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A critical Analysis on: Residential premises being used for Business Trade & Profession

By Sanket Yeolekar¹

Introduction :

Man has always had three basic needs of Food, Shelter, clothing. Mankind has evolved from living in jungles, on river banks, or in groups. Day after day man has developed his life standards .

In ancient times man used to live in Shelters like Caves. Men thought that there should be shelter to he and he is family to be safe against rain thunderstorms heavy sunlight and wind etc as soon as human kind started living in colonies .

Later onwards man started building he is homes in bamboo's wooden structures and day by day the need of strength full homes started increasing initially man was travelling from one place to another place and he was not settled but that's so nice permanent structures started getting developed the man kind use to stay for years and years at a certain place and a fixed place there after it was era of Kings and kingdoms in all over the globe.

Moving forward in the modern era Construction Techniques and modern technology started evolving and a permanent beautiful homes started getting crafted then the other basic needs of man started increasing that is clothing and food for furnishing the clothing and food man started using he is premises as per he is will wish and wants.

The beginning of this was in ancient times only the use of residential premises was though not discriminated from non residential purposes it was smoothly running that the premises where used for cattle Shelters storage places garage which was not exactly for defined business and trade but it was non residential purposes only.

Urbanisation brought various changes in the life standard of the society and mankind initially horizontal development was taking place and Bungalows and single storied houses where sufficient but letter on word as population has grown the needs of people started increasing with this vertical development that is development on land of buildings apartments and multistoried buildings started taking place of the single storied Bungalows and homes.

¹1: Author is L.L.M student 2023.

Many concept in construction sector like Vertical development of old homes started taking place and this lead to various problems with the increasing demand of person to use one tenement for residence as well as for other non residential purposes the premises are these days used for various types of consulting various trades and various businesses.

Abstract:

Theresearcheraimstoanalyzethestatutoryprovisionsofresidentialpremises& itsusefortradebusinessprofessionandcurrentlegalstatusofthesame.

Furthermore,itisdescribedbytheresearcheraboutwhatisthelineofdifferentiationbetweenTrade,BusinessandProfession.

TheprovisionsregardingrighttoprofessanyprofessionacrossIndiaarediscussedinrelationtotheaspectoffreedomtoprofession.

Theresearcheraimstodiscusstheconflictbetweensocietymembersusingtheirresidentialpremisesfornon-residentialpurposes,variousissuesbeingcreatedandtheadjudicatingauthorities.

Theauthorityforresolvingsuchissues.

Limitationstotheauthoritiesandfurthermoreconflictsbetweensuch

Non-residentialusersandtheexecutivesofresidential society management

Keywords:

Residential premices ,Trade / business,Profession , Society bylaws , Permitted use

Colonization and housing society's:

Since ages the man had started living in various kind of habitats. There was less population and emble of land The structures where horizontal but since 20th century due to various techniques and machineries the vertical development that is high rise buildings have started getting constructed and such use buildings skyscrapers are being used as residential premises as well as commercial premises now the main issue in this is weather residential premises like flats can be used for business trade and profession.

Statutory provisions of Housing societies

In Indian constitution article 19 is in respect of the property, pertains to,

The Right to Property remained a human right and not a fundamental right according to the 44th Amendment brought into the Indian Constitution in 1978. This is by the insertion of Article 300-A² in Part XII that repealed Article 31 in the Constitution Act, of 1978.

The right to property is not a fundamental right but a constitutional right. One of the Constitution's seven fundamental rights protected by Part III was the

²Article 300~A Constitution of India

right to property. Article 19(1)³ states that every citizen has the right to acquire, possess, and dispose of the property.

According to Indian Constitution one can possess any lawful property and he can also have a fundamental right of right to profession under article 19.

Various statutory provisions for bylaws:

An Act to consolidate and amend the law Relating to Co-operative Societies in the State of Maharashtra.

1) This Act may be called the Maharashtra Co-operative Societies Act, 1960.⁴

(2) It extends to the whole of the State of Maharashtra.

There is a small line differentiating profession trade and business then any activity is carried out in respect of goods and sale and profit out of it is called as a business this may be called as business. In business various manpower is required as per the nature of business that is if the business is of manufacturing then plants machineries vehicles for carriage transport are required.

Trading is particularly in respect of any commodity goods where manufacturing is not involved the goods may be sold from virtual portal like Amazon Flipkart or by a actual Store like mini stores grocery shops big malls etc. Trading particularly contains activities all except manufacturing so here manufacturing units plants and machinery is not required where as transportation accounting cashews store managers etc are required.

Profession is nothing but activities relating to your brain skill knowledge and that is why here any kind of machinery plants transportation is not required profession mainly deals with sharing your knowledge sharing your skills and activities like consultation activities like teaching legal consultancy chartered account etc are covered under profession.

Issues involved in residential premises and its professional use:

Residential premises are specifically and purposefully made for residing of tenants but in many cases the people use it for various commercial purposes the commercial purposes include business trade and profession , considering various possibilities and probabilities of uses of amenities by the end users of the profession business or trade.

Consider a business of any manufacturing industry in a residential premises where in common utility and amenities are provided by the Builder such as lift parking staircase common passages fire and safety, drinking water usage water wells electrification any kind of commercial car lifts. So the end

³Article 19 (1) a ConstitutionofIndia

⁴MaharashtraCo-operativeSocietiesAct,1960.

user of the business who is not residing in that premises will also reach to the Businessman and he will also use these amenities now say suppose in a residential premises there are 50 common parkings and a person professing he is business in residential premises with having ten employees permanently and ten employees on shift basis here itself he is total employees will occupy parking and there will be fight between the society and the Businessman the Businessman will say that I have full right to use my premises for what so ever reason

In the same way all other amenities like lifts water electricity will be used very frequently by the employees of the person who is carrying out he is business or trade in his residential premises and there will be conflict between the other tenements and the tenement using his premises for trade and business.

The other most important factor causing issue is read development of old building and structures into new structures in Modern era the statutes regarding Constructions are widely changing and the perspective regarding floor space index is changing from City to City.

The MRTP⁵ Act defines FSI as the total area on all floors, including the built-up area divided by the area of the plot.

Now the original building which was constructed years before was constructed on the old FSI calculations same as the plot area that is one FSI but in today's modern era the FSI is 2.5 times 3 times and now the redevelopments are taking place in this situation if a person is using he is residential premises as commercial or professional purposes then the deal regarding what has to be given to that occupier or the tenement as residential tenement or commercial tenement.

Statutory provisions will award such tenement as residential premises but a person holding he is residential premises on main City road will never accept to whatever is being awarded to him and he will demand as commercial premises then the Builder or the developer will not be able to give or allot him the commercial premises instead of his current occupied residential premises whether in actual he may be using that Residency premises for commercial purposes.

Other most important thing is if a person holding residential premises on ground floor and using his flat or the premises for dispensary Consulting Chartered Accountancy coaching classes then there are certain restrictions to be governed and to be followed by him but in actual this won't happen and the person holding residential premises and using it to be commercial or professional will use his premises as per his will wish and want that is there will be no restriction on the taxation on the society maintenance charges etc.

In any Housing Society the premises amenities are need to be maintained and for that purpose the standing committee that is the secretary and

⁵S 16 MRTP act 1966

chairman decides some monthly maintenance charges to the property owners there is a calculation of monthly income expenses and total tenements and this expenses will be divided on the tenements now regarding this there is a statutory provision for a person having commercial shops or spaces will be charged in some different manner or different contribution and a person holding a flat that is the residential premises will be charged on different grounds for monthly maintenance charges is a person having his shop on the main front road if say support will be charged as 5000 as monthly maintenance charge then the person just above him having a residential premises as a flat but using as commercial or professional purposes like Consulting any dispensary or lawyer will be using it as commercial space but will be charged as residential member of that society so there will be again conflict between the shop owner and the residential premises holder regarding as to difference of society maintenance charges.

Supra in observation of the same has given the directions in many cases were in the residential premises can only be used for profession which includes teaching taking classes Consulting legal consulting Chartered Accountants etc.

Benchmark judgements on this issue

Case law on firm of lawyers : In *V. Sasidharan v. Peter and Karunakar*, (1984) 65 FJR 374 (SC)⁶, the question for decision before the Supreme Court was whether the office of a lawyer or of a firm of lawyers is or is not a commercial establishment within the meaning of the Kerala Shops and Commercial Establishments Act. The SC held that it does not require any strong argument to justify the conclusion that the office of a lawyer or a firm of lawyers is not a 'shop'.

Case law on private dispensary: In yet another case of *Dr. Devendra M. Surbi*, (AIR 1969 SC 63 6T)⁷, the Supreme Court had occasion to examine the definition of 'Commercial Establishment' in S. 2(4) of the Bombay Shops and establishments Act, 1948⁸. Construing the word 'Profession' appearing in association with the words 'Business and Trade' in the said subsection, it held that a private dispensary of a medical practitioner did not come within the definition of 'Commercial Establishment'. In *Dev Brat Sharma v. Dr. Jagjit Mehta*, C.A. No. 4216 of 1988⁹, the Supreme Court held that the user of residential premises under tenancy for the purpose of a doctor's clinic did not tantamount to change of user.

Yoga classes : In the case of *Pant Nagar Anandlok CHS Ltd., at Ghatkopar, Mumbai*, (Appeal No. 550 of 1985 decided on 24-11-1986 decided by the MSC

⁶Supra *V. Sasidharan v. Peter and Karunakar*, (1984) 65 FJR 374 (SC)

⁷Supra *Dr. Devendra M. Surbi*, (AIR 1969 SC 63 6T)

⁸S. 2(4) *Bombay Shops and establishments Act, 1948*

⁹Supra *Dev Brat Sharma v. Dr. Jagjit Mehta*, C.A. No. 4216 of 1988

Appellate Court) it was decided that carrying out activities like conducting yoga classes in a residential flat does not constitute breach of bye-laws of a Co-op Housing Society.

