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Aims and Scope

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TO EXAMINE CRITICALLY THE PARTY AUTONOMY IN ARBITRATION: AN ANALYSIS

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ABSTRACT

The object of the write-up is to examine critically the parties' autonomy in Arbitration. Further, to see that whether the Arbitration law gives absolute autonomy to the parties or gives some restriction on that. To what extent the party autonomy principle is acceptable. The writer has adopted the descriptive, comparative, analytical and case study methods as a research methodology throughout the course of this paper and he is relying on books, international treaties, articles and online databases. The party autonomy principle given in the Arbitration law is not absolute and which is controlled by the important mandatory provisions. However, the party autonomy principle is somewhere violating the principle of natural justice and public policy as well which are the fundamentals of the law of the land. The writ- up is limited to critically analyze the party autonomy principle which is the corner stone of the arbitration. For which the author has to go in history of the Arbitration law and the surrounding materials. The writer has formulated the following questions and has tried to find out the answer-

- *Whether the parties may agree on everything for Arbitration.*
- *What is the autonomy available to the parties during Arbitration proceedings?*
- *Whether there is any restriction on such autonomy or it is absolute.*
- *Whether principle of natural justice apply to the Arbitration proceeding.*
- *Whether giving party autonomy is against the public policy of the country.*

INTRODUCTION

Almost all countries having their Arbitration law of their own have recognized the party autonomy principle. The author would like to begin his research paper with brief history of Arbitration law in India and impact of UNCITRAL Model Law, 1985 to the Arbitration law and also the important provisions regarding Party Autonomy. In India, Arbitration has a long history as a method of dispute resolution. In ancient time, the people used to submit their disputes to a group of wise persons of their community i.e. called the panchayat and their decision was having a binding effect. The present law of arbitration is the effect of Bengal Regulations in 1772 passed during British period. The Bengal Regulation provided that the court to refer to the arbitration the matters concerning accounts, breach of contract and partnership deed with the consent of the parties. Till 1996, there were three statutes governing the law of arbitration in India-

- The Indian Arbitration Act, 1940,
- The Arbitration (Protocol and Convention) Act, 1937 and
- The Foreign Awards (Regulation and Enforcement) Act, 1961

By repealing all the above laws the Government of India enacted The Arbitration and Conciliation Act, 1996 to modernize the arbitration law and to implement the UNCITRAL Model Law.

Party autonomy is a backbone and a corner stone of the Arbitration Law. It is a central point of Arbitration proceeding. The Arbitration is chosen and structured as a dispute resolution by the agreement of the parties for the procedure and authority. If the parties to the dispute are failed to select Arbitration, their dispute would be settled by the court. The reason to select Arbitration rather than litigation is that Arbitration provides speedy justice with confidentiality. In constituting the Arbitration, the parties agree on the form of Arbitration institution, procedure to be followed by the Arbitration tribunal, place of Arbitration and the governing law etc. In other words we can say that the parties are free to choose the arbitrators, venue, law, procedure and almost everything regarding the resolution of the dispute. Thus the parties structure the Arbitration by their choice and as agreed by themselves. Arbitration is a private court which is presided over by private judge. The judgment of the arbitrator is known as the award which is binding on both the parties. Arbitration is a formation of agreement between the parties, therefore party autonomy is soul and heart of all Arbitration contract. However, this autonomy is not absolute and it is subjected to public policy and applicable law of the land. Further, the intervention of court is also necessary where there is biasness on part of the arbitrator, misconduct of the proceedings etc.

The CPC recognizes the Arbitration as a mode of dispute resolution. The judiciary also felt need of the alternative dispute resolution because of large number of pending cases before court, minimum number of judges and delays. The Arbitration permits the parties to adopt their own procedure during the Arbitration and does not allow the court to interfere except in few cases. It is recognized that the court shall refer the disputes to arbitration, when an action is brought by one party to the court in a matter which is the subject of an arbitration agreement, if another party so requests. Party autonomy is the base of Arbitration but it does not mean that it is absolute. The Model Law as well as the national laws prescribes the provision in their Arbitration law which limits the autonomy of the parties for the betterment of Arbitration proceedings. Though, party autonomy is the base of the Arbitration agreement, it can be criticized on many grounds such as public policy, natural justice etc. Further, what we can say regarding party autonomy is power makes a man corrupt and absolute power makes a man absolutely.

ARBITRATION AND PARTY AUTONOMY

1.1. The concept of Arbitration

The Arbitration can be defined as a "mechanism for the resolution of disputes which take place usually pursuant to an agreement between two or more parties, under which parties agree to be bound by the decision to be given by the arbitrator according to law or, if so agreed, other considerations, after a fair hearing such decision being enforceable by law".

Further the Arbitration can also be defined as "the process by which a dispute or difference between two or more parties as to their mutual legal rights and liabilities is referred to and determined judicially and with binding effect by the application of law by one or more persons (arbitral tribunal) instead of by the court of law."

It can be inferred from the above definitions that Arbitration is a method of dispute resolution through the arbitral tribunal between the parties and it is alternate to the litigation. Further, we can add that it is cost effective, speedy justice and less technical.

1.2. The notion Party Autonomy

The notion Party Autonomy can be defined as "freedom of the parties to construct their contractual relationship in the way they see fit"

Further, it can also be defined as "self arrangement of legal relations by individuals according to their respective will". Now we can say that it is all depend upon the parties themselves to arrange their Arbitration agreement freely without any control. This principle has been recognized under UNCITRAL model law and hence adopted by member states.

Party autonomy is a central point of Arbitration. The Arbitration is selected through an agreement of the parties. If the parties are failed to select the Arbitration then their contractual disputes would be settled by the court of law. The parties prefer the Arbitration because of confidentiality, speedy justice and sometimes the matter is very technical then it is to be decided by the expert arbitrator. In forming the determined judicially and with binding effect by the application of law by one or more persons (arbitral tribunal) instead of by the court of law.[5]"

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[1]Section 89 CPC, 1908

[2]Salem Bar Association TN v. UOI, AIR 2003 SC 189

[3]Article 8 of UNCITRAL Model Law on International Commercial Arbitration,1985 and Section 8 of Arbitration and Conciliation Act,1996

[4]Bernstein: Handbook of Arbitration Practice, 3rd ed. (1998) p. 13.

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Party autonomy is a central point of Arbitration. The Arbitration is selected through an agreement of the parties. If the parties are failed to select the Arbitration then their contractual disputes would be settled by the court of law. The parties prefer the Arbitration because of confidentiality, speedy justice and sometimes the matter is very technical then it is to be decided by the expert arbitrator. In forming the Arbitration, the parties may agree on the ad hoc Arbitration or institutional Arbitration or self appointed arbitrators, the Arbitration rules, procedure, governing law place of Arbitration etc. Thus the parties have a full right to form the Arbitration as they agreed. Furthermore, the principle of separability supports the party autonomy as Arbitration agreement survives even though the contract was declared invalid[9]. The UNCITRAL Model Law[10], Arbitration Law of UK[11] and Arbitration Law of India[12] also recognize this principle.

Everybody has freedom to make a private contract. In selection of governing law in the contract the party autonomy was recognized. The principle of freedom to make a contract is closely related with the party autonomy. The party autonomy is affected by the regulatory laws if the private contract is regulated by laws of the land. The party autonomy in Arbitration has been developed and expanded since around 1980s[13].

The author thinks that there are some problems that may arise out of Arbitration agreement. Generally the domestic bargains for Arbitration do not arise from the free process of market force. In many cases,

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[5]Halsbury's Laws of England, (London, United Kingdom: Butterworths), 4th Ed. 1991, Para 601, 332.

[6]Abdulhay, S., Corruption in International Trade and Commercial Arbitration, (London, United Kingdom: Kluwer Law International 2004) 159.

[7]Flume, Allgemeiner Teil des BGB, Vol. II, 4th ed. 1992 § 1/1; BVerfGE 72, 155, 170

[8]*Supra* note 4

[9]Egbedi Tamara, An Analysis of The Effect of Public Policy on Party Autonomy in International Arbitration. (http://www.pdfebooksdownloads.com/Party-Autonomy-in--Arbitration.html)

[10]Article 16(1) of UNCITRAL model Law

Arbitration agreement reflects the position of the party who is economically dominant[14]. If the agreement is entered into the court has a very limited power in respect of giving effect to that agreement and that the court turns a blind eye to their unilateral character. These are happening, generally, domestic consumer Arbitration and employment contract where the other party is always at the dominant position and that can abuse it. The damages is at least less. In such a situation, maintaining power balance and equality of the parties before Arbitration is the requirement as the economically dominant parties will otherwise make the rules in their support and further there are very limited ground to challenge the an Arbitration agreement and hence it may become unfair to the economically dominant party because there is no provision for appeal against the order[15].

1.3. Principle of Party Autonomy under UNCITRAL Model Law and Arbitration Law

Under the UNCIRAL model law the party autonomy principle was adopted without any opposition. This is confirmed by the words stated in UNCIRAL model law that "Subject to the provisions of this law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings" and that "in matters governed by this law, no court shall intervene except where so provided in this law," these provisions are making confirm the principle of party autonomy.

Awards made under the direction of the parties when contrary to the public policy of the state, would be refused recognition and enforcement. This poses to be a limit to party autonomy as parties' freedom is restricted.

Sections 18 and 19 of the Arbitration and Conciliation Act, 1996 corresponds to Articles 18 and 19 of UNCIRAL Model Law on International Commercial Arbitration,1985 makes provision which extends the autonomy of the parties. Article 19 of UNCIRAL model law provides that parties are free to adopt their own procedure in Arbitration and also provides that the Arbitral tribunal is not bound to follow the procedure enshrined in the CPC, 1908 and Indian of Evidence Act, 1872.it is because the Arbitration emerges from the private contract between the parties and therefore the parties themselves determine the procedures to be followed in the arbitral tribunal is not bound to follow the procedure enshrined

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[11] Section 7 of Arbitration Act, 1996 (UK) states "Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and it shall for that purpose be treated as a distinct agreement."

[12] Section 16(1) of the Arbitration and Conciliation Act,1996

[13] OKUMA Kazutake, Professor of Law, Seinan Gakuin University Law School Arbitration and Party Autonomy.

[14] http://legalsutra.org/966/uncitral-model-law-and-indian-law/ last visited on 04.05.2011

[15] Ibid

[16] Article 19(1) of UNCITRAL Model Law On International Commercial Arbitration, 1985

in the CPC, 1908 and Indian of Evidence Act, 1872.it is because the Arbitration emerges from the private contract between the parties and therefore the parties themselves determine the procedures to be followed in the arbitral proceedings. Thus we can say that this power of the parties to create procedures for their own remains uncontrolled by outsider. But section 18 of ACA, 1996 which corresponds to Article 18 of the UNCITRAL Model Law on International commercial Arbitration limits the powers of the parties to create their own procedure. This provides that all parties shall be treated equally and they shall be given full opportunity to present their case completely. This is the fundamental principles of fairness. Thus the tribunal must follow this fairness principle in their work and thereby limit the power of the parties to create the rules for the Arbitration.

Furthermore, the contents of the Arbitration agreement has a big impact on the parties' right because such an agreement eliminates the parties' right to recourse the judiciary to te great extent[18].

