21

LAW AND SOCIAL TRANSFORMATION IN INDIA

*Susmitha P Mallaya**

I INTRODUCTION

SOCIAL TRANSFORMATION is an inevitable part of growth in a society due to changes in the technological innovations, ideology and demography as well as paradigm shift in the political views and economic policies. In this transformation, law is the most effective instrument that regulates and govern the conduct of society to uphold the rule of law, which is the cornerstone of civilised country. In other words, there is comity between law and social change. One of the important functions of law is to reconcile the conflicting interests of individuals and social order, which in turn result in the progress of the society. As quoted by Bhagawti J. in *Motilal Padmapat*,[1] "Law is not a mausoleum. It is not an antique to be taken down, dusted, admired and put back on the shelf. It is like an old but still vigorous tree, having roots in history, yet continuously taking new grafts and putting out new sprouts and occasionally dropping dead wood. It is essentially a social process, the end product of which is justice and hence it must change with changing social values. Otherwise there will be estrangement between law and justice and law will cease to have legitimacy." Therefore, any progress in the society is dependent upon the proper application of law according to the needs of the society. Similarly, the role played by judiciary to bring social transformation is pivotal. The increasing number of public interest litigation enabled the judiciary to play a social role to bring social change. They upheld the constitutional values through their humanitarian approach and contributed significantly in the areas where they are constrained to intrude and protect the interest of society.[2]

The laws governing Non-Profit Voluntary Organisations (NPVO) is also very significant for the upliftment of social fabric of the country.Theirimportance in the field of religion, culture, art, literature, science, education, health,rural economy, protection of the vulnerable such as women, children, differently able and backward classes of people is substantial.[3] It is a peculiar feature of these laws that both the state and Central Governments govern this area depending on their competent

* Associate Professor, Law Center-1, Faculty of Law, University of Delhi.

1 *MotilalPadmapat* v. *State of Uttar Pradesh*, AIR 1979 SC 621.

2 Vandana Mahalwar, "Law and Social Change", LIII *ASIL* 517 (2017).

legislative sphere. NPVO law covers some of the areas such as waqf, cooperative societies, trade unions, income tax exemptions and corporate social responsibility apart from public trust and charities, registered societies, Foreign Contribution regulatory laws etc.

II RIGHTS OF WOMEN AND SOCIAL TRANSFORMATION

In India, the status of women can be seen strongly associated with family relations. With the changing norms in the society, legislature as well as judiciary ensures to protect the rights of women through various legislative reforms. In the year 2022, again, the apex court considered few cases wherein their decisions resonated with the changing dimensions of the law and society. The cases highlighted relates to the rights of women relating to abortion as well as maternity and child care leave provided by the Statutes.

Right of unmarried women for abortion

X v. *Health and Family Welfare Department,*[4] the apex court examined the rights of an unmarried woman for abortion.Three member bench analysed the issue of inclusion of an unmarried women within the ambit of Rule 3(b) of the Medical Termination of Pregnancy Rules, 2003 ("MTP Rules") for the termination of pregnancy in terms of Section 3(2) (b) of the Medical Termination of Pregnancy Act, 1971 ("MTP Act"). In this case, considering the fact that the petitioner was an unmarried woman, High Court of Delhi divisional bench denied the opportunity of abortion of the foetusand held that the provisions of Rule 3(b) of MTP rules do not cover such rights. Supreme Court held that the high court took an extremely restrictive and narrow pedantic view of rule 3(b), excluding unmarried women from its ken. Referring to explanation 1 and the phrase employed therein "women or her partner", the apex court held that the section intends to cover all categories of women within its purview, whosoever wants to get their foetus aborted for an unwanted pregnancy.

The court compared the provisions of the pre-amendment and the post-amendment modifications to Section 3 of the MTP Act, wherein prior to the amendment the word "women or her partner" was not existing but was substituted through the amendment Act of 2021. The apex court held that woman's rights to her reproductive choice as an in segregable and inseparable part of her personal liberty as under Article 21 of the Constitution. Therefore, women have a sacrosanct right to her bodily integrity. Referring to the longline of judgments that if the woman does not want to continue her pregnancy, then forcing her to do so violates her bodily integrity and aggravates her mental trauma, which would be deleterious to her mental health.

The court observed that the notions of social morality is a very subjective concept therefore, premarital sex cannot be labelled as vicious or criminal in nature.Moreover, interpretation of legislation must also be according to the needs

3 P. Ishwara Bhat, "Law Of Non Profit Voluntary Organisations", LV (2019).

4 2022 SCC OnLine SC 1321.

of changes in society. There must not be literal interpretation of beneficial legislation. Instead, the interpreters should try to justify the purpose of the legislation.The court interpreted the MTP Act in the light of existing societal realities and did not restrict its views prevalent societal norms. In this regard, it can be analysed that the apex court upheld the legislative changes that has taken shape in the society according to its change in social norms. Earlier, MTP Act was concerned with only married women to the exclusion of other categories of women, but the Amendment act of 2021 did not distinguish between women based on their marital status.[5] Hence, through this ruling the court upheld the right of reproductive autonomy given to unmarried women are same as that of a married woman. The judgment provided unmarried women with the right to have a safe and legal abortion between 20 and 24 weeks if they faced a change in their marital circumstances.

Childcare leave and maternity leave

Another change that are reflected in the society in the recent years is the plight of working mothers especially post COVID, it has become very difficult for the women to manage family commitments as well as professional. At the same time, there are many flexible measures initiated by certain employers to accommodate the services of working women to manage both sides. In order to manage the children, women need support from family as well as institution in case she is a working mother. Maternity benefits and childcare benefits provided through beneficial legislature measures have made provisions to take care such needs of the women and empower them to be part of mainstream of society. Therefore, denial of such benefits to women are challenged. Thus, in the case of *Deepika Singh,*[6] the Supreme Court held that availing maternity leave under the Statute by a woman cannot be restricted on the basis that she previously used child care leave for her non-biological children.[7] The apex court touched upon gendered roles in society. It observed that,[8]the traditional definition of "family", of it being an unchanging unit and, one, the resultant in comprehension of circumstances/ events that may forever alter this structure, two, and the blanket ignorance of any unit that does not conform to this definition. It further points out that:[9]

> …Familiar relationships may take the form of domestic, unmarried partnerships or queer relationships. A household may be a single parent household for any number of reasons, including the death of a spouse, separation, or divorce. Similarly, the guardians and caretakers (who traditionally occupy the roles of the 'mother' and the 'father') of children may change with remarriage, adoption, or fostering. These manifestations of love and of families may not be

5 The Medical Termination of Pregnancy (Amendment) Act, 2021, s.3(2)(b) provide for the option of abortion between 20 to 24 weeks due to a change in their marital status.