Office of a Chartered Accountant : Phillipose & Co. v. the State of Karnataka, C.C. No. 21496 of 1987¹⁰: Case under Karnataka Shops and Commercial Establishments Act, 1961 — office of the partnership firm of Chartered Accountants is not a commercial establishment as C.As. Carry on profession like lawyers or doctors and do not carry on trade or business. The judge observed: “A profession is a vocation or occupation requiring special usually advanced education and skill. The work and skill involved in a profession is predominantly mental or intellectual rather than physical or manual.”

Conclusion and suggestions:

I can conclude that any activity involving material and materialistic things like production trade etc shall not be permitted in residential premises and only those activities where skill is involved like consulting of Chartered Accountants lawyers classes teaching will be permitted in the residential premises.

My suggestions:

- 1) Though housing society do have their arbitrary powers to make own rules but they are prevented to make contradictory laws which will apprise the fundamental rights inshurined under article 19 of the Constitution of India the provisions for non usage of residential premises for trade and business are not stringent and the laws should be made stringent and easy for the citizens of Bharat.
- 2) The law relating to the calculation of maintenance for societies shall be revise and as per the actual usage it should be charged.
- 3) The tax for residential premises and the commercial premises are different in a condition where residential premises is used for commercial premises then the tax cell also be charged accordingly.
- 4)The society Chairman and secretary shall be empowered to make loss for usage of amenities parking lifts gym to the tenaments using their residential premises for consulting and profession as well as some trade and business they should be given discretionary power where in they need to draft the statutory or standing loss and the shall be submitting it to the society Registrar and the laws

¹⁰Supra Phillipose & Co. v. the State of Karnataka, C.C. No. 21496 of 1987

be endorsed from him and then implied, this will give the system checks and balances.

5)A strict and mandatory prior permission by a person using his residential premises for any profession trade shall be obtained from the registered society or the local authority regarding this otherwise there shall be provision for cutting of the water lines and other things provided by society in common.

6)A person using his residential premises for any commercial or professional purposes shall be mandated to install CCTV and the strict undertaking shall be taken from him by the Society and Society registrars to safeguard the society premises and to avoid theft etc.

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An Analytical view into Israel-Palestine Conflict'

By Vikas Madhukar Mahankale

Abstract

The Israel-Palestine conflict is a protracted and deeply complex geopolitical struggle rooted in centuries of historical, religious, and territorial disputes. This abstract provides an overview of the conflict from its ancient origins to the modern era, highlighting key events, turning points, and unresolved issues that continue to shape the region.

The conflict's origins can be traced back to ancient times, with both Jews and Palestinians claiming historical ties to the land. The Jewish connection is rooted in biblical narratives, while Palestinians have inhabited the region for generations. The modern conflict's inception can be attributed to a confluence of factors, including the late 19th-century Zionist movement and the collapse of the Ottoman Empire.

The conflict evolved during the 20th century, marked by British rule under the League of Nations' mandate and the Balfour Declaration (1917), which supported the establishment of a Jewish homeland. Tensions between Jewish immigrants and Palestinian Arabs escalated, leading to a series of conflicts and revolts.

The United Nations' partition plan in 1947 proposed the creation of separate Jewish and Arab states, leading to the 1948 Arab-Israeli War, which resulted in Israel's declaration of independence. The war also marked the beginning of the Palestinian refugee crisis, a significant issue that endures to this day.

The subsequent Arab-Israeli wars, including the Six-Day War in 1967 and the Yom Kippur War in 1973, further exacerbated tensions and territorial disputes. The occupation of the West Bank and Gaza Strip by Israel after the 1967 war became a focal point of contention and resistance.

Diplomatic efforts and peace negotiations have made sporadic progress, with significant developments such as the Oslo Accords (1993) and the Camp David Summit (2000). However, the core issues of borders, refugees, the status of Jerusalem, and security remain largely unresolved.

In the modern era, periodic outbreaks of violence, particularly during the First and Second Intifadas, have taken a heavy toll on both Israeli and Palestinian populations. The construction of Israeli settlements in the West Bank and the blockade of Gaza have further complicated efforts towards a peaceful resolution.

As of today, the conflict remains unresolved, with multiple proposed solutions, including a two-state or one-state solution, encountering significant challenges. The path to a lasting peace requires the commitment of all parties, international mediation, and addressing deeply rooted historical, religious, and political issues.

This summary provides a concise overview of the Israel-Palestine conflict, illustrating its intricate historical foundations and ongoing complexities that continue to impact the Middle East and global geopolitics needing a resolution to maintain peace and harmony in the region to protect life and liberties of the civil population.

Introduction

On October 7th, 2023¹¹ the Hamas-led Palestinian militant groups coordinated surprise offensive on Israel that started the ongoing armed conflict between Israel and Hamas. At least 5,000 rockets were fired from the Gaza Strip, which has been under the control of Hamas, were launched at Israel early in the morning as the attack got underway. Around 2,500 Palestinian insurgents broke through the border fence between Gaza and Israel and attacked residential areas and Israel Defence Force (IDF) military installations close to the Gaza Strip.

¹¹ 2023 Israel-Hamas war, available at https://en.wikipedia.org/wiki/2023_Israel%E2%80%93Hamas_war, last seen on 24/10/2023

A music festival in Re'im was where 260 Israelis, the majority of whom were civilians, at least 1,400 Israelis, including dozens of civilian hostages, including women, kids, and elderly people, were kidnapped and taken to the Gaza Strip. Israel started carrying out reprisal attacks before formally declaring war¹² on Hamas the following day.¹³

This event is certainly not the first time such an event has happened in Israel-Palestine region. There have been constant skirmishes and wars in this region. It will be critical to understand on the origin of the issue and why Jews have been persecuted. All the 3 religions i.e. Christianity, Judaism and Islam have a common patriarch Abraham and therefore they are called as Abrahamic religion. These 3 religions originated in Jerusalem which is the current place of conflict.

The researcher aims to delve into the history of this crisis that has led to the current situation, and also look at the various laws that have been enacted and its efficacy and what measure can be taken to reduce this conflagration between the Palestinians and the Israelis to maintain peace and harmony in the region.

Historical Context –

Around 1000 B.C., King David ruled the Jewish people¹⁴. His son Solomon build the first holy temple in Jerusalem, which became the Central place of workshop for Jews.¹⁵

The kingdom fell apart around 931 B.C, and the Jewish people split into 2 group: Israel in the North and Judah in the South

Sometime around 587 B.C., the Babylonians destroyed the first temple¹⁶ and sent many Jews into exile.

¹²<https://www.pbs.org/newshour/world/netanyahu-declares-war-on-hamas-after-deadly-surprise-attack-kills-dozens-of-israelis#:~:text=%E2%80%9CWe%20are%20at%20war%2C%E2%80%9D,the%20enemy%20has%20not%20know.%E2%80%9D>, last seen on 24/10/2023

¹³ 2023 Israel–Hamas war, available at https://en.wikipedia.org/wiki/2023_Israel%E2%80%93Hamas_war, last seen on 24/10/2023

¹⁴<https://www.history.com/topics/religion/judaism>, last seen on 24/10/2023

¹⁵Siddhant Agnihotri, History of Jews, StudyIQ, available at <https://www.youtube.com/watch?v=FMo-6Ut76Hw>, last seen on 23/10/2023

¹⁶[https://en.wikipedia.org/wiki/Siege_of_Jerusalem_\(587_BC\)#:~:text=On%20Tisha%20B'Av%2C%20July,kingdom%2C%20were%20destroyed%20as%20well](https://en.wikipedia.org/wiki/Siege_of_Jerusalem_(587_BC)#:~:text=On%20Tisha%20B'Av%2C%20July,kingdom%2C%20were%20destroyed%20as%20well), last available on 24/10/2023

Jewish holocaust has been the darkest chapter the history of mankind in the last 3000 years. Like the Kurds and the Marathas, the Jews have been the most intelligent people on earth and made significant contributions to mankind. They have been able to establish their supremacy wherever they travelled. It has been their super intelligence and the 'religious curse' i.e. as long as the world exists they will continue to be executed, that that has been the reason why they are persecuted. The reason for that is that the Jews have changed a lot of their religious scriptures, they have supported in the persecution of Jesus Christ. In the modern world persecuting any human being is a wrong and cannot be justified for it. If we look at the messengers starting with Adam the first messenger, Idris, Noah, Moses etc have been in existing. If we look at Islam, the last messenger has been Prophet Mohammed, and in Christianity Jesus Christ. Jews consider that their messenger has still not come, they have discarded Prophet Mohammed from Islam and also discarded Jesus Christ of Christianity as their messenger. These 3 religions have Abraham as their base and therefore called as Abrahamic religion.¹⁷

If we trace the origins of Israel, it traces back to Moses i.e. Musa (Islam), Moses(Christianity). Their main history event starts with King David i.e. Dawood (Islam). Wherever Jews went they set up their settlements. Land and water is what the jews like a lot. The 6 point star of David is seen on Israel's flag and are very obsessed with it.¹⁸

King David's son Solomon i.e. Suleman (Islam), Solomon (Christianity) built the first holy temple in Jerusalem. This kingdom fell apart in 931 B.C. due to a civil war leading to split in the kingdom i.e. Israel in North and Juda in South. In 587 B.C, the Babylonians king i.e. Nebuchadnezzar i.e. modern day Iraq, invaded present day Israel and destroyed the temple and established his kingdom there.¹⁹

A second temple was built in about 516 B.C. but it was eventually destroyed by the Romans in 70 A.D. The population of Judais had increased to 20 lakhs in 700 years. The rule of Babylonians wasn't good for them. They developed in the field of academics during this time. The Babylonians did not like the concept of expansion and opposed Babylonians in it and they were killed for opposing it.²⁰

The destruction of the second temple was significant because Jewish people no longer had a primary place to gather, so they shifted their focus to worshipping in local synagogues.

