



**ALLIANCE
UNIVERSITY**
Private University established in Karnataka State by Act No.34 of year 2010
Recognized by the University Grants Commission (UGC), New Delhi
Celebrating
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Alliance School of Law

**LEX ET
MUTATIO**

LEX ET MUTATIO

LAW AND SOCIAL TRANSFORMATION

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TRANSFORMATION**



Vol II

Volume II

LEX ET MUTATIO

LAW AND SOCIAL TRANSFORMATION

Volume II



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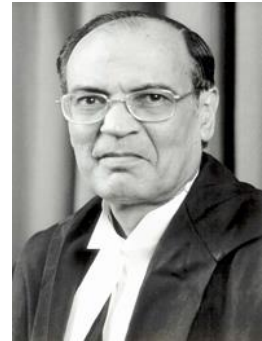
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FOREWORD



Justice C. K Thakker

The governing system of every society comprises of rules, customs and beliefs which are largely acceptable to the majority. These rules are never static and continue to evolve catering to the growing needs of the society. It is the law and legal systems along with its institutions, procedures, and remedies that the State uses to bring in the necessary reforms. The judiciary has been one of the primary contributors in redressing the socio legal issues. Law is a tool for social engineering. Underlying this view is the assumption that social processes are susceptible to conscious human control and this control can be achieved by law.

The Volume II of the book ***LEX ET MUTATIO: LAW AND SOCIAL-TRANSFORMATION***, an Alliance University publication is an effort at manifesting law as a tool for social transformation. The book primarily identifies issues and challenges across the large spectrum of issues, such as; Constitutional Policy and Development, Balancing Intellectual Property Rights and Public Interest, Child Welfare and Law, International Organizations as Sustainable Development Indicators, Issues relating to Migrant Workers during Pandemic, Law, Economic and Management, Ethnic Pluralism and Tribal Rights, Reforms in Justice Delivery System, Women Empowerment, Science Technology and Law to mention a few. The competence of Indian legal system to both lead and follow social transformation with commitment to multiculturalism, empowerment, and modernism, along with its diverse approaches along the major spheres of pluralism, empowerment and modernization are the course of the discussion, where it touches upon a large spectrum of human and social actions.

The book will be an academic resource to students, teachers, and policy makers in the field of Law, Anthropology, Sociology and Criminology. It would also be a guide to practitioners, such as Lawyers, Judges, Legislators, Social Activists, Administrators, Government, and the Inquisitive Learners of the Nation. Weaving the wide range of topics for discussion into a single book is appreciable and I congratulate the editors in accomplishing the same for the benefit of all.

Warm Regards,
Justice C. K Thakker
Former Judge Supreme Court of India

MESSAGE FROM THE PRO-CHANCELLOR



Mr. Abhay G. Chebbi

“It is the spirit and not the form of law that keeps justice alive.”

- Earl Warren

The concepts of law and social justice have been contested for decades, establishing socio-legal debates at various eras and for various causes. These discussions have shaped societal policy objectives and normative attitudes to a large extent. Legal institutions cannot be considered separate from the linked community's socio-political affairs and law cannot be studied in isolation from the socio-political environment in which it is applied. '*Law, Justice, and Social Change*' looks at how legal frameworks can be utilized as tools for positive social change apart from confirming existing social arrangements and fighting social evils.

Law as an instrument for social change encourages the neutrality of beliefs and behavior, as well as instilling the concept of social transformation and empowerment of the social fabric. It is embedded in social institutions and economic networks, affecting the course of legislation, and driving legal reforms, and developing as the State's general circumstances of human activity. Even though the current educational system clearly differentiates law, politics, and society as separate academic disciplines, scholars in these diverse fields of study frequently borrow from these disciplines in their research. This academic interdependence is merely a reflection of the contemporary society, in which these realms are so intertwined that one cannot imagine a society without law or law separate from the society. Research in law and society adds to the rigor with which existing laws are examined, as well as providing the platform for new policymaking which leads to social transformation.

This book LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION, Volume II, is an outcome of the selected research papers presented at International Conference on Law and Social Transformation organized by Alliance School of Law. I appreciate the efforts of editors in putting together this book for the benefit of students, academicians, legal professionals, and the society at large. Alliance University and its academic units will continue to challenge the status quo, create organized forums for pertinent discussions, collaborate with scholars, legal luminaries, institutions for solutions that will create a shift in examining social reforms and at the pace at which it is done. The attempt here is to create intellectual pathways for sustained solidarity towards making our legal frameworks and social reforms robust and citizen friendly, with the aspiration of making our communities, societies, and the nation capable of holistic transformation.

Warm wishes,
Mr. Abhay G. Chebbi
Pro-Chancellor,
Alliance University,
Bengaluru

MESSAGE FROM THE VICE-CHANCELLOR



Dr. Anubha Singh

“Education is the most powerful weapon which you can use to change the world”

- **Nelson Mandela**

The National Conference on Law and Social Transformation will provide an opportunity to have intellectual deliberations, allow experts to open dialogues, exchange and enhance knowledge covering a broad spectrum of socio-legal analysis in the Indian context.

It is not just the society that creates a great nation but the law that holds it together, and law is not just an instrument of check and balances but a vehicle of great purpose that gives direction to growth and sustenance of humanity. Social transformation means reconstructing all the aspects of the life, from culture to social relations, from policies to economy, from the way we think to the way we live.

The present book LEX ET MUTATIO: LAW AND SOCIAL–TRANSFORMATION illuminates on issues and challenges in the areas of Intellectual Property, Constitution, Child Welfare, Science and Technology, Economics, Management, and Gender justice. This further focuses on role of international institution and social transformation during pandemic. It emphasizes on competency of Indian legal system in its adherence to need for social transformation in the aforementioned areas while touching broader spectrum of social behavior.

The valuable knowledge exchange and proceedings of the conference presented in this book, embarks on a whole process of generating new debates and providing space to enquire new research problems in the realm of social political and legal studies. I appreciate and congratulate the editors for their contribution in accomplishment in compiling this book on different topics which will be an important resource to the students, teaching fraternity, legal professionals, judges, legislators, social activists, NGOs, Government bodies and inquisitive learners of the country.

Warm wishes,
Dr. Anubha Singh
Vice-Chancellor
Alliance University

MESSAGE FROM THE DEAN



Prof. (Dr.) Kiran Dennis Gardner

“Society is an organism which obeys the immutable law of progress: and change, judicious and cautious change, is necessary for the wellbeing and indeed the preservation of the Social System”

- Swami Vivekananda

Law is a product of tradition and culture. It contentedly claimed to be a product of the society and is responsible for the social transformation. International conference on Law and social transformation organised by Alliance University, School of law is an endeavour to inspire students, faculties, research scholars, legal professionals to present a well-researched papers on contemporary issues. It provides platform to discuss, deliberate and find solutions for pressing legal issues.

Covid-19 changed the working of the world. The working pattern of the society changed, relationships had a different equilibrium and necessary changes had to be made to help humanity to sail through these difficult times.

LEX ET MUTATIO focuses on how Covid facilitated the paradigm shift in the behavioural pattern of society and the way in which law tackled it. It's not the only the negative contribution of Covid to the society, but also the enormous positive change in all the fields such as education, technology, medical, pharmaceutical, working patterns, economy, law, international relations etc. These changes in the society have been focused on the research, identifying the gaps and suggesting solutions.

LEX ET MUTATIO is a result of the constant efforts of School of Law, Alliance University. The rigorous deliberation by the organizing committee for organizing the International Conference, tireless efforts of editorial team towards identifying and editing the research papers, and compilation of this book is outcome of all the efforts put together.

I am sure that this effort will undoubtedly build lots of remarkable outcomes in the coming years and thought-provoking expertise in the domain of socio-legal research.

I wish you all Happy Reading.

Best Wishes,
Prof. (Dr.) Kiran Dennis Gardner
Dean & Professor,
Alliance School of Law,
Bengaluru

ACKNOWLEDGEMENT

The Editors of this book LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION, Volume II, would like to thank the Management of Alliance University, Bangalore for encouraging the School of Law in organizing the International Conference on Law and Social Transformation [ICLS]-2022 and for wholeheartedly facilitating the publication of this book.

We would like to thank our Hon'ble Pro-Chancellor Mr. Abhay G. Chebbi and his office for their constant support and words of encouragement. We would also like to thank our Hon'ble Vice-Chancellor Prof. (Dr.) Anubha Singh for inspiring and motivating us at every juncture of the journey in preparation for this book. Without their active contribution, the publication of this book would have not been possible.

We would also like to thank our Librarian Dr. Prakash I N and his staff for continuously working and coordinating with the editors in plagiarism checks to maintain the originality of this book. Every member acknowledged herein has played his/her part beautifully as a team to make this publication possible.

We express our sincere gratitude to the authors and co-authors who contributed to the knowledge pool by writing pieces and expressing thoughts about how the law impacts social transformation. We are sure that their work shall pave the way for further socio-legal research.

We thank all our Faculty Members, Administrative Staff, and those who have worked tirelessly in editing, compiling, and finalising the contents so that the book is published on time. It is all because of their efforts that the book is in hand before the conference.

Last but not the least, we thank the Almighty for showering his blessings on us and keeping the way lit; showing us the right path in doing the things that are required for the academic growth of the legal fraternity.

Editorial Committee,

LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION

PREFACE

The book, *Lex Et Mutatio: Law and Social Transformation*, Volume II, is a compilation of research papers relating to different areas of law that reflects law as a societal tool of transformation in the contemporary society. It elucidates upon the existing situation in our society in terms of the ongoing occurrences in an array of issues such as, Indian media, Gender justice, Tribal rights, Surrogacy, Environmental crime, Cybercrimes, Religious rights, Artificial intelligence, etc.

Law and society are dynamic in nature and are interdependent with each other which pave the way for social transformations. The book addresses multiple socio-legal issues that are required to be re-analyzed, re-evaluated, and re-considered, raising relevant questions, to accommodate the changes in the society and endorse feasible solutions for the same.

The book will provide readers with an insight to the ubiquitous socio-legal transitions by aiding them in assessing the extent of flexibility of the existing legal mechanisms towards accommodating the required changes and helping them in understanding the dynamic needs of the society at large. The suggestions to the issues addressed herein, will help the readers implore sui-generis thoughts and motivate them towards further research.

Editorial Committee,

LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION

INTRODUCTION

“Law cannot stand apart from the social changes around it.”

- **William Brennan Jr.**

The evolution of the social system witnessed adaptation of different methods and means to achieve the intended changes in various aspects of the society. Social change is nothing but deviation from existing social structure, pattern of social relations, established social norms, social roles, etc. and the law has been considered as one of the most significant elements of social change. Though there are various means to bring changes in society, the reformation brought by law is one of the most effective and safest methods to achieve this end, wherein laws and legal institutions have the potential to push the society into various new dimensions.

However, this is a never-ending process and sometimes, society changes the law as per its current needs. Adopting customs and usages as well as introducing a new law to prohibit the Sati system, criminalizing untouchability, decriminalizing Section 377 of IPC, etc. are some of the examples of changes that have been brought into our legal system which defines the relationship between society and law.

These empower one to understand the lacunas in existing social structure, legal framework and its implementation to provide a solution for the betterment of the society. The present book, “LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION” Volume II, contains the articulated ideas and research papers presented at the *International Conference on Law and Social Transformation [ICLS 2022]*. These research papers address different socio-legal issues and provide concrete suggestions to overcome these problems under different themes like IPR, Child welfare and law, Constitutional policy, Agriculture and industry, Ethnic pluralism and tribal rights, International Organization and sustainable development, Issues relating to migrant workers, Law and economics, Reforms in the Justice delivery system, Religious rights and practices, Role of local self-government and NGOs in social transformation, Role of UNO during the pandemic, Science, technology and law and lastly, Women empowerment and gender justice.

All these research areas in this book highlight contemporary issues based on the above themes which make it unique. We are sure that this book will further encourage readers to take up socio-legal research which will enrich the community at large.

Editorial Committee,

LEX ET MUTATIO: LAW AND SOCIAL TRANSFORMATION

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CHAPTER 1

Constitutional Policy and Development; Religious Rights and Practices; and Ethnic Pluralism and Tribal Rights

EMERGING CHALLENGES TOWARDS VIOLENCE AGAINST NORTH-EASTERN PEOPLE FROM THE LENS OF INDIAN LEGAL SYSTEM

Antish Rathore¹

INTRODUCTION

In the year 2020, when the pandemic hit the world there came a wave of racism against mongoloid race people all over globe. The hatred towards people belonging to this race spread like wildfire the reason behind it being China, the largest mongoloid population, which is assumed to be the nation responsible for the outbreak of the pandemic. In USA, the rise of crimes against mongoloid race people increased to level of 100 per day². In India the North-eastern population became the victim of such racism. Was it triggered by the pandemic or was it there before? There were ample incidents on-record and off-record of instances of racism against the North-eastern population in India. The reason behind was the way the people look (facial features), it resembles with the bordering nations of India that is China, Bhutan, Myanmar, and Nepal, which are known to be home of major proportion of mongoloid race in Asia. It is not new for North-eastern Indian citizens to face discrimination based on their race, there are ample number of incidents where these people have been bullied, beaten up, and even mob lynched by none other than people of other part of nation. Unity in diversity is what India believed in but when in such perilous time racial discrimination becomes one of the concerned issues, a need for examining the issue before and after the irruption of the pandemic is necessary. Many such incidents have been mentioned in columns of esteemed newspaper, but yet it fails to attract the attention of the general public. There is a lot the Indian government could do to prevent crime against race with the Anti-Discriminatory laws in picture. The legislators can frame stringent laws with a hefty penalty as such crimes is a blow to Indian core value of unity in diversity.

Today, North-eastern region contributes not only to culture but also to economy of India. This region holds 7th rank as most enriched bio-diversities in the world, this region is the largest contributor to tea production of nation which made India the second largest tea producer nation in the world, Assam is the only state which produces three of the important indigenous silks

¹4th year BA LLB Student, Alliance School of Law, Alliance University, Bangalore.

²Alexandra Kelley, Attacks on Asian Americans skyrocket, available at <https://thehill.com/changing-america/respect/equality/490373-attacks-on-asian-americans-at-about-100-per-day-due-to>.

those are white Pat, warm Eri silk, and golden Muga, Sikkim on the other hand is India's first fully organic state, the list can go on.

North-eastern states is home of many well-known public figures who have represented and made India proud at national and international levels of in different fields. A few such names are Bichung Bhutia, Mary Kom, Somdev Devarrman, Papon Mahanta, Sarita Devi, Jayanta Talukdar, Adil Hussain and many more. However, the North-eastern region is looked down time and again just because there is certain distinction in the features of people of these areas with the mainland India. To the extent of being asked ARE YOU EVEN INDIAN?

BACKGROUND

The North-eastern Region well known as seven sisters, including Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura, adds a unique picture and diversity in India. Yet, people of mainland India failed to recognise that it was always an integral part of nation. The contribution of Kanaklata Barua³, Paona Brajabashi⁴, Bir Tikendrajit Singh⁵, Rani Gaidinliu⁶, Haipou Jadonang⁷ and many more unsung warriors of freedom fight was neither mentioned in history books nor their stories were passed on to the mainland Indian population. The contribution of many such warriors kept the North-eastern part of nation safe from any foreign invasion. One such example of war is Anglo-Manipur War⁸ in 1891, another one is Battles of Imphal and Kohima, which was fought between 8th March and 18th July 1944 when Japanese troops tried to capture Imphal and Kohima for Japanese national interest. Soon after great resilience from the Indian soldiers, comprising mostly of North-eastern people, defeated the Japanese and were able to push them back to their barracks. Imphal Kohima battle is still considered as one of the biggest defeats the Japanese Army ever faced and there were different wars North-eastern region of India sustained and emerged victorious. After signing the Merger Agreement in 1948 the North-eastern region of India became integral part of nation. And this region contributed to new languages, culture, diversity, history, and much more to India.

³ On 20th September he died trying to hoist Indian Flag at Gohpur Divison.

⁴ When asked to surrender after Anglo-Manipur War he choose death over joining British Infinitary.

⁵ Crown prince of Manipur, also known as Hero of Supreme Sacrifice and valour, he laid down his life for territorial integrity against British.

⁶ She was a spark to ignite the religious reform movement to protect Naga Belief system

⁷ Leader of present-day Manipur who encouraged people to free themselves from the clutches of British raj

⁸ The war resulted into Manipur recognised as princely state.

Yet, unaware of such history people of mainland India consider mongoloid race people as not from India. Mostly because their food habits, attire, facial features, ideologies do not resemble with mainland Indian culture, the North-eastern society are racialised. India also falls prey to the racism against mongoloid race; any person matching the physical features of other bordering nation will be criticised, bullied, beaten up, today the situation is that there are cases of increased incidents of racism. The pandemic has spark of racial crimes which was always there but unnoticed.

LEGISLATIVE FRAMEWORK

A. Constitution of India

Preamble of Indian Constitution states that there should be Equality in terms of opportunities and status provided. Under Article 15 of Indian Constitution, it is embodied that citizen of nation shall not be discriminated on the basis of place of birth, sex, caste, religion, and race or any of these.

In case of discrimination against North-eastern people, it is not only based on race but there are many aspects on which the racism is persistent in nation. There is discrimination on the basis of attires, language, looks, ideologies, eating habits, etc.