6 *Deepika Singh* v. *Central Administrative Tribunal*, 2022 SCC OnLine SC 1088

7 *Ibid*.

8 *Id*.,para 26.

9 *Id* at para 27.

> typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation. The black letter of the law must not be relied upon to disadvantage families which are different from traditional ones. The same undoubtedly holds true for women who take on the role of motherhood in ways that may not find a place in the popular imagination.

In this case, the woman was denied maternity leave who gave birth to a child while working on the post of nursing officer in Post Graduate Institute of Medical Education and Research, Chandigarh. The Central Administrative Tribunal, Chandigarh, as well as High Court of Punjab and Haryana upheld the denial of maternity leave on the ground that she was married and had two children from her prior marriage. It was observed that the first biological child of the appellant was born on June 4, 2019, when she in terms of Rule 43 of the Central Civil Services (Leave) Rules, 1972 ("Leave Rules") applied for the grant of leave. It stated that maternity leave for the third child cannot be granted for the sanctioned period *i.e.,* 2 years (730 days) during the entire service. The CAT Chandigarh and high court both held the denial of leave in terms of Rule 43(1) to be just and fair, against both of which the matter reached before the Supreme Court.

Scanning the anatomy of Rule 43, specifically referable to "maternity leave", the court held that the wording of the rules in question requires beneficial and liberal construction having nexus with a purpose-oriented approach. If the little construction of the provision of such beneficial legislation leads to difficulties and absurdities, then the legislation should not be put in "procrustean beds or shrunk to Lilliputian dimensions". The principle of beneficial interpretation was aptly applied by referring to judgments of United States Courts, as also the precedents of the Supreme Court.

Further, the apex court referred to the longline of judgments of *K.H. Nazar* v. *Mathew K. Jacob,*[10] and *Badshah* v. *Urmila Badshah Godse,*[11] it was held that it is the bounden duty of the courts to advance the cause of "social justice" and it is the bounding duty of the court to bridge the gap between law and security. The court underscored the necessity of "social context judging" by fruitful application of equality jurisprudence evolved by the Parliament and Supreme Court over the passage of time, which is also known as social justice adjudication. It was observed that,[12]

> The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism.

10 AIR 2019 SC 4681.

11 (2014) 1 SCC 188.

12 *Id.* at para 20.

> It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

It is to be noted that the role of the court was stated to be primarily helping the law achieve the purpose of social justice. Thereafter, interpreting section 3(c) of the Maternity Benefit Act, 1961 and correlating the definition of "delivery" with the same, the apex court held that the Act of 1961 aims to secure the rights of women to pregnancy, maternity leave and to afford reasonable flexibility to live both as a mother and as a worker. Referring further to Universal Declaration of Human Rights, 1948, and the Convention on the Elimination of All Forms of Discrimination against Women, the court advised interpretation of Central Civil Services (Leave) Rules, 1972 from the perspective of article 15 and other relevant constitutional rights and provisions. Referring extensively to the international documents, treaties, and the declarations to which India has been a signatory to, the court held that it is necessary to align ourselves by interpreting our local and domestic laws in tune with the international conventions and documents.

These cases show the changes that is happening in our society pertaining to the position of women and the approach of the courts to uphold such changes in the betterment of the country in general and women in particular.

III RIGHT TO EDUCATION

Education is an important facet of the human development. Many a times it brings positive changes in the society. The apex court always encouraged State through its judgment to fulfil its constitutional obligation to provide education to the children free of cost as well many guidelines were also issued to uplift the core educational values.The purpose of these decisions is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

Thus 2022, the apex court had an occasion to decide the issue of restrictions imposed by State of Karnataka to wear a headscarf or hijab inside the schools and colleges.The Government of Karnataka enacted the Karnataka Education Act in

1983, which stipulated that all students studying in Karnataka should act in a fraternal manner, transcend their group identity and develop social justice aspirations.[13] The government order, dated February 5, 2022, stated that uniforms are mandatory as mandated by state governments, faculty management and university development boards. Furthermore, college students who follow religious principles were foundto have a negative impact on "equality and team spirit" in colleges.The circular issued the government emphasised that pre-university education is an important stage in a student's life. All schools and colleges in the state have established development committees to implement policies in line with government guidelines, utilize budget allocations, improve basic facilities, and maintain academic standards. Schools and colleges are encouraged to follow the guidance of these development committees.

Therefore, in *Aishat Shifa* v. *State of Karnataka,*[14] the division bench of the Supreme Court delivered a split verdict. Hemant Gupta J. upheld the validity of the order and opined that it reinforced the fundamental right to equality under article 14 of the Constitution. He reasoned that the Order met the constitutional requirements to impose a restriction on the freedom of expression and right to privacy of the students. Conversely, Sudhanshu Dhulia J. held that the government order was unconstitutional. Dhulia J. reasoned that a student's rights to dignity, privacy, and freedom of expression were inalienable rights, and they could not be restricted based on maintaining discipline and uniformity. He observed that:[15]

> It is necessary to have discipline in schools. But discipline not at the cost of freedom, not at the cost of dignity. Asking a pre university schoolgirl to take off her hijab at her school gate, is an invasion on her privacy and dignity. It is clearly violative of the Fundamental Right given to her Under Article 19(1)(a) and 21 of the Constitution of India. This right to her dignity and her privacy she carries in her person, even inside her school gate or when she is in her classroom. It is still her Fundamental Right, not a "derivative right" as has been described by the high court.

In this case based on the government order, several educational institutions denied entry to female Muslim students unless they removed their hijab prior to entering the school/college premises. Two aggrieved pre-university college students, along with other interested parties, filed appropriate writ petitions before the High Court of Karnataka, seeking remedies against the government order. The high court upheld the constitutional validity of the order and the restrictions placed on the wearing of headscarves in schools/colleges. The high court held that the aspects of the students' rights (including the freedom of expression and the right to privacy) that were curtailed were not the substantive rights guaranteed under Article 19(1)(a) and Article 21 of the Constitution. Since the curtailed rights

13 The Karnataka Education Act, 1983, s.7(2)(g)(v).

14 (2023) 2 SCC 1:2022 SCC OnLine SC 1394.

15 *Id*., para 273.

were derivative and ancillary to the rights guaranteed under Article 19(1)(a) and Article 21 of the Constitution, the government order did not violate any fundamental rights.