¹⁷Supra 5

¹⁸Supra 5

¹⁹Supra 5

²⁰Supra 5

Hellenistic Period (c 332 – 110 BCE)

King Philipps son, i.e. Alexander The Great invaded and the Persian empire lost to him. Persian empire ruled Israeli's then. With Alexander defeating them, Israel came under the rule of Alexander. With the death of Alexander kingdom gets distributed and this period is called the Hellenistic Period.²¹²²

Roman rule in the land of Israel (63 BCE -313 CE)

The Romans i.e. Governor Pompei i.e. Pontius Pilate, then took control of Israel and ruled it. This was the most important period where the Romans expanded Christianity and started persecuting the Israelis. It was during this time that Christianity took birth. Jesus Christ of Nazareth had started expanding Gods messages which the Jews did not like and they got Christ crucified. It was the 5th Governor of Romans who had ordered the crucifixion of Jesus Christ where Jews were involved in it as Jesus Christ was a threat to the Jewish religion as many Jews had started converting to Christianity. When Christianity started spreading then more Jews were getting persecuted. In 66 AD the Jews revolted on the Roman empire as a result the Romans destroyed entire Jerusalem and all other cities of Jews and were sold as slaves post which the birth of the Byzantine Period commences.²³²⁴

Byzantine Period (324 CE – 638 CE)

The Roman empire diminished resulting in the commencement of the Byzantine empire which was a very big empire. Christianity became the official religion during the Byzantine empire and started executing Jews. Theodosius created set of rules/decrees for the Jews. He destroyed the power of the Jews as Jews were the only threat to Christianity. Jews could not keep slaves, Jews and non-Jews could not marry together. They were like was Hitler created i.e. Nuremberg laws. Synagogues will not be created for worships. If the Jews went against this rule, their property would be confiscated and even up to the extent of beating/killing them or even sent in exile.²⁵²⁶

²¹https://en.wikipedia.org/wiki/Hellenistic_period, last seen on 24/10/2023

²² Supra 5

²³<https://www.jewishvirtuallibrary.org/roman-rule-63bce-313ce>, last seen on 24/10/2023

²⁴ Supra 5

²⁵<https://www.the-samaritans.net/the-byzantine-period-324-c-e-638-c-e/>, last seen on 24/10/2023

²⁶ Supra 5

Islamic Period (638 - 1099)

Jews got some respect during the Islamic period. Whenever Jews got some time, they grouped and reorganize themselves. During this time they set up banks and worked as a trader. They looked at all the trades between Europe and Arabs and earn a lot of money and started making their people aware and became self-sufficient. Islam was set up in 632 by the last prophet. 4 caliphates are set up. Islam then finished the Roman empire. Caliph Umar took Jerusalem, Egypt, Mesopotamia, Syria and Palestine under his control. Israel came under his control. This started the golden age of the Jews. During this period many Jews converted to Islam as well.²⁷²⁸

Jewish Golden Age in early Muslim Spain (711-1031)

Jews earned a lot during this period as they used to travel across different places. They weren't helped wherever they travelled as they were an intelligent class of society. Jews are extremely possessive of their religion as a result people had a lot of insecurity about them. The worst period was that of the Crusaders period.²⁹³⁰

Crusaders Period (1099 – 1260)

In the Crusaders period, whoever were involved in the crucifixion of Jesus Christ were getting executed. This was a time of series of religious wars. Catholic church had directed this in Western Asia and it went from 11th to the 17th Century. Muslims were also targeted during this period. Jews were massacred in the Rhine valley or forcefully converted or they committed suicide if they could not agree to it. So Jews joined hands with muslims and fought with the Crusaders. The Crusaders won and they burnt the Jews in Synagogues.³¹

²⁷History of Jerusalem during the Early Muslim period, available at https://en.wikipedia.org/wiki/History_of_Jerusalem_during_the_Early_Muslim_period#:~:text=The%20history%20of%20Jerusalem%20during,the%20First%20Crusade%20in%201099., last seen on 24/10/2023

²⁸ Supra 5

²⁹Golden age of Jewish culture in Spain, available at https://en.wikipedia.org/wiki/Golden_age_of_Jewish_culture_in_Spain#:~:text=The%20nature%20and%20length%20of,of%20Abd%20al%20Rahman%20III., last seen on 24/10/2023

³⁰ Supra 5

³¹ History of Jerusalem during the Kingdom of Jerusalem, available at https://en.wikipedia.org/wiki/History_of_Jerusalem_during_the_Kingdom_of_Jerusalem, last seen on 24/10/2023

Mamluk Period (1260-1517)

The Mamluks were ruling Israel during the period of 1260-1517 i.e. Turkish. So the Turks ruled Israel. This period was also not good for the Jews. The governor that was managing the current Egypt, Syria, Yemen also signed decrees to finish the Jews. Synagogues were destroyed during this time. Ultimately everything was under the Ottoman empire.³²

Ottoman Empire

During this time Haskalah movement stated i.e. the period of the Jewish Enlightenment which was an intellectual movement. Jews were reformed during this period. They were informed about the religion, areas related to studies and grow intellectually. This later on grew into the Zionist moment. Even in the Ottoman Empire they were persecuted. The Jews went to Russia and even there they had to face Pogroms in the Russian empire. Many Jews were persecuted in Russia.³³³⁴

Poland-Lithuania (With the partition of Poland in the late 18th century, the Jewish population was split between the Russian Empire, Austro-Hungary, and Prussia, which divided Poland for themselves)³⁵

The safest heaven for the Jews was in Poland-Lithuania. Migrant laws were good here and most than half of the Jews settled in Poland-Lithuania. Poland and Lithuania split in the 18th century which created a problem for the Jews as they were split with the separation.³⁶

19th and 20th century was dominated by the Ottoman empire. The Jews never had any homeland and kept wandering. Given the intelligence of the Jews many companies and countries invest in Israel. They have a very strong economic stronghold. It was in the 19th-20th century that the Jews started asking for a land for their own. During the same time there was French revolution in 1789. This was for the first time a view of democracy surfaced. When Napoleon Bonaparte ruled France in 1802 he asked the Jews to come and stay in his kingdom with a promise of a fair and equal treatment via his Napoleonic laws. It was during

³²<https://www.britannica.com/place/Egypt/The-Mamluk-and-Ottoman-periods-1250-1800>, last seen on 24/10/2023

³³ Ibid

³⁴ Supra 5

³⁵History of the Jews in Poland, available on https://en.wikipedia.org/wiki/History_of_the_Jews_in_Poland#:~:text=After%20the%20Partitions%20of%20Poland%20in%201795%20and%20the%20destruction,part%20of%20the%20German%20Empire), last seen on 24/10/2023

³⁶ Supra 5

this time that anti-semitism was developed i.e. discrimination against Jews. Hitler in World War II said that the Jews were the most inferior of the Aryan race. From 1890-1924 the Jews all over the world started migrating to America as this had been their safest haven. Today there are close to 4 crore Jews in America and Israel. There was the first Zionist Conference in 1897 where the British promised a homeland to the Jews. Theodor Harzi was the leader of the Zionist Congress who was demanding a Jewish nation.³⁷

In World War I i.e. 1914-1919, Germany and Ottoman Empire were together. In World War I the British promised many communicated of a separate state if they supported British in the war including India. Mahatma Gandhi then started supporting British however he did not get anything after the war, same situation was with the other communities like Kurds, Jews.³⁸

Balfour agreement³⁹ gets signed secretly in 1917 where it was stated that Jews will get their homeland. There was the secret Sykes-Picot Agreement also known as the Asia Minor Agreement, was a covert agreement between Great Britain, France, with the assent of imperial Russia to split up the Ottoman Empire during World War I. It was signed in May 1916. As a result of the agreement, various territories administered by France and Britain were created from Turkish-held Syria, Iraq, Lebanon, and Palestine. The final agreement bore the names of the chief negotiators from Britain and France, Sir Mark Sykes and François Georges-Picot, who started negotiations in November 1915. As the third member of the Triple Entente, Sergey Dimitriyevich Sazonov was also present. With this agreement Palestine went to the British and this stayed till World War II⁴⁰

During the same time the Jews started purchasing land in Palestine and started settling there building walls and regrouping all the Jews. Post World War II 1945, the United Nations split Palestine between Israel and Palestine with Jerusalem under UN control in 1947⁴¹. The structure pretty much remained the same until the 6 days war⁴² in 1967 with Egypt, Jordan

³⁷ Supra 5

³⁸ World War I and after, available at <https://www.britannica.com/place/Palestine/World-War-I-and-after>, last seen on 24/10/2023

³⁹ Balfour Declaration, available at https://en.wikipedia.org/wiki/Balfour_Declaration, last seen on 24/10/2023

⁴⁰ Britannica (18/09/2023) available at <https://www.britannica.com/event/Sykes-Picot-Agreement>, last seen on 24/10/2023

⁴¹ <https://embassies.gov.il/MFA/AboutIsrael/Maps/Pages/1947%20UN%20Partition%20Plan.aspx#:~:text=UNSCOP%20recommended%20the%20establishment%20of,to%2013%20with%2010%20abstentions.>, last seen on 24/10/2023

⁴² Six-Day War, available at https://en.wikipedia.org/wiki/Six-Day_War, last seen on 24/10/2023

and Syria where the Israeli forces defeated them with further shrinking of the Palestine land primarily the West Bank area. Infact the West Bank area was with Jordan while the Gaza Strip was with Egypt then and not with Palestine. Yasser Arafat was fighting his own community rights. Israel currently is trying to take complete control of Gaza Strip and also wanting to take complete control of West Bank. Arab countries practically aren't able to do anything.⁴³

Source – Mapsland.com⁴⁴

Israel says Jerusalem is its capital. For Muslims, Jerusalem is the 3rd holiest place as per Muslims Prophet Mohammed went to Heaven from Al-Aqsa Mosque. Crucifixion of Jesus has happened in Jerusalem. This is the same place of worship for the Jews as well. Jerusalem has not be formally communicated as the capital of Israel. It is currently Tel Aviv. In Jerusalem at the East the Muslims stay, the Jews stay in the West, and the holy shrines are at the center. In the Center is the Al-Aqsa mosque, King Solomon's second temple is also here. All these 3 Abrahamic religions exists here making the region very religious sensitive. Jews don't like world saying Tel Aviv is the capital. It thinks that Jerusalem is its capital which is under the UN control. The Israeli army with help from America wants to take complete control of Jerusalem.