Under Arbitration and Conciliation Act, 1996 which corresponds the UNCITRAL Model Law also, there are many provisions which give the party autonomy. These are as follows
The parties are free to agree on-

- Procedure for appointing arbitrator[19]
- Procedure for challenging arbitrator[20]
- Procedure to be followed by the arbitral tribunal in conducting the proceedings[21]
- Place of arbitration[22]
- Language to be used in arbitral proceeding[23]
- Number of arbitrators[24]

Unless the parties have agreed that no reasons are to be given, the arbitral award shall state the reasons upon which it is based[25].

The author can criticize the above freedom of the parties on the basis of dominant position of one party on other that in case of determining place of Arbitration, language to be used in arbitral proceeding and number of arbitrator the party who is strong can frame the procedure as he wish and thus he can misuse his dominant position.

Furthermore, there is one provision that party can agree that no reasons to be recorded in the award. This autonomy is against the rule of natural justice i.e. there must be reasoned decision in all cases. The

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[17] Ibid, Article 5
[18] http://legalsutra.org/966/uncitral-model-law-and-indian-law/ last visited on 04.05.2011.
[19] Section 11(2) of Arbitration and Conciliation Act, 1996
[20] Ibid section 13

parties shall not be given such freedom because without any reason in the award no one can understand the award properly and hence it is harmful for both the parties. Finally, if the matter principles of natural justice are violated while deciding the case then that award shall be deemed to be passed without jurisdiction and hence award shall be annulled.

If we see Section 33 of the United Kingdom Arbitration Law which is the mandatory provision to be followed, we find that section 33(1) (b) makes provision that the arbitral tribunal shall adopt such procedures which is suitable to the situation and circumstances of the particular case for avoiding unnecessary delay or expense. Now we can say that to avoid unnecessary delay and expenses the arbitral tribunal can rule on such procedure which perhaps override the parties' agreement. However, this provision is made for the fairness of the parties. This can be done only where there is an agreement on the procedural point.

Furthermore, the Arbitration law of various countries imposes a time limit for declaring an award. But there are other laws such as UNCITRAL Model Law[27], Arbitration and Conciliation Act, 1996(India)[28] and Arbitration Act, 1996(UK)[29] which imposes obligation on the arbitrator to act without unnecessary delay. The parties also agreed themselves on a long period of time for submission of memorial. Here, there is conflict of powers between the arbitrator and the parties' agreement. Now the question is that what will prevail? Here the parties' agreement shall be considered by the arbitral tribunal in the light of arbitrator's obligation and duties (to avoid unnecessary delay and expenses).

VARIOUS RESTRICTIONS ON PARTY AUTONOMY UNDER UNCITRAL MODEL LAW AND ARBITRATION LAW

It is very settled principle that party autonomy is the corner stone of the Arbitration. The question here is whether this autonomy is absolute and there is no limitation or restriction on them. Now we can say although the parties have a great deal of autonomy in the Arbitration agreement in the manner in which they agree, their autonomy is subject to many restrictions. Under the law there are certain basic principles which the party cannot ignore or violate under any situation. These principles are enumerated under various provisions of Arbitration law and the UNCITRAL model law as well as the principles of natural justice which are applicable to all judicial and quasi-judicial authorities and tribunals which would also constitute a fair hearing [30].

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[21] Ibid section 19(2)
[22] Ibid section 20(1)
[23] Ibid section 22(1)
[24] Ibid section 10
[25] Ibid section 31(3)(a)
[26] Section 33(1) (b) Arbitration Act, 1996(UK) states "adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined."

Section 18 of Arbitration and Conciliation Act, 1996 which corresponds to Article 18 of the UNCITAL model law on International commercial Arbitration. In this section two principles are enshrined. These are as follows

1. **Equality before Arbitration**
   Where the parties entered into an agreement to refer their matter before the Arbitration and they have created their own rule to apply thereon even though they are required to be treated equally otherwise there will be no justice at all. Thus in the Arbitration proceedings there should be bias less conduct on the part of the arbitrator and if the biasness of the arbitrator is proved then the appointment as well as award be annulled. The biasness may occur due to number of circumstances like friendship with other side, pecuniary relief taken from one side or hostility to a party that would affect the equality between the parties.
2. **Opportunity to present case**
   This is very important requirement of arbitration that each party shall be given full opportunity to present their case completely. If we section 18 and Section 34(2)(b) of the Arbitration and Conciliation Act,1996 we find that if a party was not given proper notice of the arbitral proceeding or otherwise failed to present the case before arbitral tribunal, then the resulting award to be annulled when challenged.
3. **Principles of natural justice**
   The Arbitration law defines the arbitral tribunal as a sole arbitrator or a panel of arbitrators. The Arbitration tribunal is body being a quasi-judicial authority and hence we can say that the judges should not be appointed as arbitrators. In India, all judicial as well as administrative authorities are required to follow the principles of natural justice in the proceedings. Further in case of D.C. Saxena v. State of Haryana,it was held by the court that if the statute is silent on the matter, the natural justice principle has to be followed. The principles which constitute the essential norms of Arbitration, they are as follow
   - Nemo judex in causa sua, i.e. no man can be a judge in his own cause
   - No party shall be condemned unheard, i.e. each party must have opportunity of cross examination of witnesses examined by other side.
   - Each party is entitled to know the reasons for the decisions.
   - The person who hears the case must decide finally.

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[27] Article 14(1) states "If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal."

[28] Section 14(1) (a) states" The mandate of an arbitrator shall terminate if he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay.

[29] Supra note 14

[30] S.K. Agrwal, Arbitration: An option to resolve under Section 89 of CPC, AIR 2003, p. 187

If the matter principles of natural justice are violated while deciding the case then that award shall be deemed to be passed without jurisdiction and hence award shall be annulled.

Other Mandatory Provision under UNCITRAL Model Law and Arbitration Law

The UNCITRAL Model Law was not intended to grant absolute party autonomy in Arbitration proceedings. It was intended to promote balanced autonomy to the parties with safeguards in the form of mandatory provisions which must be followed. The Arbitration and Conciliation Act, 1996 as well as the UNCITRAL Model Law make some mandatory provisions which limit the autonomy of parties. These are as follows[35]

a) Arbitration agreement shall be in writing[36]
b) The parties shall be treated equally and be given full opportunity to present his case[37]
c) The exchange of statements of claim and statements of reply between the parties to the arbitration;[38]
d) Advance notice of tribunal to be given to the parties and such statement to be communicated to the parties.[39]
e) Assistance of the court by tribunal for getting fair hearing.[40]
f) The award under Arbitration law is equated with an ordinary award[41]
g) Arbitration award must be in writing and signed by the arbitrator and copy to be delivered to the parties.[42]
h) Termination of proceedings [43]
i) Correction and interpretation of award.[44]

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[31] Section 2(1)(d) of Arbitration and Conciliation Act,1996 and Article 2(b) of UNCITRAL Model Law on International commercial Arbitration, 1985

[32]R.S. Bachawat, Law of Arbitration and Conciliation, Nagpur, Wadhwa & Co. 1999, p. 414.

[33] Indu Ramchandra Bharwani v. UOI (1988) 4 SCC 1

[34] AIR 1987 SC 1463

[35] Supra note 12

[36]Article 7(2) of Model Law states "The arbitration agreement shall be in writing."

[37] Ibid Article 18 states "The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case."

[38] Section 23(1) of ACA,1996 and Article 23(1) of UNCITRAL Model Law on International Commercial Arbitration which state, "Within the period of time agreed upon by the parties or determined by the arbitral tribunal,
the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements".

[39] Section 24(2) and (3) of ACA,1996 and Article 24(2) and (3) of UNCITRAL Model Law on International Commercial, 1985.

Clause (2), the parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

Clause (3), all statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Principle of Public Policy

The Arbitration is based on the party autonomy principle. However, the party autonomy is not protected if it is exercised against the public policy as we can say that the public policy is a good defense to recognize and enforce the arbitral award. Public policy restricts the parties not to legalize immoral and illegal agreements. However, the public policy is interpreted by the judiciary to encourage the party autonomy. The principle of public policy includes different types of social, culture and moral values. It is very much dynamic and it varies with time and place. The principle of public policy limits the autonomy of the parties. It is because the procedure formed by the parties for the resolution of their dispute must not be inconsistent with the public policy. Public policy is the fundamental principle of the country and hence any award which is against it then that award shall not be recognized and enforced. The expression public policy is very vague in nature, however the SC has interpreted "contrary to public policy" when it is against

- The fundamental policy of the country
- Interest of the country
- Morality or justice
- Legal norms

EFFECT OF PUBLIC POLICY ON PARTY AUTONOMY

Before we start the effect of public policy on party autonomy we have to know about the public policy first and then the implication of it.

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[40] Section 27 of ACA, 1996 and Article 27 of UNCITRAL Model Law on International Commercial, 1985 states "The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence."

[41] Section 30(2) of ACA, 1996 and Article 30(2) of UNCITRAL Model Law on International Commercial, 1985 states "If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms."

[42] Section 31 of ACA, 1996 and Article 31 of UNCITRAL Model Law on International Commercial, 1985,

Clause (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

Clause (3) The arbitral award shall state the reasons upon which it is based

Clause (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

[43] Section 32 of ACA, 1996 and Article 32 of UNCITRAL Model Law on International Commercial, 1985 state that The arbitral proceedings are terminated by the final award

[44] Section 33 of ACA provides some time period under which the parties have to go for correction of award etc.

3.1. Public Policy

It is sociological concept which comprises the society's culture, moral, values, belief etc. which is accepted and applied in the society. Public policy is dynamic in nature which varies with time and place. Many almost all countries have accepted it as a fundamental principle of the country and hence any violation of this principle will lead the order or award as null and void. In case of Arbitration proceedings it makes limit on the party autonomy. It is a good ground for challenging the award and then makes the award unenforceable. The Judiciary of different States has interpreted the expression 'public policy' in different way. The public policy is very vague in nature, however the SC of India has interpreted "contrary to public policy" when it is against the fundamental policy of the country, Interest of the country, Morality or justice, Legal norms.

3.2 Judicial interpretation: Party autonomy and public policy

If we see the history of party autonomy, it was not always approved and accepted by the judiciary because they felt that the arbitration which was based on part autonomy is a dangerous for the judiciary regarding their jurisdiction. They were feeling fear that party autonomy will restrict the power of judiciary to intervene to the Arbitration agreement. The judges of many country was not allowing to the parties to choose the law for their own.

In America, the court used to invalidate the Arbitration agreement observing it as encroachment on the judicial power and hence against the public policy. This view was gradually changed when the US Arbitration Law[45] came into existence. The court then felt the importance of party autonomy and recognized it and further held that the court's role is limited in Arbitration agreement only to ensure that the agreement is enforced according to their terms. But the court held in a case[46] that the parties to the Arbitration are free to form their Arbitration agreement as they think fit but with certain limitations. The court further suggested that one of the limitations is public policy. Where the choice of the parties is against the public policy of the country, it would not be enforced.

In India, the public policy principle is well established. The SC of India in a case[47] struck down the judgment of the High Court wherein it was held that the arbitrator could not be removed on the ground of bias because of lack of specific provision in the Arbitration agreement. The SC applied the public policy principle and allowed the case and held that any agreement violating the public policy principle shall be declared invalid.

