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LEX SCRIPTA



THE QUICKSILVER CONSTANT: SOCIAL SECURITY AND
LIBERTY OF PERSON IN THE ARENA OF SOCIAL JUSTICE

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EDITOR'S NOTE

WELCOME! The Human Rights Committee, School of Law, CHRIST (Deemed to be University) is delighted to present you the third digital issue of 'Lex Scripta'- The committee blog which was started by our alumna.

The Human Rights Committee SLCU is a student-led organisation which acts as a nurturing ground to provide students a platform for legal discourse regarding pressing issues affecting human rights and aid them to come up with possible solutions for the same, thereby enhancing their knowledge and interest in the field.

For our fifth digital issue, we've chosen the theme - '**The quicksilver constant: Social Security and Liberty of person in the arena of Social Justice**'. The persistent fight against inequality and unfairness regardless of race, gender and economic status is known as social justice. The objective of social justice is to distribute resources and opportunities in a fair and just manner. This includes education, health care which includes maternity and disability benefits, pension and other similar benefits. The nexus between social justice and human rights is strengthened through the trajectory of history. The concept of social justice is centered on socialism and is in line with values such as liberty, security and sustainability. Human rights ensures that a society is just as it restructures and advances international and national regime based on efficiency of socio economic and the values mentioned guided by the public's needs and demands.

The Committee extends its heartfelt gratitude to Dr Jaydevan S Nair, Dean and Dr Sapna. S, Head of Department, School of Law for their constant guidance and support. The committee is also grateful to the faculty coordinators Dr. Fincy Pallissery and Dr. Shampa S. Dev. Finally, we thank the faculty co-ordinators of the Human Rights Committee, School of Law, CHRIST (Deemed to be University) - Shilpi Roy Chowdhury, Dr. Gopi Ranganath V and Mr. Sanjay Shenoi P, for their unyielding guidance through the drafting of this newsletter.

We hope you enjoy reading our newsletter!

SOCIAL SECURITY; THE LEGAL FOUNDATION OF SOCIAL JUSTICE, LIBERTY, AND EQUALITY OF OPPORTUNITY

- M S Sudhiksha

“No human masterpiece has been created without great labor”-Andre Gide

Workers are the driving force of a nation, just as how important fuel is to run a vehicle. India is the home to approximately 85% of unorganised workers, which happens to be the largest in the world. Despite the above-mentioned figures, the informal sector workers suffer many inconveniences as they are not monitored by the government. Consequently, they are deprived of various opportunities and social benefits. Therefore, the protection of the human rights of our workers has become our utmost priority. The most effective way to cater to their needs is enforcing uniform Social Security and liberty. Social security guarantees the provision of access to healthcare, income security, and safety in the workplace for the workers. This concept plays a crucial role in ensuring that stability prevails amidst the vulnerable group of our country in parallel to the principles enshrined in our constitution and the rights put forth in the United Nations Declaration of Human Rights. Therefore, through this article, the immediate need to implement social security in pursual of eradication of poverty and social justice has been highlighted.

Through the historical trajectory, jurists had focussed on an extensive mechanism for support and sustenance for daily wage labourers.