Further, the outcome of the case was finally referred to larger constitutional bench. However, the observations made by respective judges shows the trends of transformation of legal perspective in the society. The highlights of the same is discussed below:

While referring the constitutional provisions of quality principle, Hemant Gupta J. clarified that the object of the government order issued, mandating the government schools to follow the prescribed uniform was to encourage a secular environment and uniformity, and could not be said to be in violation to Article 14 of the Constitution. The right to religion is not absolute but should be read in conformity and with reasonable restrictions along with other rights given in Part III of the Constitution. Also, the rights provided are not to be compartmentalised into one but to read all in conformity and aid with each other, as a whole. It was held that articles 19(1)(a) and 21, are complementary to each other and not mutually exclusive.

Another pertinent issue discussed in this judgement reflects the aspects regarding the essential religious practices *viz -a- viz*-religious freedom of speech and expression. Based on examination of various sources of Muslim Law and leading Supreme Court cases[16] addressing these issues Hemant Gupta J. held that the appellants were not claiming to perform their practices at religious places, but to wear hijab in educational institutions. It was also held that wearing of headscarf is not allowed only in the school or during school hours and the students can wear it outside schools. Also, that beliefs or marks such as *tilak* which demonstrate a person's religious identity[17] should not be allowed in educational institutions funded by the government. Based on these observations it was held that directing the schools, which are run and funded by the government to prescribe uniforms, is not beyond the jurisdiction of the government. Hemant Gupta J. remarked that the case of *Bijoe Emmanuel* v. *State of Kerala,*[18] though referred was not of much importance in this case since the circular in question was applicable to all schools and not just secular schools.In addition, it was stated that, the object of the impugned government order and the State Act and Rules under which it was issued, was to encourage and provide for the better and holistic environment and discipline the student. Mandating the uniform is one of the facets to fulfil the object of the said Act and Rules thereunder.

16 *M. Ismail Faruqui* v. *Union of India*, (1994) 6 SCC 360. The apex court in this case held that offering of prayer could be a religious practice, however, doing the same at any and every possible place will not be considered as an essential religious practice or an integral part of religion.

17 *Commissioner of Police* v. *Acharya Jagadishwarananda Avadhuta*, the apex court opined that the core beliefs on which the religion is founded and without which the religion will not be religion, are the essential religious practices.

18 (1986) 3 SCC 615.

With respect to the arguments by the petitioner that the said government order was in antithesis to the constitutional values of unity in diversity and that, the aim of our Constitution is to assimilate unity in diversity. Therefore, the said government order does not harm the aim of the Constitution, "unity and diversity."

Fraternity, as it is understood, should not be seen through the prisms of community but should be for all irrespective of caste, creed, religion, and sex. The argument stating that wearing of headscarf gives dignity to the girl students is not tenable. It was observed that at the pre-university level, all students should feel, look, and think alike and cultivate their minds in a cohesive and cordial environment. The constitutional aim for fraternity would be harmed if the students of a particular community were allowed to use their religious marks in schools. Hence, with this reasoning, itwas held that the said government order promotes a healthy environment to encourage fraternity in the true sense and does not infringe constitutional values.[19] Also, only the students at the pre-university colleges are mandated to follow the prescribed uniform so that the values of equality and fraternity be imbibed in them. The students at university/college are not mandated and are open to carry on their religious faiths and practices.Constitutional values are provided and available for all irrespective of any grounds, therefore allowing a particular community to wear hijab, a religious symbol, would be against equality and secularism. Therefore, the impugned government order is in accordance with the ethic of secularism and the objectives of the Karnataka Education Act, 1983.

Sudhanshu Dhulia J. disagreed with the above observations of Hemant Gupta J. and held that the impugned Government order is an invasion on the privacy, attack on the dignity, and denying the secular education to the girls of a particular community. It was observed that discipline is required in schools, but it cannot be equated with jail or military camp. Also, it should not be seen at the cost of freedom and dignity provided by the Constitution. To ask a schoolgirl to take off her *hijab* at the gate of the school is, certainly, an invasion of her privacy and dignity, and a clear violation of her fundamental rights. She carries her right to dignity and privacy in her person whether it is at the school gate or the classrooms.

Dhulia J. observed that the school administration and the State should prioritise what they want, the education of girl child or mandating school dress code. Specifically, it is for girl children, for whom it was difficult from the start. The High Court of Karnataka failed to answer some important questions such as how the wearing of hijab is against public morality, order, or health. The decision of the high court saying that the rights become derivatives inside the classroom is not correct.

The wearing of hijab is purely a matter of choice. It is secondary whether it forms an essential religious practice or not, but it is a matter of conscience, beliefs, and expression, provided by Part III of the Constitution. If a girl wants to wear a headscarf inside the classroom by her own choice, she should not be stopped.

19 The court relied on *Indra Sawhney* v. *Union of India*, AIR 1993 SC 477:*K.S. Puttaswamy* v. *Union of India* (2017) 10 SCC 1.

The impugned government order issued, unfortunately, restricting girls of a particular community from entering the schools, hence, depriving them from education, and consequently, from the right to dignity. The question that needs to ponder over is whether the government is making the life of a girl child better by depriving her from education because of hijab or headscarves. Dhulia J. extensively relied on the landmark judgment of the Supreme Court in *Bijoe Emmanuel* v. *State of Karnataka*.[20]

This case is an example where though there are transformations happening in the society, when it comes to the matter of essential religious practices the courts are not taking any proactive steps to change certain practices, which are sensitive to certain religion.

Matrimonial disputes misuse

In order to protect the women from domestic violence, cruelty, dowry harassment *etc.,* various legislative measures were initiated by Legislature. These legislative measures helped, to an extent, to protect the women especially married women from harassment from husband and his family members. However, of late there were many cases where wife levied false allegations against husband and his family members. The apex court observed that, "in recent times, matrimonial litigation in the country has increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever". Thus in *Kahkashan Kousar* v. *State of Bihar*,[21] the Supreme Court quashed the FIR against the in-laws stating that allowing prosecution in the "absence of clear allegations against the appellants would simply result in an abuse of the process of law". The apex court pointed out various instances where the criminal trial leads to an eventual acquittal inflicting sever scars on the relatives and the persons who undergo trial. The court pertinently expressed its concern over the tendency to employ section 498A of Indian Penal Code, 1860 to settle personal scores against the husband and his relatives. In this particular case, the wife filed complaint against husband and in-laws alleging that all of them harassed her mentally and threatened her of terminating her pregnancy. However, no specific and distinct allegations have been made against any of them. The court was of the opinion that "False implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked, would result in misuse of the process of law". Also, the court noticed that how the top court had on many occasions cautioned lower courts from proceeding against the in-laws and relatives of the husband when no prima facie case is made out against them.

The court, therefore quashed the FIR against the in-laws stating that allowing prosecution in the "absence of clear allegations against the appellants would simply result in an abuse of the process of law."