Persecution of Jews

1066 Granada Massacre

On December 30, 1066, a Muslim mob stormed the Royal palace of Granda and killed more than 1000 Jewish Families. The group also kidnapped and crucified Joseph ibn Naghrela, the Jewish vizer to the Berber King⁴⁵⁴⁶

The first Crusade

In the first of the Crusades, a series of medieval holy wars involving Christians and Muslims, thousands of Jews were killed, and many were forced to convert to Christianity.⁴⁷⁴⁸

⁴³ Supra 5

⁴⁴ <https://www.mapsland.com/maps/asia/palestine/large-map-of-palestinian-loss-of-land-1947-to-present.jpg>, last seen on 24/10/2023

⁴⁵ 1066 Granada massacre, available at https://en.wikipedia.org/wiki/1066_Granada_massacre, last seen on 24/10/2023

⁴⁶ Supra 5

⁴⁷ First Crusade, available at https://en.wikipedia.org/wiki/First_Crusade, last seen on 24/10/2023

⁴⁸ Supra 5

The Spanish Expulsion –

In 1492, Spain's rulers issued a royal edict that declared all Jews who refused to convert to Christianity would be expelled from the country. Experts estimate about 200,000 people were ousted and tens of thousands died while trying to reach safety⁴⁹

Pogrom

A pogrom is a violent riot started with the intention of killing or ejecting a particular racial or religious group, usually the Jews. Among the notable pogroms that occurred in the Russian Empire were those in Odessa, Warsaw, Kishinev, Kiev, and Białystok (1906), as well as others. Following the fall of the Russian Empire in 1917, a number of pogroms took place in Eastern Europe amid power struggles, such as the pogroms in Lwów (1918) and Kiev (1919). The 1938 Kristallnacht pogrom was the most notable to take place in Nazi Germany. A minimum of ninety-one Jews perished, thirty thousand were detained and later imprisoned in concentration camps, a thousand synagogues were set on fire, and more than seven thousand Jewish-owned businesses were destroyed or impaired. Notable pogroms during World War II included the Jedwabne pogrom in German-occupied Poland, the 1941 Farhud pogrom in Iraq, and the July 1941 Iași pogrom in Romania, which claimed over 13,200 Jewish lives. Three pogroms that occurred after World War II were the ones in 1945 in Tripoli, 1946 in Kielce, and 1947 in Aleppo.⁵¹

The Holocaust

The Holocaust was the World War II-era mass murder of Jews in Europe. Six million Jews, or roughly two-thirds of the Jewish population in Europe, were systematically murdered by Nazi Germany and its allies between 1941 and 1945 while living under German occupation. Mass shootings and the use of poison gas were the main methods used to commit the murders in the extermination camps, particularly Auschwitz-Birkenau, Treblinka, Belzec, Sobibor, and Chemno in occupied Poland. In the Holocaust, the most infamous of modern-day atrocities, the Nazis murdered more than 6 million Jews through the concentration camps by

⁴⁹ Expulsion of Jews from Spain, available at https://en.wikipedia.org/wiki/Expulsion_of_Jews_from_Spain, last seen on 24/10/2023

⁵⁰ Supra 5

⁵¹ Pogrom, available at <https://en.wikipedia.org/wiki/Pogrom>, last seen on 24/10/2023

Nazis in gas chambers. Therefore the Jews now want to make themselves so powerful that the world don't execute them further.⁵²

Legal View into the never-end problem between Palestine and Israel and approach of Judicial bodies –

Nakba event in Palestine i.e. the Independence of Israel in 1948 –

The Nakba, also known as the Great Mishap and literally translating to "catastrophe" in Arabic, is the name given to the events surrounding Israel's declaration of independence in 1948, the Deir Yassin massacre, and the subsequent forced eviction of over 7,00,000 Palestinian Arabs. The first Arab-Israeli war⁵³ began in 1948 as a result of this exodus, which the Arab world saw as the ideal scenario for the *casus belli*⁵⁴. As a result of armistice agreements between Israel and its neighbors Jordan, Egypt, Syria, and Lebanon, the war ended in 1949, and the green line was established. At the time, the expulsion of more than half of the Arab residents of League of Nations-mandated Mandatory Palestine due to war caused a severe refugee crisis in the neighboring states (Morris 2006).⁵⁵

Since the Six-Day war⁵⁶, Israel has faced the harshest conflicts within its own borders, despite its ongoing conflicts with the Arab world. Israel fiercely retaliated during this conflict in 1967, seizing territory from all of its Arab neighbors well beyond the Armistice lines⁵⁷, and has kept some of it ever since. The Gaza Strip and Sinai Peninsula from Egypt (traded for peace following the Yom Kippur war), the West Bank from Transjordan, and the Golan Heights from Syria (two-thirds still withheld) were the areas occupied.⁵⁸

⁵² The Holocaust, available at https://en.wikipedia.org/wiki/The_Holocaust, last seen on 24/10/2023

⁵³ https://en.wikipedia.org/wiki/1948_Arab%E2%80%93Israeli_War, last seen on 24/10/2023

⁵⁴ https://en.wikipedia.org/wiki/Casus_belli, last seen on 24/10/2023

⁵⁵ Adv. Mehtaab Singh Sandhu and Adv. Parikshit Goyal, The Perpetual Problem of Palestine–Israel: A Legal Analysis, Vol. 56, Issue No. 33, (14/08/2021) available at <https://www.epw.in/engage/article/perpetual-problem-palestine-israel-legal-analysis>, last seen on 24/10/2023

⁵⁶ Six-Day War, Ed, Encyclopaedia Britannica, <https://www.britannica.com/event/Six-Day-War>, last seen on 24/10/2023

⁵⁷ 1949: Armistice Agreement, available at https://en.wikipedia.org/wiki/1949_Armistice_Agreements, last seen on 24/10/2023

⁵⁸ Supra 45

A lot of people refer to Israel's occupation of territory as "belligerent," particularly when viewed in the context of international and humanitarian law (Kretzmer 2012). It is crucial to comprehend the conflict and subsequent events from a legal perspective as a result.⁵⁹

Israel and International Law applicability

Occupation according to Article 42 of the 1907 Hague Regulations (HR) states that a "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised."⁶⁰ According to their common Article 2, the four Geneva Conventions of 1949 apply to any territory occupied during international hostilities. They also apply in situations where the occupation of state territory meets with no armed resistance.⁶¹ Definition of occupation is that is the effective control by the power over a territory which it has no sovereign title without violating that territory's sovereignty. Since a foreign entity without sovereignty over it performs the administrative functions of a nation, regulation is necessary because the situation always suggests a potential pushback. The relationship between the occupied population and the occupant power is governed by international law.⁶²

The first source of law of occupation is customary international law, which is defined as "general practice recognized as law" in Article 38(1)(b) of the Statute of the International Court of Justice.⁶³ All states must abide by it even though it is unwritten. The Hague Regulations, which emerged from the Hague Conventions held in 1899 and 1907⁶⁴, come in second. The foundation of the law on belligerent occupation was laid out in Hague Regulations 42 through 56. The emphasis is primarily on property rights rather than providing greater protection for the life and liberty of people in occupied territories. Third, the Fourth Geneva Convention (1949) (GCIV) included provisions for the protection of civilians and sections addressing how aliens are treated by belligerent powers during armed

⁵⁹Supra 45

⁶⁰ Occupation, 1907 Hague Regulations ,

HR)<https://www.icrc.org/en/doc/resources/documents/misc/634kfc.htm#:~:text=What%20is%20occupation%3F,established%20and%20can%20be%20exercised.%20%22>, last seen on 24/10/2023

⁶¹ Ibid

⁶² Supra 45

⁶³ Statute of the International Court of Justice, Pg 26, available at https://legal.un.org/avl/pdf/ha/sici/ici_statute_e.pdf, last seen on 24/10/2023

⁶⁴ Hague Conventions of 1899 and 1907, available at <https://guide-humanitarian-law.org/content/article/3/the-hague-conventions-of-1899-and-1907/#:~:text=These%20treaties%20are%20known%20as,belligerents%20must%20follow%20during%20hostilities.>, last seen on 24/10/2023

conflict. Article 43, paragraph 6, of the GCIV states that "*no occupying power shall deport or transfer parts of its civilian population into the occupied territory.*"⁶⁵ Israel was in violation of this clause. Israel is in clear violation of the GCIV due to the de facto annexation of the land behind the fences and the construction of Israeli settlements on Palestinian territory. Last but not least, the GCIV's annexed Additional Protocol to the Protection of Victims of International Armed Conflicts, 1977 (Protocol 1), provides safeguards for those who have been detained, such as repatriation or re-establishment. According to international law, the population that is occupying a territory is granted sovereignty there based on the principle of self-determination. Public order should be managed by the occupying power, and occupied people's civil lives cannot be disregarded. An occupation can never be perpetual or unending. According to these standards, the Israeli occupation fails to meet the requirements of international law (Smuha 2014).⁶⁷

