle and consumption of beef. Due to inconsistencies in different laws, intolerance in the society has increased towards different dietary preferences of the people.

In this chapter, the criminalizing culture which is intensifying to oppose the particular type of dietary habit of the people has been discussed. It explains the concept of over-criminalization, and how the acts of state punishing food habits amount to over-criminalization.

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1. Douglas Husak, *Over-criminalization: The Limits of the Criminal Law* 95 (Oxford University Press, New York, 2008) (hereinafter called Douglas Husak).
2. *Krishnamoorthy* v. *Sivakumar*, (2015) 3 SCC 467.

CHAPTER 2

CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016: A STUDY

SAKSHI AGARWAL

1. INTRODUCTION

Right against exploitation is guaranteed as a Fundamental Right under Part III of the Constitution of India in Articles 23 and 24. The present chapter seeks to study the problem of child labour in India with special reference to the recent amendment to the Child Labour (Prohibition and Regulation) Act, 1986. The following paragraphs give an introduction to the right against exploitation as enshrined in the Constitution of India along with a brief survey of the Constituent Assembly Debates with regard to the same before dwelling in a detailed discussion on child labour.

Trafficking in human beings and all forms of forced labour such as beggary have been declared as a punishable offence in Article 23, while prohibition has been imposed on employment of children below 14 years of age in any hazardous employment in Article 24.

The Constituent Assembly held meetings from 9 December 1946 to 24 January 1950, and during the said duration elaborate and lengthy discussions took place with regard to each Article of the Constitution of India before finally approving them for adoption in the Constitution of India. The debate of the Constituent Assembly on 3 December 1948 provides an interesting insight into the concept of forced labour and the nature and magnitude of the problem.[1] In the draft Constitution of India, the rights against exploitation were mentioned as proposed by the framers. On the one hand, Dr. Ambedkar had suggested that subjecting a person to forced labour or involuntary servitude would be an offence, whereas on the other hand K.M. Munshi's draft article had suggested for abolition of all forms of slavery, child labour, traffic in human beings and compulsory labour.[2] In the present Constitution of India, Article 23 corresponds

1. *Constituent Assembly Debates*, Vol. 7, Book 2, 538 (Lok Sabha Secretariat, New Delhi, 1999).
2. B. Shiva Rao, *The Framing of Indian Constitution – a Study* 243 (Indian Institute of Public Administration, New Delhi, 1968).

CHAPTER 4
SOCIAL EXCLUSION OF MUSLIM MINORITIES: A CASE AGAINST THE CITIZENSHIP AMENDMENT BILL OF 2019

BEDAPRIYA LAHIRI

1. INTRODUCTION

Eminent author Taslima Nasrin could once claim refuge in India when she fled from persecution in Bangladesh due to her literary opinions on Islam. But should she try it after the Citizenship Amendment Bill of 2019 is passed it would make it nearly impossible for her to gain an Indian citizenship due to her religion, which was the primary reason for her to go into exile from a Muslim majority country. Such will be the impact of the Citizenship Bill on celebrated individuals like Nasrin and countless other ordinary Muslims alike, if they seek refuge in India. This chapter discusses this rising phenomenon of social exclusion of Muslims in India and analyses the question of whether religion could define citizenship in modern contemporary democracy like India.

India always had a tainted history of religious consideration in its citizenship laws, but the manifestation of the same has never been so blatant as with the Citizenship Amendment Bill of 2019. It seeks to make drastic changes in the citizenship norms by excluding 'minority-religious individuals', particularly Hindus, Sikhs, Jains, Parsis and Christians from 'Muslim-dominated countries', specifically, Afghanistan, Bangladesh and Pakistan from the definition of an illegal migrant. What the change does is, it makes only people from the Muslim community in Afghanistan, Pakistan and Bangladesh to be treated as illegal immigrants.