Like every other state of India, the seven sisters also have varied facial features, languages, food habits, attires, dancing style, culture, living pattern, history of state, etc. But if above mentioned differences become the base of discrimination, then it is failed to put these categories into the grounds of discrimination as per Article 15 which is enacted to protect any minority population against any form of discrimination.

B. Indian Penal Code, 1860

Indian Penal Code was amended under the recommendation of MK Bezbaruh Panel in order to give more strength to its framework in order to tackle the problem of racial discrimination. Two new Sections was introduced those are Section 153-B (c) and 509-A. Section 153 A of Indian Penal code deals with such crimes but is it enough though. As it does not deal with someone's facial features, dressing pattern or appearance.

C. Anti- Discrimination and Equality Bill, 2016- An Analysis

MP Sashi Tharoor has introduced the Anti- Discrimination and Equality Bill, 2016. According to Section 5 (2) of this bill ‘race, ethnicity or descent: any racial and ethnic minorities in the relevant geographical area, including persons who originate from North-eastern States of India, persons of Tibetan origin and persons of African origin’ these people are put under category of ‘Disadvantaged group’. This Bill also provides remedies against any discrimination under Section 33 to 36 which directs towards a victim-oriented justice. This Bill prima-facie provides a safety net against discrimination of every kind in nation.

This bill’s major argument is that although there are laws in India against discrimination, they are not sufficient and is proved to be inadequate. Present laws in India only addresses the problem of discrimination based on caste, race, sex, etc. However, this bill seeks to address the in-depth problem, such as discrimination based on food preferences, marital status, attire and so on. The bill intends to put all the small and minor issues under the purview of law. This bill is a gentle reminder to the citizens of those moral values on which this nation is built upon. This bill has put the issues which were affecting the people but were not under the clear light for people to see or call out.

The Bill primarily gives discrimination a broader definition beyond the parameters mentioned in Article 15 of Indian Constitution. This bill projects itself as protection to group of people who are left defenceless and vulnerable. It also lays down a strong structure and mechanism to provide redress, and of measures which could serve as deterrents.

By making anti-discrimination a principle that applies to people from all walks of life, race, religion, caste, gender, sexual preference and ethnicity, the bill seeks to highlight the universality of the aspiration to equality.⁹ To make non-discrimination a reality is sole purpose of such bill which India is in dire need of.

⁹ Shashi Tharoor's New Anti-Discrimination Bill Could Affect the Lives of Millions of Indians

A testimony to India's Constitution and democracy. By Somak Ghoshal 03/16/2017 03:28am EDT (https://www.huffpost.com/archive/in/entry/a-new-bill-introduced-by-shashi-tharoor-could-affect-the-lives-m_a_21897344) accessed on 10 June 2021

LANDMARK JUDGEMENTS

Supreme Court of India stated in case of *Karma Dorjee & Ors vs U.O.I & Ors*¹⁰

“We are of the view that in order to enhance a sense of security and inclusion, the Union Government in ministry of Home Affairs should take proactive steps to monitor the redressal of issues pertaining to racial discrimination faced by citizens of the nation drawn from the Northeast. For that purpose, a regular exercise of monitoring and redressal should be carried out by the committee comprising Joint Secretary (Northeast), Ministry of Home Affairs; and two other members to be nominated by the Union Government (one of whom should be a public figure).”

In this precedent, the apex court has shown concern over the increased cases of discrimination in nation and urged the government to enact laws and to take steps to curb the problem of racial crimes. The court also instructed the government to make a committee for that purpose.

The plea was filed by Alana Golmei to enforce the Supreme Court’s direction by the Union Government as the people of the North-eastern states have faced social and racial abuse in various parts of the nation. This plea was addressed by Justices Ashok Bhushan, Sanjay Kishan Kaul, and B R Gavai. The plea is regarding the direction given by Supreme Court. The incidents of racial discrimination during pandemic have proved it.

EXAMPLES OF RISEN CRIMES AGAINST NORTH-EASTERN INDIAN DURING COVID 19 AND BEFORE COVID 19

Before pandemic an incident took place in 2014 when Nido Tamiam died after being beaten up by some shopkeepers in Lajpat Nagar following a squabble fuelled by their racist comments and taunts on his blond hair colour. He was killed in the national capital city; a crime results from a racist comment.

One of the most common forms of crime is harassments, verbal abuse, discrimination.

- According to Report of Northeast Migration and Challenges in National Cities By Northeast support centre and Helpline¹¹, in 2009-2010 86 percent of North-Eastern people have fall prey of discrimination in metro cities of India.

¹⁰ Karma Dorjee & Ors vs U.O.I & Ors on 14 December 2016

¹¹ North East Migration and Challenges in National Capital Cities- An Abstract of Research Project Report by North East Support Centre & Helpline

- According to Report of Manipur Women Gun Survivors Network and North-eastern Women Initiative for Peace¹² have put forth the number of migrations of total number of people 275,250 who have left the North-eastern region to pursue either higher education or looking for better employment. According to this report, 85 percent out of 275,250 moved out of region for higher education and 15 percent for employment.
- According to Migration from Northeast to Urban centre; a study of Delhi Region¹³ by V.V Giri Institute have put forth the issue of adjusting problem faced by North-Eastern people while living in mainland Indian region is discrimination and the problem to adjust with different food habit, mongoloid feature, pale skin always distinct them from the population and even their easy-going behaviour is misunderstood. From such treatment, it made them more wary of their safety and they were unable to go out of the bubble which they create by sticking together with family and other people of Northeast.
- According to Report on Discrimination and Challenges before Women from the North-East India¹⁴ by Jamia Millia Islamia University, 2/3rd of women (survey subject) had suffered discrimination in their day-to-day life. Mostly in form of overcharging fares, teasing, passing lewd comments, being mistaken as foreigners, sexual harassment, eve teasing, misbehaviour by local landlord or property dealer.

During pandemic the cases of slurs, verbal abuse, even physical abuse increased.

Alana Golmei one of the members of Bezbaruah Committee 2014 stated that “in the recent case where a girl was spat on, only Section 509 was invoked,” furthermore. “This is a disgusting incident where severe action should be taken, but we don’t have a law. So he got bail in 24 hours.” In the mentioned incident the victim was a female but Golmei questioned, “if it was a man, what kind of IPC would they have invoked?”¹⁵ But in the absence of any Anti-racism law there cannot be any end to such incidents.

¹² Manipur Women Gun Survivors Network and North Eastern Women Initiative for Peace http://www.cafionline.org/images/uploadimages/report/21_1_1_large.pdf

¹³ Migration from North-East to Urban Centres: A Study of Delhi Region
Babu P. Remesh

¹⁴ Report on Discrimination and Challenges before Women from the North East India
<https://www.legalindia.com/discrimination-against-north-east-women-in-india/>

¹⁵ Indians from the Northeast face intensified racism as coronavirus fears grow by Kimi Colney, The Carvaan, accessed on 15 June 2021

The Report titled ‘Coronavirus Pandemic: India’s Mongoloid Looking People Face Upsurge of Racism’¹⁶ has cited 22 reported cases of racial discrimination against North-eastern people between February 7 and March 25 2020.

On 10 February 2020 a woman from Nagaland was visiting a friend of hers at Chembur in Mumbai, a student at Tata Institute of Social Sciences. She was wearing a mask and came straight from the airport; she was confronted by a resident of the building as well as a video of the confrontation was taken. She was suspected to be a Chinese citizen and spreading coronavirus, she was considered as a threat to the general public.¹⁷ When she was not allowed to enter the building, a friend from another part of the city had to accommodate her as she was not even given chance to defend herself.

In Ahmedabad, Gujarat Northeast girls from Nagaland were accused of spreading coronavirus and were asked to vacate their rented apartment despite the rent being paid in advance for the month of March.¹⁸

In another similar case in Kolkata, a student from North Bengal was told by her landlord to vacate her rented accommodation because he suspected her to be a carrier of coronavirus.

On 28 March, two Northeast students from Nagaland were not allowed to enter a grocery store in Mysore. Even after showing their Aadhaar card the security denied them to be Indians. A journalist twitted on 29 March about the action taken by Karnataka Police: ‘This incident took place in Mysore. FIR lodged in Krishnaraja PS. The manager and staff of the outlet have been taken to custody.’

These are just few of the examples of such crimes happening all over country and how they were even denied that these people are Indian even with ID proof.

SUGGESTIONS AND CONCLUSION

Was India prepared for such pandemic or not? This question is getting the attention out of another major problem which this diverse country is facing right now that is ‘Racial Discrimination’ to our own people; the people from “North-eastern” part of India which includes

¹⁶ Coronavirus outbreak has increased racial attacks on people from the Northeast: NGO Report by Sumir Karmakar, DHNS, Guwahati, Deccan Herald

¹⁷ Haokip, “Recent trends in regional integration and the Indian experience.”

¹⁸ Pant, “Gujarat cop comes to rescue of NE girls amid COVID-19 rumours.”

Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. The reason behind is that these Indian citizen's facial feature looks similar to other South Asian reign and one of which is allegedly responsible for spread of Corona virus disease (COVID-19).

Every Indian citizen is equal in the eyes of law of the land. And we put inequality and justice, regardless of such laws and morals of nation there are ample of examples which serve as proof of racial discrimination against North-eastern people by kindred citizens in different part of the nation.

North-East people are of mongoloid race therefore they do not share same features as mainland Indian state's citizen. However, the beauty of India lies in its decent variety.

Who to blame for such incidents? Put blame on Indian government which failed to protect its own citizens against racial crimes or to develop that region socially, politically and economically, or to blame the education system which has always ignored the contribution of North Eastern people in India's freedom struggle, their culture, history, or to blame the people of 'mainland' India those being ignorant of its own nation's demography and diversity, or the law of nation which did not provide a safety net for them to take shelter into, or to shift blame on the media, forth pillar of democracy which have always ignored the major events happening in North Eastern part of the country, and there is plenty of blame to go around.

Floods in Assam go unnoticed whereas all the mainstream media talk about floods in Bihar. The political uprising in Manipur did not become focus for the main news channels but when the same happened in Rajasthan everyone is interested in those debates. Earthquake in Meghalaya goes unnoticed, a shockwave in Delhi caught everyone's attention. This is the harsh reality of our 'United India'. Although these states are not completely ignored, but they are not given the time and attention which they require, and it is the main concern. Will this discrimination ever end is the question in many citizens of these states? and by enacting such laws it will bring a comfort to the citizen of the reign and assurance that they are not discriminated in their own country.

- The government need to raise awareness through various means so that the whole nation can know how culturally diversified India is. The inclusion of chapters about the history of kings, warriors of freedom fight, famous contemporary personalities of each field of

north-eastern region in the textbooks, the promotion of tourism in the region for domestic tourists not only as region with rich flora and fauna but also as region with great history.

- The entertainment industry can play a very crucial role to build up or tear apart any stereotype therefore the DONER Ministry should encourage to represent north-eastern culture as it is and break down any false stereotype of the region on the screen as use it to educate the people of mainland India about the seven sisters.
- Sports have always been considered as the tool to narrow down any gap between two people to two nations. It can be used to narrow down the gap between Northeast and Mainland India.
- The Information and Forecasting media are also of use and a tool to raise awareness about the region of nation.
- The diverse nation such as India is in dire need of Anti- discrimination law and sanction of such crime be taken more serious attention and assurance from all four pillars of democracy.

India is still in need for the major Anti-Discrimination Law but first and foremost ***‘Let us all stop pretending that there is no racism in India because there is and it needs attention’.***

INTERNATIONALIZATION OF LEGAL EDUCATION AND LEGAL SERVICES IN INDIA – A MOVE TOWARDS TRANSFORMATION OF LAW AND SOCIETY IN GLOBALIZED WORLD

Avinash Bhagwan Awaghade¹

INTRODUCTION

In the history of legal education, there was no such formal law degree structure established in Indian legal education field. It was the sole discretionary power of British government to confer right to practice or appear before court.² At that time Indian lawyer had no right to appearance in court. British India period there was no scope to claim formal legal education or course i.e., law degree because there was no such system of formal legal education existed in India until 1773.

Legal Education in India was formally introduced as a subject of teaching with the establishment of three Universities in the Presidency Towns of Bombay, Madras and Calcutta in the year 1857 and it was at tertiary level.³ These three universities were established in the line of the pattern of university education existed in London University. Introduction of formal legal education at university level were the outcome of the recommendation of Woods Education Dispatch (1854)⁴. The very purpose of appointment of wood commission by king in Britain to suggest the measures for creating a formal higher education system in India and to recognize the higher education at the university level.⁵

After the independence of the India, the picture of legal education was made clear importance of the education system and become popular and essential too⁶, A rule of law became a fundamental doctrine for the governance of the country politics. It was essential demand of

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² Getman, Julius G., The Development of Indian Legal Education: The Impact of the Language Problem, <http://www.repository.law.indiana.edu/facpub/1900> Accessed on 7 January 2022

³ Aggarwal, Arjun P. "Legal Education in India." Journal of Legal Education, vol. 12, no. 2, Association of American Law Schools, 1959, pp. 231–48, <http://www.jstor.org/stable/42891345>. Accessed on 9 January 2020

⁴ Parmatam Parkash Arya, Higher Education and Global Challenges: Systems and Opportunities, Deep and Deep Publications, 2006

⁵ Moore, R. J. "The Composition of 'Wood's Education Despatch.'" The English Historical Review, vol. 80, no. 314, Oxford University Press, 1965, pp. 70–85, <http://www.jstor.org/stable/560738>. Accessed on 9 January 2020

⁶ Bar Council of India, Brief History of law in India <http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/> Accessed on 6 January 2020

democratic approach that legal system of the India should be brought in the line of constitutional goals as set in preamble of the constitution of India. It was the changing need of social, economic and political society. With the changing complex of law and social needs, there was felt a greater need for change and reform in the structure and pattern of legal education. The Legal education have an important role to play in the establishment of a law-abiding society and citizen. Quality in legal education and research are extremely important because it will help shape the quality of the rule of law.⁷

TRANSFORMATION OF LEGAL EDUCATION AND PROFESSION

First Generation Legal education and transformation

It was said to be said first step toward the conveying formal legal education at higher education. At the first instance when legal education was introduced as formal The Degree in law was introduced as a two-year degree course by the Universities. It was picture of legal education before 1960s. After establishment of Bar Council of India (BCI) as statutory body under the Advocates Act. BCI In the exercise of its powers, extended the duration of LL.B. course from two years to three years with effect from 1967. After enactment of Indian Advocate Act, 1961 Three-year Law Degree course was made popular and suitable to allow entry as advocate in legal profession.

After 1967, legal education has been essential part of professional education where legal education institutes traditionally offer only 3-year law course. Because academic degree holders i.e., two years law degree course were not entitled for the registration as an advocate under the Advocates Act, 1961 and hence were not allowed to practice in any court of law. Hence two years academic degree courses were discontinued by the Indian universities as there was no provision for the same in the Bar Council of India Rules. Three-year graduation course was made eligibility criteria to get enroll for the law course. The Bachelor's degree in any subject/stream from a recognized institution was made basic entry criteria to get admission for law degree course

⁷ Charles E. Tucker, Jr., Cabbages and Kings: Bridging the Gap for More Effective Capacity-Building, 33 University of Pennsylvania Journal of International Law 1169, 1192-93 (2012)

Second Generation Legal education and transformation

But in the 1980s, Bar Council of India started experiment with the five-year law course. It was the initiative taken to combat the global demand as well as nation demand of industry and higher education sector. wherein legal education in higher level committed toward production of more law graduate to fulfill demand of private sector and industry. In the view of Professor Upendra Baxi who has constantly stated that law institutions look like production factory of advocates It appear to be producing servants of global capital *instead of soldiers/pleader of social justice*.⁸ The Five years law degree offered an interdisciplinary and integrated approach with other social science subjects like arts, commerce and science subjects. Like BBA. LLB, BCOM. LLB, BSC. LLB, BA. LLB. The Eligibility criteria to get admission for the five-year integrated course is successful completion of Class XII. Standard⁹ The statutory sanction to such degrees can be found in the Advocates Act, 1961 through Section 4.

The model law school concept was realized by establishment of the Nation Law School, i.e. The National Law School of India University (NLSIU) was established in Bangalore with an objective of maintain quality and standard in legal education and to provide model of law schools to standardize the legal education and legal profession as well.¹⁰

The pattern of Model/National Law school has impacted the growth of legal education. It also be called as reformative and strengthening legal education policy of government.¹¹ Indian Legal education have to outfit to the needs of new kinds of legal consumers, corporate customers, techno society.

In process of understanding modern Indian legal education in the context of global demand the establishment of NLUs, was the committed step to accept the tasks and deliver services to private sector. The broader feature and legal atmosphere of law profession have enhanced. The rise of

⁸ Upendra Baxi, „Enculturing Law? Some Unphilosophic Remarks“, Mathew John & Sitharamam Kakarala (eds.), *Enculturing Law: New Agendas for Legal Pedagogy* (Tulika Books, 2007).pp 2-21

⁹ The Legal Education Committee at its meeting held on 30th April, 2017 considered the matter relating Rule-5 of the Legal Education Rules 2008 and clarified the definition of basic qualification and eligibility of candidates to get admitted into 3 year and 5-year Law Courses.