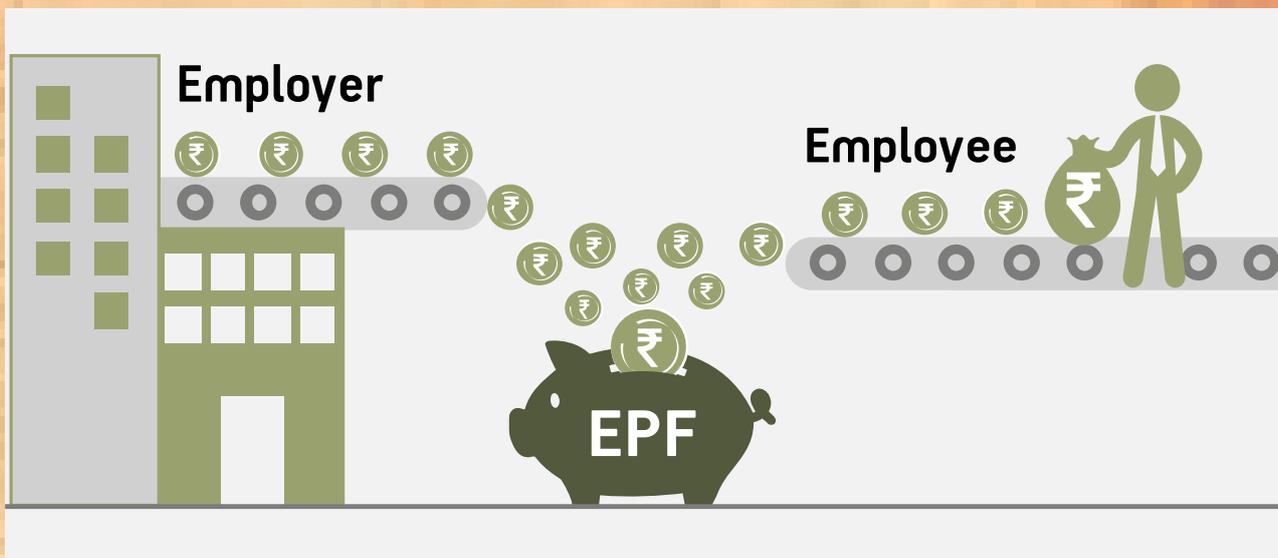


The infamous philosopher Kautilya in his script, has mentioned public relief for the poor and a number of allowances such as a pension, sick benefit, and old-age benefit. During colonial rule, the British made no effort to improve the condition of the workforce in India, due to which the labour force faced widespread hazards and accidents. This problem led to an increase in the poverty rate. During the said period, no one governing body existed that looked into the provision of facilities and the address of their grievances. A Post independent India was not much different in establishing effective governance and administration due to difficulties coping with the increasing population and its never-ending demands.



The social security measures which were implemented during that era focussed only on the organised sector. Lack of security increased vulnerability, and skyrocketing hunger deprivation led to the rapid shattering of families. From 1947, The public expenditure for social security compared to countries such as Sri Lanka and China has been significantly less (1.8% of GDP). The first social security law passed in India that looked after the well-being of the workers was the Workmen Compensation Act of 1923. After much contemplation, the central government had approved the Social Security Code in the year 2019. This proposal was formulated for bringing about change in the current scenario of unorganised workers.

Social security is a form of welfare program pursued by the government to promote sufficient resources for the potentially vulnerable economic groups. This new Act is a consolidation of nine pre-existing social security laws, such as the Employee Provident fund Act 1952[1] The Maternity Benefit Act 1961[2], the Unorganised Workers' Social Security Act 2008[3], etc. International Labour Organisation (ILO) was one of the first international bodies to recognise and adopt a declaration to include social security as a basic virtue for workers throughout the world.



Despite the various benefits the social security law in our country provides for the unorganised sector workers, certain flaws cannot be overlooked. Social security measures are pre-dominantly burdened on the employer. [4] To date, there has been no effort to enforce the social security scheme effectively. Before the 2019 bill was introduced, all the laws on these benefits were fragmented. The approaches that have been taken to build a socially ideal system in India has constantly been disrupted because of the rigid mentality of the society that encourages the wealthy and well-off citizens to remain in power and side-line the not so well-off citizens, and deny them any opportunity to sustain themselves and improve their condition. Social welfare leads to the involvement of substantial budget outlays. In simpler terms, it is expensive.

There will also be inflationary pressure as a large government expenditure slows down economic growth. Especially in a large country like India, broad coverage is furthermore difficult. Moreover, finding those who are subjects of the scheme will be even more challenging as there are a lot of hassles and stigmas associated with them. Due to a lack of knowledge and awareness of the social security code, people are unable to procure the benefits that the code aims to provide. The previously elected government discarded the idea of statutory backing for social protection, and there has been no commission set up for the same despite many proposals.



The eminent economist Dr Amartya Sen had put forth two very close yet completely different aspects of social security. The first is protection which focuses on providing benefits to those who have been subjected to accidents, medical illness, or any such disablement within as well as outside of their employment, whereas promotion deals with enhancing the living conditions of those who have been caught in the vicious cycle in poverty. In India, the majority of the population enjoys protection over promotion. Though the laws at present seem promising, the various lacunas halter the progress of certain sections of the people.

CONCLUSION:

Compared to India, there are other countries that have excelled in providing their workers with basic necessities as well as remedies for damages incurred. For example, Sweden has policies such as social insurance and a qualification test to determine those who are likely beneficiaries of these welfare programs.[5] Along with pensions for the retired, there are provisions for widows and widowers under spouse adjustment pension as well. Whilst in Canada and the United States, overseas emigrants earning on a daily basis get a minimum fixed wage issued by the government.[6] Hence, India taking inspiration from other nations, must work towards the intergenerational implementation of uniform social security that will bring individuals closer to social justice whilst diminishing inequality and combating poverty.



REFERENCES

[1] The Employee's Provident Funds and Miscellaneous Provisions Act 1952, No. 19, Acts of Parliament, 1952

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[5] Social Security Programs throughout the World; Europe 2018, (Feb. 15, 2022), <https://www.ssa.gov/policy/docs/progdesc/ssptw/2018-2019/europe/sweden.html>.

[6] What to know if you get Social Security or SSI, (Feb. 15, 2022), https://www.ssa.gov/international/Agreement_Pamphlets/canada.html.