There was a time in our society when there was an increase in the cases of dowry harassment and dowry death and the women were tortured in her in-laws

20 *Supra* note 17.

21 (2022) 6 SCC 599.

house. Child marriage marked the beginning of the exploitation of women. A girl, who does not even know what life or marriage means, was sent to strange path filled with stones. There, her husband and his family members tortured her. In 1980s there was a rapid increase of such instances which forced women to commit suicide or were murdered in the name of dowry.Various organisations around the country protested against this and forced the government to enact laws that would shield women and penalise offenders. The protests had a positive outcome as they resulted in several changes in Dowry Prohibition Act, Indian Evidence Act and Indian Penal Code, which were then bundled together as section 498A. Section 498 A thus became a strong weapon for empowering women and discouraging criminal acts to ensure gender equality.

Gradually, the law started changing with the increase of awareness and supporting structures have made it possible for women to break free from abuse while getting fair treatment. Earlier, merely based on the complaint filed by wife against relatives of husband, they were taken into custody for dowry harassment while this may not be true or may be done in order to settle scores between people. Later, court provided guidelines while making arrest. Thus in *Manav Adhikar* v. *Union of India,*[22] it was laid down that only a designated investigating officer should probe complaints under section 498-A related offences and also that if settlement occurs, then the parties can approach the high court for quashing proceedings or other orders.

The above decision of the apex court reflects the fact that while it is important to draft laws for the protection of the most vulnerable group of people in society such as women but there should also be some measures taken so that these laws are not misused leading into unfairness. There have been adjustments made in section 498A based on previous legal cases, guidelines were also set by the courts. Parliament through legislative processes also showed how the values of society changes over time with respect to these issues. Therefore, it can be stated that in future what will count more than anything else would be striking balance between protecting the interest of victim and prevention of abuse against the accused persons.

IV RESERVATION POLICIES

Reservation policies were introduced in India with an objective to recognise the historical injustice meted out to the people belonging to backward groups and to implement provisions by which they would have better access to resources and opportunities. Constitutional provisions was made to ensure that equal representation could be seen from people belonging to all castes in the services under the state and centre. Initially, it was introduced for a time span of 10 years. However, even after decades the legislature found it necessary to continue the same. Though changes in the society happens scientifically and technologically, the system of reservation continued with more strata of society fought to get the benefits of reservation. Thus, in the leading case *Indra Sawhney* v. *Union of*

22 2018 SCC OnLine SC 1501.

India,[23] the Supreme Court uphold the 27 percent quota for backward classes and struck down the Government notification reserving 10% government jobs for economically backward classes among the higher castes. Later, in 2019 Legislature introduced reservation of "Economically Weaker Sections" (EWS) throughthe Constitutional (103rd Amendment) Act of 2019 and provided 10% reservation in government jobs and educational institutions for the "economically backward" in the unreserved category. This legislative amendment was challenged in apex court in *Janhit Abhiyan* v. *Union of India,*[24] in this case the constitutional validity for EWS legislation was upheld. The court observed that the subject of reservation has always been a hotly contested one in the constitutional canvas of the country. It was formulated with the intention of giving the backward members of society opportunities they were unable to get because of their social standing or institutionalised oppression. However, people have embraced and rejected the ideas of reservation over time, with there being sharp divisions in public opinion.

One of the main issues examined in this case was whether the reservation is an instrument for the inclusion of socially and educationally backward classes to the mainstream of society and, therefore, reservation structured singularly on economic criteria violates the basic structure of the Constitution of India? Further, discussing the topic of economic disabilities and affirmative action, the court observed that economic and social inequalities form part of a real and substantive problem, that a mere formal action for equality cannot deal with. The court further observed that the United States Supreme Court has also made some strides to ensure that economic considerations are considered, due to which economic backwardness becomes a ground for providing reservation. The court observed that article 14 and the concept of equality in India follow a similar principle as well.

The court addressed the concerns regarding the economic backwardness being violate of the basic structure of the Constitution. However, majority was of the opinion that the Constitutional amendment providing reservation benefits to EWS category is not violative of basic structure. Speaking for the majority Maheshwari J., stated:[25]

> Reservations for EWS of citizens up to 10% in addition to the existing reservations does not result in violation of any essential feature of the Constitution and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of 50% because, that ceiling limit itself is not inflexible and in any case applies only to the reservations envisioned by Articles 15(4), 15(5) and 16(4) of the Constitution of India.

Bela M. Trivedi J. referred to *K.C. Vasanth Kumar* v. *State of Karnataka*,[26] and observed that "reservation must have a time span; however, after 75 years of

23 (2000) 1 SCC 168.

24 2022 SCC OnLine SC 1540: (2023) 5 SCC 1.

25 *Id.* , para 233.

26 (1988) 4 SCC 590.

independence, it is imperative that we revisit the whole system of reservation in the larger interests of the society." Further, it stated:[27]

> The SC, ST, and the backward class for whom the special provisions have already been provided in Articles 15(4), 15(5) and 16(4) form a separate category as distinguished from the general or unreserved category. They cannot be treated at par with the citizens belonging to the general or unreserved category. The 103rd amendment creates a separate class of 'economically weaker sections of the citizens' from the general/unreserved class, without affecting the special rights of reservations provided to the SC, ST, and backward class of citizens covered under Articles 15(4), 15(5) and 16(4). Therefore, their exclusion from the newly created class for the benefit of the 'economically weaker sections of the citizens' in the impugned amendment cannot be said to be discriminatory or violative of the equality code. Such amendment could certainly be not termed as shocking, unconscionable, or unscrupulous travesty of the quintessence of equal justice as sought to be submitted by the learned counsels for the petitioners.

On the other side, minority dissented with the majority opinion and held against the validity of the 103rd Constitutional Amendment. It was stated that "the exclusionary clause (in the impugned amendment) that keeps out from the benefits of economic reservation, backward classes and SC/STs therefore, strikes a death knell to the equality and fraternal principle which permeates the equality Code and non-discrimination principle".[28]Accordingly, Bhat J., observed that while the addition or insertion of an "economic criterion" furthering the objective of article 46 is not *per se* unconstitutional or invalid, it is the manner of its implementation that has proved to be questionable. Exclusive exclusion of classes covered under Articles 15(4) and 16(4) from EWS reservation violates the basic structure of the Indian Constitution and the fundamental rights of the classes so concerned.[29] According to Bhat J., it is unreasonable to exclude 82% of the country's population from the scope of the amendment to further advance the object of economically weaker sections of the society. Thus, the poorest of people (tribals) would also be exempted from an amendment meant for the economically weaker sections. It was held that economic emancipation is an objective and purpose that is enshrined in our Constitution in articles 38, 46, and even in the Preamble. Ensuring economic well-being and economic justice to everyone through amendments shines a new light on the concept of upliftment of economically backward/weaker sections of society.