¹⁰ The National Law School of India Act, 1986 Karnataka Act No. 22 Of 1986 https://www.nls.ac.in/wp-content/uploads/2020/09/National-Law-School-of-India-University-Act_Karnataka-Act-22-of-1986.pdf Accessed on 9 January 2020

¹¹ Soledad Atienza & Sonsoles Arias, *Blueprint on global legal education by the IBA Commission on the Future of Legal Services*, November 2020 <https://docs.ie.edu/law-school/IBA-LSGL-Blueprint-on-global-legal-education.pdf> Accessed on 11 January 2020

the NLUs pattern in late 1980s and 1990s was acted as shock observer to combat the effect of the wave of liberalization, privatization and globalization in India.¹²

Hon'ble Mr. Justice A.P. Mishra said *"lawyers are the mother", Judges are coming out from lawyers. If the legal education is not correctly done, the product will not be good It will be defective product. Legal Education is fundamentally required a multi-disciplined, multi-purpose education is requirement of modern society which can develop the human resources and democratization of legal education is needed to strengthen the legal system* A lawyer, as service provide is the creation of such education would be able to take part in to national development and social transformation which is required in a much more beneficial manner.¹³

The Globalized education policy have anticipated that legal education in country shall encompass legal issues. The global aspect in international treaties, conventions across the world are needed to be considered while framing of education policy. The globalization of legal profession and legal education is continuing process and its step is certain to gear-up legal claims of education, which expected to acquaint with a change in the legal profession in India.¹⁴

Globalization encouraged changes in the international relations and polities have also transformed the nature of legal profession. Present legal profession is closely knotted up with modern education claim which wanted global legal education, now period has come for our legal educators and the regulatory authorities to concentrate more on forward education to move on toward the global restructure legal education so that our law graduates/ advocate can enter into the global legal service market, also efficaciously strive in the embryonic worldwide market of multinational legal service and respond to the law reform progression.¹⁵

Third Generation Legal education and transformation- Global law schools and curriculums

The progress of the knowledge economy remains a significant goal of the progressive and evolving countries; the structuring educational institutions with international excellence along

¹² N R Madhava Menon, "Clinical Legal Education: Concepts and Concerns" in N R Madhava Menon, ed, A Handbook on Clinical Legal Education (Lucknow: Eastern Book Company, 1998) p.7

¹³ S.P.Sathe, " Access to legal education and the legal profession in India" in R.Dhavan, N.Kibble and W.Twiner (ed.) Access to Legal Education and Legal Profession 165 (1989)

¹⁴ Raju Ramachandran, Professional Ethics for Layers: Changing Profession, Changing Ethics (Gurgaon: Lexis Nexis, Second Edition, 2014)

¹⁵ Ibid

with transformed curriculum of global standard ought to become the priority of the evolving nation like India¹⁶. The Cambridge university, Harvard university, New York university, Oxford university, Stanford university and Yale university worldwide are articulating them self to encounters of globalization expectation¹⁷

With the dream of making a more competitive and global market oriented legal education institution are resetting themselves with objectives to get in to place in global ranking university. Similarly in India the new generation of academics in legal field emerged like *Jindal Global Law School*, *National Law Schools* they have started internationalization of law education and profession as well by adopting global standards curriculum and programmes. They are providing the global law curriculum specialization at graduate and post graduate level in law. They are also providing opportunity to exchange of students and faculty at global level. They are motivating and promoting students to opt globally demanded curriculum of international trade law, International commercial arbitration, Air and space law, Aviation law and Trade remedy law, for graduate and post graduate program in law, and also fascinating students by offering international research opportunity through a research hub on globally demanded research areas in law. The students of national law schools and global law schools getting placement and paid internship in India and abroad as well. Both the government and private sector initiative have created global opportunity in legal profession.¹⁸

Increasing need and process of internationalization and globalization of the legal profession, education and the possible entry of foreign lawyers/law firms into India by cross border supply chain, commercial presence mode are expected impact of globalization. The favorable education policy of government has placed red carpet to welcome legal service provider in the near

¹⁶ Catherine Grant, Helpdesk Report, The contribution of education to economic growth, Helpdesk reports are commissioned by the UK Department for International Development and other Government departments https://assets.publishing.service.gov.uk/media/5b9b87f340f0b67896977bae/K4D_HDR_The_contribution_of_Education_to_Economic_Growth_Final.pdf Accessed on 23 February 2021

¹⁷ Simon Marginson and Marijk van der Wende, Globalization and higher education, OECD Draft -2006 <https://www.oecd.org/education/research/37552729.pdf> Accessed on 24 February 2021

¹⁸ Dr. Ranbir Singh, Access to Legal Information & Research In Digital Age, National Law University Press, Delhi, ISBN: 978-81-923639-5-1 <http://nludelhi.ac.in/download/publication/2015/Access%20to%20LEgal%20Informationa%20and%20Research%20in%20Digital%20Age.pdf> Accessed on 25 February 2021

upcoming decade, these multifactor have probably created a serious threat to the legal professionals and service industry i.e., practicing the law in India as advocate.¹⁹

Globalization of the legal profession is likely to introduce a tough change in the entire fabric of law curriculum, teaching and legal profession in India. Today, the profession of law, to a large extent, necessitates lawyers to represent clients not only within national jurisdiction but also at international boundaries. As a result of the extraordinary changes induced by technology and globalization, all occupations including legal profession are obligatory to re- contemplate their system of managing and delivery of legal services.²⁰

INTERNATIONALIZATION OF LAW AND LEGAL PRACTICE

The opening of the economical policy to other countries and broadening of the international trade and commerce aspects have fetched the dreadful necessity of revising various state laws relating to “*ease of doing business*”²¹ and other applicable regulations which also includes the Advocates Act,1961.

The surge in the significant of import and export business lead to, establishment of new companies their subsidiary companies in India. Their commercial presence in India, demanded the beginning of international arbitration. It very common to see foreign lawyers appearing on behalf of companies and international clients in India.

the legal issue of permitting foreign law firms and lawyers in India and taking vice-a-versa prearrangement for law practicing in India²².

In the legal issue of allowing foreign lawyers and law firms to do the business in law practice in India, the fundamental objections raised up at different jurisdiction over the period of time i.e., the law graduates from India are permissible to practice the profession of law in U.K., USA,

¹⁹ Mihaela Papa & David B. Wilkins, Globalization, lawyers and India: toward a theoretical synthesis of globalization studies and the sociology of the legal profession, *International Journal of the Legal Profession*, 2011,18:3, 175-209, DOI: 10.1080/09695958.2011.679797 Accessed on 26 February 2021

²⁰ Swethaa S. Ballakrishnen, Women in India’s “global” law firms: Comparative gender frames and the advantage of new organizations, *The Indian Legal Profession in the Age of Globalization The Rise of the Corporate Legal Sector and its Impact on Lawyers and Society* , pp. 240 – 274 DOI: <https://doi.org/10.1017/9781316585207.007> Cambridge University Press Print publication year: 2017

²¹ The Ease of Doing Business (EoDB) index is a ranking system established by the World Bank Group wherein the ‘higher rankings’ (a lower numerical value) indicate better, usually simpler, regulations for businesses and stronger protections of property rights. Available at <https://doj.gov.in/eodb/> Accessed on 23 Oct,2021.

²² Justice B. N. Srikrishna Retired Judge, Supreme Court of India, Report of the High-Level Committee to Review the Institutionalization of Arbitration Mechanism in India <https://legalaffairs.gov.in/sites/default/files/Report-HLC.pdf> Accessed on 29 October 2021

Australia and other foreign jurisdiction are subject to adhering their cumbersome legal procedure. Additionally, there are many obstacles like qualifying tests, previous work experience, work visa and residence etc.

In respect of foreign lawyers or law person who want to jump in to law practice in India. which is not allowed or you can say permissible under the Advocates Act, 1961. The court issue of letting admission of foreign law firms and lawyers without any legal process of recognition under the Advocate Act were questioned and resolved in *In A.K. Balaji v. Government of India*²³, the Madras High Court observed and held that foreign lawyers are allowed to visit India provisionally on a *fly in and fly out basis* to counsel clients regarding foreign law and international legal issues and also to do arbitration proceedings in the matter or arising out of a agreement relating to international commercial arbitration. Though, a mechanism to enable this procedure has not been put in place. The Court in this case observed:

- (i) “Foreign law firms or foreign lawyers cannot practice the profession of law in India either on the litigation or non-litigation side, unless they fulfil the requirement of the Advocates Act, 1961 and the Bar Council of India Rules.
- (ii) However, there is no bar either in the Act or the Rules for the foreign law firms or foreign lawyers to visit India for a temporary period on a fly in and fly out basis, for the purpose of giving legal advice to their clients in India regarding foreign law or their own system of law and on diverse international legal issues.
- (iii) Moreover, having regard to the aim and object of the International Commercial Arbitration introduced in the Arbitration and Conciliation Act, 1996, foreign lawyers cannot be debarred to come to India and conduct arbitration proceedings in respect of disputes arising out of a contract relating to international commercial arbitration.
- (iv) The B.P.O. Companies providing wide range of customized and integrated services and functions to its customers like word-processing, secretarial support, transcription services, proof-reading

²³ WP No.5614 of 2010 AIR 2012 Mad 124 decided on 21.02.2012

services, travel desk support services, etc. do not come within the purview of the Advocates Act, 1961 or the Bar Council of India Rules. However, in the event of any complaint made against these B.P.O. Companies violating the provisions of the Act, the Bar Council of India may take appropriate action against such erring companies.”

In 2016, The Bar Council of India (BCI) issued draft *Rules for registration and regulation of foreign lawyers in India*.²⁴ But over period of time said draft rules have withdrawn since then²⁵ and the ruling of the Bombay High Court in *Lawyers Collective v. Bar Council of India & Ors*²⁶ were confirmed recently by Supreme Court of India in *Bar Council of India v AK Balaji* ²⁷ a awaiting legal challenge to A.K. Balaji in the Supreme Court²⁸, the legal position continues to remain unclear and uncertain till date.

CONFLICTING INTEREST OF STAKEHOLDERS OF LEGAL EDUCATION

Legal education is a professional education controlled, managed and supervised by three statutory and legal bodies, The Bar Council of India (BCI), The University Grants Commission (UGC), and University (Educational institution) to which the any colleges or institutions are affiliated or recognized. The deficiency in organized, structured and incompatible rules and regulation of these bodies lead to professional irregularities in the running and administration of law colleges in India.

The Bar Council of India along with UGC, is apex body having statutory power to recognize and regulate universities in India. Act,1961 also authorized to issue of academic criteria for purpose of recognition of law degree and qualification for registration of an advocate on state bar council registry. It has power to drills overall supervision and control over the State Bar Councils. It is also commended with the mission of encouraging and supporting law reform in legal profession. All these functions have statutory sanction under section 7 of the Act²⁹.The statutory power of BCI under Advocate Act does not leave room for uncertainty that BCI has power to regulate all

²⁴ Draft Bar Council of India rules for registration and regulation of foreign lawyers in India, 2016
<http://images.assettype.com/barandbench/import/2016/07/BCI-Rules.pdf> Accessed on 24 Oct,2021

²⁵ Kanu Sarda, ‘Bar council stops entry of foreign lawyers, firms’, The New Indian Express, 09.10.2016, available at <http://www.newindianexpress.com/thesundaystandard/2016/oct/09/bar-council-stops-entryof-foreign-lawyers-firms-1526330.html> Accessed on 24 Oct,2021

²⁶ 2010 (2) Bom CR 753

²⁷ (2018) 5 SCC 379 popularly known as the entry of Foreign Law Firms into India matter.

²⁸ Bar Council of India v. A.K. Balaji & Ors., SLP (Civil) No(s). 17150–17154/2012 (2018) 5 SCC 379

²⁹ Functions of Bar Council of India., Section 7 in The Advocates Act, 1961

A-to-Z aspect of legal education and profession as well. Thus, even at pre- entry level of an advocate to the profession.

The prescribed legal norms and canons set by the BCI frequently leads conflicting to the academic norm and laws issued UGC and respective universities established under Acts. This leads to misperception about standard rules and practice to be fulfilled.³⁰

CONFLICT OF ENTRY AGE IN LAW PROGRAM

The demand of having an age limit criterion was initially, perceived in 2008. BCI Rules on Legal Education edged under the Advocates Act of 1961. Clause 28 in the Schedule III of the Rules³¹ required to enforce an age hurdle for potential students, the determined age for looking admission into a program of integrated Bachelor of law degree, is limited to twenty years in case of general category of students and twenty-two years in case of students belong SC, ST and other Backward classes and the determined age for claiming admission into a program of Three-Year Bachelor Degree Course in Law, is restricted to thirty years. The privilege was given to university to allow students with certain concession. The University have power to stretch concession of 5 year for the students belonging to SC or ST or any other Backward Community. In case of the post-graduate course in law, the age limit was decided to thirty years for general category students and thirty-five for reserved classes. In the Hon'ble Madras High Court commended *In M. Santhosh Antony Vareed v. The Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai*³² supported the upper age limit as prescribed in Clause 28 of the Rules of Legal Education, 2008.

In the above legal norm Bar Council of India (BCI) had passed a proactive resolution in 2013, and decided to withdrawing Clause 28 of the Legal Education Rules, 2008, accordingly removed age hurdles for admission in a law school. But this removal was tested in a writ petition before the *Madurai-bench of the Hon'ble Madras High Court*, which ruled that³³ the withdrawal of Clause 28 of the Legal Education Rules, 2008 was illegal. Further, A Special Leave Petition was

³⁰ Dr. Dhanaji Jadhav, Dr. Atmaram Shelke, *Intricacies in Regulating Higher Legal Education and Research in India: A Critical Appraisal of the Legal Education Rules 2020*, Vol. 58 No. 4 (2021); Volume 58 No. 4 (2021) Available at <http://psychologyandeducation.net/pae/index.php/pae/article/view/4700/4139> Accessed on 24 Oct,2021

³¹ Rules of Legal Education, 2008 <http://www.barcouncilofindia.org/wpcontent/uploads/2010/05/BCIRulesPartIV.pdf> Accessed on 24 Oct,2021

³² 2009 (8) MLJ 1677

³³ B. Ashok vs The Secretary Ministry of Union Law and Justice, Government of India

moved before the Hon'ble Supreme Court of India, objecting this verdict of the Madurai-bench of the Hon'ble Madras High Court, which was finally dismissed. Hence, as an effect of the said judgements, restored Clause 28 of the Legal Education Rules, 2008 and instructed all universities and law schools to observe with the said age-cap in the matter of admissions.³⁴ Now in current updates on age capping validity are arguing in the petition filed by the 77-year-old woman, Rajkumari Tyagi in the apex court of India. The plea to interfere in a case already pending in the matter, *Rishab Duggal vs. Bar Council of India*,³⁵. Wherein Apex court has asked BCI to stay the rule of age cap. In argument The BCI strappingly relied on statutory authority under the Act, 1961, to control and supervise education in law.

The looking back to the constitutional aspect of UGC and BCI authority to prescribe the professional and academic criteria of legal education and recognition of law degree to work as advocate in India. The legislative power of lawmaking on the entry 66 of the Union List of the Constitution of India authorized the Union Government to fix the standard for higher education and research matters.³⁶

CONFLICT OF RIGHT TO PRACTICE LAW

The technical meaning of '*to practice the profession of law*' in section 29 of the 1961 Act is widespread to cover the individuals practicing in court cases i.e., litigious matters as well as individuals working in outside the court room practice i.e., non-litigious matters both are bound to observe the rules and standards listed in the 1961 Act. Technically term "advocate" is demarcated in section 2A of the Act, 1961. Now, according to the above-mentioned apex court of India, the retired judicial officers, law graduates performing all the practising in law are calculated as the practice the profession of law but it would be called as prohibited acts unless they are registered as advocates on roll.

In *Bar Council of India v. Board of Management Dayanand College*³⁷ held that the right to practice rules comes under the Act, 1961 are backboneed by entries 77 and 78. Therefore said entries exposes the BCI is established to maintain the standard of the legal profession.³⁸ Yet,

³⁴ Bar Council of India vide a Circular dated 17th September, 2016

³⁵ Writ Petition (Civil) No. 1023 of 2016 https://main.sci.gov.in/supremecourt/2016/41628/41628_2016_Order_12-Mar-2019.pdf Accessed on 25 Oct, 2021

³⁶ Bar Council of India v. Savita Institute of Medical (2007) 2 SCC 202

³⁷ Ibid

³⁸ India Cement v. State of Tamil Nadu [1990 (1) SCC 12]

higher education and research aspects are not straightly connected with the law practices, therefore, it shall not be understood in the context of under section 7 (1) (h) of the Act, 1961.

In *Lawyers Collective vs. Bar Council (Bombay High Court)*³⁹ Foreign Law Firms are not entitled to hold the offices or officers to practice law in India. Simply advising on legal issues are considered as “practice of law”. unregistered advocates cannot do practice in law. This observation has recently given by Hon’ble Supreme Court of India in *Bar Council of India v AK Balaji*⁴⁰. In *Aswini Kumar Ghose v Arabinda Bose*⁴¹ a Constitution Bench of final court of appeal of India observed that,

“...it seems reasonable, therefore to assume that the practice of law in this country generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party.”

In *Lilly Isabel Thomas*⁴² a Constitution Bench of the apex court and a Three Judge Bench of the decision in *Bar Council of Uttar Pradesh v State of UP*⁴³ authoritatively held that, the right to practice the profession of law under the Act, 1961, statutory right available only to the person who has enrolled as advocate on roll. Likewise, the other professionals like The Chartered Accountants (CA), Company Secretaries (CS), Civil Engineers and Architects shall not be permitted to give advice on legal issues. Till date, there is no substantial rules made by BCI that implicate the non-litigation practice.

