



Editorial

Human rights are always appreciated within the scope of law. The legal provisions are essential to claim any right, including human rights. However, mere legal provisions are not enough to understand, protect and promote human rights in modern societies. The global task of promoting and protecting all human rights and fundamental freedoms cannot be fulfilled without mass awareness and sensitization about human rights issues. The grand agenda of global peace and prosperity is possible only with people understanding and imbibing the significance and value of human rights. Peoples' participation is a must in resolving human rights conflicts. The informed and matured participation of masses is possible only with human rights education (HRE).

The reason for teaching and learning human rights were described as early as 1948 in the Universal Declaration of Human Rights, the basic statement of human rights which continues to be the inspiration of all other human rights instruments and activities. Article 26(2) of the Declaration provides that education should be directed to the "strengthening of respect for human rights and fundamental freedoms." Education should promote understanding, tolerance and friendship among all nations and racial and religious groups, and further the maintenance of peace.

The 1978 UNESCO International Congress on Teaching of Human Rights, convened in Vienna, developed the reasons for teaching of human rights. The Congress recognised that "while education should make the individual aware of his or her own rights, it should at the same time instill respect for the rights of others."

Being pivotal to the education process, teachers can substantially influence the shaping of the future of humanity. Teachers, thus play a significant role in the Human Rights Education. Human rights should be taught as a practical skill so as to show law as a process. Moreover, students should be educated as 'citizens of the world'.

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National Seminar on Human Rights with Special Focus on Right to Education

A one-day national seminar on Human Rights with a Special Focus on Right to education was organised on March 18th 2017. The seminar was motivated by an imperative to evolve a framework for synergising the efforts of variegated stakeholders for the promotion and protection of human rights. The broad objectives of the seminar were to:

- introduce and familiarise participants with the basics of human rights including educational rights; and
- facilitate discussion on strategies for effective consultation and university participation in the promotion of human rights and enhancing the knowledge about the same

The following were the sub-themes of the seminar:

- Human Rights: An Overview
- Right to Education as a Human Right
- Role of Teachers in Protection and Promotion of Human Rights
- Enforcement of Human Rights: Hassles and Hurdles

Research papers and review articles were invited from the academicians, professionals, research scholars and students from various educational institutions across the country. The theme of the seminar received an overwhelming response and approximately 60 full length papers were presented by the various participants.

The inaugural function was presided over by Prof. Khurshid Iqbal Andrabi, Hon'ble Vice Chancellor, University of Kashmir while Prof. Anand Paliwal, Head and Dean, Faculty of Law, Mohanlal Sukhadia University Udaipur, Rajasthan was the Guest of Honour.

National Workshop on Teachers Training and Sensitisation Programme on Human Rights

With an objective to train the participants for such purposes as curriculum development, preparation of teaching materials, intensifying areas of interdisciplinary programmes, selection of appropriate methods and training of teachers, inculcation of human rights awareness and knowledge of teachers, a two-day National Workshop on Teachers Training and Sensitisation Programme on Human Rights was organised on 29-30th March, 2017.

The workshop aimed at learning through mutual exchange of experiences imparting new social concerns. The broad themes for the workshop were:

- Human Rights and Duties Education: Challenges and Way Forward
- National Policy of Education and Human Rights
- Human Rights and Duties Education in School Curriculum

The resource persons among others included Prof. A.K. Koul (Former Vice Chancellor, NUSRL Ranchi), Prof. K.P.S. Mahalwar (National Law University, Delhi), Prof. Gul Wani, Dr. Sheikh Showkat Hussain and Zaffar Ahmad Shah.



Participants at two day Workshop



Workshop on Mediation

A two-day Mediation Workshop was organised from 21st to 22nd March, 2017 in collaboration with Peacekeeping and Conflict Resolution Trust (PACT), a Goa based foundation. The workshop provided the participants with core negotiation and mediation skills, an understanding of its relevance in dispute resolution, and a hands-on experience in managing conflicts through a variety of theory and simulations. The resource persons included Mr. Gracious Timothy (advocate/mediator) and Mr. Jonathan Rodrigues (mediator/trainer).

Memoranda of Understanding

In March, 2017, the School of Law signed MoUs with National Law University, New Delhi, Central University of Himachal Pradesh, Central University of Jammu and Central University of Kashmir. The MoUs have been signed for the purpose of academic/institutional collaboration that will encompass exchange of students and faculty as well as other academic activities, research and publication. In addition to this, active efforts will be made to develop joint training and research programmes.