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[45] United States Fede/ral Arbitration Act, 1925.

[46] Mastrobuonu v Shearson Lehman Hutton Inc, 514 US 52, 55 (1995).

[47] Bharat Heavy Electricals v. C.N. Garg, (2000) 3 Arb. L.R. 674

Conclusion

On the basis of above analysis the author comes to the conclusion that since the party autonomy is the base for the Arbitration and it cannot be discarded due to some irregularities in the Arbitration proceedings. However, the Arbitration law makes provision which limit the party autonomy because that provision must be followed anyhow. Further the author has tried to criticize the party autonomy on the basis of principle of natural justice and the public policy principle. The Judiciary of different States has interpreted the expression 'public policy' in different way. The public policy is very vague in nature, however the SC of India has interpreted "contrary to public policy" when it is against the fundamental policy of the country, Interest of the country, Morality or justice, Legal norms. The author thinks that Arbitration agreement reflects the position of the party who is economically dominant. If the agreement is entered into the court has a very limited power in respect of giving effect to that agreement and that the court turns a blind eye to their unilateral character. These are happening, generally, domestic consumer Arbitration and employment contract where the other party is always at the dominant position and that can abuse it. Finally the author is of the view that there must not be an absolute autonomy to the parties. Though the Arbitration law has given the party autonomy, there are some other provisions which limit that autonomy. We can say that to some extent the party autonomy principle is controlled by the same Arbitration law but sometimes it is uncontrolled without the express provision in the Arbitration law. Finally the author is of the view that there must be some additional provision in the Arbitration law on the basis of principle of natural justice and public policy to control the party autonomy.

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ABSTRACT

Knowledge is typically non-excludable in that it is not possible to prevent others from applying new knowledge even without the authorization of its creator. If a new technology is valuable, it is therefore likely to be copied or imitated, reducing the potential profits of the original inventor and potentially removing the incentive to engage in innovative activities. Intellectual property rights (IPRs) encourage innovation by granting successful inventors temporary monopoly power over their innovations. Once an innovation has been done, its non-rival character suggests that its benefits will be maximized if its use is free to all at marginal cost. Although this availability to all will yield benefits in the short run, it will also severely damage the incentive for further innovation. But, excessive IPR protection is likely to lead to an inadequate dissemination of new knowledge, which in itself could slow growth to the extent that access to existing technology is necessary to induce further innovation.

Key Words: *Intellectual Property Rights, Innovation, Knowledge, Authorization, Potential, Protection.*

INTRODUCTION

David 1993 defines Intellectual Property Rights (IPRs) have been defined as ideas, inventions and creative expressions on which there is a public willingness to grant the status of property.IPRs provide certain exclusive rights to the creators of IP, in order to enable them to reap commercial benefits from their creative efforts or reputation. The purpose of IPR legislation is to protect against unauthorized imitation, copying or deceptive usage of identifying marks.

Intellectual Property

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:

- Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications.
- Copyright covers literary works (such as novels, poems and plays), films, music, and artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs,

Intellectual Property Rights

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. Intellectual property means the property represented by the product emanating from creativity of the human mind, human intellect and creative ideas. It can be an invention, original design practical application of a new idea, artistic creation etc. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886).

Patent

A patent is an exclusive right granted for an invention a product or process that provides a new way of doing something, or that offers a new technical solution to a problem. A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. These patent rights are usually enforced in a court, which, in most systems, holds the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

Necessities of Patents

Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

Kind of protection do Patents offer

Patent protection means an invention cannot be commercially made, used, distributed or sold without the patent owner's consent. Patent rights are usually enforced in courts that, in most systems, hold the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

Rights of Patent Owner

A patent owner has the right to decide who may or may not use the patented invention for the period during which it is protected. Patent owners may give permission to, or license, other parties to use their inventions on mutually agreed terms. Owners may also sell their invention rights to someone else, who

then becomes the new owner of the patent. Once a patent expires, protection ends and the invention enter the public domain. This is also known as becoming off patent, meaning the owner no longer holds exclusive rights to the invention, and it becomes available for commercial exploitation by others.

Grant of Patent

The first step in securing a patent is to file a patent application. The application generally contains the title of the invention, as well as an indication of its technical field. It must include the background and a description of the invention, in clear language and enough detail that an individual with an average understanding of the field could use or reproduce the invention. Such descriptions are usually accompanied by visual materials drawings, plans or diagrams that describe the invention in greater detail. The application also contains various "claims", that is, information to help determine the extent of protection to be granted by the patent.

Inventions which are Patentable protected

An invention must, in general, fulfill the following conditions to be protected by a patent. It must be of practical use; it must show an element of "novelty", meaning some new characteristic that is not part of the body of existing knowledge in its particular technical field. That body of existing knowledge is called "prior art". The invention must show an "inventive step" that could not be deduced by a person with average knowledge of the technical field. Its subject matter must be accepted as "patentable" under law. In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods or methods of medical treatment (as opposed to medical products) are not generally patentable.

Inventions which are not Patentable

- An invention which is frivolous or claims anything obviously contrary to well established natural laws.
- An invention the primary or intended use or commercial of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment.
- A substance obtained by a mere admixture resulting only in the aggregation of properties of the components thereof or a process for producing such substance
- The mere arrangement or duplication of known devices each functioning independently of one another in a known way.
- A method of agriculture or horticulture.
- Plants and animals in whole or any part thereof other than microorganisms, but including

seeds varieties and species and essentially biological processes for production or propagation of plants and animal.

- A computer programme per se other than its technical application to industry or a combination with hardware.
- A presentation of information topography, of integrated circuits
- An invention which in effect is traditional knowledge is an aggregation or duplication of known properties of traditionally components.

Apply for Patent

- Any person who is true and first inventor or his assignee or legal representative is entitled to apply for a patent either alone or jointly with other person to protect his invention through patent right.
- The applicant has to ensure that the application for patent relates to single invention connected by the common technical effect.

Trademark

A trademark is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise. Its origin dates back to ancient times, when craftsmen reproduced their signatures, or "marks" on their artistic or utilitarian products. Over the years these marks evolved into today's system of trademark registration and protection. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

What does a Trademark do?

A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. The period of protection varies, but a trademark can be renewed indefinitely beyond the time limit on payment of additional fees. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

Kinds of Trademarks registered

The possibilities are almost limitless. Trademarks may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three- dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors used as distinguishing features. In addition to trademarks identifying the commercial source of goods or services, several other categories of marks exist. Collective marks are owned by an association whose members use them to identify themselves with a level of quality and other requirements set by the association. Examples of such associations would be those representing accountants, engineers, or architects. Certification marks are given for compliance with defined standards, but are not confined to any membership. They may be granted to anyone who can certify that the products involved meet certain established standards. The internationally accepted "ISO 9000" quality standards are an example of such widely recognized certifications.

Registration of Trademark

First, an application for registration of a trademark must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign filed for registration, including any colors, forms, or three-dimensional features. The application must also contain a list of goods or services to which the sign would apply. The sign must fulfill certain conditions in order to be protected as a trademark or other type of mark. It must be distinctive, so that consumers can distinguish it as identifying a particular product, as well as from other trademarks identifying other products. It must neither mislead nor deceive customers or violate public order or morality. Finally, the rights applied for cannot be the same as, or similar to, rights already granted to another trademark owner. This may be determined through search and examination by the national office, or by the opposition of third parties who claim similar or identical rights.

How extensive is Trademark protection?

Almost all countries in the world register and protect trademarks. Each national or regional office maintains a Register of Trademarks which contains full application information on all registrations and renewals, facilitating examination, search, and potential opposition by third parties. The effects of such a registration are, however, limited to the country (or, in the case of a regional registration, countries) concerned.

Industrial Design

An industrial design is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such

as patterns, lines or color. Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry, and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods. To be protected under most national laws, an industrial design must be new or original and nonfunctional. This means that an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration. However, those features could be protected by a patent

Why to protect Industrial Designs?

Industrial designs are what make an article attractive and appealing; hence, they add to the commercial value of a product and increase its marketability. When an industrial design is protected, the owner - the person or entity that has registered the design - is assured an exclusive right against unauthorized copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity, and promoting more aesthetically attractive products. Protecting industrial designs helps economic development, by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. They contribute to the expansion of commercial activities and the export of national products. Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen, in both industrialized and developing countries.

How can Industrial Designs be protected?

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a general rule, to be registrable, the design must be "new" or “original". Different countries have varying definitions of such terms, as well as variations in the registration process itself. Generally, "new" means that no identical or very similar design is known to have existed before. Once a design is registered, a registration certificate is issued. Following that, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years. Depending on the particular national law and the kind of design, an industrial design may also be protected as a work of art under copyright law. In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, he can no longer invoke the other. Under certain circumstances an industrial design may also be protectable under unfair competition law, although the conditions of protection and the rights and remedies ensured can be significantly different.

How extensive is Industrial Design protection?

Generally, industrial design protection is limited to the country in which protection is granted. Under the Hague Agreement Concerning the International Deposit of Industrial Designs, a WIPO-administered treaty, a procedure for an international registration is offered. An applicant can file a single international deposit either with WIPO or the national office of a country which is party to the treaty. The design will then be protected in as many member countries of the treaty as the applicant wishes.

Geographical Indication

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local geographical factors, such as climate and soil. Whether a sign functions as a geographical indication is a matter of national law and consumer perception. Geographical indications maybe used for a wide variety of agricultural products, such as, for example, “Tuscany” for olive oil produced in a specific area of Italy, or “Roquefort” for cheese produced in that region of France. The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product that are due to human factors found in the product's place of origin, such as specific manufacturing skills and traditions. The place of origin may be a village or town, a region or a country. An example of the latter is “Switzerland” or “Swiss”, perceived as a geographical indication in many countries for products made in Switzerland and, in particular, for watches

Need of Geographical Indication

A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. Since those qualities depend on the place of production, a specific "link" exists between the products and their original place of production.

Why do Geographical Indications need protection?

Geographical indications are understood by consumers to denote the origin and quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by commercial operators. False use of geographical indications by unauthorized parties, for example “Darjeeling” for tea that was not grown in the tea gardens of Darjeeling, is detrimental to consumers and legitimate producers. The former are deceived into believing they are buying a genuine product with specific qualities and characteristics, and the latter are deprived of

valuable business and suffer damage to the established reputation of their products.

What is a "generic" Geographical Indication?

If a geographical term is used as the designation of a kind of product, rather than an indication of the place of origin of that product, this term does no longer function as a geographical indication. Where that has occurred in a certain country over a substantial period of time, that country may recognize that consumers have come to understand a geographical term that once stood for the origin of the product - for example, "Dijon Mustard," a style of mustard originally from the French town of Dijon - to denote now a certain kind of mustard, regardless of its place of production

Protection of Geographical Indication

Geographical indications are protected in accordance with national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin. In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions range from court injunctions preventing the unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

Copyright

Copyright is the set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. These rights can be licensed, transferred and/or assigned. Copyright lasts for a certain time period after which the work is said to enter the public domain. Copyright applies to a wide range of works that are substantive and fixed in a medium. Some jurisdictions also recognize "moral rights" of the creator of a work, such as the right to be credited for the work.