Israel agreed to leave the Sinai Peninsula as part of the peace treaty it signed with Egypt in 1979⁶⁸, but no deal was reached regarding the Gaza Strip. Even though Israel unilaterally left the Gaza Strip in 2005 in accordance with its "*Disengagement Plan Implementation Law*," the overall occupation continued, and new fighting became more intense after Hamas emerged in the Gaza Strip. In an odd move, Israel claimed the right to re-enter the Gaza Strip whenever a military need arose. With the signing of the Oslo Accords in 1993⁶⁹, which included rights and obligations for both parties and gave the Palestinians more autonomy through an interim Palestinian government in Gaza and Jericho, a significant development appeared to have been made. However, due to unresolved disagreements over Jerusalem and the withdrawal of Israeli troops, the peace goals were not met, and after 2000, violent clashes in the region increased significantly (United Nations 2005).⁷⁰

⁶⁵<https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/#:~:text=Article%2049%20of%20the%20Fourth,protected%20persons%20from%20occupied%20territory%E2%80%9D.>, last seen on 24/10/2023

⁶⁶ International Humanitarian Law, Article 49 - Deportations, transfers, evacuations, available for <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49>, last seen on 24/10/2023

⁶⁷Supra 45

⁶⁸ Egypt-Israel Peace Treaty 1979, available at https://en.wikipedia.org/wiki/Egypt%E2%80%93Israel_peace_treaty, last seen on 24/10/2023

⁶⁹The Oslo Accords and the Arab-Israeli Peace Process, (1993), available at <https://history.state.gov/milestones/1993-2000/oslo#:~:text=On%20September%2013%2C%201993%2C%20Israeli,%2C%E2%80%9D%20at%20the%20White%20House>, last seen on 24/10/2023

⁷⁰Supra 45

President Clinton, Yitzhak Rabin, and Yasir Arafat at the signing ceremony for the Oslo Accord, September 13, 1993. (William J. Clinton Presidential Library)⁷¹

Israeli Supreme Court, United Nations, and International Court of Justice approach to this issue

The Israeli Supreme Court has undoubtedly influenced the legal discussions surrounding Israel's occupation of Gaza and the West Bank since 1967, taking into account thousands of petitions concerning actions by the Israeli authorities. In *Tzemel v. Minister of Defense* (1983), the court stated that its jurisdiction comes from its statutory authority and that it has the authority to issue orders to all bodies that carry out public duties in accordance with the law, which includes acts and decisions of governmental authorities wherever they may occur.⁷²

The Court also provided an interpretation of some key principles of international law in relation to the conflict. Although Israel has not ratified Additional Protocol 1, it acknowledged that several of its provisions uphold Customary International Law in the Targeted Killings case (2007) and the Fuel and Electricity case (2008). Using the broadest interpretation of Article 52 of the Hague Regulations, the Court held in the Beth El case (1978)⁷³ involving the requisition of private land for the strategically located settlements that the occupying power had a duty to maintain public order and security in the occupied territory even when dealing with threats coming from that territory towards the occupied territory. But creating strategically positioned civilian settlements to aid in local defense was seen as a military necessity, justifying the seizure of private property.⁷⁴

The German public law threefold proportionality test was recently modified by the Israeli Supreme Court. The three issues are whether there is a rational connection between the administrative act and its legislative purpose, if it is the least intrusive way to accomplish that purpose, and if the benefit outweighs the harm caused to other people's interests. In the Beit

⁷¹ Supra 59

⁷² Supra 45

⁷³ Beit El, (1978) available at https://en.wikipedia.org/wiki/Beit_El, last seen on 24/10/2023

⁷⁴ Supra 7

Sourik case (2004)⁷⁵, the Court even declared that this standard had become the norm for both domestic and international law, particularly with regard to belligerent occupation. It is uncommon for states to recognize their control over territories as "occupied," but Israel does so. The Supreme Court has so far refrained from making any significant rulings regarding settlements, despite Israel's recognition that the rules of belligerent occupation apply to its contested territories.⁷⁶

In 2003, the UN General Assembly asked the International Court of Justice (ICJ) for an advisory opinion regarding the legal ramifications of the 26-foot-tall and 708-kilometer-long wall that Israel had constructed in the occupied territory surrounding East Jerusalem. This request was made in accordance with Article 96 of the UN Charter. The International Court of Justice (ICJ) found that despite Israel's claims that the wall/fence was being built for security purposes, it was unlawful under international law. Israel was accused of specifically breaking the GCIV, the Hague Regulations, and the UN's state responsibility articles. Israel's claim of self-defense was rejected on the grounds that it had actually occupied the Palestinian territories. According to the United Nations, this occupation violates the UN Charter and several resolutions that forbid territorial annexation through force and interference with territorial sovereignty, depriving the Palestinian people of their right to self-determination (United Nations 2004).⁷⁷

The International Court of Justice (ICJ) stated in 2002 that the term "necessity" cannot be used by Israel to justify the wall or the occupation or to absolve the state from the wrongdoing done in violation of international law (Tams 2006). This was in reference to the articles on Responsibility of States for Internationally Wrongful Acts, 2001.⁷⁸

To Be or Not to Be: An Existential Dilemma

The Montevideo criteria must be satisfied for a state to be recognized under Customary International Law, which governs the establishment of new states. Aside from the government's independent control over its territory and people, it requires a government, a

⁷⁵Beit Sourik Village Council v. The Government of Israel et. al., HCJ 2056/04, Supreme Court, 20 June 2004 available at <https://ihl-databases.icrc.org/en/national-practice/beit-sourik-village-council-v-government-israel-et-al-hcj-205604-supreme-court-20>, last seen on 24/10/2023

⁷⁶Supra 7

⁷⁷Supra 7

⁷⁸Supra 7

clearly defined territory, a stable population, and the ability to interact with other states (Davids 2012). 138 of the 193 UN General Assembly members voted in 2009 to upgrade Palestine's legal status to that of a "*observer state*" as opposed to a "*observer entity*." Palestine has a right to its rights under international law if it gains statehood. In the event of an external attack, the right to self-defense will be recognized as legitimate, and it will have access to international tribunals like the International Court of Justice and the International Criminal Court. Even though the UN Security Council continues to oppose the move for an official member state, it is possible that it may meet the requirements for statehood after being given the status of "*observer state*" by the UN General Assembly. A sign that more and more nations want to bring about a lasting peace in the area and support the Palestinian people is India's recent UNSC statement in support of "*The Just Palestinian Cause*" (Lakshman 2021).⁷⁹⁸⁰

Divided International views on ongoing Israel-Hamas War 2023

1. International leaders, including those from Argentina, India⁸¹, the United States, and European nations, denounced the Hamas attacks, showed solidarity with Israel, asserted that Israel has a right to defend itself from armed attacks, and labeled the organization's methods as terrorism.
2. While most Latin American governments denounced Hamas's attacks in Israel, some, like Colombia, expressed support for the Palestinians⁸²
3. Following its initial announcement that it would examine its assistance to the Palestinian Authority to ensure that it was not financing terrorism, the European Union announced that it would triple its immediate humanitarian assistance to Gaza.⁸³
4. Hamas' attacks on Israel on Saturday were denounced by US President Joe Biden as "an act of sheer evil."⁸⁴

⁷⁹Supra 7

⁸⁰ Time of India, (17/05/2021), available at <https://timesofindia.indiatimes.com/india/india-reiterates-support-to-just-palestinian-cause/articleshow/82695418.cms>, last seen on 24/10/2023

⁸¹<https://www.telegraphindia.com/amp/world/india-sides-with-west-condemns-terrorist-attacks-in-israel-by-palestines-hamas-group/cid/1971848>, last seen on 24/10/2023

⁸²Gabriel Gonzalez Zorrilla, 11/10/2023, available at <https://www.dw.com/en/latin-american-leaders-react-to-hamas-terror-attacks-on-israel/a-67069815>, last seen on 24/10/2023

⁸³ Reuters, (14/10/2023), available at <https://www.reuters.com/world/middle-east/eu-triples-immediate-humanitarian-aid-gaza-2023-10-14/>, last seen on 24/10/2023

⁸⁴ CNN, (10/10/2023), available at https://edition.cnn.com/middleeast/live-news/israel-hamas-war-gaza-10-10-23/h_3e2ffb7d680ee079e1249b4a1560a4d9, last seen on 24/10/2023

5. In response to the Hamas attack, Austria⁸⁵, Germany,⁸⁶ and Sweden suspended development assistance to Palestine and declared that they would review other initiatives and aid provided.
6. In a statement, the World Uyghur Congress denounced “horrendous attacks by Hamas against Israeli civilians.”⁸⁷
7. In a public statement, the president of Croatia, Zoran Milanovic, claimed that Israel had lost his support because of its atrocities against humanity and “retaliatory actions” in Gaza.⁸⁸
8. Yolanda Dáz, the deputy prime minister of Spain, urged the international community to pressure Israel to end what she described as a massacre in Gaza.⁸⁹
9. Different responses from African governments revealed disagreement over the cause of the conflict and who should be held accountable. However, the majority of them expressed grief and grave concerns about the outbreak of violence, denouncing attacks on innocent bystanders and calling for restraint and de-escalation to stop further Israeli and Palestinian casualties.⁹⁰
10. Many nations held protests in support of the Palestinian and Israeli peoples, respectively. In response to the attack, Argentina, Canada, Germany, the United Kingdom, Spain, France, Italy, and Uruguay said they would tighten security at sites connected to Jews.⁹¹
11. Following the conflict, French authorities reported more than 100 antisemitic incidents throughout the nation. All pro-Palestine protests are now prohibited in France due to concerns for public safety. Despite the ban, there were nearly 3,000 pro-Palestinian protesters at Place de la République in Paris, where police used water cannons to disperse the crowd and make ten arrests.⁹²