CASE ANALYSIS: SELVI V/S STATE OF KARNATAKA

- Soumil Singh

INTRODUCTION

The landmark case of Smt. Selvi and Ors v. the State of Karnataka highlights fundamental legal problems regarding involuntary administration of the impugned techniques and further provides a clear position on what should be done and avoided while applying these tactics. Narco Analysis is a scientific development that has become a familiar term in India, possibly dangerously so. Some constitutional concerns that pertain to the technological era must be addressed. Are the investigative authorities' procedures ultra vires to an individual's fundamental rights, whether the approaches are a blessing or a bane for the accused, and whether human rights are jeopardised due to such practices?

FACTS

The Supreme Court granted a special leave petition in this case after hearing objections to the accused, suspects, and witnesses in the investigation being exposed to neuroscientific tests without their agreement. The Court reviewed whether using neuroscientific tests to obtain evidence, such as narcoanalysis, BEAP ('brain mapping,' and polygraph testing was constitutional. To detect lying or deception, the polygraph exam measures physiological responses such as respiration, blood pressure, pulse, and galvanic skin resistance. The narcoanalysis exam includes injecting sodium pentothal into a subject's veins, which induces a hypnotic trance that allows them to become less inhibited.



The BEAP monitors brain activity in reaction to specific stimuli in order to identify whether or not the person is familiar with specific knowledge. The BEAP monitors brain activity in reaction to specific stimuli in order to identify whether or not the person is familiar with specific knowledge

ISSUES

- Whether the involuntary application of the contested procedures violate Article 20(3) of the Constitution's "right against self-incrimination"?**
- Whether the involuntary application of the contested procedures was a justifiable constraint on "personal liberty" as defined by Article 21 of the Constitution?**

LAWS INVOLVED

Article 20(3), Constitution of India 1950

It is a privilege from self-incrimination and consecration in criminal proceedings because it protects the accused.

Article 21, Constitution of India 1950

Article 21 guarantees that everyone lives free and dignified lives, and it also ensures that no one's mental privacy is invaded without their agreement.

JUDGEMENT

In this case, it was held that the findings of these tests should be viewed as personal testimony and that the tests' outcomes should be



constituted testimonial coercion, falling under the protection of article 20(3). A person who has been formally charged, a person who is under suspicion and is being investigated, and a person who is a witness in a case (whose statement could expose him/her to criminal charges in the ongoing case) can all use the protection of article 20(3). The protection provided by Article 20(3) applies not only to testimonial compulsion in the courtroom but also to testimony previously obtained by him and to a person prosecuted. When such a test is administered on a person, it imposes restrictions on their liberty and thus invades their mental privacy, and thus violates Article 21.

ANALYSIS

K.G. Balakrishnan delivered the majority of the judgment. Article 20(3) of the Constitution, which deals primarily with the issue of self-incrimination, is given much weight by the C.J.I. However, the minority aspects, namely privacy and due process, do not appear to have been given as high a priority in this decision, even though it remains vital. However, the minority element involves essential constitutional issues such as privacy and due process, and we can see from the judgement that these are given less weight. The author tends to agree and consent on both the contentions and the approach used to get at the rationale, but a bit more focus on privacy in the judgement would have helped balance



the reason. The reason for this is that the interpretation of 20(3) has been disputed by numerous high courts. The second reason is that the grounds of privacy are established beyond a reasonable doubt in this situation. In the case of D.K. Basu v. State of West Bengal, the Supreme Court of India emphasised the necessity of preventing "cruel, inhuman or degrading treatment" of anyone brought into custody.

CONCLUSION

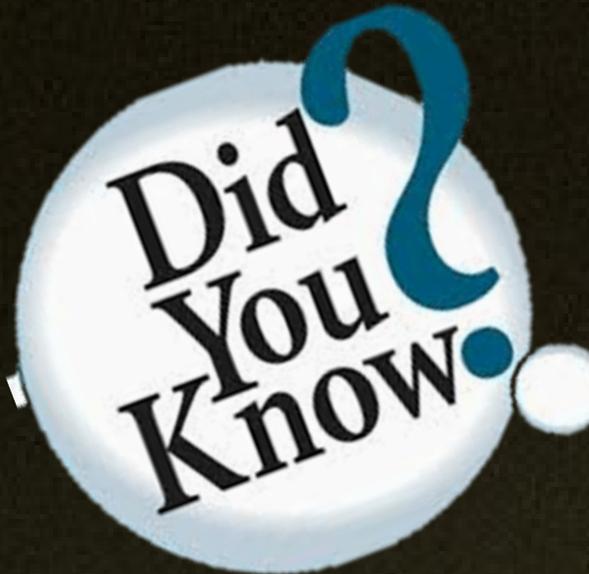
No matter how good it is, a decision will always be criticised as there is always room for improvement. The same might be said of the decision taken in this matter. Although it was one of the most significant and historic decisions of its time regarding constitutionality and democracy, criticism is inevitable. Furthermore, there is always the opportunity for detractors to join forces when it comes to judicial decisions. However, compared to other assessments, this is one of the few detractors who may struggle to discover a flaw. The ruling is a superb example of a fair and impartial conclusion.