The blatant exclusion of Muslims by legislation signals an institutionalized form of social exclusion based on a religious identity. "Social Exclusion involves a denial of rights and opportunities which the majority enjoy, resulting in the inability of individuals from excluded groups to participate in the basic political, economic and social functioning of the society, causing high human poverty and deprivation."[1] "Thus individuals or groups could be considered as socially excluded if they are geographically

1. S.K. Thorat and Nidhi Sadhan, "Caste and Social Exclusion Issues Related to Concept, Indicators and Measurements," 44 *Economic and Political Weekly* (2009).

CHAPTER 6
NATIONAL SOVEREIGNTY IN THE AGE OF GLOBAL VILLAGE

RAVEENA SARAO

1. THE TREATY OF WESTPHALIA

The starting point of power can be followed towards the Westphalian state in the sixteenth century in Europe. The Westphalian state framework was tied down in the settlements that were marked in 1648 in Westphalia to end a 30-year war in Europe with a perspective to accomplishing peace, security and political dependability in Europe. The essential standard, among others, that underlined these arrangements was that sovereign states are equivalent and free. In this respect, a sovereign state has three fundamental qualities:

- a lasting populace;
- characterized domain; and
- a working government.

This guideline underscores the thought that a sovereign state has the power to act freely over its own region to the avoidance of other states.[1]

In reality, this rule, educated and set out the establishment of cutting-edge world-wide law, particularly the 1945 United Nations (UN) Charter, which has revered and perceived the sovereign correspondence and freedom of all part conditions of the UN.[2]

In reality, the Charter admonishes the UN not to meddle in matters that are basically inside of the purview of any state.

Throughout the years, the Westphalian model was well recognized and acknowledged for its capacity and ideological stance. In due course of time, as the society underwent changes, a need was felt to re-analyse the modal framework. Amongst many challenges, world security and world economy became the manifested areas. Still, the

1. See the UN Charter, Art. 2.
2. See the UN Charter, Art. 2(1).

CHAPTER 7

PROBLEMATIC OF SILENCE AND MEMORIES: THE CASE OF KUNAN-POSHPORA MASS RAPES

SHABEEH RAHAT

1. THE KASHMIR VALLEY

The present disputed conditions of Kashmir have not existed always. At the time of Partition of India and Pakistan, while Maharaja Hari Singh was still deciding between India and Pakistan, an internal rebellion broke out and Pakistani militia also invaded the State, for which he took military assistance from the Indian government to suppress it until peace was restored. By signing an Instrument of Accession on 26 October, Kashmir was ceded to India temporarily. When the matter was taken to the UNO by India, a 1948-resolution pronounced that Pakistan withdraw its troop from Kashmir, ceasefire and hold a plebiscite to decide the future of the State, which was never to happen. Pakistan refused on grounds that force is needed for a fair plebiscite. Kashmir became part of the Indian Union in 1950 with a special status under the Act 370. Since then, both Pakistan-Administered and India-Administered Kashmir exist, divided by Line of Control (hereinafter referred as LOC), more or less of the nature of an international border. There is anger and a feeling of betrayal among the Kashmiris. After the 1987 makeshift elections and with the defeat of the pro-Kashmir party, that angst intensified to the level of militancy and led to an armed insurgency for the cause of self-determination. To counter this, the Indian government imposed the Armed Forces Special Powers Act (AFSPA) in the region in 1990.

It is currently the most militarized zone in the world, with one military or paramilitary trooper estimated for every eleven citizens, with areas on the international border yet heavily militarized. The armed forces occupation is to provide 'security' and 'protection' to the State from the 'terror' of militants. Ironically, the Kashmiris are terror-stricken perpetually due to this *forced occupation* by the Indian government by labelling it a 'disturbed area'. The armed forces, under the AFSPA, the Disturbed Areas Act, the Army Act and the Criminal Procedure Code (for police, who are treated just like civilians by the Army) have immense and unwarranted power to 'use force, even to the causing of death', 'enter and search' and even 'arrest, without warrant'. AFSPA guarantees them impunity and the State apparatus assures their immunity is untouched in case of any 'trouble'.