Moot Court Competition

Our students, Mr. Sheharyar Shafi Rather, Mr. Iftikhar Hussain Samoon and Ms. Mehras Nissar Mir of BA.LL.B 2nd Semester participated in 3rd National Moot Court Competition 2016 organised by Rajiv Gandhi School of Intellectual Property Law, IIT Kharagpur between 11 and 13 November, 2016.

Law Society Activities

The school of Law under the banner of Law Society held a Plantation Drive in collaboration with Department of Forests, Srinagar, at Zakura Campus, University of Kashmir on 1st April, 2017. The Registrar, University of Kashmir, Prof. Musadiq

Amin Sahaf appreciated and encouraged the Law Society for such initiatives and thanked the Forest Department for providing 200 Pine and Deodar trees.



Plantation Drive

The Society organised 2nd Shah-I-Hamadan Inter-College Mega Quiz Competition on 06-07-2017 in which the teams from the School of Law and various law colleges of the valley participated.



Student Participants in the Quiz Competition

Legal Aid Clinic Activities

The Legal Aid Clinic of the School organised a number of legal literacy programs in Ladakh Province of the State of Jammu and Kashmir in July 2017. The legal literacy programs were organised with the chief objectives of dissemination of information, enhancement of knowledge about law and empowerment of marginalised to make active use of law. The legal messages were conveyed in comprehensible and simple language. Each legal



literacy program was followed by interactive sessions. Similar programs were also held in District Kupwara.

Students of LL.B and BA .LL.B visited various police stations to acquire the first hand information with respect to filing of F.I.R, maintenance of police diaries, etc. Most importantly, an interaction with public prosecutors and detainees was held.

Students Visits to different places of Learning

The students of LL.M 3rd Semester participated in "Gujarat National Law University Indian Business and Commercial Laws Academy-Summer School 2017." The summer school/training course was organised by Gujarat National Law University from July 3rd to July 22nd 2017. The course will go a long way in expanding the horizons of the students by opening up their mind academically and culturally to meet the challenges of today's globalised world.

Mr. Mohammad Saud Bhat, BA. LL.B 10th Semester got admission in LL.M (Corporate Law) in University of Leeds.

Special Lectures

Maulana Khalid Saifullah Rehmani, Secretary All India Muslim Personal Law Board delivered a lecture on "Ijtihad and Modern Issues" on 07-08-2017.

Prof. V.K. Aggarwal, Vice-chancellor Jaganath University, Jaipur Rajasthan delivered a special lecture to the students of LL.B Ist Semester on 11-09-2017



Prof. V.K. Aggarwal delivering lecture to the students

Hon'ble Justice S.M. Subramaniam of Madras High Court had an interaction with the faculty members of the School of Law on 27-09-2017.



Justice S.M. Subramaniam interacting with the faculty members

Legislative Trends and Case Comments

State Bank of India v. Santosh Gupta, AIR 2017 SC 25

Mir Mubashir Altaf

In this case, the Supreme Court was sitting in appeal against the judgment passed by the J&K High Court (dated: 16-07-2015) in which it had been held that various key provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") were outside the legislative competence of Parliament as they would collide with Section 140 of the Jammu & Kashmir, Transfer of Property Act 1920. It is pertinent to mention that the SARFEASI Act, 2001 enables the banks to enforce their security interest without the intervention of the court or tribunal. By virtue of Section 13 of the Act, a secured creditor can (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset. In the instant appeal, it was contended by the appellants that the Parliament was competent to enact the impugned law by virtue of Article 246 (1) read with Entry 45 and 95 of List I.

However, on behalf of the private respondents, it was contended that the SARFAESI



Act, in pith and substance, relates to “transfer of property” and not “banking” and would, therefore, be outside the competence of Parliament and exclusively within the competence of the State Legislature. It was further argued that the power of Parliament is expressly “limited” under Article 370(1)(b) of the Constitution of India whereas under the Constitution of Jammu & Kashmir, the State Legislature has plenary powers over all matters, except those where the Parliament has power to make laws. The state of J&K through its counsel adopted an interesting stance by arguing that though the SARFAESI Act was enacted by Parliament by virtue of Entry 45 List I, yet Section 13(4) alone incidentally encroaches upon the property rights of permanent residents of the State of Jammu & Kashmir and must be read down so that it will not be permissible under this Section to sell property belonging to a permanent resident of the State to a person who is not a permanent resident of the State. He further submitted that the proviso added to Rule 8(5) of the SARFAESI Rules must be read along with Section 13(4) of the SARFAESI Act and if so read, the State of Jammu and Kashmir would have no objection to the SARFAESI Act applying to the State of Jammu and Kashmir.