Indian Copyrights Act

Copyrights: The exclusive right to do or authorize the doing of any of the following in respect of a work:

1) In case of a literary, dramatic or musical work:

- To reproduce the work in any material form or by electronic means.
- To issue copies
- To perform the work in public.
- To make any film or sound recording of the work.
- To make any translation or adaptation of the work.

2) In the case of a computer program:

- To sell or give on commercial rental.

3) In the case of artistic work:

- To reproduce the work in material form.
- To include the work in a film.
- To make an adaptation of the work.

4) In case of a cinematograph film:

- To make a copy of the film.
- To sell or give copies of the film on hire.

Ownership of the Copyright

'Subject to the provisions of this act, the author of the work shall be the first owner of the copyright therein.' In cases where the author or creator of the work, has done the said work for another individual either for consideration, or while in his/her employment then the first owner of the copyright is the individual and not the author, unless an agreement to the contrary has been signed.

Copyright Board

- Quasi-judicial body
- Consists of Chairman and 2 to 14 other members

The Copyright Board is a quasi-judicial body consisting of a Chairman and not less than two or more than fourteen other members. The Chairman and other members of the Board are appointed for a term of five years. The Copyright Board was reconstituted for a term of five years with effect from 22 February 2001. The Board hears cases regarding rectification of copyright registration, disputes in respect of assignment of copyright and granting licenses in works withheld from public.

Infringement (to break law) of Copyright

Illegal use or Violation by way of exploitation within authorization of the author of the copyright amounts to infringement. The governing principles for deciding the infringement of copyright are as under:

- There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.
- Where the same idea is being developed in a different manner it manifests that the source

being common, similarities are bound to occur. In such cases, the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyright work. If the defendant's work is nothing but a literal limitation of the copyright variations of the copyrights. In other words, in order to be actionable, the copy must be a substantial and material one, which at once leads to the conclusion that the defendant is guilty of an act of piracy.

- One of the surest and safest tests to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.
- Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.
- Where, however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negate the intention to copy the original and the co-incidences appearing in the two works are clearly incidental, no infringement of the copyright comes into existence.
- Piracy must be proved by clear and cogent evidence after applying the various tests laid down.
- Fair dealing with any work has been kept out of the mischief of the Copyright Act.
- Court may take the assistance of an expert in complicated and technical aspects of the violation of copyright(s).
- The test to detect piracy is to see whether mistakes and deviations occurring in the original have also been reproduced.
- Law restraining human enterprise should be liberally construed and therefore Copyright Act should not be interpreted so as to shut out research and scholarship.
- The burden lies on the plaintiff to satisfy the court that the defendant has infringed his copyright.
- Innocence is no defence to a charge of infringement.
- An infringement is in the nature of an invasion of a right of property and therefore intention of the infringer is immaterial provided there is infringement.
- For determination of the question of infringement, the result and not the intention is relevant.
- The owner of the literary work could bring action for infringement of copyright even though the literary work was not registered. Non-registration of work does not prevent an action for infringement.

Exceptions to infringement of Copyright

The following acts, amongst others, do not constitute infringement:

- Fair dealing with a literary, dramatic, musical or artistic work not being computer programmes for the purposes of private use including research, criticism or review, making copies of computer programmes for certain purposes, reporting current events in newspaper magazines or by broadcasting or in a cinematography film or by means of photographs.
- Reproduction of judicial proceedings and reports thereof, reproduction exclusively for the use of Members of Legislature, reproduction (artistic work excluded) in a certified copy supplied in accordance with law.
- Reading or recitation in public of extracts of literary or dramatic work.
- Publication in a collection for the use in educational institutions in certain circumstances.
- Reproduction by teacher or pupil in the course of instruction or in question papers or answers.
- Performance in the course of the activities of educational institutions in certain circumstances.
- The causing of a sound recording to be heard in public utilizing it in an enclosed room or in clubs in certain circumstances.
- Performance in an amateur club given to a non-paying audience or for religious institutions.
- Reproduction in newspapers and magazine of an article or current, economic, political, social or religious topics in certain circumstances.
- The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign the copyright to any person either wholly or partially, generally or subject to any limitation and for the whole term of the copyright or any part thereof.
- The owner of the copyright in any existing work or the prospective owner in any future work may grant any interest in the right by license in writing signed by him or by his duly authorized agent.

Registration of Copyright

Application to the Registrar of Copyright in prescribed form, accompanied by due fees, to enter the particulars of the work under the Register of Copyrights. The Registrar, after holding such enquiry as he deems fit, may enter the particulars of the work in the register. It is not necessary to register the work for copyright. There is nothing in the Act, which makes registration of copyright as a precondition for availing of the remedies for infringement. Registration only provides prima facie evidence of particulars entered, without the necessity of further proof by way of production of the original.

Time period of Copyright

The total term of protection for literary work is the author's life plus sixty years. For cinematographic films, records, photographs, publications, works of government and international agencies the term is 60 years from the beginning of the calendar year following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

Penalties

A person who knowingly infringes or abets the infringement of a copyright is punishable with imprisonment ranging from six months to three years, and with a fine ranging from f**ifty thousand rupees to two lakh rupees.**

Benefits of protecting Copyright and related rights

Copyright and related rights protection is an essential component in fostering human creativity and innovation. Giving authors, artists and creators incentives in the form of recognition and fair economic reward increases their activity and output and can also enhance the results. By ensuring the existence and enforceability of rights, individuals and companies can more easily invest in the creation, development and global dissemination of their works. This, in turn, helps to increase access to and enhance the enjoyment of culture, knowledge and entertainment the world over and also stimulates economic and social development.

How have Copyright and related rights kept up with advances in technology?

The field of copyright and related rights has expanded enormously during the last several decades with the spectacular progress of technological development that has, in turn, yielded new ways of disseminating creations by such forms of communication as satellite broadcasting, compact discs and DVDs. Widespread dissemination of works via the Internet raises difficult questions concerning copyright and related rights in this global medium.

Need for the Intellectual Property Rights

Any property has to be protected in order to save it inform an unauthorized use. Similarly the intellectual Property rights also need to be protected from infringement. IPRs relates to new ideas, new technologies, new product and evolution of knowledge-based industrial environment, IPRs are key elements for gaining competitive edge of the industry and ascertaining the desired success and preserving exclusive markets. The cost of R&D to develop new products and new processes is rising sharply and hence there is a need to increase and accelerate the extent of production of IPRs to get

reasonable return on investment and reduce the risk and uncertainty. IPR protection provides an incentive to inventors for further research and investment in R&D which leads to creation of new and better products and, in turn, brings about economic growth and social benefits. IPRs are emerging as a new wealth and power of nations. IPRs through propagation of new knowledge and ideas lead to creation of new and better products and bring about industrial, economic and social development of the country.

Intellectual Property rights and economic growth

If we look at the world as being composed of two types of countries: a developed, innovating "North" and a developing, imitating "South"1, then the impact of stronger IPR protection benefits the innovating North, but its impact in the South where innovation is limited or non-existent is ambiguous, depending inter alia on the channels through which technology is transferred. Research indicates that stronger IPR protection is only found to benefit the South when R&D is highly productive, thus resulting in significant cost reductions, and when the South comprises a large share of the overall market of the product. Research also shows that the benefits of increased innovation through stronger IPR protection become weaker as more and more countries strengthen their IPR regimes, because the extra market covered and the extra innovation that can be stimulated by such protection diminishes. Since IPR holders engage in monopoly pricing that distorts consumer choice, strengthening IPR protection can lead to welfare reductions, particularly in a country that undertakes little or no R&D and would otherwise be able to free ride on foreign innovations.

Why promote and protect Intellectual Property?

There are several compelling reasons. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life. An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

How does the average person benefit?

Intellectual property rights reward creativity and human endeavor, which fuel the progress of humankind. Some examples: The multibillion dollar film, recording, publishing and software industries

which bring pleasure to millions of people worldwide would not exist without copyright protection. Without the rewards provided by the patent system, researchers and inventors would have little incentive to continue producing better and more efficient products for consumers. Consumers would have no means to confidently buy products or services without reliable, international trademark protection and enforcement mechanisms to discourage counterfeiting and piracy.

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THE GATT OBLIGATIONS & THE GENERAL EXCEPTIONS

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ABSTRACT

The object of the write-up is to elaborate the general exceptions given in Article XX of the GATT obligations. The writer has concentrated his study only on Article XX to see that whether the general exceptions are really usable to promote free trade on international level. The writer has adopted analytical and descriptive methodology for this paper and he is relying on books, articles, newspapers, online databases. The careful interpretation of Article XX of GATT by the GATT Panel to promote free International Trade is satisfactory. Making the International trade liberal, the general exceptions play a very important role. The writer has formulated the following questions and has tried to find out the answer-

- *What is the scope of Article XX of GATT?*
- *What is the role of GATT Panel regarding interpretation of Article XX?*
- *What is the importance of Chapeau in Article XX?*
- *Whether Article XX has its extraterritorial jurisdiction.*

INTRODUCTION

The main objectives of the GATT agreement are the riasing living standards and promoting full employment by reducing trade barriers and eliminating discriminatory trade practices. The exceptions of the GATT treaty of 1947 have been adopted in its entirety into the GATT treaty of 1994. All GATT obligations are subject to a set of ten general exceptions set forth in Article XX of GATT obligation. The exceptions provide an exhaustive list of 10 circumstances in which a contracting party to the Treaty may depart from the terms and conditions of the rest of the treaty. All these exceptions are based on non-economic grounds rather than social grounds. The Chapeau of Article XX obligates the members that nothing in this agreement shall be construed to prevent the adoption or enforcement of any contracting party of exceptions/measures as listed from paragraph (a) to (j) of Article XX of GATT. It must also be subject to the condition that these exceptions should not be applied arbitrarily or unjustifiable between the countries where the same conditions prevail. All these exceptions should not amount to disguise restrictions on International trade.

Article XX (a) to (j) of GATT, 1994 consist the measures which have been recognized as exceptions

to substantive GATT obligations. It is because the domestic policies embodied in that measures have been recognized as important and legitimate. The balance has to be struck between the member's right to invoke an exception under Article XX and the duty of the same member to respect the treaty rights of the other members.[1]

The Chapeau imposes two tier test in the sense that the exception at issue contemplated in Article XX must not only come under one or another of the particular exceptions (paragraph a-j), it must also satisfy the requirements imposed by the opening clause of the Article. The analysis, is, therefore, two tired-

1) Provisional justification by reason of characterization of the measure under Article XX (a) to (j), and
2) Further appraisal of the same measure under the introductory clause of Article XX.

However, the standards established in the Chapeau are very broad in scope and reach, as suggested by the language that the prohibition of the application of a measure 'in a manner which would constitute a means of 'arbitrary' or 'unjustifiable discrimination' between countries where the same conditions prevail or a disguised restriction on international trade'.