This case analysis reflects the idea of social transformations taking place in the society with respect to reservation policies introduced in India prior to our

27 *Supra* note 21 para 257.

28 *Id*. ,para 620.

29 *Id*., para 626.

Independence. The idea of reservation was conceived as a means to secure social justice, economic justice and political justice as well as equality of opportunity to the citizens of country. It is to be noted that reservations affect every citizen irrespective of caste or status. Therefore, keeping in view of the policies adopted by the government from time to time to uplift and help the disadvantaged and backward classes of society, the 103rd legislative amendment is progressive legislative measure to provide reservation benefits to the "General category of economical weaker sections."

However, these policies and provisions must be revisited taking into account the changing socio-economic conditions of the people. These policies have occasionally resulted in unjust enrichment and are used for political advantages. No doubt, the court repeatedly highlighted the need for revisiting the exclusive rights of reservation in order to achieve the egalitarian society envisioned by the makers of our Constitution.

As society develops, social and economic norms also change over time. Flexibility is essential to fostering adaptation to changing circumstances and providing various opportunities to all social strata. With this decision, the Supreme Court has gone beyond its original guidelines, overturning the ceiling limit, and allowing for a more liberal interpretation, stating that adding 10% to the existing reservations of a different nature does not violate any fundamental feature of the Constitution or harm its basic structure.

V RIGHTS OF DISABLED PERSONS

India is committed to work towards enhancing quality of life of person with disability. Pursuant to the commitment of various proclamation, legislative enactment was made in India by enacting The Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. Later, to fulfill its obligation under the United Nations Convention on the Rights of Persons with Disabilities, The Rights of Persons with Disabilities Act, 2016 was passed. This Act replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995. This law mandates the government to contemplate measures and lay down strategies for comprehensive development of disabled persons. In this regard, the courts in India through various judicial pronouncements has recognized and enforced the rights of person with visual disability. To ensure that strategic measures are implemented, court has extended reservation in various forms and manner as feasible. For instance, in recruitment process, by extending the concept of right to work to disabled persons also in specific jobs. In *State of Kerala* v. *Leesamma Joseph*,[30] the Supreme Court of India held that persons with disabilities have a right to reservation in promotions under Article 16(4) of the Constitution by virtue of provisions of Disabilities Act 2016. The former disabilities Act does not carry a provision expressly providing for reservation in promotions. The court has emphasised that it has been collective duty of not just state but also of private entity as part of civilised society to extend

30 AIR 2021 SC 3076.

support to person with visual disability so that they may enjoy life as much as possible and every possible benefits can be made accessible to them.

In the year 2022, the Supreme Court in *Ajay Kumar Pandey* v. *State of UP,*[31] held that insofar as it provides reservation to persons with disabilities in the category of hearing impairment alone is illegal and *ultra-vires* to Article 14 and 16 of the Constitution of India. It is also against the provisions of section 3 of the U.P. Reservation Act of 1993 as well as sections 32 and 33 of the Disabilities Act, 1995. The reservation would be applicable to each category of disabled persons in accordance with the provisions of U.P. Reservation Act of 1993 read with Disabilities Act, 1995. Itruled that person with visual disability has the right to reservation in those job wherein they may be employed.The court citing *Union of India* v. *National Federation of the Blind* [32] ruled that the plain and unambiguous interpretation of section 33 of Disabilities Act is that every appropriate government must appoint a minimum 3% vacancies in an establishment out of which 1% each shall be reserved for persons suffering from blindness and low vision.

The High Court of Delhi in *Vishv Mohan* v. *Department of Personnel and Training*[33] the court held that depriving the petitioner of public employment based on the inconclusive medical report was unfair, unjust, whimsical and arbitrary. In this case, a candidate with visual impairment of 2015 batch, to be appointed to the Indian Administrative Service (IAS) and setting aside Appellate Medical Board Report as being inconclusive. The High Court of Delhi observed that a welfare State is expected to create conditions, which are conducive to citizens with disabilities by providing them avenues for public employment under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Similarly the High Court of Delhi in *Manish Lenka* v. *Union of India,*[34] directed the school to provide uniforms free of cost to the student within a period of two weeks and also waived the computer fee. With respect to transportation costs, since the school did not provide it, the child's counsel was asked on the next date of the hearing to make a submission on the transportation cost incurred by the child for travelling between his home to the school and back.In this case, a student of Class 6 at a Kendriya Vidyalaya school in Noida, with a visual impairment of over 75 per cent, had moved the high court seeking a grant of books, learning material, and assistive devices along with other facilities provided under theRights of Persons with Disabilities Act (RPWD), 2016. When the counsel representing the boy argued that the child's father is a daily wager who is unable to afford his son's educational requirements, the bench perused the provisions of perused the Section 16 and 17 of the RPWD Act, 2016 and observed that;[35]

> A perusal of the said provisions show that facilities such as uniform, computer fee and transportation cost are all covered under the

31 Civil Appeal No. 4811 of 2022.

32 (2013) 10 SCC 772.

33 2022 SCC OnLine Del 2525 : 2022 LiveLaw (Del) 807.

34 2022 SCC OnLine Del 4403: 2022 LiveLaw (Del) 1164

35 *Id*. para 10.

> statute. In the opinion of this Court these constitute basic facilities for a child such as the Petitioner. Considering the recognition given to the rights of persons with disabilities, there can be no doubt that these facilities ought to be provided especially at Kendriya Vidyalaya Schools which are government schools present all over the country, in order to ensure that children with disabilities are not deprived of proper education.

These decisions of high court and Supreme Court reflects the transformation of law to bring inclusivity in the society by bringing the persons with disability to the main stream of society.

VI ENVIRONMENTAL CONCERNS

Since last few decades, with a benevolent object of environmental protection, environment conscious society and government across the globe is continuously undertaking measures to safeguard the degrading environment. Given the continuously deteriorating environment, clamour to safeguard them has become a focal point of attention in last few decades. Government is continuously and actively amending and introducing law for its safeguard. However, judiciary is playing a role of catalyst in safeguarding the environment concerns by pronouncing landmark judgements. One of area of environment concerns is the protection of forestland. It can be seen that Supreme Court took over the role as an administrator, lawmaker and policy maker to ensure the protection of environment.