WORLD DAY OF
**SOCIAL
JUSTICE**

20 FEBRUARY





"Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe"
Frederick Douglass

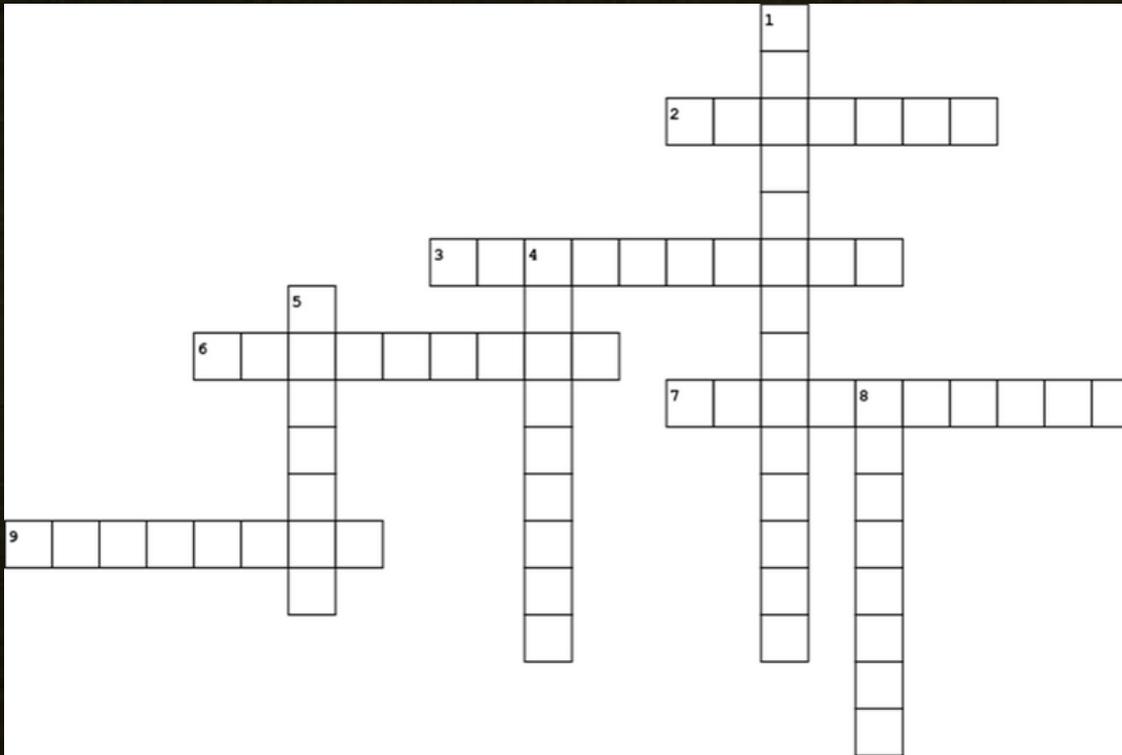
More than a hundred global leaders convened in Denmark, in 1995 for a World Summit on Social Development to address poverty and high unemployment, as well as to strive for stable and predictable communities. They agreed to a joint declaration called the Copenhagen Declaration and Programme of Action for Global Development. The United Nations eventually declared February 20th as the annual World Day of Social Justice.



The objective of the World Day of Social Justice is to raise awareness about social inequality and bring people from all walks of life together around the world to eliminate poverty, biological prejudice and discrimination against sexual identity, illiteracy, and religious bigotry in order to establish a more socially inclusive community.



CROSSWORDS



ACROSS

2. The court of law ensures to all.
3. Extreme Patriotism
6. Applicable to all.
7. An agreement between nations for regulation of matters affecting all of them respect.
9. Showing love and compassion to fellow human beings.



DOWN

1. Martin Luther King Jr. fought against Racial
4. A System of Racial discrimination which prevailed in South Africa.
5. One among the three famous slogans of the French Revolution.
8. Article 14 of our constitution talks about

ANSWERS

- ACROSS:**
2. Justice
 3. Chauvinism
 6. Universal
 7. Convention
 9. Humanity
- DOWN:**
1. Discrimination
 4. Apartheid
 5. Liberty
 8. Equality

DISCLAIMER

All content in this newsletter is only for informational purposes. The views and opinions expressed in this newsletter are individual opinions of the authors and do not reflect or represent the views held by the committee or the University.

We recommend the readers to research and read further before forming their opinions.

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