CHAPTER 8

RIGHTS OF THE INTERNALLY DISPLACED PERSONS AND THEIR RECOGNITION IN INTERNATIONAL AS WELL AS DOMESTIC LAWS

SHAMBHAVI MISHRA

1. INTRODUCTION

> When those who had been evicted went back to where they came from, they found their villages had disappeared under great dams and dusty quarries. Their homes were occupied by hunger and policemen. The forests were filling up with armed guerrillas.[1]

The tragedy of internally displaced persons is that they are yet to find themselves as a distinct dot on the map of international humanitarian law, free from the diluting effect of refugee rights, free from the fear of international community probing into the question of state sovereignty. The lack of a binding instrument recognizing the plight of internally displaced persons speaks volumes about the massive invisibilization of the violation of human rights of billions of people across the globe.

It is a well-established and acknowledged fact that the refugees and the internally displaced persons are two absolutely distinct categories. Internally displaced persons are those who have left their home regions either voluntarily due to some environmental disaster, conflicts and wars or population shifting to find better life subsistence, or involuntarily evicted due to various developmental projects but have not moved out of the international boundary of their home state. They are displaced from their original region to another region within their home state unlike the refugees who cross their home state's territory to venture into an alien state unwilling to return because of a well-founded fear of prosecution. If not for this distinction of crossing boundaries, the refugees and internally displaced persons may find themselves on a similar plane. Thus, an Afghani hazara in Iran and a Kashmiri brahmin in Delhi find themselves on a similar

1. Arundhati Roy, *Capitalism: A Ghost Story* 48 (Chicago: Haymarket Books, 2014).

CHAPTER 9

A CHILD'S CONSTITUTIONAL RIGHT TO HEALTHY ATTACHMENTS VIA FAMILY RELATIONS: WITH FOCUS ON THE MENTAL HEALTH OF CHILDREN OF INCARCERATED PARENTS

SHREYA MAHAJAN AND AYUSHI SHARMA

1. INTRODUCTION

Since the time a child is born, he/she is completely dependent on his/her parents. These years of dependency shapes up how the child grows up to be. It lays down a foundation stone for his/her future mental, social, emotional and cognitive development. However, when a parent is incarcerated, the child is deprived of such an intimate dependency and is forced to live a life of obstacles at each and every step. This not only proves to be a set-back, for his financial and physical needs will never be satisfied, but also, this separation stunts his/her mental growth and adversely affects his psychology. Research has shown that infants and toddlers who do not develop secure attachments with their parents produce elevated levels of Cortisol (a stress hormone), which may alter the developing brain circuits and cause long-term harm.[1] In addition to this, young children with unhealthy attachments are at much greater risk for delinquency, substance abuse and depression later in life. Researchers have also found that having an incarcerated parent can traumatize a child in a same manner as domestic abuse and violence does, both having similar kinds of lasting negative implications.[2] The incarceration of parent sets in an ugly cycle into motion ultimately harming the child. Scholars have termed such children as the *collateral damage*[3] or the "*invisible victims.*"[4]

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1. ABA Centre on Children and the Law Practice and Policy Brief, *available at*: http://www2.americanbar.org/child_migrated/PublicDocuments/policy_brief2.pdf (last visited on 23 March 2018).
2. Amy B. Cyphert, Prisoners of Fate, "The Challenges of Creating Change for Children of Incarcerated Parents," 77 *MLR* 385 (2018), *available at*: https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3785&context=mlr (last visited on 23 March 2019).
3. Dorothy E. Roberts, "Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement," 34 *UCDLR* 1005–1015 (2001), *available at*: http://scholarship.law.upenn.edu/faculty_scholarship/1344/ (last visited on 23 March 2019).
4. Michal Gilad and Tal Gat, "U.S. v. My Mommy: Evaluation of Prison Nurseries as a Solution for Children of Incarcerated Women," 37 *NYUR* 371–372 (2013).