Protection of forest: Continuous *mandamus*

There are series issues taken up by environment activist T.N. Godavarman Thirumulpad to protect the forestland as part of environmental protection. The main object of the writ petition filed in 1995 was to protect the forestland in Nilgiris district of Tamil Nadu. As it was exploited through deforestation by unlawful timber activities. This case is a peak of continuous mandamus where the court delays the decision making and goes on upto 20 years and the case is still not over. In every hearing new direction are issued. Thus in the year 2022, in *T.N. Godavarman Thirumulpad* v. *Union of India,*[36] the apex court mandated that each protected forest, that is, National Park or Wildlife Sanctuary, must have an Eco-Sensitive Zones (ESZ) of minimum one kilometre measured from the demarcated boundary of such protected forest.This case began in 1995 as a public interest litigation (PIL) aimed at conserving forest areas in the Nilgiris district of Tamil Nadu. Over time, it grew to address forest conservation and environmental protection across the country. The case involved various parties, including mining companies, state governments, and real estate developers, who wanted to relax environmental rules for their economic activities. The main issues before the Court were about defining ESZs around protected areas, regulating mining and other activities, and balancing development with environmental conservation.

In its judgment, the Supreme Court made several important decisions. It ruled that there must be at least a one-kilometer buffer zone, or ESZ, around all

36 (2022) 10 SCC 544.

national parks and wildlife sanctuaries, with special exceptions for unique cases like the Jamua Ramgarh Sanctuary. It banned mining within protected areas and imposed strict rules on activities in the ESZs. State governments were directed to identify and report all existing structures and activities within these zones. While some ongoing activities were allowed to continue with prior approval, the Court made it clear that such activities must not harm the environment. The Court also rejected petitions that sought permission to continue mining near protected areas.

This judgment is based on key principles from the Constitution and environmental laws, such as the Environment (Protection) Act, 1986, and the Wildlife (Protection) Act, 1972. It highlights the Public Trust Doctrine, which says that natural resources belong to everyone and the government must protect them. It also uses the Precautionary Principle, which means that we must take action to prevent environmental damage even if we are not completely sure about its effects. Lastly, it stresses sustainable development, which ensures that we meet today's needs without harming the ability of future generations to meet theirs.

This decision has significant effects on India's environmental protection efforts. It strengthens the rules for protecting forests and wildlife by clearly defining what activities can and cannot happen in ESZs. State governments will now have to be more accountable in monitoring and reporting activities in these zones. While these restrictions may impact industries like mining and real estate etc.

They aim to ensure long-term environmental benefits. The judgment also sets an example for future cases, showing how the judiciary can play a strong role in safeguarding our natural resources. It draws from earlier cases like *M.C. Mehta* v. *Kamal Nath,*[37] *Vellore Citizens' Welfare Forum* v. *Union of India,*[38] and *Goa Foundation* v. *Union of India,*[39]which have shaped India's environmental laws.

In simple terms, this judgment is a reminder that economic growth cannot come at the cost of destroying our environment. By enforcing stricter rules and promoting sustainable development, the Supreme Court has shown that protecting nature is essential for the well-being of both present and future generations.

Later again in *T.N. Godavarman Thirumulpad In re* v. *Union of India,*[40] permission was sought from the Supreme Court by the concerned authorities to complete the pending development activities related to Delhi region. It was submitted that the areas in respect of which the permission is sought, for carrying out the construction activity of Phase IV Metro Rail, are not forest areas and permissions/approvals are not required. Some of the averments are summarized as under:

(i) The project involves a huge capital expenditure and stoppage of construction activities and consequent delay in completion of the project would

37 (1997) 1 SCC 388.
38 AIR 1996 SC 2715.
39 (2014) 6 SCC 590.
40 (2022)4 SCC 289.

involve heavy financial implications owing to cost escalation, which would have a cascading effect on public exchequer.

(ii) The DMRC has undertaken the proposed project with a view to providing the citizen of NCT of Delhi/NCR a viable public transport option so as to reduce vehicular congestion on the road and consequently, reduce pollution in the NCT of Delhi/NCR.

(iii) The operation of Metro project has resulted in several advantages to the public at large.

(iv) There would be a greater advantage to the public at large and essentially in the form of saving travel time and reducing the degree of pollution in the NCT of Delhi/NCR.

(v) Any delay in the commissioning of the project, on the other hand, would jeopardise the object and purpose of DMRC to provide efficient transport facility to the citizens.

Nagarathna J. observed that:[41]

> To meaningfully arrest the problem of declining tree cover, the civil society must also be placed with the responsibility to carry out reafforestation activities. While we cannot ignore the importance of governmental responsibility in materializing the goals of sustainable development through reafforestation, we strongly endorse the idea of collective responsibility towards ensuring a sustainable future. The engagement, inclusion and participation of citizens and perhaps more significantly, the ownership of the sustainable development agenda by empowered citizens and community-level actors will contribute in a significant manner to achieving the economic, social and environmental pillars of the sustainable development agenda.
>
> Citizens, as the ultimate beneficiaries of development, have a critical role to play, not just in terms of effort and action towards the achievement of the environmental goals but also in terms of the associated monitoring of the progress towards these goals

It was held that the term 'forest land", occurring in section 2, will not only include "Forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. Therefore, prior approval of Central Government is required for any non-forest activity within the area of any "forest".

41 *Id*., paras 32, 33.

In another case of *Binay Kumar Dalei.* v. *The State of Odisha,*[42]Supreme Court sets a landmark precedent in Indian Environmental Law. The case involved the protection of the eco-sensitive zone (ESZ) surrounding the Kuldiha Wildlife Sanctuary in Odisha and the preservation of the Similipal-Hadgarh-Kuldiha-Similipal Elephant Corridor. The primary issue was whether mining activities could be allowed near this ecologically significant area without harming the environment or violating conservation laws.

The conflict began when the National Green Tribunal (NGT) ordered a halt to mining activities near the elephant corridor, which connects the Kuldiha and Hadgarh Wildlife Sanctuaries. This directive aimed to protect the biodiversity and ensure the safe passage of elephants. Leaseholders of stone quarries near the corridor opposed this decision, arguing that their operations were outside the ESZ and were approved by relevant authorities. They appealed to the Supreme Court after the NGT denied them the chance to present their case and enforced a strict ban on mining near the corridor.

The Supreme Court upheld the NGT's concerns about environmental preservation but allowed limited relief for the appellants. The Court ruled that mining could proceed only after the completion of a *Comprehensive Wildlife Management Plan* and the formal declaration of the elephant corridor as a conservation reserve under Section 36A of the Wildlife (Protection) Act, 1972. This decision ensures that any economic activity in the region does not compromise the ecological balance. The key directives issued in this case are:[43]

i. The State Government must implement the Comprehensive Wildlife Management Plan to minimize the impact of quarrying on wildlife.

ii. The process of declaring the elephant corridor as a conservation reserve must be completed promptly.

iii. Mining operations in the ESZ can resume only if they strictly adhere to environmental guidelines and laws.