CONFLICT OF ALL INDIA BAR EXAMINATION (AIBE) EXAM AND RIGHT TO PRACTICE LAW

Law graduate’s students who wish to start practice in law as advocate are mandatory to pass the AIBE within two years of their enrolment on state roll. This rule came in picture in 2010⁴⁴, The BCI, has power to decide and regulate which advocates shall have the right to practice, in India under Act, 1961.

³⁹ *Lawyers Collective vs. Bar Council (Bombay High Court)* 2010 (2) Bom CR 753

⁴⁰ *Bar Council of India v AK Balaji* (2018) 5 SCC 379

⁴¹ *Aswini Kumar Ghose v Arabinda Bose* AIR 1952 SC 369

⁴² *Lilly Isabel Thomas vs Union of India* AIR 1964, SC 855

⁴³ *Bar Council of Uttar Pradesh v State of UP* (1973) 1 SCC 261

⁴⁴ All-India Bar Examination Rules-2010 Available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/06/BarExamnotification.pdf> Accessed on 25 Oct, 2021

The BCI has power to conduct the exam under 2010 rules. The BCI the pleading that rules are framed under vested authority under Act,1961⁴⁵

Conflicting legal issues involved in qualifying exam AIBE that the Is BCI have authority to prescribe the additional qualification of a pre- or post-enrollment.? when the issue of requirements of practise as advocate already been raised before the Constitution Bench of Hon'ble supreme court in 2016.

In the case of *V Sudheer vs. BCI and another*⁴⁶, Supreme Court observed that BCI not entitled to put additional conditions as prior or post requirements to work as advocate under the Act,1961. In the case of *Indian Council of Legal Aid and advice vs BCI*⁴⁷, Supreme Court held that BCI cannot make any rules under Section 49(1) (ag) of the Advocates Act, 1961. The same questions were raised in both petition while challenging the validity of the *Bar Council of India Training Rules, 1995*⁴⁸. It was amended by BCI in the year 1998 on the ground of ultra vires rules under Act,1961 and attacking on fundamental rights under Article 14 of the Constitution of India.

HIGHER LEGAL EDUCATION (POSTGRADUATE AND RESEARCH DEGREE) CONCERN

The Ministry of Human Resource Department (MHRD) projected a One Year LL.M Programme one of the objectives to start the One-year LL.M programme is meet international demand and Standards. National Education Policy, 2020 (NEP) was accepted by the Union government to announce and accept the change in school and higher education in India. The major objective of higher education policy was to internationalize and accept challenges in

⁴⁵ Section 49(1) (ah) of the Advocates Act, 1961, 9. No advocate enrolled under Section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All-India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all law student's graduating from academic year 2009-2010 and onwards slid enrolled as advocates under Section 24, of the Advocates Act, 1961.

The All-India Bar Examination:

10.(1) The All-India Bar Examination Shall be conducted by the Bar Council of India.

(a) The Bar Examination shall be held at least twice each year. in such month and such places that the Bar Council of India may determine from time to time.

(b). The Bar Examination shall test advocates in such substantive and procedural law areas as the Bar Council of India may determine from time to time.

⁴⁶ *V Sudheer vs. BCI and another* (1999) 3 SCC 176

⁴⁷ *Indian Council of Legal Aid and advice vs BCI* (1995)1 SCC 732

⁴⁸ *Bar Council of India Training Rules, 1995* Available at https://ksbc.org.in/advo_act93.php Accessed on 25Oct, 2021

global education.⁴⁹ The great consequence of NEP is the formation of the Higher Education Commission of India (HECI)⁵⁰ It is working as the parent body for higher education in India. HECI has expected to replace other existing authorities including UGC, AICTE, and NAAC. The very crux of advanced education in any program is to empower students to specialize in ranges of study. In the legal compass, this varieties are, covering a multitude of transitional, evolving spheres⁵¹. The leading law school in India and abroad offers fulltime basis LLM programmes with specialties in Commercial & Financial Law regime, International Trade & Investment Law, Intellectual Property Rights & Technology Law, Taxation Law, Competition Law, and General Legal Studies, further some of the law schools offers interdisciplinary courses with other specialization. Intellectual law graduates do not prefer to join PG program in legal studies. They are fascinated with international legal practice as attorney. But situation in India is quite different Indian law schools not able to attract the student to teaching profession and research orientated positions. Many of NLU graduate interested to migrate to U.S.A and U.K. law schools for post graduate education. Further most of them do not prefer to return in India. This situation has forced to change higher education policy. The policy maker now reorganizing post-graduate legal studies i.e., LLM degree. The making it a one-year programme accelerated the academic and research carrier. The Bar Council of India Legal Education Rules, 2020⁵² (BCI Rules) were published in Gazette of India. The rules' objective to radically modify the framework for the LL.M. degree.

The BCI is stepping in to Post-Graduation Education and Research in Law. This has upstretched eyebrows of legal academics in India. It was attacked by the stake holder of legal education by pointing the autocracy of the BCI without locus standi. Presently said notification authority is challenged before the apex court. The petition was filed by students and a association of National Law Universities in India. The petitioner has argued that BCI does not have statutory authority to regulate PG courses. In response to the argument the BCI arguing that it has the statutory

⁴⁹ Cabinet Approves National Education Policy 2020, paving way for transformational reforms in school and higher education systems in the country, 29 July 2020 <https://pib.gov.in/PressReleasePage.aspx?PRID=1642049> Accessed on 30 November 2021

⁵⁰ Draft of Higher Education Commission of India (Repeal of University Grants Commission Act) Act 2018 http://www.academics-india.com/HECI_draft.pdf Accessed on 30 July 2021

⁵¹ Kian Ganz, „Fascination with LLMs in India“, The Lawyer ,ISSN- 0953-7902 (January 23, 2012).

⁵² The Bar Council of India Legal Education (Post Graduate, Doctoral, Executive, Vocational, Clinical and other Continuing Education) Rules, 2020 Available at https://www.livelaw.in/pdf_upload/pdf_upload-386894.pdf Accessed on 24 Oct 2021

authority to regulate, manage and control legal education in India which also include PG courses and research program as well under the Advocates Act 1961.

CONCLUSION

The Advocate Act, 1961 has been entrusted statutory functions to the Bar Council of India, BCI, the functions to encourage legal education and to prescribe academic as well as professional standards of such education in coordination and consultation with the Universities and other regulating bodies in India. It also expected to coordinate and instruct the State Bar Councils for imparting legal education in state jurisdiction. Thus, the Bar Council of India is king regulator with the responsibility to take all necessary actions as it considers necessary and deem fit to screening students at the entry level i.e., admission level to the law course by providing a common entrance eligibility test, moving on it also regulate entry into legal profession by providing an examination or a training course pre-enrolment aspect.⁵³ The Model/National law schools have taken up the challenges of the 21st cent of neo liberalization of education, capitalism, economic liberal policies. After the liberation of national policy by national governments throughout the world. Indian education policymaker actively indulged in trade liberalization, including trade in legal services (under GATS and WTO commitments), there is no exemption from agreeing equal treatments to law individuals from foreign jurisdictions. The transformation of law and society expected to satisfy not only the requirements of the bar and the new needs of trade, commerce and industry but also the requirements of globalized legal services, education and profession as well.

⁵³ (Dr.) Haniraj L. Chulani vs Bar Council of Maharashtra & Goa 1996 AIR 1708

THE TRIBAL COMMUNITY AND VIOLATION OF THEIR CONSTITUTIONAL RIGHTS: A STUDY

**Deepika V¹
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INTRODUCTION

Tribes are the persons who belongs to group they follow certain distinct culture from others. They are mostly dependent upon the forest and the forest produces. Their occupation is on agriculture, selling forest produces, hunting and food gathering. According to Forest Rights Act 2006³, gave land right to forest dwelling community i.e., tribes have rights to own the forest lands. Some other tribes are working in the society as households, sewage cleaners, sweepers, removing dead bodies and leather works etc. According to the census 2011, the tribal population is 8.6%⁴ in total and India is the second largest tribal population over the world.

There are 80% of tribes are situated in the central India. More number of tribes are lived in the states of Odisha, Madhya Pradesh, Chhattisgarh, Jharkhand, Maharashtra, Gujarat, Rajasthan, Andhra Pradesh, and West Bengal.⁵ Due to the lack of education and innocence they are highly played by the non-tribal peoples and some official authorities too. In the tribal areas of Jharkhand governing mining operations. Due to this lot of tribes in that area got affected by respiratory diseases. And most of them got affected by the hydroelectric power to exploit the natural resources of the lands of the tribes. In the Narmada Bacha case, most of the tribes are forcibly displaced from their lands for the dam construction between the Narmada rivers. There was no proper rehabilitation or no prior information about the projects to the tribes. Gandhi said tribes are the children of the forest but today we destroy both the forest (Mother) and tribes (son) in the name of development.⁶

There are lots of legislations and welfare programs related to tribes and their community. In fact, there is no use. This is how the government exploited a natural resource from them. This paper analyze on the Citizenship Amendment Act 2019 which affected the tribes by the way of not

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³ Dhawal Srivastava, 'All about the Forest Rights Act in India, Ipleaders'. Accessed on 15.02.22

⁴ Ibid.

⁵ Anuj Kumar, 'Rights of tribals in India with respect to access to justice', legal desire (2016). Accessed on 15-02-22.

⁶ Ibid.

having Aadhar or proper place for tribes. Due to the governmental development projects tribes are migrating to other places, then how will they have a proper residence? During the pandemic covid-19, the tribal people were severely affected by not having permission to sell the timber, non-timber forest products. Around 20-30 million⁷ people are involved in and collection of kendu leaves and beedi making. Due to lock down and restriction not to make crowd MFP (Market for minor forest products) were closed. Their basic source of income was closed, how will they meet the necessary needs and where will they go for their livelihood.

RIGHTS OF TRIBES UNDER CONSITUION

The constitution provides various rights to safeguard the tribal people and their interest.

- Article 15 of the constitution of India states that the state shall not discriminate any citizen on grounds of religion, race, caste, sex, place of birth or any of them. This explains that every citizen of India is provided equal rights and opportunities without any discrimination.
- Article 16(4) of the constitution of India states that it is up to the state to make laws on reservation for the tribes in employment criteria of the tribes to support and overcome suppression made by the caste system.
- Article 19(5) of the Constitution of India guarantees the tribal people right to own property and enjoy it in any part of the country.
- Article 46 of the Constitution of India states that, The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- Under Article 275(i) of the Constitution of India the Centre Government is required to give grants-in-aid to the State Government for approved Tribal Welfare Schemes.⁸
- Article 338 of The Constitution of India grants the right to appoint a commissioner to look after welfare activities of tribes.
- The Government of India has reserved seats in the House of People (Lok Sabha) and The State Legislative Assemblies under Article 330 and 332 of The Constitution of India.

⁷Ibid.

⁸Anuj Kumar, 'Rights of tribals in India with respect to access to justice', legal desire (2016). Accessed on 15-02-22.

RIGHTS OF FOREST DWELLERS IN INDIA

There are three types of rights granted under scheduled tribes and other forest dwellers (Recognition of Forest Rights) Act, 2006.

1. right for the use of forest resource
2. right to protect and conservation
3. right to own the land

The Section 3 of the act gives right to site that forest residents can use the grazing areas and water bodies and the Section 3(1)(c) gave right to use minor products like Tendu Patta, herbs, and herbal medicines. The Section 3(1)(i) gives the community woods rights and powers to conserved and protected. The Section 5 of the act gives certain privileges to various forest dwelling societies to protect their environment, wildlife, and other resources etc. the following enactment in this act given rights to maintain and manage the forest.

The Section 4(4) of the act protects the land from sold or transferred to anybody. The Section 4(6) of the act gives land to them to harvest for their livelihood there is no need of documentation to the claimant.

IMPLEMENTATION OF GOVERNMENTAL PLANS AND VIOLATION OF FUNDAMENTAL RIGHTS OF THE TRIBES

For met the economic expediency the government has invite the investors from both domestic and foreign to invest on the natural resources. BITs (bilateral investment treaty)⁹ agreement are to protect the foreign investors in the contractual obligation. India has signed 80 plus BITs agreement with another countries not even single agreement or policy talking about the protect of tribal rights.¹⁰ In the case of RAKIA investors files, a compensation against the Andhra government 44.71 million dollars for the failure to supply bauxite to the company of Anrak aluminum limited.¹¹ The government cancelled the project because of several protest by the tribal due to fume of cutting the bauxite most of them got affected by respiratory diseases. Like

⁹Anuj Kumar, 'Rights of tribals in India with respect to access to justice', legal desire (2016). Accessed on 15-02-22.

¹⁰Ibid.

¹¹Pushkar Anand and Amit Kumar Sinha, 'Protecting the rights of tribal', Hindu (2017). Accessed on 15-02-22.

other countries also have BITs agreement they all have exceptions for the protection of tribal rights, why not India cannot do that is a question.

In the case of ***Samatha vs State of Andhra Pradesh***¹² the supreme court ruled that the transfer of tribal land to private landowners or mining is null and void under the fifth schedule of the constitution. And gives guidelines under The Forest Act 2006, to protection of land rights of tribes over the forest and right to know prior consent in case of displacement and rehabilitation is needed.

In the case of ***Orissa Mining Corporation v. Ministry of Environment & Forest & Others***¹³ the Sterlite industrial company was applied for an approval to take bauxite in Orissa Forest Niyamgiri. The tentative approval was given by the authority. The Niyamgiri forest was home for Dongriakondhs tribes. Their main occupation is selling forest products. Around eight thousand people and children were living in that area. Later, several protest by the Dongria tribes the ministry of environment cancelled the approval for the protection of rights of tribes under Forest Act 2006. The company filed a case in court the court said that state is a trustee to protect the natural resources of forest. Further the livelihood of tribes is to sell the forest products. So, the company cannot build or extract any resources from that place.

Every time the tribals would fight for their rights. There was no peace of mind for them. They don't have proper house, occupation, and shelter too. we do have lot more laws for tribes and tribal community but in practical sense they do suffer a lot.

The development is needed for a nation but not in a way of destroying their own nature citizens and their homes.

In the famous ***Narmada Bachao Angolan case***¹⁴ so many villages of ethnic groups were displaced for the construction of dam between the Narmada rivers. There was no prior information given and no proper rehabilitation given to the tribal people belongs to that area. Their main occupation is fishing and agriculture. That is their livelihood but in the name of development the government taken over many homes of tribes. The Article -14 of the

¹²Ibid.

¹³Pushkar Anand and Amit Kumar Sinha, 'Protecting the rights of tribal', Hindu (2017). Accessed on 15-02-22.

¹⁴Anuj Kumar, 'Rights of tribals in India with respect to access to justice', legal desire (2016). Accessed on 15-02-22.

constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.¹⁵ Here in this case, the tribal people were not treated equal before law.

Article 21 of Indian constitution states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Likewise in the case *Maneka Gandhi v. Union of India*,¹⁶ the Supreme Court gave a new dimension to Article 21. The Court held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Hence, the tribes also have a right to live with dignity. And taking into consideration the government must give more concern about tribes while implementing plans in the future and while involving in the BITs agreement.

THE EFFECTS OF CITIZENSHIP AMENDMENT ACT (CAA) 2019 ON TRIBES

The Citizenship Amendment Bill was passed on 2019 of December 11 by the parliament of India. By amending its existing Citizenship Act 1955 has caused serious protest mostly in the north-eastern region of the country which also shares borders with Bangladesh, Myanmar, and China. Because of this new bill the country granted the illegal migrants from the neighbouring countries namely Bangladesh, Pakistan, and Afghanistan.¹⁷

This feared the indigenous people that the government would destroy all their ancient cultures, histories, languages and even identities. Thus, the protest happened. This protest led to the serious clashes and injuries between the police and the people. This made the Indian authority to shut down all the mobile network services and called the army to restore order and impose curfew. Without being proper study of the impact in the country the government implemented this Bill which led to various killing of lives. This bill has curtailed the people's continuity of their languages, culture, and ethnicity and the economic wellbeing. Through this if the government grants such illegal immigrants, it will affect the people's culture, race and it causes the political impact in the country.

¹⁵Ibid.

¹⁶ Ibid.

¹⁷Dev Kumar Sunwar, 'citizenship Amendment Bill negatively impacts indigenous people of northeast India', cultural survival (2020). Accessed on 13-02-2022

There also arises a significant issue on land rights of the majority population of indigenous people. The new law allows migrants who arrived in India before 2014 to become the citizen of the country. Previously the border issue is the ongoing major issue in Assam and Northeastern region, this bill has caused massive protest due to the flow of new migrants and raised the religious issue against Muslims. It is Fundamental Discriminatory in Nature, said the Office of the UN High Commissioner for Human Rights (OHCHR) and that OHCHR hopes the Supreme Court of India will carefully consider the compatibility of the law with India's international human Rights obligations.¹⁸ So by the Supreme Court's decision this has been come to the conclusion that the foreigners who entered Assam before March 25, 1971 were to be considered as citizens and rest had to be expelled. This amended Bill has done cutoff date to December 2014 from December 1951 as the date of detection and deportation to create a National Register of Citizens (NRC).