The appellate body of DSB in the case US- Shrimp[2] provided an overview regarding the three consecutive elements of the concept of 'arbitrary or unjustifiable discrimination between countries where the same conditions prevail' and held that-

1) The application of the measure/exception must result in discrimination,
2) The discrimination must be arbitrary or unjustifiable in character, and
3) This discrimination must occur between countries when the same conditions prevail.[2]

The Scope And Framework Of General Exceptions[3]

No law whether international or domestic for the matter can long exists without some provision for relaxing legal norms in certain circumstances. The exceptions grew when particular nations cited

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[1] Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this agreement shall be construed to prevent the adoption or inforcement by any contracting party of measures.

specific existing practices that would be inconsistent with some proposed trade obligation. It has been said that GATT is riddled with exceptions and it is really true that there are number of provisions that relax GATT obligations under various circumstances. The provisions are essentials to an institution which purports to regulate the complex and politically sensitive subject of world trade. The exceptions provide the necessary flexibility without which the GATT might never have been concluded. It is important to be aware with these exceptions in order to assess the degree of stability and predictability that the GATT can bring to world trade relations and the degree to which reliance can be placed on any particular GATT obligation.

Classification of GATT exceptions

The GATT exceptions can be classified into several category-

1) Universal exceptions

These are the exceptions which could apply to all the GATT obligations so that reference to those exceptions shall be made in every case under consideration. For eg. Article XX.

2) Particular exceptions

Those exceptions which apply to a limited number of the GATT obligations. For example- tariff concessions, quantitative restrictions etc.

The Chapeau (Preamble) of Article XX

All the exceptions of Article XX are qualified by the chapeau, which sets out the tests for the manner in which a trade measure is applied. There are three standards in the chapeau:

1. Arbitrary discrimination,
2. Unjustifiable discrimination, and
3. A disguised restriction on international trade.

The first draft charter for the ITO came in the U.S.-British[4] proposal of December 1945 which provided for the customary trade exceptions but permitted them unconditionally. At the London session, several delegates suggested applying conditions to the exceptions in order to guard against "indirect protection."

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[2] Ibid, para 150

[3] John H Jackson, 'World Trade And The Law Of Gatt', Publishers Indianapolis, Kanascity, New York, pp 535-539.

[4] http://www.charnovitz.org/JWT.htm

The British delegate offered a specific amendment -- that trade measures could not be "applied in such a manner as to constitute a means of arbitrary discrimination between countries where the same conditions prevail, or a disguised restriction on international trade." Although this proposal was accepted at the subcommittee level, no agreement was reached on the General Exceptions as a whole in London. At New York, the two conditions were incorporated into the preamble, which then remained intact through Geneva and Havana. This suggests that the proviso may incorporate the principle of national treatment as well as non-discrimination.

To prevent the abuse of GATT exceptions under Article XX the chapeau has been worded. The purpose of the chapeau is the uniting all ten exceptions. The chapeau is worked by the principle that when the exceptions of GATT must be invoked as a matter of legal right, they should not be so applied as to defeat or frustrate the legal obligations of the right holder under the substantive obligations of the GATT agreement. The measures falling within any of the exceptions, it must be applied reasonably with care and cautions to both the legal duties of the party claiming the exceptions and the legal rights of the other party concerned.[5] In my opinion the chapeau makes it clear that all exceptions given in paras (a) to (j) of Article XX are limited and conditional exception.

Nature and Purpose of Article XX

The exceptions given in Article XX relate to all the obligations under the GATT; the most favoured nation treatment obligation and national treatment obligation, and others as well.[6] Interpreting the Chapeau of Article XX of GATT obligation, the Appellate Body described the nature and purpose of Article XX as a balance of rights and duties, i.e. a balance must be struck between the right of a member to invoke an exception under Article XX and the duty of that same member to respect the treaty rights of the other members. The interpreting and applying the exceptions is the marking out a line of equilibrium between the right of a member to invoke an exception under Article XX and the rights of the other members under varying substantive provisions e.g. Article XI of the GATT so that neither of the competing rights will cancel out the other and thereby distort and nullify or impair the balance of rights and obligations made by the members themselves in the agreement.

Burden of proof

The burden of showing that a measure justified as being one of the exceptions set out in Article XX of the GATT does not constitute the abuse of any of the exceptions under the chapeau; go on the party invoking

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[5]Appellate Body Report on US-Gasoline, p. 22

[6]Ibid, p. 24.

the exception. In other words it the burden of proof is on the party invoking the exception. We consider that the reasoning of the appellate body in US- Shirts and Blouses from India is applicable to Article XX of the GATT obligation.[7] As the Appellate Body stated in US- Gasoline that the burden of proof can vary according to what has to be proved. In fact, the party invokes any of the exceptions under Article XX has to supply the evidence necessary to support its allegation. At the same time the complaining party has also to supply sufficient argument and evidence in response to the claim of the defending party. Ultimately we are of the opinion that it is not only for the party invoking Article XX to prove that the arguments put forward in rebuttable by the complaining party are incorrect until the latter has backed up with sufficient evidence.

TEN GENERAL EXCEPTIONS UNDER ARTICLE XX

All GATT obligations are subject to a set of ten general exceptions given in Article XX of the GATT. The measures taken by the state must not be arbitrary or unjustifiable discriminatory in any way. Article XX comes into play only when one State takes measure which is in contravention of the GATT obligations. In order to apply the exceptions as a defense a three tier test must also be satisfied. Thus the defending state has to show:

- That the measure adopted has met the standards in the introductory clause, which require non arbitrary and non discriminatory,
- That the adopted measures comes under one of the general exceptions, and
- That there is connection between the policy and the trade and that the policy needed in order to reach the stated end.[8]

Article XX starts with the opening clause that is called the 'chapeau' which applies to all ten exceptions equally such as-

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[7] Appellate Body Report on US- Wool Shirts and Blouses, pp. 15–16:

We acknowledge that several GATT 1947 and WTO panels have required such proof of a party invoking a defence such as those found in Article XX or Article XI to a claim of violation of a GATT obligation, such as those found in Article I, II, III or XI, Article XX and XI are limited exceptions from obligations under certain other provisions of the GATT 1994, not positive rules establishing obligations in themselves. They are in the nature of affirmative defences. It is only reasonable that the burden of establishing such a defence should rest on the party asserting it."

[8] Salman Bal, 'International Free Trade Agreement And Human Rights': Reinterpreting Article XX of the GATT, 10 MINN. J. GLOBAL TRADE 62 (2001)

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures-

a) Necessary to protect public Morals

The makers gave more weight on public morality matters and not on trade liberalization. Article XX (a) permits a GATT member to ban the importation of products produced in such a way that violates human rights norms in order to protect the public morals of the importing members. This clause (a) of Article XX makes provision about the exception to the general obligation that the member of the GATT cannot take measures against other members that would restrict trade but under Article XX the GATT members may make restriction on trade for promoting "public morals". It is important to note here that the drafters did not define what "public morality" is. It is not proper that the term Public Morals should be interpreted in the uniform way. It is because each country has its different norms regarding public morals. As an Islamic country, the Kingdom bans the imports of alcohol, pork, pork products and pornography.

Concept of 'necessary'

The term 'necessary' is critical because this word qualifies three exceptions under Article XX of the GATT such as: [9]

(a) Necessary to protect public morals,
(b) Necessary to protect human, animal, or plant life or health, and
(c) Necessary to secure compliance with laws or regulations.

In Korea-beef case[10] the term 'necessary has been interpreted as 'reasonable available'. In order to justify a measure taken, necessary to protect public morals, it must also satisfy the requirements imposed by the Chapeau (opening clause) of Article XX of GATT obligations. This is to be noted here that no jurisprudence has yet developed this clause (a) neither under GATT 1947 nor GATT 1994.

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[9] Mitsuo Matsushita Thomas J. Schoenbaum and Petros C. Mavroidis, "The World Trade Organization- Law , Practice and Policy", p. 492, published in 2003

[10] Korea- Beef, Report of the Appellate Body, p. 159.

China- Measures Affecting Trading Rights case[11] is very important case in relation to measures necessary to protect public morals. In this case the US made a complaint regarding the series of Chinese measures regulating activities in relation to the importation and distribution of reading material, audiovisual home entertainment products and film for theatrical release. US claimed that Chinese measures violate the trading rights commitment taken by the China. Panel found that certain provisions are inconsistence with its trading rights nevertheless justified under Article XX (a) of the GATT as the measures necessary to protect public morals. Panel told that Article XX (a) is available to China as a defense for the measures which was found to be inconsistent.

b) Necessary to protect human, animal or plant life or health

Any country invoking the an exception under Article XX(b) has to bear the burden of proof showing that the inconsistent measures adopted came within the scope of that exception and accordingly it has to show the following things-

- That the measures for which the provisions was invoked fell within the scope of policies designed to protect human, animal or plant life or health,
- That the inconsistent measures for which the inconsistent measures have been invoked were necessary to fulfill the policy objective, and
- That the measures have been applied in conformity with the requirement of 'preamble' of Article XX of GATT obligation.

For the purpose of justifying the application of Article XX (b) all the above elements must be satisfied.

The Appellate body in the EC- Asbestos case provided a new interpretation of Article XX (b) of GATT obligation which makes more flexibility to the state party in enacting measures to protect health and the environment. Article XX (b) has two requirements-

1. A signifying that a measure is intended to protect human, animal, plant life or health, and
2. The proof that measure is 'necessary' for the above purpose.

In the above case the term “necessary” has been interpreted by the Appellate Body as “reasonably available”[12] Upholding the French ban on imports of asbestos under Article XX (b), the Appellate Body held that where there is scientifically proven risk to health, WTO members have the right to determine the level of protection of health which they consider appropriate.

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[12] Appellate Body Report, EC- Asbestos, p. 172.

CASE: Mexico v. United States of America[13] (Restrictions on imports of tuna)

The Marine Mammal Protection Act of the United States of America (MMPA) banned importations of tuna caught in Mexico. In 1990 the US Government prohibited imports of tuna harvested in the said marine area by Mexican vessels, unless the Mexico declares that no dolphin was caught and killed. The USA argued that his ban comes under one of the exceptions of Article XX of GATT. The USA said that the measures were permitted and also allowed under GATT Article XX (b) and XX (g), which provided a general exception from GATT obligations for measures "necessary to protect human, animal or plant life or health" and "relating to the conservation of exhaustible natural resources", respectively.

The Panel held that Articles XX (b) and XX (g) could not be applied to the case because of their restricted scope of jurisdiction. Regarding this mater, the Panel established that the said articles were intended to protect the life and health of humans, animals and plants, as well as to regulate the consumption of exhaustible natural resources within the jurisdiction of the importing country only.

c) Relating to the importation or exportation of Gold and silver

This clause shall also be read with the same opening clause of article XX. It provides that nothing in this agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures relating to the importation or exportations of gold or silver. An unadopted panel report[14] Canada- Measures Affecting the sale of gold coin dealt with Article XX (c) of GATT. In this case Maple leaf coins made in Canada were exempt from tax while foreign gold coins were subject to the tax. The GATT panel ruled that they were products for purpose of Article III: 2. The Panel reasoned these coins normally were purchased for investment purposes and not just used as means of payment. However the panel's report was not adopted.

d) Necessary to secure compliance with laws or regulations

d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices,

Article XX (d) connotes three fundamental requirements:

1. The restrictive measure must be 'necessary' i.e. reasonable,[15]

2. Necessity must be related to compliance with a law or regulation of a WTO member invoking Article

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[14] See L/5863 (1985); 'World Trade Organization', Guide to GATT Law and Practice- Analytical Index 571, 6th Ed. 1995.