⁸⁵Austria Suspends Aid For Palestinians After Hamas Attack, (09/10/2023), available at <https://www.barrons.com/news/austria-suspends-aid-for-palestinians-after-hamas-attack-8ea1a10d>, last seen on 24/10/2023

⁸⁶86

⁸⁷<https://www.uyghurcongress.org/en/statement-wuc-condemns-hamas-attacks-on-civilians-and-stands-with-all-those-suffering-from-violence/>, last seen on 24/10/2023

⁸⁸<https://www.politico.eu/article/israel-has-lost-my-sympathy-says-croatian-president/>, last seen on 24/10/2023

⁸⁹<https://www.aa.com.tr/en/europe/spain-s-deputy-pm-urges-europe-to-help-stop-massacre-in-gaza/3018907>, last seen on 24/10/2023

⁹⁰<https://abcnews.go.com/International/International/african-leaders-react-israel-declares-war-amas/story?id=103885919>, last seen on 24/10/2023

⁹¹<https://www.politico.eu/article/european-countries-ramp-up-security-for-jewish-community-in-wake-of-hamas-attacks-on-israel/>, last seen on 24/10/2023

⁹²<https://www.bbc.com/news/world-europe-67088547>, last seen on 24/10/2023

12. London's streets were filled with rallies and protests by supporters of both Israel and Palestine.⁹³
13. **Arab League**– Ahmed Aboul Gheit, the head of the Arab League, called for “an immediate end to military operations in Gaza” and “the cycle of armed conflict between the two sides.”⁹⁴
14. **Egypt** – In a statement from the foreign ministry that was carried by the state news agency, Egypt warned of “grave consequences” from an increase in hostilities between Israel and the Palestinians.⁹⁵
15. **Jordan** – Foreign Minister Ayman Safadi expressed concern about the “volatility” of the situation, “particularly in light of what cities and areas of the West Bank are witnessing of Israeli attacks and violations against the Palestinian people”. The number of fatalities in the occupied West Bank has risen to an unprecedented level. The first two nations in the area to reach a peace agreement with Israel were Jordan and Egypt.⁹⁶
16. **Hezbollah**– Hezbollah, a Lebanese armed group, claimed in a statement that it was in “direct contact with the leadership of the Palestinian resistance” and that it was closely monitoring the situation in Gaza. The statement added that it was a “decisive response to Israel’s continued occupation and a message to those seeking normalization with Israel” in response to events involving Gaza fighters who launched a barrage of rockets into Israel.⁹⁷
17. **Iran** – Iran reportedly supported the Palestinian attack, according to an adviser to Supreme Leader Ali Hosseini Khamenei, the semi-official ISNA news site reported. It quoted adviser Rahim Safavi as saying, “We congratulate the Palestinian fighters.”“Until Palestine and Jerusalem are freed, we will support the Palestinian fighters.” According to Iran’s foreign ministry, Hamas attacks were evidence of the Palestinians’ growing confidence in the face of Israeli occupation.⁹⁸
18. **Kuwait** condemned Israel for what it called its “blatant attacks” and expressed its “grave concern” about recent developments involving Israel and the Palestinians. The

⁹³<https://www.independent.co.uk/news/uk/crime/london-protests-palestine-israel-hamas-b2426958.html>, last seen on 24/10/2023

⁹⁴<https://www.aljazeera.com/news/2023/10/7/we-are-at-war-reactions-to-palestinian-hamas-surprise-attack-in-israel>, last seen on 24/10/2023

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Ibid

⁹⁸ Ibid

foreign ministry urged the international community to “stop the provocative practices by the occupation” and the “policy of expanding settlements” in a statement.⁹⁹

19. **Qatar**– In a statement, the foreign ministry of Qatar claimed that Israel alone was to blame for the ongoing escalation of hostilities between Israelis and Palestinians. It urged extreme restraint on both sides and urged the international community to stop Israel from escalating its war against Palestinian civilians in Gaza by using these events as justification.

20. After-effects of the ongoing Israel-Hamas War 2023

21.

22. Due to a perceived lack of leadership on the matter following the start of the war, Israeli citizens’ disapproval of Israeli Prime Minister Benjamin Netanyahu and the government increased, and calls for Netanyahu’s resignation increased.¹⁰⁰

23.

24. The United States was actively collaborating with Qatar to secure the release of hostages, which had implications for nations with strong ties to Hamas like Turkey and Qatar.¹⁰¹

25.

26. Hamas’s actions had a significant impact on diplomatic efforts and might have prevented an agreement between Saudi Arabia and Israel that was mediated by the US.¹⁰² The New York Times observed that worries about the escalation of the situation and Palestinian rights made the prospects of normalization between Israel and Saudi Arabia seem less likely. There were also rumors that Iran might have been attempting to sabotage the relationship between Saudi Arabia and Israel. On October 14th, Saudi Arabia put a halt to discussions about potential rapprochement with Israel.¹⁰³

27.

28. The possibility of the conflict spreading throughout the region and even escalating

⁹⁹ Ibid

¹⁰⁰ <https://www.theguardian.com/world/2023/oct/22/netanyahu-told-to-quit-now-as-ex-leaders-pin-blame-on-dysfunctional-government>, last seen on 24/10/2023

¹⁰¹ <https://dohanews.co/biden-says-us-working-with-qatar-to-release-israeli-civilians-reports/>, last seen on 24/10/2023

¹⁰² <https://www.wsj.com/world/middle-east/israel-violence-jeopardizes-bidens-middle-east-agenda-8708165a>, last seen on 24/10/2023

¹⁰³ <https://www.france24.com/en/middle-east/20231014-saudi-arabia-pauses-normalisation-talks-with-israel-amid-ongoing-war-with-hamas>, last seen on 24/10/2023

intowar between Israel and Iran has been discussed by a number of leaders and experts. Iranian officials have stated their willingness to get involved if Israel continues military operations or launches a ground invasion against Gaza.¹⁰⁴

29.

30. While Russia portrayed it as a failure of Western policy, Ukraine expressed concerns that Russia might use the Israel-Hamas conflict to weaken international support for Ukraine. Vladimir Putin, the president of Russia, described the conflict as an illustration of the failure of American policy in the Middle East and predicted it would have an impact on Western support for Ukraine, possibly having an impact on Russia's relations with Israel.¹⁰⁵

31.

32. In the event that Israel manages to destroy Hamas' ability to rule Gaza, the PA will not be able to retake power in Gaza on the back of an Israeli tank. This affects the future course of events in Gaza. The PA's ability to uphold security and authority in the West Bank, where demonstrations demanding a change in leadership have already begun, will be tested even before there is a ground invasion. Extremist settlers have increased their terrorist attacks on Palestinian communities in recent months, making this problem even more difficult. All of these events, along with the Israeli army's ongoing attacks on Jenin and Nablus in particular, could cause the PA to lose control and create an unstable situation in the West Bank.¹⁰⁶

33.

34. There will be consequences from this further strain on Israel's relations with Egypt and Jordan, the "original peacemakers" with Israel and the Arab nations with whom the Palestinian issue resonates the most. Israel was forced to remove its ambassadors from Cairo and Amman. As evidenced by the Aqaba-Sharm El Sheikh process led by the United States in 2023, this triangle of relations has served as the focal point of efforts toward Israeli-Palestinian de-escalation. A decline in these ties could have an effect on regional stability as well as the likelihood of the war coming to an end and the release of hostages and POWs, both of which Egypt has historically been a key

¹⁰⁴ Financial Times, available at <https://www.ft.com/content/8376c8bc-4ce4-433b-912c-337bf2ca66e6>, last seen on 24/10/2023

¹⁰⁵ Anton Troianovski, Putin Offers Muted Response to Attack on Israel. That Speaks Volumes. (10/10/2023) New York Times, available at <https://www.nytimes.com/2023/10/10/world/europe/israel-hamas-russia-putin.html>, last seen on 24/10/2023

¹⁰⁶ <https://www.usip.org/publications/2023/10/how-israel-hamas-war-impacts-regional-relations>, last seen on 29/10/2023

player in achieving. Nonetheless, Qatar was successful in getting Hamas to free two American hostages, and it has stated that it will keep trying to free more hostages.¹⁰⁷

35.

36. The US found itself looking extremely isolated after opposing UN resolution on Gaza truce as only 12 nations joined Washington and Israel in opposing a motion at the UN general assembly calling for a sustained humanitarian truce leading to a cessation of hostilities,¹⁰⁸

Conclusion

In alignment with the international law, Israel must be held to the same standards as other states, as it is the occupying power. It can no longer escape its legal responsibilities and must abide by international law. According to international humanitarian law, the international community must work to protect the Palestinian people. Children on both sides were killed by flying rockets, and they may have permanently scarred a generation. One of the Ten Commandments that Moses received at Mount Sinai, according to the Book of Exodus in the Torah, was “*thy shalt not kill.*”¹⁰⁹ There would be a lot more kids playing in the Promised Land right now if the devoted would just pause and pay attention to those words.¹¹⁰

It can certainly be seen that the muslim axis what the US calls it as “axis of evil’ has been in support of Palestine and the Christian countries in support of Israel pointing to the religious bend of these nations and a bi-polar world created on the basis of religion. India certainly has taken a balanced approach to it i.e. supporting Israel as it is against terrorism and protecting the civilian rights and their life in Palestine by sending food and medical aid to the Gaza strip.