The census has been conducted in 2021 with the plan of collecting the data for the National Population Register (NPR) to identify illegal immigrants across the country who entered in 2020. In 1951, a National Register of Citizens in Assam was created a survey to determine and find the people who were born in the state before March 24, 1971. The definitive version of the list ended with approximately 1.9 million people in Assam (which borders of Bangladesh) as citizenship of those who declared themselves as foreigners. This has also impacted Bangladesh, as there was a potential influx of immigrants from India as Bangladesh is already grappling with over 900,000 Rohingya refugees from Myanmar, who are unlikely to be repatriated. In prior to this protesting issue the citizenship amendments have slowly moved to the religious issue between Hindu and Muslim, it is 8.6 percent¹⁹ of the tribal constituting the total population, so there was a growing concern towards the implementation of the CAA towards the forest dwellers and Indigenous communities in India. So, the primary issue in here is regarding the documentation.

As most of the tribal communities are facing the immigration and migration issues it has created a huge battle for those communities. The Scheduled Tribe or the Adivasi areas has witnessed a long history of displacement due to projects including Bokaro Steel Plant, and mining for coal,

¹⁸Ananya Singh, 'How will CAA and NRC affect India's tribal population?', The citizen (2019). Accessed on 14-02-2022

¹⁹Dev Kumar Sunwar, 'citizenship Amendment Bill negatively impacts indigenous people of northeast India', cultural survival (2020). Accessed on 13-02-2022

uranium, and bauxite. Even the Displacement continues today. Due to this issue many people's villages have been disappeared. In this situation how these people will come up the prior documents for their survival. As these people are constantly migrating from one place to another, how will they show documents of their father or grandfather since their villages has been removed or disappeared due to government's plan how these people will show their birthplace. It is not in the system anymore. To make it a wider view the example of Nilamber Pitamber village in Jharkhand has been disappeared to inaugurate Modi Sarkar's Mandal dam has been taken. Due to This inauguration the entire village has submerged and made the people to migrate. And those who have displaced to other areas, their name, address, and locality of residence will change. In 2019 Supreme Court ordered for the eviction of lakhs of people belonging to the tribal and forest dwelling communities, whose claims to forest land rights were rejected under the forest act 2006. Due to these issues People living in the forests without Aadhar as they keep on migrating from one to other then how the government can expect them to provide documents and how can they prove their citizenship. The tribal populations who fall under the category of Particularly Vulnerable Tribal Groups (PVTG), earlier known as Primitive Tribal Groups (PTG), do not have any required documents and ask them to prove their citizenship is extremely arduous task. And as per the Ministry of Tribal Affairs, there are seventy-five tribal groups spread across eighteen states and the Union Territory of Andaman and Nicobar Islands which were identified as PVTGs. The PVTGs are the most vulnerable section of tribe who resides in isolated, remote, and difficult areas. Even the Dalit population in Jharkhand does not have any property in their name but sustain themselves by working as daily-wage laborers, and in another point of view with this existing issue if the religious persecution will create a huge obstacle in their path.

One thing in the citizenship Act has mentioned that the Indian government is saying citizenship will be provided based on religion so in Jharkhand, the Adivasi population has become Christian. Adivasis being primarily animistic and worship the forests and how can they be recognized and organized under religious community and about the Tana Bhagat is a team who worked with Gandhi the during the freedom struggle even exist till today who live a very simple life and still fighting for their own property battle to be settled on land of their own by law and this is an issue on the basis of religion. In this situation, if the Adivasi population practice and follow different

dharmas, they need to provide identity documentation for citizenship, then their entire ethnic identity will be destroyed against CAA Amendment.²⁰

As far as in the view of central India, the likelihood is that for the Indian state and the upper ruling caste or class the lesser populated tribal region as an easy dumping ground for any person, either they are internally displaced or foreign ‘illegal’ immigrants. To support this issue with an example of the Tamil Sri Lankan repatriates who became estate labourers upon entering India, about three lakhs were “dumped” in Tamil Nadu’s Nilgiri District,²¹ who primarily occupying the Gudalur, and Pandalur Taluk were originally tribal regions. Land rights and the legal security they offer for tribal and forest dwelling communities are the major contention and officially the millions of tribes are still landless. And we do not have revenue law to overcome these contentions to determination of their rights. While many do not hold any ration cards, voter ID’s the confusion regarding the documents necessary to prove citizenship is continuing to create anxiety among the population. The government has introduced the land bank there are many lands within this land bank. There are people who live on their own on the basis of the land. If it is the part of a land bank, then it becomes the property of the government. Then the identity of the Adivasi community that lives to prove the residential status of the Adivasis or the tribal communities they must show the three generation who are currently alive, and the elderly person should say that this person live around us this is how they prove their residential status. If the government implement these kinds of CAA and NRC for Adivasi population how many people and how much they can understand these kinds of significant issue. Though the Hindustan Times have highlighted the lack of awareness among those living in the tribal belts of India, and also if most of the people have heard of the CAA and NRC, they are unaware about the implementation and the documentation they currently have would help them to prove their citizenship.²² So right now it is in the huge mess due to the CAA the certification and the documentation of the tribal communities to show who are eligible to be citizens of the country. So, till now there is no laws specifically talks about the tribal citizenship. Hence, the state has the liability to provide the

²⁰ Ananya Singh, ‘How will CAA and NRC affect India’s tribal population?’, The citizen (2019). Accessed on 14-02-2022

²¹ Ibid

²² Ananya Singh, ‘How will CAA and NRC affect India’s tribal population?’, The citizen (2019). Accessed on 14-02-2022

proper documentation to tribes to tackle these kinds of problems. Due to lack of education, they are not aware and not much serious about the citizenship.

THE STATE NEGLECTED COVID 19 ISSUES TO SAFEGUARD TRIBAL COMMUNITY

In the prolonged period of the COVID-19 pandemic and lockdowns created a greatest hardship for already marginalised tribal communities in India. And in the meantime, the state entirely failed to focus on the tribal community during this period. The action of lock-down has caused a significant issue for the livelihood of the tribal communities who live on their own and even the migrant workers who depend on the salaries for their survival. While India's population has covered with 8.6 percent of the tribal population as per 2011 census data faced multiple vulnerabilities even before the pandemic. Poverty among Scheduled Tribe (ST) was 45.3% (rural) and 24.1% (urban) as compared to the national average of 25.7% in rural and 13.7% in urban areas in 2011–12 (MoTA 2018–19).²³ During the COVID-19 pandemic, these vulnerabilities have challenged the emerging tribal communities of the country. Were Lockdowns and Social Distancing Affected Livelihoods of the tribal population in India. This has affected the community based on the region and the occupation. According to the Ministry of Tribal Affairs estimated that by Behera and Dassani, about 1.5 to 2 million tribal people work across various parts of the country.

Due to lock-down the workers who work in the manufacturing and service sectors did not receive any salaries this had led to financial distress for the migrants. The Kendu leaves and Sal seeds are the major source for the agricultural purpose for the tribals to improve their livelihood since the lock-down period arose during the collection period (April–June) of MFPs,²⁴ the tribals were unable to collect and sell their produce due to the physical distancing norms and lack of buyers. And about the Adivasi women who depends on the minor forest products like forest medicine, honey, herbs which were the major income during the summer seasons, got affected during the lockdowns due to the closure of the weekly market. Due to pandemic people avoided using unpacked milk and declined in the consumption of meat and eggs to avoid direct contact from the people. This led to downfall of the earning by the people of tribal community since it is

²³Kurian George and Amrutha Jose, 'COVID 19 and tribal communities: how state neglect increased marginalization during the pandemic', Engage EPW (2021). Accessed on 14-02-2022

²⁴ Kurian George and Amrutha Jose, 'COVID 19 and tribal communities: how state neglect increased marginalization during the pandemic', Engage EPW (2021). Accessed on 14-02-2022

the only source earning. People who travel from one region to another for the selling purpose were labelled as a corona virus carrier. And marginalized tribal community are further marginalized since the livelihood of the tribal community has been back dropped by the society in financial aspects as well as there is no safety, health, and education. In Some regions the dominant sections have created a huge violence to these communities in both direct and indirect manner. Due to lock-down as people are restricted to travel the slogan stay home stay safe has not worked for them. Finally, regarding the health care of the tribal communities around 44% of the tribal children under the age of five years are stunted, 45% underweight and 27% wasted.²⁵ In most of the regions there are many non-functional medical centres that worsened the survival of these communities during pandemic.

CONCLUSION AND SUGESSTIONS

The Central and State Government has shown like great interest on the tribal welfare. They also enacted many amendments on forest right, tribals rights and conducted many welfare programs for them. But in real life of tribes are living in the hell. There was no peace of mind for them like other persons in the country. The authorities are shown less response to the tribes. And some places there is discrimination against the tribes are most offended persons. Due to lack of education lives of tribes were misused. Though the constitution speaks about the equality it does not exist in reality. So, it is the right of the state to protect every citizen equally in the country. Education is the only way to change this kind of discrimination against tribal society. As a human being respect and treat other as equal in workplace and outside also. The enacting law is not important, it should be properly implemented. It is also a duty of the state to implement laws properly and keep checking on it.

²⁵ Ibid.

FREEDOM OF RELIGION UNDER INDIAN CONSTITUTION–A CRITICAL STUDY ON KARNATAKA ANTI-CONVERSION BILL, 2021

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INTRODUCTION

Religion constitutes the part and parcel of human life and it is a personal choice of every individual to relate with transcending being. Some may call them Gods and Goddesses and others may call them Creator, Supreme Being or any other such names. Some may not believe that there exists any such superpower that controls human life and therefore, they consider themselves atheists. Since it is a personal attitude of an individual towards his or her religious belief, no outside force like state, community, and family or near friends can force anyone to believe or not believe, or worship a particular God or Goddesses, or employ a particular methodology to worship or show respect towards their transcend being in whom they believe.

Indian religious temperament, at present, is one of the highest sensitive issues among several countries concerning the religious aspects. Religion, in India, is most foundational for many things and among them, the use of religious sentiments for political gain is much apt today. The Constitution of India, under Article 25,³ provides religious freedom to all without discrimination based on any parameters. India, being one of the homes for multi-religious people, had witnessed to the whole world that irrespective of several religions, peace and tranquillity has been established without much difficulty under the strong Constitution and with its implementing agencies at all levels. But, since from the recent past, a new trend has begun to turn down this strong belief of unity in diversity and especially, diversity of religious faith due to rampant politicisation of religious faith by almost all the political parties that aspired to rule the country at all levels, from local to national level. One among such attempts would be laws regarding anti-conversion by states to destabilise the unity in diversity.

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³ INDIA CONST. art. 25

FREEDOM OF RELIGION UNDER INTERNATIONAL LAW

The legal provisions, both under international law and national law, have been guaranteeing freedom in one's religious beliefs. Freedom of religion is one of the basic human rights of every individual. The international human rights law in its treaties obligates the States Parties to respect the individual religious faith in their respective States and to not interfere in their personal religious affairs. The international human rights law has upheld the rights of all religious people, be they majority or minority, with regard to their religious beliefs that are to be respected without any hurdles.

Several international documents assert the freedom of religion. Among them, important ones are the Universal Declaration of Human Rights (UDHR), Declaration on Elimination Based on Religion or Belief, International Covenant on Cultural and Political Rights (ICCPR), European Convention on Human Rights (ECHR), American Convention on Human Rights, African Charter of Human and Peoples Rights, etc. UDHR, primarily, espouses the freedom of thought, conscience and religion and further, it declares that this freedom includes changing one's religion or belief and manifesting it privately or in public.⁴ While exercising this freedom of religion, no individual can be coerced with the purpose of impairing it but this right is subjected to state laws in the interests of protecting public order, public safety, health or morals or the fundamental rights and freedoms of others.⁵ The freedom of religion takes precedence of one's choice and it cannot be taken away by any provisions of law and the States Parties have to provide sufficient avenues to the parents to impart their children with moral and religious values in consonance with their convictions.⁶

FREEDOM OF RELIGION UNDER THE CONSTITUTION OF INDIA

Though the term 'secularism' was added through the amendment in 1976,⁷ the spirit of secularism was prevalent ever since the inception of the Constitution of India in 1950. Mostly the spirit of secularism is embedded in the preamble, fundamental rights and Directive Principles of

⁴ Article 18 of Universal Declaration of Human Rights, 38 (United Nations, 2015)

⁵ Article 1 of Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Proclaimed by General Assembly resolution 36/55 of 25 November 1981, <https://www.ohchr.org/en/professionalinterest/pages/religionorbelief.aspx#:~:text=Article%202-1,grounds%20of%20religion%20or%20belief>. Last visited on 20-01-2022

⁶ Article 18 of International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, last visited on 20-01-2022

⁷ The Constitution (Forty-Second Amendment) Act, 1976

State Policy of the Constitution. Despite the fact that religion is at the centre of Indian society, the spirit of secularism has been retained and the right to freedom of religion is guaranteed under the Constitution of India.⁸ Particularly, it has been included within Articles 25 to 28 of the Constitution.

Article 25⁹ envisages both the aspects of religious freedom and the restrictions to exercise one's religious freedom. It begins with restrictions on religion, namely, public order, morality and health and further, it includes freedom of conscience, and the right freely to profess, practice and propagate religion.

While deliberations in the Constituent Assembly on freedom of religion under Article 25, not much controversy existed on the issue of the right to religion except on the word 'propagation'. Opposition was raised against the insertion of the word "propagation" and was opined that religion is a private affair between the creator and the believer and therefore, entry of the third person is unwarranted. The insertion of 'propagation' would become a nuisance and hence initiated an amendment to delete the word 'propagation'.¹⁰ But this amendment to delete the word 'propagation' was opposed by some opining that the word 'propagation' is not absolute in itself and therefore, the state has the power to impose restrictions on the grounds of public order, morality and health.¹¹ Since the right of propagation was not given to any particular community or religious group, all have the right on an equal footing. It was also opined that even if the word 'propagate' was not included within the ambit of the freedom of religion, under the freedom of speech and expression, it would still be open to religious communities to persuade other people to join its faith.¹² Finally, it was retained under Article 19 which was renumbered as Article 25 of the Constitution.

The freedom of conscience is purely an intrinsic one. It solely depends upon the choice of an individual to accept or not to accept any religion or methodology consisting in worship or anything that surrounds concerning one's faith. No external force can curtail this freedom and also no outsider can dictate a person to do against the wishes of the concerned person. It's an

⁸ Singh, Ranbir & Singh Karamvir, Secularism in India: Challenges and its Future, 69, *Indian Journal of Political Science*, 597, 600-603 (2008).

⁹ INDIA CONST. art. 25

¹⁰ VII, CONSTITUENT ASSEMBLY DEBATES at 817-824

¹¹ *Id*, at 831

¹² II, SHIVA RAO, B. FRAMING OF INDIA'S CONSTITUTION, SELECT DOCUMENTS, 267-268 (The Indian Institute of Public Administration New Delhi, 1967)

exclusive trait of an individual to think, feel, or contemplate that gives intrinsic satisfaction to his life. The person is neither answerable to the state nor any external force for believing what is suitable to his life.¹³

The second part of the article¹⁴ i.e., the right freely to profess, practice and propagate religion constitutes the external facet of one's religious life.¹⁵ The right to profess entails an individual to express his belief and faith publicly through words or any other conduct whereas, practice implies the manifestation and practical expression of a person's belief. The propagation, generally, means spreading or transmitting one's religious tenets to others.¹⁶

The right under Article 25 i.e. right to freedom of conscience and right freely to profess, practice and propagate guarantees to all whether they are citizens or not. These rights are not merely limited to freedom of conscience and belief but act in pursuance of that belief.¹⁷ Further, the Supreme Court had the opinion that,

“...subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further, to propagate his religious views for the edification of others”.¹⁸

Thus, the right to propagate includes the right to communicate one's belief to others or to expose the tenets of his faith but it does not include converting the other person to his or her religion by employing any kind of force.¹⁹

LAWS RELATING TO THE PROTECTION OF RELIGION IN INDIA

During the pre-independence India, under British rule, some Hindu princely states had implemented anti-conversion Acts in their states and some among them were the Raigarh State Conversion Act (1936), the Patna Freedom of Religion Act (1942), the Sarguja State Apostasy

¹³ Sardar Saydna Taher Saifuddin Saheb v. State of Bombay, AIR 1962 SC 853 at 872

¹⁴ INDIA CONST. art. 25

¹⁵ N. Adithyan v. Travancore Devaswom Board, (2002) 8 SCC 106;

¹⁶ Rev. Stanislaus vs. State of Madhya Pradesh, AIR 1978 SC 908

¹⁷ The commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Tirtha Swamiar, (1954) S.C.R. 1005 at para 17 & 18

¹⁸ Ratilal Panachand Gandhi vs The State Of Bombay AIR 1954 SC 388 at 393

¹⁹ Digyadarshan v. State of Andhra Pradesh AIR 1970 SC 181 at 188

Act (1945), Udaipur State Anti-Conversion Act (1946), and further, similar kind of Acts was prevalent in Bikaner, Jodhpur, Kota, Kalahanadi, etc.²⁰ Ever since the independence of India, several attempts have been made to bring anti-conversion laws at the national level, namely, in 1954, 1960 and 1979 but all these attempts have become futile due to lack of support in the parliament.²¹

Different states have brought enactments to curb the conversion activities and among them, the first one is Odisha in 1967,²² followed by Madhya Pradesh in 1968,²³ Arunachal Pradesh,²⁴ Chhattisgarh,²⁵ Gujarat,²⁶ Himachal Pradesh,²⁷ Jharkhand,²⁸ Uttarakhand,²⁹ and UP.³⁰ The States like Rajasthan³¹ and Tamil Nadu³² at one point in time attempted to introduce anti-conversion bills in their respective states but could not implement them as laws due to various reasons. Recently, Gujarat and Madhya Pradesh have amended their Acts introducing stringent provisions to the existing laws and further, the State of UP³³ has enacted the law in 2021. The State of Karnataka³⁴ has passed the bill in the legislative assembly and waiting to introduce in the legislative council.