In this case, the court after appraising the arguments from both the sides set aside the judgment of the High Court by stating that in pith and substance the entire SARFAESI Act is referable to Entry 45 List I read with Entry 95 List I. The court further elaborated that the impugned law in essence deals with recovery of debts due to banks and financial institutions, *inter alia* through facilitating securitisation and reconstruction of financial assets of banks and financial institutions, and sets up machinery in order to enforce the provisions of the Act. The court made it clear that the Entries 45 and 95 of List I clothe Parliament with exclusive power to make laws with respect to banking, and the entirety of SARFAESI can be said to be referable to Entry 45 and

95 of List I, 7th Schedule to the Constitution of India. It was further elaborated by the court that anything that comes in the way of SARFAESI by way of a Jammu and Kashmir law must necessarily give way to the said law by virtue of Article 246 of the Constitution of India as extended to the State of Jammu and Kashmir, read with Section 5 of the Constitution of Jammu and Kashmir. Some Important Observations:

- State of J&K has no vestige of sovereignty outside the constitution of India and its own Constitution.
- Permanent Residents of the State of J&K are citizens of India, and there is no dual citizenship as is contemplated by some other federal constitutions in other parts of the world.
- The object behind enacting Article 370 (1) was to recognise the special position of the state of Jammu and Kashmir and to provide for that the special position by giving power to the President to apply the provisions of the Constitution to that state with such exceptions and modifications as the President might by order specify.
- Though the marginal note refers to Article 370 as only a temporary provision, it is in fact in current usage and will continue to be in force until the specified event in sub-clause (3) of the said Article takes place.
- A Constitutional amendment is different in quality from an ordinary law.

GST and Special Status of J&K: An Inquiry

Hakim Yasir Abbas

The special status of Kashmir is in news again. And this time it is the Constitution One Hundred First (Amendment) Act, 2016 and the Good and Service Tax Act, 2017 which are responsible for raking up the issue. The decision of the State government to apply the amendment and the legislation to the State of Jammu and Kashmir has resulted in a lot of controversy. A lot of politicians and legal scholars have argued that the same has resulted in the further erosion of the special status of the State and has further diluted the autonomy of the State. This piece is



an attempt to critically analyse the legal implications of the Amendment and the GST Act on the special status of the State. In order to do so, this article is divided into three parts: A) Explanation of the Special Status, B) Explanation of 101st Amendment and GST Regime, and C) The Implications of Constitution Order 269 of 6th July 2017 on the special status of Jammu and Kashmir.

Special Status Explained

Article 370 of the Indian Constitution requires that any constitutional provision, including a constitutional amendment, which does not relate to matters referred to in the Instrument of Accession can be applied to the State of J&K only with the concurrence of the state government. Same is the case with the law-making power of the parliament as well. Parliament does not possess legislative competence in relation to the state of Jammu and Kashmir for all the matters that have been listed in the Union List of the Seventh Schedule of the Constitution. It possesses such competence only in relation to those entries of the Union List that have been applied to the State of J&K vis-a-vis Constitution (Application to Jammu and Kashmir) Order, 1954 under Article 370 of the Indian Constitution and its subsequent amendments. Moreover, by virtue of section 5 of the Constitution of J&K, the legislative assembly of the State has the competence to legislate for all matters for which the parliament does not have the power to legislate. Therefore, the legislative relationship between the State of J&K and the Union of India is governed by the various constitutional orders made under Article 370 of the Indian Constitution and Section 5 of the Constitution of Jammu and Kashmir.

GST Explained

GST is a destination-based tax, as against the present principle of origin based taxation. The new tax regime follows a multi-stage collection mechanism wherein tax is collected at every stage and the credit of tax paid (input tax credit) at the previous

stage is available as a set-off at the next stage of transaction. This helps to eliminate "tax on tax" or the cascading impact of tax. GST shifts the tax incidence near to the consumer and benefits the industry through better cash flows and better working capital management. From consumer point of view, GST helps to bring down overall tax.

GST rates on goods and services have been broadly classified into four tax rates: 5 per cent, 12 per cent, 18 per cent and 28 per cent. Some goods and services would be exempt. Precious metals like gold will attract a separate tax rate of 3 per cent. A cess will be levied over the peak rate of 28 per cent on specified luxury and sin goods. Under GST, businesses are required to file returns each month. But the government has let companies file late returns for the first two months so that they can adapt to a new online filing system.