The solution to this problem can largely been seen in adopting a one-state solution or a two-state solution

¹⁰⁷ Ibid

¹⁰⁸ <https://www.theguardian.com/world/2023/oct/28/gaza-israel-truce-un-resolution-us>, last seen on 29/10/2023

¹⁰⁹ Torah, Ten Commandments, available at https://en.wikipedia.org/wiki/Thou_shalt_not_kill, last seen on 24/10/2023

¹¹⁰Supra 7

One-State Solution– This, also known as the “binational state,” would establish a single democratic, secular nation in which Palestinian Arabs and Israeli Jews would coexist as full citizens with equal rights. People who favor a one-state solution typically believe that creating two states for Israelis and Palestinians would be too difficult. The populations are too intertwined, and it is too difficult to come to an agreement on issues like borders, Jerusalem, and Palestinian refugees (yes, we’ll explain why these issues are difficult in a moment).¹¹¹

A quarter of a century after the Oslo Accords, the two-state solution is in shambles, according to Avraham Burg, a once prominent Israeli supporter of the two-state solution who later favored a one-state solution. No peace process exists. There isn’t much hope left. We still have to figure out a way to allow Israelis and Palestinians to coexist with equal rights across a single international border. A progressive one-state solution is required now.¹¹²

However, many Israelis have a negative opinion of a one-state solution because they believe it would undermine Israel’s security and destroy the state’s Jewish identity. The only Jewish state in the world would be effectively eliminated if citizenship were granted to all Palestinians, who would reduce Jews to a minority. Additionally, a one-state solution still has its own logistical issues, not the least of which is how to maintain peace between two populations that have been at war for more than 50 years.¹¹³

Which is why a lot of people prefer the...

Two-State Solution

This is one of the most widely discussed solutions, which envisions the establishment of two separate states, Israel and Palestine, living side by side within recognized borders. The borders and the status of Jerusalem would need to be negotiated. Under this proposal, Israel and Palestine would each have its own state. The Palestinian state would have a majority of Muslim Arabs, and the state of Israel would continue to be majority Jewish, remaining a Jewish state.¹¹⁴

¹¹¹<https://www.heyalma.com/israel-guide/what-are-the-proposed-solutions-to-the-israeli-palestinian-conflict/>, last seen on 24/10/2023

¹¹² Ibid

¹¹³ Ibid

¹¹⁴ Ibid

Confederation: In essence, consider Palestine and Israel as a scaled-down version of the European Union. Although each side would have its own government, they would cooperate on matters relating to resources, security, and the economy. Although there would be no restrictions on travel or residence between the two states, each side's residents could only cast ballots in their own elections.¹¹⁵

Autonomy-Plus: Right-wing Israeli politician Naftali Bennett calls for "upgrading" Palestinian autonomy in the West Bank in the areas already under Palestinian control. This is known as autonomy-plus. The Palestinians would be able to conduct their own elections and maintain their own institutions of higher learning and public services, but they would not be able to manage their own borders or field an army. Additionally, Israel would annexe existing West Bank territory. Palestinians believe that this agreement is unworkable.¹¹⁶

Federation: Under this version of the one-state solution, the entire West Bank is subject to Israeli law, and all Palestinians living there are granted full citizenship and the right to vote. To maintain a Jewish political majority, the resulting nation would be split up into smaller provinces or cantons (imagine gerrymandering).¹¹⁷

Expulsion: Some on the extreme right of Israel have argued that the only viable solution is to "transfer" or expel all Palestinians from the West Bank. Most Jews and Arabs find the idea repulsive and view it as nothing less than ethnic cleansing, even if it could be carried out without violence.¹¹⁸

It's important to note that the Israel-Palestine conflict is highly sensitive and deeply rooted, and there are strong differences of opinion among various countries. Achieving a lasting solution would require the commitment of both Israel and Palestine, along with UN, international support and diplomacy. Successful negotiation and the resolution of core issues such as borders, refugees, and the status of Jerusalem would be essential. Furthermore, any proposed solution would need to address the historical, cultural, and religious aspects of the conflict. Ultimately, the path to a resolution is uncertain and

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Ibid

¹¹⁸ Ibid

would require the willingness of all parties to engage in dialogue, compromise, and reconciliation.

Critical Analysis of Medical Informed consent legally

By Kshama Khandode

Abstract

The element of Medical Informed consent is one of the critical issues in medical treatment. The patient has a legal right to autonomy and self determination enshrined within Article 21 of the Indian Constitution¹¹⁹He can refuse treatment except in an emergency situation where the doctor need not get consent for treatment. The consent obtained should be legally valid. A doctor who treats without valid consent will be liable under the tort and criminal laws. The law presumes the doctor to be in a dominating position, hence the consent should be obtained after providing all the necessary information.

Keywords: Autonomy, prior informed consent, valid consent

¹. Introduction:-

The element of consent is one of the critical issues in the area of medical treatment today. It is well known that the patient must give valid consent to medical treatment; and it is his prerogative to refuse treatment even if the said treatment will save his or her life. No doubt this raises many ethical debates and falls at the heart of medical law today. The earliest expression of this fundamental principle, based on autonomy, is found in the Nuremberg Code of 1947¹²⁰. The Nuremberg Code was adopted immediately after World War II in response to medical and experimental atrocities committed by the German Nazi regime. The code makes it mandatory to obtain voluntary and informed consent of human subjects. Similarly, the Declaration of Helsinki¹²¹ adopted by the World Medical Association in 1964 emphasizes the importance of obtaining freely given informed consent for medical research by adequately informing the subjects of the aims, methods, anticipated benefits, potential hazards, and discomforts that the study may entail. Several international conventions and declarations have similarly ratified the importance of obtaining consent from patients before testing and treatment. The present paper examines the entire gamut of issues pertaining to consent from the point of view of the legal environment as it exists in India today. The circle

¹¹⁹<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779959/>

¹²⁰https://en.wikipedia.org/wiki/Nuremberg_Code

¹²¹<https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>

of legal development in the area (i.e., consent) appears to be almost complete when the apex court in India recently ruled that, it is not just the 'consent' or 'informed consent' (as it is known worldwide) but it shall also be 'prior informed consent' generally barring some specific cases of emergency. This places a medical professional in a tremendous dilemma. Hence, it is time to revisit the area of 'consent and medical treatment' to understand the sensitive and underpinning elements

THE LEGAL BASIS OF CONSENT

Consent is perhaps the only principle that runs through all aspects of health care provisions today. It also represents the legal and ethical expression of the basic right to have one's autonomy and self-determination. If a medical practitioner attempts to treat a person without valid consent, then he will be liable under both tort and criminal law. Tort is a civil wrong for which the aggrieved party may seek compensation from the wrong doer. The consequences would be payment of compensation (in civil) and imprisonment (in criminal) To commence, the patient may sue the medical practitioner in tort for trespass to person. Alternatively, the health professional may be sued for negligence.¹²² In certain extreme cases, there is a theoretical possibility of criminal prosecution for assault or battery. The traditional definition of battery is an act that directly and either intentionally or negligently causes some physical contact with another person without that person's consent. If a person has consented to contact expressly or by implication, then there is no battery. It is a rare case in which a doctor would be held liable for criminal breach, unless there is gross disrespect to the patient's bodily autonomy, for instance, if a patient's organs are taken without his consent. In tort law, usage of force against any human body, without proper justification, is actionable irrespective of the quantum of force. If the medical practitioner attempts to treat a patient without obtaining proper consent, he will be held guilty under tort law. Consent for treatment may be expressed or implied. The patient entering the consultation chambers by his own volition may be considered to have given consent for a clinical diagnosis to be carried out. Consent may be inferred from the general submission by a patient to orders given by a doctor during clinical diagnosis. This is an excellent example of implied consent. During the clinical examination, there might arise the need for an intimate examination of the patient, such as a vaginal examination. For such an examination, the medical practitioner must ideally obtain another consent by asking the patient's permission orally. Furthermore, if there is a need to undergo an invasive examination, such as an incision or drawing of samples of body fluids, a written consent of the patient is ideally required. Often medical practitioners ask for precise prescriptions for the situations when written consent is needed. It is interesting to note that what law demands is mere consent and not written consent and does not prescribe such requirement on a mandatory basis. In fact, the medical practice itself determines the need for written consent. Ideally, where the patient is subjected to anesthesia (either local or general) or where the patient is subjected to severe pain during administration of the treatment, a written consent would be helpful. There is no mandate

that a doctor should always obtain written consent and failure of which would hold him liable. However, if there is written consent, the medical practitioner would have greater ease in proving consent in case of litigation. To standardize the practice, the Medical Council of

¹²²<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779959/>

India (MCI) has laid down guidelines¹²³ that are issued as regulations in which consent is required to be taken in writing before performing an operation. The MCI guidelines are applicable to operations and do not cover other treatments. For other treatments, the following may be noted as general guidelines:

1. For routine types of treatment, implied consent would suffice
2. For detailed types of treatment, ideally express oral consent may be needed
3. For complex types of treatment, written express consent is required

CAPACITY AND INFORMATION WHILE SEEKING CONSENT

There are two more additional aspects to be borne in mind: first, valid consent can be obtained only from a patient who is competent to consent and secondly, such consent must also be informed consent. To be competent to give a legally effective consent, the patient must be endowed with the ability to weigh the risks and benefits of the treatment that is being proposed to him. The law presumes that such an ability is generally acquired with the attainment of the age of maturity. A person who has attained the competent age and who has sound mind can give valid consent to the medical practitioner for any treatment. Persons who have attained the age of 18 are generally considered to have attained the age of maturity and are competent to give consent. The law thus presumes capacity, rationality, autonomy, and freedom if the person has attained the age of so called maturity. On the other hand, where there is reason to believe that a patient is unable to understand the nature of the treatment and its benefits or side effects before making the decision, it is necessary to consider whether an adult presumption of capacity is rebutted in that particular case. If the patient is incompetent to give consent, then the consent may be obtained from the attendant of the patient. In the UK, there are several ethical issues raised regarding the proxy consent on behalf of such persons. Even the Law Commission Report (Mental Incapacity, 1995)¹²⁴ suggests few reforms. Irrespective of the age, for a person who is incompetent due to unsoundness of mind,

¹²³<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779959/>

¹²⁴<https://lawcom.gov.uk/project/mental-incapacity/>

consent will be obtained from the guardian of the patient. In India, the court has not come across borderline cases of an adult refusing treatment leading to emergency and leaving the doctor in a dilemma, unlike in the west.