Some of the important elements of the laws that have been implemented in different states are-

- Prohibition of conversion from one religion to another religion by force, fraud, inducement or allurement,

²⁰ ANAND, DR. FURQUAN ET.AL., A STUDY OF COMPATIBILITY OF ANTI-CONVERSION LAWS WITH RIGHT TO FREEDOM OF RELIGION IN INDIA, 28 (The Indian Law Institute, New Delhi)

²¹ SHRIVASTAVA, ANIRUDDHA. An Analysis of Anti-Conversion Laws in India, 2, International Journal of Integrated Law Review, 93, 94 (2021)

²² Orissa Freedom of Religion Act, No. 2 of 1968

²³ Madhya Pradesh Freedom of Religion Act, 2021 (Act No. 5 of 2021)

²⁴ Arunachal Pradesh Freedom of Religion Act, 1978 (Act No. 4 of 1978)

²⁵ Chhattisgarh Freedom of Religion (Amendment) Act, No. 18 of 2006

²⁶ Gujarat Freedom of Religion Act, 2003

²⁷ Himachal Pradesh Freedom of Religion Act, 2019 (Act No. 13 of 2019)

²⁸ Jharkhand Freedom of Religion Act, 2017 (Jharkhand Act No. 17, 2017)

²⁹ The Uttarakhand Freedom of Religion Act, 2018 (Act 28 of 2018)

³⁰ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (Act 3 of 2021)

³¹ Rajasthan Freedom of Religion Bill, No. 12 of 2006

³² Tamil Nadu Prohibition of Forcible Conversion of Religion (Repeal) Act, 2006,

³³ UP Act, *supra note* 30

³⁴ The Karnataka Protection of Right to Freedom of Religion Bill, 2021 (LA Bill No. 50 of 2021)

- The term conversion means “renouncing one religion and adopting another”.³⁵ “renouncing an indigenous faith and adopting another faith or religion”³⁶ and “to make one person to renounce one religion and adopt another religion”³⁷.
- The penal action varies from state to state. It amounts to be more stringent with regard to women, minors and SC and STs.
- Sanctioning of the District Magistrate or such other authority is mandatory under the law.
- Reconversion is included in some Acts and further, notice is not required to reconvert to one’s original religious faith.
- The offences under the Acts are cognizable and non-bailable.
- Declaration before and after conversion is mandatory under the provisions of law.
- The parties to the offence are a person who converts the other and also the persons who abet or aid the conversion activity.
- Conversion for the purpose of marriage is an offence under the law and such marriages are considered to be void in the eyes of law.
- Burden of proof is upon the person who has been accused to prove that he or she has not committed the crime of conversion and not on the victim.

All the laws that are enacted in their respective states can be placed under two categories. The first category of Acts are general in nature and restrict merely the fraudulent means of conversion through force or allurement/inducement. The second category of Acts include the conversion in a general sense and also marriage for the purpose of conversion and further, puts a blanket ban on the marriage for the purpose of conversion or vice-versa. It is also noteworthy that some Acts like Gujarat, Uttarakhand and MP have been amended to accommodate stringent provisions to the already existing Acts and to include marriage for the purpose of conversion.

KARNATAKA PROTECTION OF RELIGION BILL VIS-À-VIS FREEDOM OF RELIGION UNDER THE CONSTITUTION OF INDIA

The whole bill consists of 15 sections and the headnote speaks as ‘The Protection of Right to Freedom of Religion Bill, 2021’.³⁸ The purpose, as explicated in its introduction, provides that

³⁵ Orissa Freedom of Religion Act, No. 2 of 1968; Madhya Pradesh Freedom of Religion Act, 2021 (Act No. 5 of 2021); Himachal Pradesh Freedom of Religion Act, 2019 (Act No. 13 of 2019)

³⁶ Arunachal Pradesh Act, *supra* note 24

³⁷ Gujarat Act, *supra* note 26

³⁸ Karnataka Bill, *supra* note 34

the bill advocates the protection of the right to freedom of religion and prohibition of unlawful conversion from one religion to another religion through fraudulent means.

The term ‘allurement’ under the definition clause of the bill includes several forms of temptations. Temptations by gifts, gratifications, money or material benefit i.e., both of cash or kind, employment, education at free of charge by institutions run by any religious organs, the promise of marriage, assurance of better lifestyle, divine displeasure, religious celebrations that are detrimental to any other religions or glorifying one religion against the other etc.³⁹

‘Conversion’ under the bill means ‘renouncing one’s own religion and adopting another religion’.⁴⁰

The bill prohibits conversion from one religion to another religion through fraudulent means, both conversion in general and also for the reasons of the marriage.⁴¹ It further provides that reconversion to the previous religion shall not amount to an offence under this bill.⁴² Wide powers have been given to lodge complaints against the conversion. The converted person, his or her next friend, brother, sister, colleague, or any person who is related to the converted person through blood, marriage, adoption or in any form can lodge a complaint.⁴³ The offence shall be non-bailable and cognizable,⁴⁴

The punishment under section 5 of the bill extends from 3 to 5 years of incarceration and also the fine of Rs. 25,000. If the converted person is minor or woman or unsound mind or SCs and STs, the imprisonment is 3 years and further, it may be extended to 10 years and also a fine amount of Rs. 50,000. For mass conversion, imprisonment from 3 to 10 years and a fine amount of Rs. 1 lakh. The provisions are also made to grant compensation to the victim if the accused is guilty of an offence under the bill. The court can fine the offender up to Rs. 5 lakh which is payable to the victim as compensation along with the fine amount. Finally, if the offence is repeated, the fine amount will be Rs. 2 lakhs and imprisonment will not be less than 5 years.⁴⁵

³⁹ *Id*, at Sec. 2

⁴⁰ *Id*, at Sec. 2 (c)

⁴¹ *Id*, at Sec. 6

⁴² *Id*, at Sec. 3

⁴³ *Id*, at Sec. 4

⁴⁴ *Id*, at Sec. 7

⁴⁵ *Id*, at Sec. 5

Conversion is allowed under the bill by following the procedures of declaration both prior to conversion⁴⁶ and post-conversion.⁴⁷ If an institution commits the offence under the bill shall be punished as per the provisions of the bill and also the said institution shall not be provided with any financial aid or grant by the state.⁴⁸ Everyone, who actually commits the offence under the bill including the persons who abet or aid others to commit such offence shall be liable for the punishment.⁴⁹ The burden of proof is upon the person who has been alleged to have committed an offence and not on the victim.⁵⁰

CRITICAL ANALYSIS OF THE BILL

Freedom of conscience is different from external acts performed in pursuance of his internal beliefs. One may have the absolute right to think freely and believe in anything without interference but when it comes to the external celebration or performance, the state interferes. The right is not absolute with regard to the second part of Article 25 i.e., the right freely to profess, practice and propagate. The external manifestations of one's internal belief may attract state interference. The most controversial point under the right to freedom of religion guaranteed under Article 25 is the 'propagation'. Propagation means transmitting or spreading one's religion by exposing its tenets to others.⁵¹

Forcible conversion is not allowed under the right to freedom of religion as envisaged under Article 25 of the Constitution but every individual has the freedom to convert from one religion to another without the interference of the state and its agencies. The Apex Court in Stanislaus case observed,

“We have no doubt that it is in this sense. that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees 'freedom of conscience' to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the

⁴⁶ *Id*, at Sec. 8

⁴⁷ *Id*, at Sec. 9

⁴⁸ *Id*, at Sec. 10

⁴⁹ *Id*, at Sec. 11

⁵⁰ *Id*, at Sec. 12

⁵¹ Rev Stanislaus case, *supra* note 16

conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the 'freedom of conscience' guaranteed to all the citizens of the country alike.”⁵²

The Court opined that everyone has a freedom of conscience and the right freely to profess, practice one's religious tenets and further, disseminate the same to others without forcing another person to accept the religious tenets of someone else by converting to the former's religion. Everyone has been given equal rights under the Constitution with regard to the freedom of religion and any external force, whether an individual or state and its agencies, interfering in the private and internal affairs of an individual in matters of freedom of religion would affect the privacy of that person. Therefore, compelling a person to change or not to change his religious belief by the other, individual or state, would impinge the rights of that person guaranteed under the Constitution. Moreover, the state, being the welfare in its nature, cannot interfere in the right to freedom of religion by monitoring its citizens to admit or not to admit specific religious tenets under the guise of public order, health or morality.

- **Power of the state to enact anti-conversion law:**

Propagation, no doubt, includes the freedom of conversion but does not include forceful conversion by alluring or inducing. Conversion by force and conversion by willingness are two different aspects of religion. Freedom to convert from one religion to another is a corollary to the right to freedom of conscience. The state, with bonafide intention, may enact a law to curb the forceful conversion but a thin line of difference is found between these two aspects.

Based on public order,⁵³ morality⁵⁴ and health,⁵⁵ the states can restrict the freedom of religion guaranteed under Article 25 of the Constitution. The Karnataka anti-conversion bill⁵⁶, in its statement of objects and reasons, provide,

“...in *Rev. Stanislaus v/s State of Madhya Pradesh and Orissa* (1977) 1 SCC 677, the Hon'ble Supreme Court has held that 'right to propagate' under Article 25 does not include the right to convert another person.”⁵⁷

⁵² *Id*, at para 19

⁵³ *State of Karnataka v. Praveen Bhai Thogadia* (2004) 4 SCC 684

⁵⁴ *The Commissioner of Police v. Acharya Jagadhishwarananda A.* (2004) 12 SCC 770

⁵⁵ *Church of God (Full Gospel) in India v. K. K. R. Majestic Colony Welfare Association* (2000) 7 SCC 282

⁵⁶ The Karnataka Bill, *supra* note 50

The objects and reasons of the bill rely on the Supreme Court verdict⁵⁸ and also apparently it is clear that the state, without going into the merits of the case, has quoted the verdict. The Supreme Court in the above-said case makes reference to two issues. Firstly, whether an individual has a fundamental right to convert another person to his religion under the Constitution or merely to propagate one's religious tenets. Secondly, whether State legislatures are competent to enact in the event of protecting the 'public order'. While answering the first question, the Supreme Court is of the opinion that the right to freedom of religion doesn't include the right to convert and delving into the second question, the Court opined that the state, under provisions of regulating the public order, has right to enact laws pertaining to the protection of religious rights.

The Court, in the said judgment, has not absolutely negated the propagation or rejection of conversion from one religion to another religion. When the petitioner, in the said case, asserted the right to freedom of religion includes the right to convert, the Court expressed its view that the right to freedom of religion under Article 25 of the Constitution would not include the right to force other persons to convert to their religion and such force would hamper the right to freedom of religion of that person. The state, taking into consideration the verdict of this case, has proceeded to enact a law to curb the conversion absolutely and thus, it has made an attempt to enter into the personal freedom of an individual.

The Constitution provides avenues to enact laws in order to protect the public order and therefore, in the exercise of the powers conferred under Entry 1 of the List II, i.e., public order, the state legislature secured power to enact laws relating to the public order⁵⁹ but this blanket ban of conversion in the name of public order is not expected from a welfare state.

- **Contradiction in the headnote:**

The headnote of the bill says, 'The Karnataka Protection of Right to Freedom of Religion Bill, 2021'. The word meaning, as it is taken, it does mean to say that it provides the right to freedom of every religion but in spirit, it forbids the freedom of religion by restricting the freedom of conscience. Freedom of conscience allows a person to choose the religion of his choice but the

⁵⁷ *Id*, at 10

⁵⁸ Rev. Stanislaus Case, *supra* note 52

⁵⁹ INDIA CONST. entry 1 list II

state, in the event of curbing the forceful conversion, has gone to an extent of restricting the right of an individual to choose his religion according to his conscience. Obtaining the permission of the state through declaring one's personal freedom to change religious belief before the District Magistrate, after following the procedure laid down under the bill, would curtail the freedom of a person to exercise his religious freedom.

- **Vague and unclear terms:**

Section 2 of the bill provides definitions for the purposes of the bill. Provisions given under 'allurement' are broad and vague in nature. On one hand, it includes any gift, money or any material benefit and on the other, it includes the employment and free education imparted by any religious trust or society for the benefit of poor and disadvantaged categories. They are not only affecting the religious faith of a person but also his social activities and public life in general. The bill puts a blanket ban on the public-spirited activities of one community towards the other. In the guise of establishing public order, the state interferes in the religious and social life of an individual and makes the communities into watertight compartments by abstaining a community from helping the other community members. It brings disunity among communities on the basis of religious differences and ultimately, breaks the healthy relationship.

The Apex Court in *Rev. Stanislaus case*⁶⁰ clearly laid down the principle that the concept of 'propagation' doesn't include conversion by one person to the other. It does mean that one cannot force the other person to change his/her religion but out of his volition or free will, he can change his religion but the bill puts the blanket ban on the conversion activity and also it assigns the religious freedom to civil authority to decide the same. The state, at any cost, is forbidden to take up the responsibilities of a person's faith aspect. In the guise of public order, it cannot decide the religious nature of a person. Therefore, declaration before the District Magistrate by a person to change his religion, before and after conversion, is ultra vires to the Constitution. The bill does provide the Magistrate to conduct enquiry and held a person to be culprit under the bill but it doesn't provide any protection against the false allegations or cases or discriminatory action of the administration or a complainant.

⁶⁰ *Rev Stanislaus case, supra note 58*

- **An ‘attempt to conversion’ and ‘conversion’:**

The bill provides that both conversion and attempt to conversion constitute an offence⁶¹ but the bill is not clear, whether the allegation itself amounts to offence or the conversion activity is an offence? If the allegation amounts to an offence, then the allegation of conversion by anyone can be brought under the purview of the bill and misuse of the bill would take place rampantly. Further, the bill attempts to make the induced conversion is illegal whereas, induced reconversion is valid under the law.

- **Burden of Proof:**

The burden of proof, as envisaged by the bill, says that the person who converts the other or who is an accused person in the conversion activity must prove that he has not committed the offence.⁶² Such a burden of proving would lead to unnecessary harassment of a person and further, it can be accepted that it is impossible to prove innocence in normal circumstances. Anyone at any moment may make false allegations to harass the other person without having any valid reasons and also the conversion issue under the bill has been made so stringent that it makes the life of a person impossible to live on this earth. Further, the false allegations or false cases will not provide any remedies or solace to the affected person under the bill.

- **Encroachment of privacy of a person:**

Choice is a fundamental aspect of human life and moreover, the right to choose one’s religion is fundamental and implicit in the freedom of conscience. Every human being is born free but hardly exercise this freedom of choice due to various reasons like circumstances in which the person is born, his surroundings, lack of fair opportunities to compare his religions with religious tenets, etc.⁶³ As he grows, he has been given the freedom to choose according to his knowledge and capacity to discern what is good and bad for his life. Freedom to choose one’s religion as per his conscience is also constituted his personal freedom. Therefore, the state cannot restrict this personal right and cannot encroach upon the privacy of a person regarding choosing his religion according to his discernment. Forcing a person to convert is unlawful and against the conscience

⁶¹ The Karnataka bill, *supra* note 57 at Sec. 3

⁶² *Id.*, at Sec. 12

⁶³ Suleman, Saadhiya. Freedom of religion and anti-conversion laws in India: an overview, *ILI Law Review*, 112 (2010)

of the person under Article 25 of the Constitution so also state interfering in the religious affairs of an individual, nevertheless, equal to restricting his individual freedom with regard to choice of religion.

Marriage is a personal choice and falls within the fundamental right guaranteed under the Constitution.⁶⁴ Several high courts have laid down that the state cannot interfere in the marriage life of a person. It is his/her personal life and the state and its agencies, at any cost, cannot interfere in the marriage life of a person. The bill also makes provision to declare the nullity of the marriage if it finds that marriage has been contracted for the sole reason of the conversion.⁶⁵ The right to marry falls under the right to life and liberty and choosing one's life partner is the private choice of the person and the state entering into the personal life in the name of public order is the encroachment on the privacy of an individual.

- **Cause for disunity:**

The bill restricts free education by placing it under offensive activity and abstains the educational institutions established by the religious organizations from providing free education to the poor and disadvantaged group. The state, in the wake of privatizing the education sector, tries to place the disadvantaged category of people into a still worse position by abstaining the religious organizations from imparting free education to these backward categories of people. The bill, in its core elements, clearly brings disunity among the religious groups and communities from relating each other with faith and confidence. It causes to doubt each other and provides ample avenues to file false allegations and cases against each other on flimsy grounds. The bill also may become a tool in the hands of certain vested interested groups and political leaders, who try to rule the country based on divide and rule policy i.e., division on the basis of caste, creed and religion. Thus, it may become an effective instrument to bring clear division between the majority and minority communities and further, to lose faith in each other.