This judgment emphasizes the balance between environmental protection and economic development. The court underscored the need for a cautious approach to mining near sensitive ecosystems, where the survival of wildlife is at stake. It highlighted that safeguarding nature is paramount and that sustainable practices must be prioritized over short-term profits. The court observed that the mining activities had disrupted wildlife habitats and posed a threat to the ecological integrity of the region. It rejected the plea for compensation from leaseholders for their financial losses, stating that environmental laws must take precedence over individual interests. The judgment drew on principles established in previous cases like *Hospitality Association of Mudumalai* v. *In Defence of Environment*

42 (2022) 5 SCC 33.
43 *Id*., para 16.

and Animals,[44] and *Goa Foundation* v. *Union of India,*[45] which advocate for stringent enforcement of conservation laws.

This case serves as a powerful reminder of the importance of protecting our natural resources. The Supreme Court's directives reflect a commitment to upholding environmental laws and preserving biodiversity. By mandating the completion of conservation measures before allowing any economic activities, the court has struck a balance between development and environmental stewardship. The judgment reiterates Mahatma Gandhi's wisdom: "Nature can meet all our needs, but not all our greed," urging us to act responsibly for the sake of future generations.

In *Pragnesh Shah* v. *Arun Kumar Sharma*,[46] the Supreme Court delivered an important judgment concerning the Mount Abu Eco- Sensitive Zone in Rajasthan, stressing the need to protect fragile ecosystems. The case involved the Zonal Master Plan (ZMP) 2030, prepared by the Rajasthan Government to guide future development in the region. An expert committee, appointed to examine the situation, reported that part of the land owned by the appellant was unsuitable for construction. The report stated that some areas had steep slopes prone to soil erosion, while other areas, though stable, were home to wildlife such as sloth bears. The proposed construction, which included a tourism facility, was likely to harm the environment and disrupt the wildlife ecosystem. Based on this, the National Green Tribunal (NGT) directed the Rajasthan Government to revise the ZMP 2030 to align with the ESZ notification and the principle of precaution. The appellant's request for reconsideration was rejected by the NGT, leading them to approach the Supreme Court.

The Supreme Court upheld the NGT's decision, affirming that the Mount Abu ESZ notification, issued under the Environment Protection Act, 1986, is a binding framework to protect the delicate ecosystem of the region. The court explained the importance of the precautionary principle, which means the government, must act to prevent environmental harm even if not all-scientific evidence is available. The court found that restricting construction on the appellant's land was necessary, as steep slopes in the area were fragile and prone to erosion, while the stable parts were critical habitats for wildlife. The proposed tourism facility could disturb this delicate balance, making construction unsuitable. The court also supported the NGT's directive to revise the ZMP 2030 to ensure future development plans respect environmental protection guidelines.

In another case, Supreme Court expounded the environmental clearance jurisprudence in *Pahwa Plastics Pvt. Ltd.* v. *Dastak NGO*.[47] In this case, Pahwa Plastics Pvt. Ltd., a company in Haryana, was taken to court for running its factories without the required Environmental Clearance (EC). Although the company had

44 AIR OnLine 2020 SC 776.
45 (2014) 6 SCC 590.
46 (2022) 11 SCC 493.
47 (2023) 12 SCC 774.

official permissions to set up and operate its units, it missed obtaining the EC, which is mandatory under environmental laws. Later, the company applied for EC after the government allowed post-approval in certain cases.

An NGO named Dastak filed a complaint with the National Green Tribunal (NGT), asking for the factories to be shut down for operating without EC. The NGT agreed with the NGO and ordered their closure. The company then appealed this decision in the Supreme Court.

The Supreme Court carefully examined the case and observed the following:

i. The company's factories were non-polluting, followed all environmental rules, and caused no harm to the environment. The issue was only a delay in obtaining EC, which the Court considered a minor mistake.

ii. The factories employed around 8,000 workers and contributed significantly to the economy. Shutting them down would harm workers' livelihoods and hurt the economy.

iii. The company had already completed most formalities to get the EC, including public hearings and expert reviews, and was eligible for approval.

The court stressed the importance of obtaining EC to protect the environment but said closing factories for a small technical error, when they are otherwise following all rules, would be unfair. It referred to an earlier case where it ruled that minor mistakes should not lead to shutting down factories that support livelihoods and the economy. Instead, industries that fail to follow rules should be penalized under the "polluter pays" principle, where they pay fines and cover the cost of fixing any environmental damage.

This judgment struck a balance between protecting the environment and safeguarding jobs, emphasizing the need for sustainable development and proper enforcement of environmental laws.

VII NON-PROFIT ORGANISATION

Generally, non-profit making companies without the object of making profits undertake many social activities. Many of them are in the form of charitable institutions involve in field of health, education etc. However, they may generate profit in due course, of their functioning they are exempted from taxation laws and are not considered as revenue generating business institutions by the government. In the year 2022 some of such activities became a concern for the judiciary to examine and decide. Thus, apex court in *Apex Laboratories (P) Ltd*. v. *CIT,*[48] held that 'pharmaceutical companies' gifting freebies to doctors is prohibited by law and they cannot claim it as a deduction.These freebies are technically not 'free' – the cost of supplying such freebies is usually factored into the drug, driving prices up, thus creating a perpetual publicly injurious cycle. In 2012, the Central Board of Direct Taxes issued a circular which clarified that expenses incurred by pharmaceutical and allied health sector industries for distribution of incentives (Freebies) to medical practitioners are ineligible for the benefit of Explanation 1 to

48 (2022)7 SCC 98.

section 37(1). Apex Laboratory Company refused to pay the claim made by Income Tax Commissioner and refused to accept the circular issued. High Court of Madras also upheld an order of the Commissioner of Income Tax. This was challenged before the apex court. Ravindra Bhat J. observed that:[49]

> It is also a settled principle of law that no court will lend its aid to a party that roots its cause of action in an immoral or illegal act (*ex dolomalo non oritur action*) meaning that none should be allowed to profit from any wrongdoing coupled with the fact that statutory regimes should be coherent and not self- defeating. Doctors and pharmacists being complementary and supplementary to each other in the medical profession, a comprehensive view must be adopted to regulate their conduct in view of the contemporary statutory regimes and regulations. Therefore, denial of the tax benefit cannot be construed as penalizing the assessee pharmaceutical company. Only its participation in what is plainly an action prohibited by law, precludes the assessee from claiming it as a deductible expenditure.