The GST to be levied by the Centre would be called Central GST (CGST) and that to be levied by the States (including Union territories with legislature) would be called State GST (SGST). An Integrated GST (IGST) would be levied on inter-State supply (including stock transfers) of goods or services. This would be collected by the Centre. Import of goods would be treated as inter-State supplies and would be subject to IGST in addition to the applicable customs duties. Exports will be treated as zero-rated supplies which means no tax will be payable on exports of goods or services. However, exporters can claim input tax credit.

GST Council will make recommendations on everything related to GST including laws, rules and rates etc. Union Finance Minister Arun Jaitley heads the panel while ministers of finance or taxation of each state are its members. Decisions in the Council are taken by a 75 per cent majority. Centre and a minimum of 20 states are required for majority because Centre would have one-third weightage of the total votes cast and all the States taken together would have two-thirds of weightage.



GST and Special Status-Implications

Before the C.O. 269 came into force on 6th July 2017, the legislative assembly of the State of Jammu and Kashmir had abundant authority to legislate on matters related to tax. This is because the legislative power of the Parliament for creating a tax regime for the State of Jammu and Kashmir was limited as all the provisions of the Indian Constitution related to the same were not applied to the State. However, with the coming into force of the Order, the Parliament now has the power which it did not previously have. However, there are some features of the Order which tends to highlight that the special status of the state is protected. Following are the main features of the Constitution (Application to Jammu and Kashmir) Order, 2017 [Hereinafter Order] which possess direct link with the special status of the J&K as explained above:

1. Section 1(3) of the Order is a non-obstante clause which preserves and protects the powers of the State Legislative Assembly under Section 5 of the Constitution of Jammu and Kashmir. This provision states as follows:
“Notwithstanding anything contained in this Order, the powers of the State of Jammu and Kashmir as per section 5 of the Constitution of Jammu and Kashmir shall remain intact.”
2. Section 2(I)(1) of the Order makes 246A of the Constitution of India applicable to the State of Jammu and Kashmir and under the same the legislative powers of the State and the Centre have been divided in accordance with the following scheme:
 - a. The Legislature of the State of Jammu and Kashmir shall have powers to make laws with respect to goods and services tax levied by the State.
 - b. The Parliament shall have power to make laws with respect to goods and services tax levied by the Union (notwithstanding the restrictions or limitations on the same by virtue of Articles 245 and 254 of the Constitution).
 - c. Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
 - d. The Legislature of State of Jammu and Kashmir shall have exclusive powers to make laws in respect of imposition of any taxes as enabled by section 5 of the Constitution of Jammu and Kashmir.
3. Section 2(II)(1)(f) makes Article 269A of the Indian Constitution applicable to the State of Jammu and Kashmir and provides for the “levy and collection of goods and service tax in course of inter-state trade or commerce”. It provides a mechanism for the levying, collection and appropriation of such tax
4. Section 2(II)(1)(i) makes Article 279A of the Indian Constitution applicable to the State of Jammu and Kashmir and provides for the establishment of Goods and Service Tax Council. Clause 4 to clause 11 of Article 279A provide for the functions and powers of the Council including the determination of goods and services that can be taxed and their respective tax rates. However, clause 12 and 13 try to preserve and protect special status of J&K. They provide as follows:
 - (12) Notwithstanding anything contained in clause (4) to clause (11), for the purpose of any decision impinging on the constitutional provisions relating to the State of Jammu and Kashmir, the concurrence of the representative of the State of Jammu and Kashmir in the Goods and Service Tax Council shall be mandatory and the procedure provided under Article 370 shall be followed.



(13) Nothing in this article shall affect in any manner whatsoever the legislative competence of State of Jammu and Kashmir as guaranteed by virtue of Section 5 of the Constitution of Jammu and Kashmir.

5. Section 2(IV) of the Order makes provision in relation to the amending power of the Parliament. It provides that any amendment made to Sections 279A via Article 368 of the Constitution shall not have any effect in relation to the State of Jammu and Kashmir unless applied by the order of the President under clause (1) of Article 370 of the Indian Constitution.
6. Section 2(VII) of the Order is a savings clause which applies section 19 and 20 of the Constitution 101st Amendment Act, 2016 in a modified form and states as follows:

“19. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in the State of Jammu and Kashmir immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as applicable to the State of Jammu and Kashmir, shall continue to be in force until amended or repealed by the Legislature of the State of Jammu and Kashmir or until expiration of one year from the commencement of this Constitution Application Order, whichever is earlier.

20. Subject to the provisions of Article 370, if any difficulty arises in giving effect to the provisions of the Constitution as amended by this Constitution Application Order (including

any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of issuance of this Order), the President may, by Order, make such Provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty: Provided that no such Order shall be made after the expiry of three years from the date of such assent...”