[15] Supra, 12

XX (d). it is not enough for the member to show "had to implement". The member had to explain that why it did so. It did so because without the measure, a domestic rule would have been ineffective. For getting the benefit under Article XX (d) the member had its domestic rule prior to a trade restrictive measure.

3. The domestic law or regulation which the member country administering must be consistent with GATT obligations.

Examples[16] of Domestic rules which are consistent with the GATT obligations that may justify Article XX (d):

- Customs enforcement,
- Rules about certain kinds of import monopolies, and
- Intellectual property protection.

Laws or regulations which are not inconsistent with the provisions of GATT, was interpreted to mean that Article XX (d) only exempts from the obligations under the GATT measures necessary to secure compliance with those laws and regulations, which are not inconsistent with the provisions of GATT Article XX (d). it does not give permission to the contracting parties to operate monopolies inconsistently with the other provisions of GATT specially if such a monopoly is inconsistent with Article Xi[17]

e) Relating to the products of prison labour

e) Relating to the products of prison labour,

It allows import restrictions or product produced by forced labour not to protect workers[18]. This provision was added for economic reasons. This exception does not talk about all kinds of worker's right but is limited to "prison" labour. A provision in US Tariff Act, 1930 bans importation of prison made goods. Setting aside questions of product comparability or quality, if prison labourers are maintained at a bare subsistence level, then their product is similar to unfairly subsidised merchandised[19]. The other workers in other country who are not imprisoned cannot compete with prison labour products. They are paid high level of amount. The problem is that the workers around the world are paid a less amount of wage. Therefore if the underlying principle for Article XX (e) is to combat an unfair form of competition, then the language of this exception is inclusive. It should cover merchandise for which a

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[18] Supra no. 11, p. 603.

[19] Prof. Raj Bhala, 'Modern Gatt Law', p. 546, pub. Sweet & Maxwell ltd., 2005.

laborers, jailed or not, are paid less than an agreed upon threshold. Yet agreeing upon that threshold is impossible.

It is, however, justified that Article XX is not easy to implement. For eg, is it possible to to determine whether a particular facility in a WTO member is, in fact, a prison? The member may be willing to disclose many of its prisons. For reasons of internal security, it might keep on many or few facilities secret.[20]

b) Protection of national treasures of artistic, historic or archaeological value

f) imposed for the protection of national treasures of artistic, historic or archaeological value,

The member country can invoke this exception of GATT for protecting national treasures of artistic, historic or archaeological value. It can make a restriction on trade violating the GATT obligation only for the above purpose. The restriction must be qualified by the Chapeau of Article XX. For getting the benefit under Article XX (f) the member country has to show that the measure was imposed for the protection of national treasures etc. UNESCO and others has neglected the 'national treasures' exception in relation to the development of international cultural heritage law. While the debate was going on about the relationship between national cultural policy and trade liberalization, it seems appropriate that Article XX (f) should be reconsidered in the light of the rising body of international law relating to the protection of cultural heritage.

g) Relating to conservation of exhaustible natural resources

g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption,

Article XX (g) raises the question of whether any relationship or conjunction with production restriction is sufficient for the trade measure to fall under Article XX (g) or whether a particular relationship and conjunction are required. The answer lies by interpreting Article XX (g) which provides that it covers wider range of measures which are essential for the conservation of exhaustible natural resources as the very incorporation of Article XX (g) of GATT suggests that the commitment under the GATT should not hinder the pursuit of policies aimed at conservations of natural resources. The trade measure has to be primarily aimed at the conservation of an exhaustible natural resource to be considered as 'relating to' conservation within the meaning of Article XX (g).[21]

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[20] Ibid, p. 547.

[21] Panel Report on Canada Measure Affecting Exports of Unprocessed herring and Salmon, L/6268, adopted on 22nd march, 1998, 35 S/98, 113-115, para 4.4- 4.7.

A country can control the production or consumption of exhaustible natural resources only to the extent that production and consumption is under its jurisdiction. Article XX (g) of the GATT allows each contracting party to adopt its own conservation policies following the conditions set out in the Article which limit resort to this exception, namely that the measure taken must be related to the conservation of exhaustible natural resources. Exhaustible natural resources in Article XX (g) relate to both living and non living resources and are to be read in the contemporary concerns of the community of the nations about the protection and conservation of the environment which after WTO/GATT, 1994 has been raised as legitimate goals of national and international policy.

Shrimp turtle case: the United States versus India, Pakistan, Malaysia and Thailand (1998)

"The turtles are listed as an endangered species under US Endangered Species Act, 1973 and the 1973 Convention on international Trade in Endangered Species of Wild Fauna and Flora.This follows an appeal filed by the United States to the WTO (13 July, 1998) against its ruling which does not allow the US to discriminate against imports of shrimps that have been caught without using turtle exclusion devices (TEDs). The United States had implemented a ban on shrimp from countries whose fishing fleets did not have special "turtle excluder devices," to prevent endangered sea turtles from being killed in the shrimping process. India, Malaysia, Thailand, and Pakistan claimed that the law was a disguised restriction on free trade and challenged the measure in the WTO's dispute resolution process. The dispute resolution panel deciding the case said that the shrimp ban was not justified under the Article XX exceptions because environmental protection measures could not be used to undermine the overall multilateral trading system.

The appellate body held that the new language in the preamble of the GATT established that the WTO members agreed that sustainable economic development was a goal of the trading system and should be taken into account as "color, texture, and shading" in interpreting the agreement. The appellate body kept on saying that the way the United States implemented its shrimp ban, however, was discriminatory, and ordered the United States to end the ban."[22]

b) Undertaken in pursuance of obligations under any commodity agreement

h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not so disapproved,

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[22] http://www.globalization101.org/index.php?file=issue&pass1=subs&id=151

Article XX (h) of the GATT excepts from the GATT obligations a measure in pursuance of Intergovernmental Commodity Agreement (ICA). An ICA is the cartel of producers. In 1960s and 1970s the UN conference on Trade and Development encouraged their formulation.[23] A number was created for commodities like cocoa, cotton, coffee, copper, oil and tin. For the purpose of getting the benefit under Article XX (h), three requirements must be met to qualify the exception. These are as follow-[24]

First, the measure that derogates from one or more GATT rules must be an 'obligation'. It can not be a matter of option or discretion.

Secondly, the obligation must arise under the ICA. Para (h) demands a true conflict between obligations- one arising under GATT, and another arising under ICA.

Thirdly, the ICA itself must satisfy certain criteria. There may be criteria submitted to the contracting parties. The criteria may come from one of the three sources. For instance the countries involved in the ICA may be the ones submitting the criteria. The second source, contracting party may create criteria. It must be approved by them. The third source of criteria is UN Economic and Social Council.[25]

i) Price Stabilization Scheme

i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination,

The purpose of this clause is to provide price stabilization schemes as a matter of policy by a contracting party to stabilize its general price levels when it faces the problem that the world prices for certain commodities, particularly raw materials which it exports will be substantially higher than the stabilize domestic price for the like commodity. However, the member country should not restrict as to operate to increase the exports of or the protection offered to such domestic industry, and should not depart from the GATT obligation relating to non discrimination.[26] Once a contracting party maintaining export restrictions on a raw material which had the effect of assisting a domestic industry processing that

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[23] Supra no. 11, p 380

[24] Supra no. 20, p. 548.

[25] Ad Article XX, sub para. (h)

[26] Article XX (i) is bsased on the proposal submitted by the New Zealand to the Preparatory Committee at Geneva in 1947

material and on the other hand is maintaining a prohibition on imports of the finished products, the contracting party will have to justify such restrictions under Article XX (i) of GATT or else these restrictions may be violative of Articles I, II and III of GATT obligation.

j) Short Supply Exception

j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

After the Second World War temporary shortages of goods is the historical antecedent to this exception. The drafters at the Landon Preparatory Conference in 1946 explained the scenarios in which Article XX (j) of GATT could be used-

The preparatory committee agreed that during the post war transitional period it should be permissible to use quantitative restrictions to achieve the equitable distribution of products in short supply, the orderly maintenance of war time price control by countries undergoing shortages as the result of war, and the orderly liquidation of temporary surpluses of government owned stocks and of industries, which were set up owing to the exigencies of war, but which it would be uneconomic to maintain in normal times…all these exceptions would be limited to a specified post war transitional period which might be subject to some extension in particular cases.[27]

In 1970s the CONTRACTING PARTIES recommended to the GATT council that Para (j) be retained, with no provision for further review.[28] This Para has been invoked rarely and there are adopted no GATT panel or WTO ruling on it.

CHAPTER- 3: IMPLEMENTATION OF ARTICLE- XX

The exceptions used in GATT treaty of 1947 has been adopted as it is into the GATT treaty of 1994. These exceptions are subject to the considerable degree of controversy. Article XX sets ten exceptions

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[27] Landon Report, para III. C. 1(b) at 11, quoted in 'World Trade Organization', Guide to GATT Law and Practice- Analytical Index 592 (6th ed. 1995)

[28] See Article XX sub Para (j), decision of 20th Feb., 1970.

by use of that a contracting party can deviate from the GATT obligations. The purpose of the GATT treaty is to facilitate free trade, for this purpose there are some restrictions on the contracting party to impose on the trade which are reasonable. For eg. The member country can restrict trade to protect the environment.

The first problem with GATT exceptions is that the list is exhaustive one and which was made over 60 years ago. The importance was given such as environmental and consumer protection. The second problem is that the WT's core activity is to promote world trade through the decision taken by the Panels which was composed of trade experts whose priority is encouraging international trade. For this one can depend upon the strict reading of the provision of GATT treaty. The third and final problem is that the dispute settlement bodies have to stand their decisions on the treaty limiting the variety of issues which can be taken into consideration and thereby expertise can be used.

The important thing here is that whether Article XX applies only to measures protecting things located within the territory of importer or whether it also extends to measures protecting things located within the territory of other members, or outside the territorial jurisdiction of any member. It has been clear that the text of Article XX is ambiguous on this point.

CONCLUSION

The result of my analysis is that Article XX is an exception to the whole GATT obligations. This was important to add these exceptions in the treaty for better application of rests of the provisions of the GATT obligation without which the objective of the Treaty could not be fulfilled. It limits the rights of the signatories as it is reasonable to assure the objective of the treaty as a whole. The exceptions must be interpreted liberally as to ensure that it achieves it purposes. There are some limitations on the exceptions for the betterment of its implementations. It means the member invoking the exception must show that there was 'necessary' and that must not be unjustifiable. One important thing is that the contracting party has no extraterritorial jurisdiction to apply the general exceptions under Article XX. For the better implementation of the GATT obligation, these exceptions are necessary measures. There are some other specific restrictions which apply only in certain cases but these general exceptions are applicable to whole of the GATT obligations.

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Various Aspects About Uniformity Of Laws In India

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A B S T R A C T

A Unified Code is very necessary for achieving the unity, integrity and solidarity of the nation which is given by the very preamble of the Constitution of India. The main purpose of Uniform Civil Code as provided under Article 44 is to provide dispensation of justice, equality, opportunity to the people of India which can be achieved by equal principles of law for each citizen.The idea of Uniform Civil Code came in the constituent assembly in 1947.The Sub- Committee on FR included the Uniform Civil Code as one of the DPSP. Article 35 of Draft constitution[1] read as follows:-"The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."