No doubt the court examined the impact of freebies provided by the companies to promote their business on the health of the people. The court pointed out that medical practitioners have a quasi-fiduciary relationship with their patients. A doctor's prescription is considered the final word on the medication to be availed by the patient, even if the cost of such medication is unaffordable or barely within the economic reach of the patient. The threat of prescribing medication that is significantly marked up, over effective generic counterparts in lieu of such a quid pro quo exchange was taken cognizance of by the Parliamentary Standing Committee on Health and Family Welfare. Therefore, it is righty pointed out:

> Interpretation of law has two essential purposes: one is to clarify to the people governed by it, the meaning of the letter of the law; the other is to shed light and give shape to the intent of the law maker. And, in this process the courts' responsibility lies in discerning the social purpose which the specific provision subserves. Thus, the cold letter of the law is not an abstract exercise in semantics which practitioners are wont to indulge in. So viewed the law has birthed various ideas such as implied conditions, unspelt but entirely logical and reasonable obligations, implied limitations etc. The process of continuing evolution, refinement and assimilation of these concepts into binding norms (within the body of law as is understood and enforced) injects vitality and dynamism to statutory provisions. Without this dynamism and contextualisation, laws become irrelevant and stale.

In another case, *ACIT (Exemptions)* v. *Ahmedabad Urban Development Authority,*[50] the Supreme Court examined question of the correct interpretation of

49 *Id*., para 29.

50 [2022] 143 taxmann.com 278 (SC).

the proviso to Section 2(15) which defines 'Charitable purpose' for tax exemption.The Supreme Court of India has clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce, or business, or provide service in relation thereto for any consideration. However, in the course of achieving the object of General Public Utility (GPU), the concerned organization can carry on trade, commerce, or business or provide services in relation thereto for consideration, provided that:

(i) The activities of trade, commerce, or business are connected to the achievement of its objects of GPU; and

(ii) The receipt from such business or commercial activity or service in relation thereto does not exceed the quantified limit, *i.e.,* 20% of total receipts of the previous year.

The decision is extremely detailed running into 149 pages and has analysed the entire development of law including various amendments carried out over the years and the jurisprudence including a large number of earlier Supreme Court and high court decisions.[51] Charitable purpose has been defined under section 2(15) of the Act to include relief of poor, education, medical relief and few others (called per se charities). It also includes within its purview a residual category 'advancement of any other object of general public utility' ('GPU'). While engaging in GPU activities it is common for such institutions to carry on any activity in the nature of trade, commerce or business or any activity of rendering services in relation thereto (hereinafter collectively referred as 'commercial activity') for a cess, fee or other consideration. Such commercial activities have been subject matter of various restrictions imposed under the law from time to time.

In another case of *New Noble Education Society* v. *Chief Commissioner of Income-tax,*[52] Supreme Court laid down important interpretational principles in relation to the scope of exemption provided to charitable educational institutions under Section 10(23C) of the Income-Tax Act, 1961. It also made certain important observations as to what can be regarded as an 'incidental' activity in relation to education. Section 10 of Income Tax Act, 1961 exemption covers certain specified categories of educational institutions only – one such category is "any university or educational institution existing 'solely' for educational purposes and not for purposes of profit" (Specified Exemption).With respect to the Specified Exemption, there has been some jurisprudence as to how to interpret the word 'solely'. Whether it should mean that the educational institution should be exclusively engaged for the purpose of education, or whether only the predominant purpose of the institution should be education. In the instant case, the taxpayer was an educational institution. Its application for registration under section 10(23C)(vi) was rejected by the income-tax authority on the ground that *inter alia* (a) not all its objects mentioned in the charter documents were exclusively for educational

51 For instance, *CIT v. Rajasthan & Gujarati Charitable Foundation Poona,* 402 ITR 441 (SC); *Indian Chamber of Commerce* v. *CIT,* [1975] 101 ITR 796.

52 2022 SCC OnLine SC 1458.

purposes, and (b) it was not registered under the applicable state-specific laws regulating charitable institutions. The taxpayer challenged this before the High Court of Andhra Pradesh and on rejection by the high court, the tax payer approached the Supreme Court. The Supreme Court also stated that though there is no bar to the generation of surplus by such educational institutions however, the key aspect is that such surplus shall be generated while providing educational and related activities only such as sale of textbooks, providing school bus facilities, hostel facilities etc.

These case laws shows the approach of the courts to uphold the welfare of the country economically without effecting the welfare activities of the state. The court rightly pointed out that:[53]

> In a knowledge based, information driven society, true wealth is education – and access to it. Every social order accommodates, and even cherishes, charitable endeavour, since it is impelled by the desire to give back, what one has taken or benefitted from society. Our Constitution reflects a value which equates education with charity. That it is to be treated as neither business, trade, nor commerce, has been declared by one of the most authoritative pronouncements of this court in T.M.A Pai Foundation (supra). The interpretation of education being the 'sole' object of every trust or organization which seeks to propagate it, through this decision, accords with the constitutional understanding and, what is more, maintains its pristine and unsullied nature.

VIII CONCLUSION

Law is a dynamic instrument to achieve harmonious adjustment by removing social tension and conflicts in society. It changes according to the changing trends of society. Legislature by way of amendment of law or enactment of law and Judiciary through the interpretation of law demonstrates the transformation-taking place in our country. The cases discussed in the survey of 2022 resonate the same. With respect to the status of Women in the society, the judiciary upheld the right of an unmarried woman for abortion by protecting her bodily autonomy. It justified the legislative amendment taken place with respect to the same. It is a change in the legal status of the women to be considered for termination of pregnancy as per the law where unmarried or single women is also included. It mandated that distinction between married and single women is not constitutionally sustainable and benefits in law extend equally to both single and married women. Thus, apart from balancing the legal aspects relating to the empowerment of women in society, the court also took a fair view to curb the misuse of law by women. With respect to education in the society, the court adopted a mixed approach with respect to free the education system from religious belief. The policy of reservation in government sector has become an accepted norm in the society. In the light of such acceptance

53 *Id*., para 77.

for the reasons best known to the political parties or the people concerned, the majority view of the apex court to bring the people belonging to general caste based on economic background cannot be overlooked as changing dimension of law. The transformation is progressive with respect to the concerns regarding environment and courts upheld the same principles in the year 2022 as well.

With respect to the matters related to the NPVO, apex court upheld the principle that charitable institutions advancing 'general public utility' cannot engage itself in any trade, commerce or business, unless it is undertaken in the course of actual carrying out the same for thegeneral public utility. Further, if the taxpayer charges substantial amounts over and above the cost for the general public utility related activities, such activities would be considered as 'trade, commerce, or businesses and would be subject to restrictions provided in the law. The changes in the education sector moving towards the commercial activities is also reflected while examining the issues relating to tax exemptions claimed by education institutions in the year 2022.