CHAPTER 10

LEGAL AND INSTITUTIONAL FRAMEWORK RELATING TO DISASTER MANAGEMENT IN INDIA

SOUMA BRAHMA SARKAR

1. INTRODUCTION

The International Decade for Disaster Reduction, a United Nations Program for the 1990s, focused attention on the increasing losses caused by natural hazards and promoted actions to reduce their impacts. During this period, in the United States, there was an increase in thrust on disaster mitigation than response and recovery by the Federal Emergency Management Agency. This shift in the disaster response paradigm also influenced many other nations and various international organizations which undertook similar efforts. Beyond the decade, efforts were made in the areas of improving risk assessments, implementing mitigation strategies, improving technologies supporting warning and, dissemination and response to warnings, improving the basis for natural disaster insurance and providing assistance to the developing nations.

In May 1994, a mid-term review of the UN Declaration held at Yokohama was attended by various governments, NGOs, scientists and business entities throughout the world which concluded that (i) such disasters always affected the poor and socially disadvantaged in the developing countries, owing to higher degree of vulnerability to such situations; (ii) prevention and mitigation of disasters rather than disaster response which are often executed at high costs and yield only temporary relief; and (iii) prevention contributes to lasting improvements in safety.[1]

Disaster management is a kind of managerial function entrusted with the creation of a framework within which the communities reduce vulnerability to hazards and cope with disasters. It also seeks to promote safer and less vulnerable communities with the capacity to cope with the hazards and disasters. It seeks to protect the communities by coordinating and integrating all activities necessary to build, sustain and improve the capability to mitigate against, prepare for, respond to and recover from both natural disasters as well as man-made disasters.

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1. Biswaroop Das, "Some aspects of Disaster Mitigation and Management in India," *Indian Journal of Public Administration*, Vol. XLVIII, No. 2, April–June 2002, p. 184.

CHAPTER 11

THE RECENT JUDICIAL TREND IN DOWRY DEATH CASES

GUNJAN AGRAHARI

There is no denial that dowry death is one of the most degrading, inhuman, torturous and heinous crimes against humanity and all human beings. Every day in India fifteen women are murdered by their new husbands and/or in-laws for failing to bring sufficient dowry through the marriage.

The Supreme Court has expressed grave concern over the increasing number of deaths due to dowry cases. In the case of *Elango* v. *State*[1] while referring to a judgment[2] the court observed as follows:

> There is an alarming increase in cases relating to harassment, torture, abetted suicide and dowry death of young innocent brides. Awakening of collective consciousness is need of the day. For this a wider social movement is necessary. The role of the courts, under the circumstances, assumes a great importance. The courts are expected to deal with such cases in a realistic manner so as to further the object of the legislation. However, the court must not lose sight of the fact that the act, though a piece of social legislation, is a panel is statute. One of the Cardinal rules of interpretation in such cases is that the panel is statute must be strictly constructed. The courts have, thus to be watchful to see the emotions or sentiments are not allowed to influence their judgement, one way or the other and that they do not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent until proven guilty and that the guilt of an accused must established beyond reasonable doubt.

There may be many aspect of analysing cases of dowry death for the purposes of research and study, such as amount of dowry in dowry death cases, involvement of relatives, involvement and role of husband, cruelty and inhuman treatment meted out to the diseased wife, bride burning and so on, but this chapter analyses only the harassment

1. 2000, CrLJ 4343 (4353–4354) Mad. See for detailed study on the subject *Jalalab Shaikh* v. *State of Goa*. 2000 CrLJ 762 (762–763) (SC) : AIR 2000 SC 571 : 2000 AIR SCW 111 : 1999 (2) Andh LT (Cri) SC 336 : 2000(5) Bom LR 344 : 2000(1) SCJ 266.
2. 1996 SCC Cri 792: 1996 CrLJ 3237.