INDIAN LAW ON CONSENT

The principle of autonomy is enshrined within Art. 21¹²⁵ of the Indian Constitution, which deals with the right to life and personal liberty. The expression personal liberty under Art. 21 is of the widest amplitude and covers a wide variety of rights, including the right to live with human dignity and all that goes along with it, and any act which damages, injures, or interferes with the use of any limb or faculty of a person, either permanently or temporarily. However, the common law application of consent is not fully developed in India, although the Indian courts have often referred to these principles. In such situations, obviously one has to refer to the principles of the Indian Contract Act and the Indian Penal Code. The relationship between a medical professional and his patient is a contract by parties competent to contract giving rise to contractual obligations. Parties are generally competent (in accordance with the Indian Majority Act) (i) if they have attained the age of 18, (ii) are of sound mind, and (iii) are not disqualified by any law to which they are subject to. Furthermore, there is a stipulation in the contract law stating that consent of any party (in our case it is the patient) that is obtained by coercion, undue-influence, mistake, misrepresentation or fraud, will render the agreement invalid. However, in England, the General Medical Council guidelines state that the consenting age is 16 years old. A young person can be treated as an adult and can be presumed to have the capacity to decide. If the child is under the age of 16 he or she may have the capacity to decide, depending on his/her ability to understand what is involved. Where a competent child refuses treatment, a person with parental responsibility or the court may authorize investigation or treatment which is in the child's best interests. Interestingly, the position is different in Scotland where those with parental responsibility cannot authorize procedures a competent child has refused. The consent obtained, of course, after getting the relevant information will have its own parameter of operation to render protection to the medical practitioner. If the doctor goes beyond these parameters, he would be treating the patient at his risk, as it is deemed that there is no consent for such treatment at all. A doctor who went ahead in treating a patient, to protect the patient's own interest, was held liable as he was operating without consent. The patient was suspected to have appendicitis. After obtaining due consent, she was subjected to an operation. However, upon incision, it was found that her appendix was normal and not inflamed. To protect the interest of the patient, the doctor removed her gangrenous gall bladder. Later, it was discovered that the kidney of the patient was affected. The doctor was held liable as he was operating without consent. This case law also signifies the traditional notion of paternalism prevalent among the members of the medical fraternity.

¹²⁵<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779959/>

It is a notion where the doctor takes-up the role of a parent of the patient and starts deciding on behalf of the patient himself. Unfortunately, the law does not accept this notion. The first priority of law is always the right of autonomy of the patient provided he is endowed with necessary capacity. A medical practitioner who believes that a medical procedure is appropriate and necessary for a patient's well being can perhaps be forgiven for believing that the principle of autonomy should be sacrificed in the best interest of the patient. In the present case, had the doctor stopped after realizing that the patient's appendix was normal, he would have been protected as he was working under the valid consent of the patient, and more importantly, mere error of judgment is not culpable. When he proceeded in removing her gall bladder, he was acting sans valid consent, which was an extreme case of professional paternalism and gross disobedience to the right of the patient's autonomy. Hence, some commentators like Mill, have advocated for minimal level of paternalism in the interest of the medical profession and the overall inability of humans in taking rational decisions, during the time of crises.

Regarding proxy consent, ¹²⁶when the patient is unable to give consent himself, there are no clear regulations or principles developed in India. If such a situation exists, the medical practitioner may proceed with treatment by taking the consent of any relative of the patient or even an attendant. In one case, the wife of a patient informed the hospital authorities in unambiguous terms that she had no objection to her husband undergoing bypass surgery, her consent was deemed sufficient for the purpose of any formalities with which the hospital was required to comply

Recently, the apex court gave an impacting judgment in the area. Wherein the court observed that “where a surgeon is consulted by a patient and consent of the patient is taken for diagnostic procedure/surgery, such consent can't be considered as authorization or permission to perform therapeutic surgery either conservative or radical (except in a life-threatening emergent situation)”. For the first time in India, the court ruled that however broad consent might be for diagnostic procedure, it can not be used for therapeutic surgery. Furthermore, the court observed that “where the consent by the patient is for a particular operative surgery it can't be treated as consent for an unauthorized additional procedure involving removal of an organ only on the ground that it is beneficial to the patient or is likely to prevent some danger developing in the future, where there is no imminent danger to the life or health of the

¹²⁶<https://www.contemporarypediatrics.com/view/what-consent-proxy-medical-care>

patient”. This proposition puts fetter upon the role of a “paternal doctor” in the Indian scenario. In one case, a 44-year-old unmarried female consulted her doctor and was advised to undergo a laparoscopy. A few consent forms were taken from her of which one was for admission and another one was for the surgery. The relevant one among such consent forms gave the doctor an allowance to carry out a “diagnostic and operative laparoscopy” and there was an additional endorsement that a “laparotomy may be needed”. When the patient was in the operation theater (and was unconscious), another proxy consent was taken from her attending mother for a hysterectomy. Her uterus, ovaries, and fallopian tubes were removed. Subsequently, when an action was brought, it was held that the operation was conducted without real consent and the doctors were held liable.

EMERGENCY SITUATION AND CONSENT

Interestingly, in India, the entire gamut of laws on consent turns into complex propositions if an emergency medical situation arises. In a few of the milestone decisions, the apex court ruled that a medical practitioner has a duty to treat a patient in an emergency. Emphasizing the paramount duty of any “welfare state“, the Supreme Court stated that Art. 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the state are bound by duty to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in the violation of his right to life guaranteed under Art. 21. Proceeding in the same direction, the court emphasized further that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or state action can intervene to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation of a doctor is total, absolute, and paramount. Laws of procedure whether in statutes or otherwise that would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. In one case, the apex court laid down some important guidelines such as (i) The doctor when approached by an injured person, shall render all such help which is possible for him at that time, including referring him to the proper experts, (ii) the doctor treating such persons shall be protected by law, as they are not contravening any procedural laws of the land (regarding jurisdictions etc.), and (iii) all legal bars (either real or perceived by the doctors) are deemed to have been eliminated by the verdict. This is in consonance with the hypocratic oath¹²⁷, which a doctor takes when entering the profession. Hence, a doctor is duty-bound to treat a patient in the case of an emergency, without waiting for any formalities. There are several statutes (like medical institutions regulation acts in various states) imposing this duty upon medical establishments to treat emergency patients, especially accident victims.

In *Dr. T.T. Thomas vs. Elisa*,¹²⁸ the patient was admitted into the hospital on March 11, 1974. Upon admission, the patient was diagnosed as a case of perforated appendix with peritonitis requiring an operation. But, unfortunately no operation was done until his death on March 13, 1974. The contention of the doctor was that no surgery could be adhered to, albeit the suggestion, because the patient did not consent for the surgery. Therefore, other measures were taken to ameliorate the condition of the patient, which grew worse by the next day. Although the patient was then willing to undergo the operation, his condition did not permit it. On the other hand, the version of the respondent (i.e., the Plaintiff) was that the doctor

¹²⁷ <https://doctors.practo.com/the-hippocratic-oath-the-original-and-revised-version/>

¹²⁸ <https://indiankanoon.org/docfragment/600254/?formInput=medical%20ethics>

demanded money for performing the surgery. Furthermore, the doctor was attending to some chores in an outside private nursing home to conduct operations on the other patients and that the appellant doctor came back only after the death of the patient. The two versions before the court were: 1) the plaintiff (the deceased patient's wife) said that the doctors concerned demanded a bribe, hence the operation was delayed until it proved fatal and 2) the version of denial for consent. Finally, the court delivered a verdict in favor of the plaintiffs stating that consent under such an emergent situation is not mandatory. It is interesting to note the following observations:

“The consent factor may be important very often in cases of selective operations, which may not be imminently necessary to save the patient's life. But there can be instances where a surgeon is not expected to say that ‘I did not operate on him because, I did not get his consent’. Such cases very often include emergency operations where a doctor cannot wait for the consent of his patient or where the patient is not in a fit state of mind to give or not to give a conscious answer regarding consent. Even if he is in a fit condition to give a voluntary answer, the surgeon has a duty to inform him of the dangers ahead of the risks involved by going without an operation at the earliest time possible”.
“When a surgeon or medical man advances a plea that the patient did not give his consent for the surgery or the course of treatment advised by him, the burden is on him to prove that the non-performance of the surgery or the non-administration of the treatment was on account of the refusal of the patient to give consent thereto. This is especially so in a case where the patient is not alive to give evidence. Consent is implicit in the case of a patient who submits to the doctor and the absence of consent must be made out by the patient alleging it”
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Conclusion :- In light of all these developments, it may be concluded that there are many Grey areas in this field of consent law in India, which can be eliminated by pro-active intervention by the concerned professional regulatory body.