INTRODUCTION

At the time of debate, the subcommittee on FR recommended that the application of Uniform Civil Code for all citizens should be made on voluntary basis.[2]At the time of debate in the constituent assembly, the provision for ucc was strongly opposed by the members representing the muslim community. These members were Shri Mohd. Ismail sahib, Shri Poker Bahadur sahib, Shri Mahboob Ali Baig sahib bahadur, shri Naziruddin Ahmad and Shri hussain Imam. They all pleaded for the amendment to article 35 of the Draft Constitution that would allow the community to maintain their personal laws.Shri Mahboob Ali Baig sahib bahadurs moved a proviso to art 35 of the Draft Constitution that ***"nothing in this article shall affect the personal laws of a citizen.[3]"***Other members like Shri Mohd. Ismail sahib, Shri Poker Bahadur sahib, shri Naziruddin Ahmad and Shri hussain Imam also suggested their amendments to article 35 of the Draft Constitution. The members suggesting the proviso were speaking not only on behalf of muslims but for other communities also. These members unanimously raised the following points in Constitutional Assembly debate: -

[1] Art. 44 of the existing Constitution of India.
[2] Shiva Rao, "Framing of India's Constitution",Vol. 11, select doc., 206. Tripathi (1969), debate of 19 April 1947.
[3] CAD, Vol. 7, p. 543 (23rd Nov. 1948).

1. The fundamental rights guaranteed by the Constitution adherence to one's own personal law has been recognized, hence Uniform Civil Code would be in contravention of that right;
2. Interference by government with personal law would affect the life style of the people and hence it would violate the FR to life and the concept of Secularism.
3. Even the foreign Ruler did not disturb the personal laws of the people why this concept of UCC is going to be added.
4. The country is so vast and diverse that the uniformity of law is not possible.

Dr. B.R. Ambedker, Shri K.M. Munshi, Shri Alladi Krishna Ayyar were main supporter of Uniform Civil Code and they strongly opposed any kinds of amendment to Art. 35 of the draft Constitution.[4] Mr K.M. Munshi supporting the Uniform Civil Code told that Article 19 of the Draft constitution[5] is covering the secular activities. He felt that a Uniform Civil Code was necessary for achieving the *unity and solidarity*[6] of nation.

Dr. B.R. Ambedkar argued that we had already a Uniform Civil Code in all matters like a Uniform criminal code, Uniform property laws etc. He argued that muslim law may be changed in order to implement the provision of Uniform Civil Code because muslim law was ununiform up to 1935 i.e. North-west frontier was not subject to the Sariat Law. It followed the Hindu law in matters of succession and in other matters. Due to the above reason he opposed the amendment to Article 35 of the Dfaft Constitution.[7]

Shri Alladi Krishna Ayyar opposed any kind of amendment to Article 35 of the Draft constitution he added in his argument that when the British occupied this country, they introduced a common criminal law in the country which shall be applicable to all citizens whether they be hindu, be muslim, be britishers and on that muslim took no exception. Further he added that we have a common law of contracts governing transactions between Muslims and hindu, between Muslims and Muslims. All are governed by the general law and not by the Quran.[8] For the above reason he submitted that the this Article 35 be passed. The main emphasis of debate was that all laws in India have been codified except the personal law. In other countries the personal law is in codified form so in India also the personal law should be codified at the earliest.After a long debate Art 35 of the Draft constitution was accepted without any amendment, as it stood and it was later renumbered as Article 44 of the Constitution of India and it read as follow:"The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."

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[4] The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."
[5] Art. 25 of the existing Constitution of India.
[6] K. M. Munshi, CAD, Vol. 7, p. 548.
[7] CAD, Vol. 7, pp. 550-552.
[8] CAD, Vol. 7,p. 549 (23rd Nov. 1948).

Constitutional Provision-During the struggle for independence our leader who came from different streams of the society, religion, caste, creed etc. They had visualized the picture of independent India. They wanted to make this republic on the four pillars of ***justice, liberty, equality and fraternity***. They formulated some ideas which the succeeding Governments were to achieve. These principles were put down in Part-IV of the Constitution of India named as 'Directive Principle of State Policy'. The Govt. is bound to obey these directives. The Uniform Civil Code[9] is one of the directives or mandates to which the Govt. of India or the state shall consider in making law. This mandate is contained in Article 44 of the Constitution of India which reads as follows:-*"The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."*

The term 'State' is defined u/Article 12 of the Constitution of India which includes *the Central Govt., the State Govt., Union and State Legislatures and Local Bodies.* As long as any Govt. assumes the office, after taking the oath of faithfulness to the Constitution of India, they cannot escape of the responsibility flowing from Article 44 of the Constitution of India. The expression 'Unity and Integrity of the Nation' was inserted in the preamble of the Constitution of India by The Constitution (42nd Amendment) Act, 1976. By the same amendment Article 51A has been introduced which provides that the duties of every citizen of India include-

Clause (a) - *to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;*
Clause (c) - *to uphold and protect the sovereignty, unity and integrity of India;*
Clause (e) - *to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;*

India is a secular state, for this purpose Article 25 of the Constitution of India has been introduced which guarantees freedom of religion, conscience and freedom to profess, practice, and propagate religion, to all persons in India. But this right is not an absolute right. State may, by law, restrict such right.[10] Article 44 of the Constitution of India is a mandatory provision for the State to make a uniform law on the matter of personal laws of the communities. The Supreme Court of India said,

"A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law….. But it is the state which is charged with the duty of securing a Uniform Civil Code for

[9] Article 44of the Constitution of India says, *"The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India."*

[10] Article 25(2) of the Constitution of India, "Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice."

the citizens of the country."[11] Overall the writer is of the view that State is under duty to make and unify the personal laws of the community but it is escaping from doing so because of vote bank of the community in the election.

Uniform Law and Personal Laws-About Procedural Law: Article 44 of the constitution does not define the expression 'civil code'. In the present context, civil law would relate to various aspects of personal relations, such as, contract, property, marriage, succession, and the like. The concurrent list of Schedule 7of the constitution of India includes the following thing in civil code,- "Marriage and divorce, adoption, wills and succession, joint family and partition, transfer of property, contract, actionable wrongs, bankruptcy and insolvency, trusts and trusties, evidence, civil procedure".[12]

Civil code would relate to that branch of private laws (excluding public laws) which deals with the civil rights and obligations of individuals such as CPC, Evidence Act, TPA and the like.[13] Thus the Uniform Civil Code concerned with only a very small piece of civil law which we call the personal laws of different communities in India. The expression "Uniform Civil Code" denotes a very small piece of civil law relating to marriage, succession, adoption and maintenance and this field of personal law posing the problem because of its intimate relationship with religious injunction, practice and beliefs.[14]

Personal Laws?: The expression **"**Personal law" means the law which governs a person's family matters generally regardless of where the person goes. The framers of Constitution of India meant by the word 'personal law' as "marriage and divorce; infants and minors; adoption; wills; intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this constitution subject to their personal law"[15]. The Government of India Act, 1935 says about personal law as "marriage and divorce; infants and minors; adoption; wills; intestacy and succession". [16]

Who protects the personal laws- The community opposing the Uniform Civil Code took the plea that Art. 25 of the Constitution of India guarantee the fundamental right to freedom of religion and unifying their personal laws would violate their fundamental right. But this is not true because this Article 25 guarantees only freedom of religion and it is based on relationship between person and God and not between person and person. It means that if the legislature enacts any law unifying the personal / family matters of the community then it does not violate

[11] Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945.
[12] See Entries – 5, 6, 7, 8, 9, 10, 12 and 13 of list 3 of 7th schedule of Constitution of India.
[13] D.D. Basu, "Uniform Civil Code for India", 2nd Ed., p. 2.
[14] Krishnayan Sen, "Uniform Civil Code", economic and political weekly, vol. 39. No. 37 (sep. 11-17, 2004), p. 4196.
[15] See in Entry 5 of List 3 of the 7th Schedule of the Constitution of India.
[16] See entries 6 and 7 of The Government of India Act, 1935.

any right of any community. It is because family matters relates between person and person and not between person and God. Article 25 guarantees religious freedom while Article 44 seeks to divest religion from social relations and personal law. Therefore we can say that Article 25 does not protect the personal law[17] of any community. The freedom of religion guaranteed u/Art. 25 of the Constitution of India is also subject to other provisions of Part III of the Constitution of India and therefore personal laws can't be remote the reach of Articles 14, 15(1) and 21 of the Constitution of India.

The SC observed that Article 44 is based on the concept that there is no necessary connection between religion and personal laws in a civilized society. Article 25 guarantees the religious freedom whereas Article 44 seeks to divest religion from social relations and personal law.[18]

We had uniform codes of laws which cover almost every aspect of legal relationship excluding those matters which are governed by the various personal laws personal laws. The only that area which was not covered by the Uniform Civil Code was succession and marriage, it was the intention of the framers of Article 44 to bring that change.[19]

Public Policy and Judicial Approach-Article 44 of the Constitution of India is one of the directive principles of state policy which provides for the Uniform Civil Code.[20] According to Article 37 of the Constitution of India the provisions of this Article shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. Today 60 years have been lapsed after the enforcement of the Constitution of India but the Indian Government had not yet enforced the directive of Article 44 of the Constitution of India. By seeing the non action on part of the government of India, the SC gave many verdicts in support of the implementation of Article 44 of the Constitution of India.

In Mohd. Ahmed Khan v. Shah Bano begum,[21] the Supreme Court of India observed that it is a matter of regret that till now Article 44 of Constitution of India[22] has remained a dead letter. It seems that the muslim community has to take a lead in the matter of reforms their personal law. The government of India is duty bound of securing a Uniform Civil Code for the citizens of India and no doubt it has legislative capability to do so.

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[17] M.P. Jain, "Indian Constitutional Law", Ed. 6th, 2010.
[18] *Sarla Mudgal v. UOI,* (1995) 3 SCC, p. 635.
[19] A.M. Bhattacharjee, *"*Muslim Law and the Constitution*",* 2nd Ed., p. 177.
[20] 'The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India'
[21] (1985) 2 SCC, p. 556
[22] 'The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India'

In *Jorden Diengdeh v. S.S. Chopara*,[23] the Supreme Court of India observe that the law relating to marriage, divorce and judicial sepration is far from uniform so the time has come to make a uniform law which would be applicable to all person irrespective of their religion and caste. The court suggested the government of India to legislate a Uniform Civil Code on marriage and divorce.In another landmark judgment in *Danial Latif v. UOI*,[24] the Supreme Court of India upheld the constitutional validity of the Muslim Women(Protection of right on Divorce) Act, 1986 and held that muslim divorced women has right to get maintenance even after iddat period under the Act of 1986. The Supreme Court of India has given this judgment with a view to unifying the family matters.

In *John Vallamatton v. UOI*,[25]the Supreme Court of India once again express regret for non enactment of Uniform Civil Code. In this case section 118 of the Indian Succession Act was challenged on the ground that it is violative of article 14, 25 and 26 of the Constitution of India. The CJ V.N. Khare in view of above fact forcefully reiterated that the Uniform Civil Code be enacted as it would solve the problem relating to family matters.