CONCLUSION

The question that comes to our consideration is, can the state take up the responsibility to decide for an individual to which religion he belongs? Since conversion is individual freedom and not

⁶⁴ INDIA CONST. art. 21

⁶⁵ The Karnataka bill, *supra* note 62, at Sec. 6

community right, can the state interfere in exercising his personal freedom in the name of public order?

Under the Karnataka anti-conversion bill, the state through Magistrate allows the conversion of a person from one religion to another through declaring his willingness to change his religion. Thus the bill purports to be holding that religion is not a personal right of an individual rather it is the activity of the state and therefore, it provides the authority of the District Magistrate (DC) to obtain permission to change one's religion.

Hence, the bill, proposed to be implemented by the Karnataka state to curb the forceful conversion, not only extends its parameters to restrict the forceful conversions rather it is targeted to curtail absolutely the freedom of religion of some particular community members of the society guaranteed under Article 25 of the Constitution. On the one hand, the state cannot restrict the freedom of conscience of an individual in choosing one's religious faith and on the other, with the bonafide intentions, even if the state wants to implement the bill, it must give due consideration to the following points, namely,

- As forceful conversion amounts to be an offence under the bill, the reconversion too must be made an offensive activity under the bill.
- State, at any cost, cannot compel an individual to declare himself or herself before a civil authority i.e., the District Magistrate or any other authority, to make a decision with regard to his or her personal choice of religion i.e., changing one's religious faith constitutes the freedom of conscience.
- The term 'allurement' must not include the works of charity and social reforms like education, employment or such other activities but must include those activities that are genuinely constituting or leading the forceful conversions.
- The burden of proof must be laid on the person who alleges the forceful conversion and not on the person who faces the allegations.
- The bill must include the provisions of remedies in the event of any misuse of the provisions of the bill or in the wake of filing false complaints merely to harass or hamper the rights of any persons.

Conversion is an internal thought process and relates to the conscience of a person and therefore, the state has nothing to do with regard to the conversion of an individual. If ever there are any

stray incidents of forceful conversion, in the eyes of the state, the existing provisions of the law are sufficient to curb them and bring them under control and therefore, one more law is redundant in the eyes of law. The provisions under the existing law namely, section 153A of the Indian Penal Code,⁶⁶ which prohibits the promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. by words either spoken or written is sufficient to monitor the illegal activities with regard to the conversion.

⁶⁶ Indian Penal Code, 1860 (Act of Parliament, 1860)

RATIONAL CRITICISM AND BLASPHEMY LAWS IN INDIA

K. Sanjay¹

V. Santhosh²

INTRODUCTION

Atheism can be religious or irreligious. Being the minority among the minorities, irreligious atheism is prone to attacks from all sides in a “might is right” democracy. One such attack is the blasphemy laws. While the intention of the blasphemy laws is usually to protect religious freedoms and ensure peace between religious groups, these laws can however be misinterpreted to punish irreligious atheists who express their disbelief in the form of fair criticisms. The irreligious group rejecting all religions is likely to be the most vulnerable in the sea of religions. India accommodates multiple religious beliefs in its diverse landscape. In doing so, Indian laws cannot be indifferent to the conflicts arising out of contradicting religious beliefs. Impartial protection to all religious beliefs from one another becomes a prerequisite for peaceful administration in India. Such legal protection is ought to inculcate religious tolerance and unity among the Indian citizens. Protecting a religious belief and simultaneously inculcating religious tolerance to another cannot be envisioned in the form of an exhaustive codified law because of the vast number of religious beliefs in India. However, such law can be codified in a heuristic manner flexible to suit all possible religious conflicts among citizens in general. A law codified using a heuristic approach is a kitchen knife that can be misused if the judge is not religiously tolerant while serving justice. Thus, the role of the judiciary in India is paramount in ensuring peaceful relations among religions and between religions.

To be secular, a State is bound to protect irreligious atheists in the same manner as it protects others. Ironically, the secular state associates infants to a religion (usually the one followed by the parents) at birth when they are not even capable of giving consent. One can justify the same by citing administrative reasons and the personal choice of parents/guardians in upbringing their child. However, the same justification would not hold good after the child becomes an adult with a rational mind capable of giving consent. The secular state cannot force the adult to be

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associated with a particular religion and if it does, it would lose its secular character. Blasphemy laws are a threat to secularism if it punishes professing and practicing irreligious atheism. This paper will analyze the existing constitutional freedom available for the irreligious atheists in being themselves and propagating their way of life to their fellow citizens in India.

FREEDOM FROM RELIGION AND GOD

Freedom from religion or simply the freedom to be irreligious cannot be understood without defining the religion itself. The definition of religion is as complicated as religion. Sometimes, Judiciary has ignored the atheistic religions consciously or carelessly while defining the word “religion” and has restricted the meaning of religion to a belief binding the spiritual nature of man to a supernatural being.³ On the other hand, the judiciary has also inclusively defined religion in which the scope of the word “religion” was extended to include atheistic religions in India like Buddhism and Jainism which do not believe in God but have ethical rules, rituals, ceremonies, and observances.⁴ The Constitution guarantees the right to propagate one’s religion.⁵ Applying the inclusive definition of religion to the constitutional provisions, one can safely assume that there is a right to propagate atheism in the name of religion. However, the right to be irreligious or propagate irreligious atheism cannot be construed from the above-said interpretation. Atheism on its own without a religious notion is purely a ‘rejection’ that is practically impossible to propagate. Rejection is a reply to religious claims and not a claim on its own unless backed by another religion. However, propagation of irreligious atheism could also mean propagating a way of life that irreligious atheists follow (i.e. making active and fair criticisms against superstitions).

Although the judiciary couldn’t bring the right to be irreligious atheist under the word “religion” in Article 25, the right to be an irreligious atheist was construed to be included implicitly under the “freedom of conscience” guaranteed under Article 25. The judiciary while interpreting the said freedom has held that the individuals have the right to be “atheist” and the freedom of conscience under Article 25 confers them the right to express an opinion or claim that they do

³ *Lily Thomas v. Union of India* (2000) 6 SCC 224.

⁴ *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* 1954 AIR 282.

⁵ The Constitution of India 1950, Art. 25(1).

not belong to any religion.⁶ The Constitution is not just for believers. The non-believers too have the constitutional liberty to pursue a way of life or faith to which they seek to adhere.⁷ An individual cannot be forced to stand with folded hands when a prayer (which the individual believes to be religious) is being sung and any such force if inflicted would violate their freedom of conscience.⁸ Forcible conversion of any person to one's religion would violate freedom of conscience and the said act cannot be called the propagation of religion. Propagation means persuasion and exposition without the element of coercion.⁹ Therefore, mere propagation of atheistic religions without the element of coercion would not violate the freedom of conscience.

The Constitution bars the educational institutions wholly maintained out of state funds from providing religious instructions.¹⁰ Nobody can be forced to attend religious instruction or religious worship imparted in an educational institution recognized by State or receiving aid from State funds.¹¹ However, a comparative study of the philosophy of all religions or education for value development based upon all religions cannot be *ultra-virus* the Constitution.¹² The irreligious atheists can legally marry a consenting individual without performing religious rituals, or ceremonies and such marriages would be subject to certain legal requirements only.¹³ Apart from education, marriage, divorce, succession, and maintenance laws, India also allows irreligious atheists to refrain from referring to God in their official capacity. The Third Schedule of the Constitution also allows the Ministers of the State and Union to take an oath by saying the words "solemnly affirm" instead of the words "swear in the name of God" if they do not believe in God.¹⁴ The State cannot compel anyone to declare or specify their religion in any form or declaration.¹⁵ An attempt to insert the words "in the name of God" in the preamble of the Constitution of India was rejected by the Constituent Assembly.¹⁶ Thus, the Constitution of India impliedly grants the freedom to be an irreligious atheist.

⁶ *Dr. Ranjeet Suryakant Mohite v. The Union Of India* 2015 (6) BOMCR 609.

⁷ *Shafin Jahan v. Asokan K.M.* AIR 2018 SC 1933.

⁸ *Sanjay Ananda Salve v. The State Of Maharashtra* 2014 (6) BOMCR 142.

⁹ *Rev Stainislaus v. State of Madhya Pradesh* AIR 1977 SC 908.

¹⁰ The Constitution of India 1950, art 28(1).

¹¹ Article 28(3).

¹² *Aruna Roy v. Union of India* AIR 2002 SC 3176.

¹³ The Special Marriage Act 1954, s 4.

¹⁴ The Constitution of India 1950, Schedule III.

¹⁵ *Dr. Ranjeet Suryakant Mohite v. The Union of India* 2015 (6) BOMCR 609.

¹⁶ 'Constitutional Assembly Debates on October 17, 1949'

<<http://164.100.47.194/Loksabha/Debates/cadebatefiles/C17101949.html>> accessed 3 November 2021

SCIENTIFIC TEMPER AND RELIGIOUS TOLERANCE

In a secular society, the State is ought to treat religious atheists and irreligious atheists in the same manner as it treats religious theists. Similar protections and restrictions should apply to all three groups. In the case of *Ahmedabad St. Xaviers College v. State of Gujarat & Anr*,¹⁷ the Hon'ble Supreme Court of India held that a secular state is neither anti-God nor pro-God and it treats the devout, the agnostic, and the atheist alike. The Hon'ble Supreme Court went on to define the role of a secular state to maintain its secular character by holding that Constitution of India eliminates God from the matters of the State and guarantees freedom of conscience as well as the right freely to profess, practice, and propagate religion simultaneously. Religious claims, in some instances, if not all, may overlap with scientifically proven evidence or moral principles of a rationalist derived by mere reason. However, the irreligious atheists would not agree upon some superstitious beliefs of any religion that is not scientifically or logically justifiable. In such circumstances, the irreligious atheists would oppose or expose the superstitious religious claims. Such opposition may be in the form of fair criticism for the edification of others. Spreading historical evidence, scientific knowledge, and rationalist reasoning is likely to progress society and end superstitious social evils. However, insulting the religious or theistic claims would seem like spreading hatred without purpose. Therefore, a secular state is ought to protect fair criticism and simultaneously restrict everything else thrown at religious and/or theistic citizens. Act or omission amounting to fair criticism is difficult or rather impossible to be precisely defined in law. The prevailing facts and circumstances during the commission or omission would invariably be a relevant factor in identifying its nature. The Indian judiciary on various occasions has differentiated fair criticism and mere insult in its pronouncements and has tried to promote both scientific temper and religious tolerance.

In India, children are usually not taught the tenets of all religions during their childhood, and sometimes the parents or guardians do not even teach the tenets of their religion to their children. The parents or guardians can go unquestioned without teaching the tenets of their religion or other religions to their wards. Even a grown-up adult can go unquestioned for not knowing religious tenets but not developing scientific temper would amount to failure of fundamental duty under Article 51A (h) of the Constitution of India. The said provision not only casts a

¹⁷ 1974 AIR 1389.

fundamental duty to develop scientific temper but also humanism, a spirit of inquiry and reform.¹⁸ Periyar is one such reformer who performed this fundamental duty in the right sense and encouraged others to do the same. In the case of *P.D. Sundaresan President, Parent Teachers Association, Government Boys Higher Secondary School, Krishnagiri District v. The Principal Secretary to Government, School Education Department and Ors*,¹⁹ the Hon'ble Madras High Court held that installation of Periyar statue in school premises is not illegal and such a move is necessary because schoolchildren must know Periyar's life and mission. The Hon'ble Madras High Court opined that understanding Periyar's philosophy will help the school children in performing their fundamental duty enshrined under Article 51-A (h) of the Constitution of India. Religious freedoms are not absolute.

In the case of *Sri Venkataramana Devaruand v. The State Of Mysore*,²⁰ the Hon'ble Supreme Court of India has held that a member of the Hindu public under Article 25 (2) (b) cannot claim for a temple to be open at all hours for worship and/or the services exclusively performed by Archakas should be personally performed by the said member. The above-said sub-section referred by the Hon'ble Court is a non-obstante clause empowering the State to make laws for providing welfare and reform or throwing open public religious Hindu institutions for all Hindu classes and sections.²¹

Similar to scientific temper, the citizens are also expected to develop religious tolerance, which is implied in their freedom of religion itself. In the case of *Lily Thomas, Etc. Etc. v. Union of India & Ors.*,²² the Hon'ble Supreme Court was dealing with the issue of first marriage's status after conversion for bigamy. The Hon'ble Court held that mere conversion would not end marital ties unless a divorce decree is obtained and the second marriage (with Muslim woman) after conversion without first marriage's divorce (with Hindu woman) is punishable as bigamy. The Hon'ble Supreme Court went on to hold that person's right under Article 25 to entertain the religious belief of their choice is subject to the restriction of not exhibiting their belief or ideas in a manner infringing the religious right and personal freedom of others. While exercising freedom, one cannot encroach upon the similar freedom of others.

¹⁸ The Constitution of India 1950, art 51 A (h).

¹⁹ (2012) 5 MLJ 208.

²⁰ 1958 AIR 255.

²¹ The Constitution of India 1950, art 25 (2) (b).

²² (2000) 6 SCC 224.

BLASPHEMY LAWS AND FLAWS

Law is subject to social change and vice versa. The same can hold for religions too. Many superstitious activities, which were done in the name of religion, are now illegal and some are even considered immoral by the majority. Untouchability (which was predominantly practiced by the upper caste Hindus in India) is forbidden as per the Indian Constitution.²³ The Hindu practice of Sati is another example of superstitious social evil, which is banned in all forms.²⁴ All these reforms would have been impossible without criticism against religious and superstitious beliefs. The current blasphemy laws under Indian criminal law are capable of curbing the fair criticisms required for a social transformation and reform. The Indian Penal Code, 1860 deals separately with the offences relating to religion under Chapter XV.²⁵ Under the Indian Penal Code, the following offences relating to religion are punishable:-

1. Section 295:- Intentionally destroying, damaging, or defiling any place of worship or any object held sacred by any class of persons to insult the religion of such class or with the knowledge that such act is likely to be considered as an insult to religion by such class.²⁶
2. Section 295-A:- Insulting or attempting to insult the religion or religious belief of any class of Indian citizens in any manner with the deliberate and malicious intention of outraging the religious feeling of any class of Indian citizens.²⁷ To punish a person under this provision, prior sanction of the concerned Government is necessary under Section 196 (1) of the Criminal Procedure Code.²⁸
3. Section 296:- Voluntarily causing disturbance to lawful assembly performing religious worship or religious ceremonies.²⁹
4. Section 297:- With the intention of wounding the feelings of any person or of insulting their religion; or with the knowledge that such feelings are likely to be wounded or that such religion is likely to be insulted by doing the following:-
 - a. Trespassing in place of worship, place of the sepulcher, place set apart for funeral rites or depository for remains of the dead.

²³ The Constitution of India 1950, art 17.

²⁴ The Commission of Sati (Prevention) Act 1987.

²⁵ The Indian Penal Code 1860.

²⁶ *ibid* s 295.

²⁷ *ibid* s 295-A.

²⁸ *Shalibhadra Shah v. Swami Krishna Bharati* (1980) GLR 881.

²⁹ The Indian Penal Code 1860, s. 296.

- b. Offering indignity to a human corpse.
 - c. Causing disturbance to persons assembled for funeral ceremonies.³⁰
5. Section 298:- Uttering word or making sound or gesture in the hearing or at the sight of any person, any place, or any object with the deliberate intention of wounding the religious feelings of such person.³¹
 6. Section 153-A:- Promoting or attempting to promote disharmony, feelings of enmity, hatred, or ill-will on religious grounds between religious groups;³² Acting in a manner prejudicial to maintenance of harmony between religious groups which disturbs or is likely to disturb public tranquility;³³ Organizing exercise, drill, movement or similar activities knowing that the participants are intending to use or trained to use criminal force or violence against a religious group which causes or is likely to cause fear or alarm or insecurity among members of such religious group.³⁴

Although these provisions intend to curb intentional insults directed towards religions that affect the feelings of religious persons, the provisions are prone to misuse by way of giving them wide interpretation so that the same can be used to curb fair criticisms without insult. The judiciary while dealing with offences relating to religion cannot afford to lose its scientific temper by curbing fair criticisms on the pretext of protecting religious sentiments. Unlike other countries with State religion, India cannot have blasphemy laws protecting one particular religion alone. The Indian blasphemy laws should protect all religions in India. Even though Chapter XV is framed in a heuristic manner keeping in mind the diversity of religious beliefs and practices, the misinterpretation of the same may curb fair criticism and even violate Article 25. The judiciary plays a major role in this context. The state has to ensure religious harmony through Chapter XV of the Indian Penal Code. ³⁵In doing so, it cannot resist social reform. If it does, then the judiciary has to step in and correct the State instead of joining hands with the State.

Many judgments in India had dealt with blasphemy provisions but few are without scientific temper. Those few judgments show how these blasphemy laws are capable of stagnating social

³⁰ *ibid* s.297.

³¹ *ibid* s. 298.

³² *ibid* s. 153-A (1) (a).

³³ *ibid* s 153-A (1) (b).

³⁴ *ibid* s 153-A (1) (c).