In *Sarla Mudgal v. UOI*,[26] the Supreme Court of India has directed the PM to take fresh step of Article 44 of the Constitution of India towards securing a Uniform Civil Code for Indian citizen which is necessary for the national unity and integrity. This judgment was pronounced by Supreme Court of India while dealing with a question that whether a Hindu husband married under Hindu law, and then converted into Muslim, without dissolving the first marriage, can solemnize a second marriage. The court held such marriage illegal and husband can be prosecuted for bigamy under section 494 IPC. This is the step which is going towards the Uniform Civil Code for Indian society.

Supreme Court Direction-The Supreme Court of India has held that all marriage must be compulsorily be registered, irrespective of their caste and religion.[27] The judicial attitude towards the Uniform Civil Code is a kind of several variants wherein it has responded to it in an indifferent way at different point of times. The judicial view in a case[28] was not to test personal laws on the standard of fundamental right. It was affirmed by the Supreme Court of India in Ahmadabad Women Action Group case. [29] Both these decisions made it clear that personal laws are not come within the preview of "laws in force" as given in Article 13(1) and so it cannot be tested on the touch stone of the constitution of India.[30]

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[23] AIR 1985 SC, p.935.
[24] AIR 2001 Supreme Court of India, p. 3262.
[25] AIR 2003, SC, p. 2902.
[26] (1995) 3 SCC, p. 635.
[27] The times of India, feb. 15, 2006.
[28] State of Bombay v. Narsu Appa Mali, AIR 1952, p. 84.
[29] (1997)3 SCC, p. 573.
[30] Mrs. Tejaswini S. Malegaonkar, "Uniform Civil Code – Issues and challenges" , p. 186.

But the Supreme Court of India in *Lily Thomas v. UOI*[31] observed that any direction for the implementation of Uniform Civil Code should not have been issued by only single judge as in Sarla mudgal case. In this case the Supreme Court of India finally observed that no court has power to give direction for the implementation of the DPSP as given in Part IV of the Constitution of India and which include the Uniform Civil Code because DPSPs are not judicially enforceable. But according to Article 37[32] of the Constitution of India state is bound to apply the principles contained in part 4 in making laws. Here we can say that if the govt. is failed to apply these principles ten the court can direct it. Again the govt. of India was directed in case of *John Vallamattom v. UOI*[33], that the Parliament has to enact a Uniform Civil Code for governing the personal laws of all the religious groups. Ultimately we can say that the Supreme Court of India has played its role very sincerely by directing the govt. to make a Uniform Civil Code for Indian society but it is the govt. that is competent to enact the Uniform Civil Code for citizens.

Uniformity and Justice-The Constitution of India by article 14[34] declares that there shall be equality before the law, it can be possible when there is a common law for all the citizens of India and they shall be on equal footing before the law. The Constitution of India has given equal right to women in respect of marriage, custody of children, separation, inheritance and property which is today understood as the justification for Uniform Civil Code.[35] But till yet 60 years has been passed when Constitution of India came into force and the government of India is failed in unifying the personal law of the people. Equal right has to be given to women in matters of succession, marriage, separation, custody of children, inheritance in the property which is the foundation for a Uniform Civil Code. It is necessary to advance gender justice in today's modern developed society that even personal laws must be tested on the standard of the principle of fundamental right. The matters of personal laws based on religious freedom guaranteed by Article 25 of the Constitution of India, shall yield to the test of universal values of human dignity, gender justice and secularism.[36] By reading Articles 14, 15, 21 and many other provisions of the Constitution of India the researcher comes on the point that in India there is equality of status and of opportunity and the state is duty bound not to discriminate between persons on ground only of sex etc.

Muslim Law and Views-It may be said by little experience research that the Muslim women have no voice and no feelings relating to the issues concerning them. This is the case when it comes to the issue of gender justice this

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[30] Mrs. Tejaswini S. Malegaonkar, "Uniform Civil Code – Issues and challenges" , p. 186.
[31] AIR 2000, Supreme Court of India, p. 1650.
[32] "The provisions contained in this part shall not be enforceable by any court, but the principle therein contained is nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws."
[33] AIR 2003, SC, p. 2902.
[34] The state shall not deny the equality before the law and equal protection of the laws within the territory of India.
[35] http://www.hindu.com/br/2007/05/29/stories/2007052900571500.htm
[36] Mrs. Tejaswini S. Malegaonkar, "Uniform Civil Code – Issues and Challenges", Indian Bar Review, vol. 32 (1&2) 2005, p. 186.

is the main issues which is highlighted again and again for several decades by the demand for making a Uniform Civil Code on matters of personal laws which will be applicable to all citizens of India.[37] The women raised this issue, i.e. demanding Uniform Civil Code which has been taken over by men. Some people were feeling that the personal laws of the different communities including Muslim law are gender unjust and gave their opinion that gender justice is possible only through enacting Uniform Civil Code. The researcher states here the following situations which makes gender unjust for Muslim women. These are as follows-

1. Muslim men may marry with four women at a time which a women cannot. It is a very big hurdle in balancing gender justice and it is not possible without making a uniform law that binds a person not to marry more than one woman.
2. Muslim husband may dissolve the marriage by pronouncing 'talak' thrice at spot but Muslim women do not.

These are the few instances which show that there is unequal gender justice in Muslim Law. Now the Indian government has to take step for removing such type of inequality. It is to be noted here that there is mandate in our constitution under Article 44 that provides about duty of state to make a uniform law for all citizens of India irrespective of their caste, religion, sex etc.

Justice under Hindu Law-Under the traditional Hindu law there were some differences among the persons belonging to Hindu religion. For example- the Hindu women had a very small right in relation to property, they had no right to become 'karta' in a family etc. Now the government of India has taken step to unify the Hindu personal laws and made Hindu law in 1955. These are as follows:

1. The Hindu Marriage Act, 1955
2. The Hindu Adoption and Maintenance Act, 1956
3. The Hindu Succession Act, 1956
4. The Hindu Minority and Guardianship Act, 1956

The state has enacted the above laws for the purpose of unifying the Hindu law relating to marriage, succession, adoption and maintenance and minority and guardianship. Now there is no doubt to say that all aspect of Hindu law has been codified. Since social reform is a piecemeal process, the appropriate step would be to make a small beginning and work towards an eventual codification of the entire body of the personal laws.[38]

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[37] Sabeeha Bano, "Women's Voices: Expanding Gender Justice under Muslim Law".
Source; eco and pol weekly, vol. 30, no. 47 (nov. 25, 1995), pp. 2981-2982.

[38] Imtiaz Ahmad, "Personal Laws: Promoting Reform from Within", Economic and political weekly, vol. 30, no. 45 (Nov. 11, 1995), pp. 2851-285.

Various issues of Uniform Civil Code-It is important to note here that the provisions of Muslim law governing the Muslims and other personal laws governing the other religious communities are discriminatory to each other. The researcher wants to give some illustrations[39] which make the communities different to each other and which are the big hurdle in unifying the personal laws:

1. The Muslims are polygamous while other communities are monogamous.
2. The Muslims can dissolve the marriage without interference of court while the other communities can affect divorce only with the intervention of the court.
3. Muslims beliefs that their whole laws are based on the Quran that was come through the Prophet and the words of Quran are of God and they don't want to change in their personal law.
4. The Muslim wife can be divorced by the husband at pleasure but the wife under other communities can be divorced on certain grounds specified and only through the court.
5. The divorced Muslim wife is not entitled to get maintenance after *iddat* period (controversial point) from the husband while other communities allow the divorced wife a permanent alimony.
6. Under Muslim law, a daughter inherits half the share of a son; under Hindu law, a daughter shares equally with a son.
7. A Muslim person cannot dispose of more than one-third of his properties by will while other personal laws do not impose such restriction.
8. Muslim law confers on person a right of pre emption of any property of which he is co-sharer or an adjoining owner.

Conclusion: On the basis of above analysis the writer comes to the point that our Constitution of India is sovereign, socialist, *secular*, democratic and republic by its nature. There is one of the directives under the Constitution of India i.e. Uniform Civil Code which is the secular provision and provides "*The state shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India".* This provision is based on the idea that there is no crucial connection between religion and personal law.

Article 25 of the Constitution of India guarantees the right to freedom of religion. It provides that subject to public order health and morality all persons have right to profess, practice and propagate religion. Article 44 is a secular provision which has been adopted to unify diverse personal laws of all the communities in one civil code. In fact, in India, maximum number of civil laws has been codified and applicable to all citizens irrespective of their caste, religion, race, sex etc. but unfortunately still it could not be possible for the reasons unknown to unite all the diverse personal laws. Equality is the constitutional goal and fundamental law of the country. The Uniform Civil

[39] A.M. Bhattacharjee, "Muslim Law and the Constitution", 2nd Ed., pp. 179&180.

Code is one of the mandates by which constitutional goal of equality can be possible by making a uniform law relating to personal matters of the communities in India.

It is well settled that the interpretation by Supreme Court of India of several provisions of the Constitution of India and other laws in respect of making uniformity in India is satisfactory and the Uniform Civil Code as provided in the Constitution of India is mandatory and to be implemented by making a uniform law for the unity and integrity of India.

In this research paper the authors have formulated the following questions and have tried to explain in detail as per their research like What is the main purpose of the provision of Article 44 of the Constitution of India? What is the relationship between personal laws and religion? What is the role of judiciary in directing the state to make Uniform Civil Code? Whether Article 25 of the Constitution of India protects the personal laws? The word "Uniform" denotes equality, similarity etc. in every field of life. Uniform Civil Code (UCC) denotes equal principle of law for the personal matters of human beings. Everyone is equal in democratic type of society as in India. Equality is a way of peace, fraternity, tranquility brotherhood and cooperation. Most of the laws are codified uniformly for every citizen in India. There are some fields of Muslim law which are not codified like marriage, succession, divorce, maintenance etc. Therefore it is obligatory on part of the State to make a uniform personal law for all the communities of Indian society.The India's national character is sovereign, socialist, secular, democratic and republic. Therefore the state is duty bound under the Constitution of India to grant all the citizens *justice*- social, economic and political*, liberty* of thought, expression, belief, faith and worship, *equality* of status and of opportunity and *fraternity* assuring the dignity of individual and the unity and integrity of the nation. Uniform Civil Code is one of the requirements to achieve the abovementioned constitutional objectives and goals. In India, these principles of constitutional goals demand the uniformity in the legislation.

Suggestion: The researcher is giving following suggestions which may be helpful in enacting the Uniform Civil Code for all citizens of India:Minority communities must be consented while enacting the Uniform Civil Code. To achieve this constitutional goal it is the obligation of all the sects of the society to make harmonious environment for the unity and integrity of India.

1. There should be an optional civil code for a period of time, it means to give people sufficient time to appreciate the new law and when substantial part is accepted by the people, it can be made compulsory.
2. There should be a gradual shift from diversified and unequal laws to a more complete code.
3. Article 44 of the Constitution of India imposes upon the state a duty to make the Uniform Civil Code; it means the duty is correlative of right. Here state's duty correlates with individual's right so individual's right must be protected and enforced by the court of law.

4. The directive principle of state policy and fundamental rights are supplementary and complimentary to each other so judicial interpretation of Article 44 should be done with the help of Article 14, 15, 21 and 25 of the Constitution of India.n of Indiae 44 should be done with the help of Article 14, 15, 21 and 25 of the Constitution of India

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