³⁵ P.S.A. Pillai, *Criminal Law* (Lexis Nexis, 12th edn., 2016) 531.

change and social reformation. In the case of *S. Veerabadran Chettiar vs E. V. Ramaswami & Ors.*,³⁶ the Hon'ble Supreme Court while interpreting Section 295 of the Indian Penal Code, opined that even a "Ganesha doll" taken from a shop by a rationalist is an object held sacred by Hindus. In this case, the Hon'ble Court equated the act of breaking a Ganesha doll taken from shops to the act of breaking the Ganesha idols inside the temple and Ganesha idols carried out in procession during festivals. This interpretation itself may hurt the religious sentiments of Hindus, whose feelings the court was claiming to protect. Interestingly, the Hon'ble Court did not direct further inquiry into the complaint made by Hindus saying the case had become stale. The Hon'ble Court dismissed the appeal despite all the whining. In the case of *Baba Khalil Ahamad v. State*,³⁷ the Hon'ble Allahabad High Court while interpreting Section 295-A of the Indian penal code, held that even a true statement may outrage the religious feelings. In the case of *T. Parameswaran v. The District Collector*,³⁸ the Hon'able Kerala High Court came down heavily on a drama performance where Jesus was portrayed as a human who succumbed to certain temptations. Although there was no problem in portraying Jesus as a "human", the Hon'able Court felt that worldly temptations can never originate within Jesus as per Christian beliefs. The Hon'able Court went on to say that, nothing could be portrayed contrary to such faith of Christians even if it sounds incredible to others. Thus, faiths without credibility were given protection. Though the case was relating to the Kerala Dramatic Performances Act, 1961, the judicial decisions relating to Section 295, Section 295-A, and Section 298 of the Indian Penal Code were relied upon for interpretation.

One can infer from these cases that the judiciary has tried to protect false claims and incredible faith in the name of religious tolerance. Such an attitude of widely interpreting the blasphemy provisions would be detrimental to the scientific progress of the society and it will discourage the spirit of inquiry among the citizens who think rationally. Most legal scholars agree that the freedom of conscience is meant not only for religious convictions but also for the protection of secularized conscience.³⁹ Such secular conscience will be in danger if rational criticisms are curbed for protecting religious sentiments without credibility.

³⁶ 1958 AIR 1032.

³⁷ 1960 CriLJ 1528.

³⁸ AIR 1988 Ker 175.

³⁹ Nadia N. Sawicki, ' [2011-2012] 33 Cardozo L. Rev. 1389.

RATIONAL CRITICISMS WITHOUT INSULT

Rationality can be of three types i.e. (i) Rationality backed by reason, (ii) Religious supra-rationality backed by reasoning that goes beyond natural reason but not against it, and (iii) irrationality. The legal system operates in the realm of rationality.⁴⁰ The foundation is rationality and the superstructure is the law. Law punishing rationality is nothing but hypocrisy. When rational criticisms are made against religious practices, the judiciary has to check if the religious practices are irrational or supra rational. If the religious practice is irrational then the ruling should incline towards scientific temper by allowing rational criticism. If the religious practice is supra rational then the ruling should inculcate religious tolerance to the person who makes the criticism. Accordingly, the balance between scientific temper and religious tolerance can be maintained.

In dealing with blasphemy laws, the Indian Judiciary on various occasions has tried to maintain both scientific temper and religious tolerance instead of just curbing the former with the latter one. The mere possibility of misinterpretation by the judiciary cannot be sufficient to nullify the whole blasphemy provisions. In a case,⁴¹ the Hon'able Supreme Court of India upheld the constitutional validity of section 295-A of the Indian Penal Code, 1860 which punishes only insults in aggravated form with the deliberate or malicious intention of outraging religious feelings and does not punish insults to religion that is made unwittingly or carelessly without such intention. The Hon'able Court opined that the tendency of aggravated form of insult to religion is the one that disrupts public order and such form of aggravated insult is a reasonable restriction to freedom of speech under Article 19(2). The provision exists not merely because it is constitutionally valid or it was held to be constitutionally valid, it also serves a purpose that is essential in exercising the fundamental right to freedom of religion. Therefore, the said provision cannot be cut off from the penal code even if there is a possibility of curbing fair criticisms without insult. The only way out is to lay guidelines for interpreting the blasphemy provisions in the right spirit with scientific temper. The Indian judiciary has rightly done it on various occasions.

⁴⁰ Rafael Domingo, 'Restoring Freedom of Conscience' [2015] 30.2 Journal of Law and Religion 176-193.

⁴¹ *Ramji Lal Modi v. State of U.P.*, AIR 1957 SC 620.

In a case,⁴² the Hon'able Orissa High Court held that worship of the deity in the proper form but on an unauthorized date and with the help of an unauthorized priest cannot be in itself held to violate Section 298 of Indian Penal Code. It was held that such activity with mere knowledge and without the deliberate intention of wounding the religious feelings would not amount to an offence under Section 298 of the Indian Penal Code.

In the case,⁴³ the Hon'able Madhya Pradesh High Court held that to constitute an offence under Section 295-A of the Indian Penal Code, there should be a deliberate and malicious intention of outraging the religious feelings of any class of citizens. The Hon'ble Court went on to opine that mere usage of words such as 'Kulta' or 'Duracharini' claiming that such words were used by rumor mongers against "Sita" cannot amount to a grossly offensive or provocative matter. The Hon'ble Court held that while interpreting section 295-A the judge should not consider the religious feelings of an abnormal or hypersensitive man. The judge should rather consider the religious feelings of an ordinary man with common sense and prudence.

In the case,⁴⁴ the Hon'able Allahabad High Court held that rational criticism of religious tenets couched in restrained language could not amount to an offence under Section 153A or Section 295A. The Hon'able Court held that criticism of untouchability and reprehensible treatment meted out to the lower castes under the sanction of Hindu religion is legitimate and such criticism was supported by Mahatma Gandhi.

In the case,⁴⁵ the Hon'able Bombay High Court had to deal with a writ petition challenging the bursting of crackers on which there are pictures of Gods and Goddesses. The Hon'able Court held that the society as a whole is not looking that in point of view where the religious feelings are being hurt and thus petitioner cannot represent the whole society if only the feelings of petitioner's feelings are being hurt. The Hon'able Court while dismissing the petition also cited other instances where the religious feelings of society are not being hurt like invitations and newspapers containing the pictures of Gods thrown at dustbins after use or even burnt.

⁴²*Chakra Behera and Ors. v. Balakrushna Mohapatra* AIR 1963 Ori 23.

⁴³*Ramlal Puri v. State of Madhya Pradesh* AIR 1971 MP 152.

⁴⁴*Lalai Singh Yadav vs. State of Uttar Pradesh* 1971 CriLJ 1773.

⁴⁵*Bhau Shankarrao Suradkar vs. State of Maharashtra & Ors.* 1999 CriLJ 1230.

In a case,⁴⁶ the applicant in an interview insulted Muslims by saying Muslims indulge in a riot as a daily exercise and Quran legitimizes them to commit murders except during the month of Ramzan. The applicant claimed that the statements were made to claim that Quran is not consistent with the requirements of the 21st century. Criminal proceedings were initiated against the applicant under Section 298 of the Indian Penal Code. The Hon'able Allahabad High Court refused to quash the criminal proceedings initiated under Section 298 as the statements made by the applicant was not a warm expression dropped in the heat of controversy or an argument in good faith for purpose of vindicating one's claims which the framers of Indian Penal Code did not want to punish. From this case, one can construe that a warm expression dropped in the heat of controversy or an argument in good faith for purpose of vindicating one's claims is not punishable under Section 298 of the Indian Penal Code.

In a case ⁴⁷ the Hon'able Bombay High Court held that mere display of slippers on which the images of Hindu Gods and Goddesses were sketched cannot be an offence under Section 295-A of the Indian Penal Code unless it was displayed prominently outraging or hurting the religious feelings of any class of citizens. Such slippers were not meant for wearing and thus they were held to be artistic expression by the Hon'ble Bombay High Court.

Rational criticisms, arguments in good faith, unintentional insults, and artistic expressions are to some extent protected by the judgments discussed above. Some activities, which are otherwise punishable if interpreted strictly, were ignored by the judiciary just because the society was indifferent. However, there was and will always be a possibility of misinterpreting or widely interpreting the blasphemy provisions in the Indian Penal Code which are as dangerous as misinterpreting a religious text. One cannot blame the religious text when the problem is with the interpreter. Outdated Blasphemy laws are unnecessarily aiding the resistance to necessary social change. Resistance to social change will be harmful if people are allowed to cling themselves to outdated traditions to which they are emotionally and sentimentally bound.⁴⁸ If there is a conflict between the need for social reform and religious practice, then religion must yield. ⁴⁹ Rational criticisms are tools for social reform.

⁴⁶ *Ashok Singhal vs. State of U.P. & Anr* 2005 CriLJ 2324.

⁴⁷ *Vineet Kacker vs. The State Of Maharashtra* 2017 ALLMR (CRI) 4309.

⁴⁸ C.N. Shankar Rao, *Sociology Primary Principles* (S. Chand & Company Ltd., 3rd edn., 2003) 488.

⁴⁹ Dr. J.N. Pandey, *Constitutional Law of India* (Central Law Agency, 54th edn., 2017) 383.

CONCLUSION AND SUGGESTIONS

The freedom of conscience guaranteed in India includes the right to be an irreligious atheist and the judiciary has played a major role in substantiating the said inclusion. However, the practice of irreligious atheism actively by way of fair criticisms and its protection is at the mercy of judicial interpretation that is differing from case to case (or judge to judge). If the nature of atheistic expression is scientific or rational criticism of religion or theism, then it is ought to fall under the citizen's fundamental duty to develop scientific temper and spirit of enquiry. If the nature of atheistic expression is merely an insult to religions or Gods, then it is ought to be punished under blasphemy laws. Irreligious atheism cannot survive if there are blasphemy laws widely interpreted to punish truth or rational criticisms. Although changes in the law might fail to address the poor implementation or wider interpretation, the following are suggestions are made for protecting the rational criticisms from being punished religiously:

1. The Indian Penal Code, 1860 may be amended to include a separate provision in Chapter XV which would be a non-obstante clause stating: "Notwithstanding anything contained in this Chapter or under Section 153-A, any act or omission including words written or spoken or expressed in gestures, would not be punishable if such act or omission is in the nature of a rational criticism or the spirit of enquiry."
2. An explanation clause may be added under the above-mentioned provision, which would read as: "For the purpose of this provision, the words 'rational criticism' includes affirming scientifically proven truths and rejecting religious or theistic claims if not scientifically proven."
3. An explanation clause may be added to Section 295 of the Indian Penal Code, 1860 that would read as - "For the purpose of this provision, the words 'object held sacred' exclude the objects owned by the accused."

MUSLIM WOMEN'S RIGHT TO DIVORCE AND RELIGIOUS PRACTICES IN INDIA

Nayana G¹

INTRODUCTION

Law is always dynamic. Law must be in accordance with the time and circumstances. As observed by Lord Denning, 'law does not stand still, but moves continually'. But when we look into the Muslim law in general and talaq, in particular, as administered in our country is never static, never dynamic and not in accordance with the spirit of the Holy Quran, the primary source of Muslim law and the changing needs of time.

Islam does not regard marriage as a sacrament, in the Hindu religious sense of the term. According to the scheme of the marriage for Muslims, marriage between a man and his wife is a multi-dimensional reality, partaking of the domains of the sacred and the secular. The object of Muslim marriage is the preservation of human species, the fixing of descent, restraining men for debauchery, the promotion of love, affection and union between the husband and wife, mutual help in earn in livelihood and protection and encouragement of chastity, not merely gratification of sexual lust and procreation². The fundamental concept of individual liberty and responsibility, which is a corner stone of Muslim jurisprudence, is incorporated even in the institution of marriage. The Muslim marriage depends on the volition of parties concerned³.

Under the Holy Quran, marriage is a fortress of chastity. It prescribes strict adherence to morality and sexual discipline, both to men and women. It strictly prohibits extra-marital conjugal relationship; in other words it permits sexual relationship only through marriage. Moreover, the fine thread that runs through all its injunctions is protection and compassion to the weaker and poorer sections of the society, thereby achieving the goal of equality among all.

Under the present Muslim personal Law in India, a Muslim husband has been given unconstrained and unfettered extra-judicial power to dissolve the marital tie at his will and also having the power of unilateral pronouncement of talaq. At the same time, a Muslim wife has not

¹ Research Scholar, Government Law College, Thiruvananthapuram

² Thanzeem Fathima, *Islamic Law and Judiciary*, 31 (1st edn, Deep & Deep Publications, 2001)

³ Dr Kauser Edappagath, *Divorce and Gender Equity in Muslim Personal Law of India*, 33, (1st edn, Lexis Nexis2014)

been given such a power. The present position of law among Muslims in India, is that the husband having the power to untie his marital status at any time anywhere as he wishes. But the same cannot be availed to a Muslim woman.

DIVORCE UNDER ISLAMIC LAW

Divorce among Muslims is a complex subject. For some years the Muslim Law of divorce particularly the practice of triple talaq has been a subject of considerable controversy. There is a widespread belief that Muslim personal law on divorce is so remarkably one-sided and discriminatory towards women. There is no doubt that certain inbuilt inequities exist in Muslim Personal law. The provision of Triple talaq is practiced in India is an acute expression of that built in inequity against women in the marriage system⁴.

The general belief, both among Muslims and non-Muslims, that under Muslim Law a male enjoys an arbitrary and unlimited power to inflict divorce by pronouncement of talaq does not all accord with true *sharia law*. According to the true law of sharia, talaq must be for a reasonable cause. Islam regards marriage as an extremely desirable institution. Hence the conception of marriage as the rule of life and divorce only an exception to the rule if the marriage irreparably breaks, Muslim law permits extra judicial divorce both to men and women. This is based on the non-fault theory of divorce.

The modern breakdown theory of divorce does not require information on the reasons for the breakdown of marriage but simply evidence of it. An almost similar power is that is available to the Muslim husband by way of talaq has also been given to the wife under sharia law. She can recourse to unilateral extra-judicial divorce by khula mode. Just as a husband who is convinced of an irretrievable breakdown of marriage, and as a last resort dissolves it by pronouncement of talaq, a wife who has the same conviction may also discard her husband by exercising her right to *khula*⁵. The provision of an out-of –court divorce is based on a firm expectation that the aggrieved spouse would behave in a God-fearing, responsible and rational way. It is not aimed at giving uncontrolled, arbitrary or unilateral powers to either the husband or the wife⁶.

⁴ Dr Kauser Edappagath, *Divorce And Gender Equity In Muslim Personal Law Of India*, 3 (1st edn, Lexis Lexis., 2014)

⁵ Id

⁶ Tahir Mahmood, *The Muslim Law Of India*, 89,(3rd edn, Lexis Nexis,2002),

Talaq is strongly condemned in Islam and is permissible only under exceptional and unprecedented circumstances, after a pre-divorce conference. The Prophet denounced talaq as the detestable of all things permitted. There is nothing in the law of Islam suggesting that the husband is free to exercise the power of talaq in an arbitrary, irrational, or unreasonable manner. Muslim law allows talaq subject to several conditions that are of a dissuasive nature: their purpose is to discourage the husband from exercising his right without a careful and cool consideration. Talaq must be for a reasonable cause and be preceded by attempt of reconciliation between the husband and wife by arbitrators. Sharia law prescribes for a simple procedure for talaq keeping all chances of reconciliation and reconsideration open. A talaq strictly following the procedure is, talaq-e-sunnat, a proper talaq. A talaq is in violation with the prescribed procedure is talaq-e-biddat, an improper talaq. For example triple talaq, which is widely prevalent in India.

The Quran does not mention triple divorce in one sitting. It requires the divorce to be effective over three periods of cleanliness, giving the couple the chance to reconcile during those three months. The Quran also provides for arbitration to both men and women, appointing an arbitrator for each and they are to attempt reconciliation together. Thus both the Quran and the Prophet prohibit arbitrary divorce. However Muslim law, as applied in India, has taken a course contrary to the spirit that the Prophet or the Holy Quran laid down and given the Muslim male a free hand to unite the marital tie. Despite many restrictions imposed by the Quran on the misuse of the husband's absolute power to divorce by his wife, a Muslim male could twist the sanctions given in such a way that he always came out as a winner and the wife always became the victim of sufferings resulting from a divorce. A Muslim woman did not have any chance to justify her stand nor could she initiate a divorce without being a loser.

DIVORCE BY JUDICIAL DECREE UNDER MUSLIM DISSOLUTION OF MARRIAGE ACT, 1939⁷

Lian

- This type of divorce occurs when a wife is falsely charged with adultery by her husband.
- She can move to court to file a regular suit for dissolution of marriage, under the Muslim Dissolution of Marriage Act, 1939.

⁷ <https://blog.ipleaders.in/handbook-marriage-divorce-muslim-law/>

- The ground of divorce must be a false charge of adultery on the wife, his husband.
- The husband imposing charge must be sane and above 18 years of age.
- Marriage is not dissolved until dissolution degrees are passed by the court, once it is passed divorce becomes irrevocable.
- The husband can prevent divorce by the withdrawal of false assertion of adultery on the wife, before passing of the decree by the court.

Faskh

- If husband and wife feel that they are not compatible together, they can file for divorce.
- Section 2 of The Dissolution of Marriage Act, 1939, states grounds on the basis of which the wife may sue for divorce.
- Whereabouts of husband not known for 4 years.
- Husband has failed to maintain wife for two years.
- Husband is sentenced for imprisonment of 7 years or more.
- Husband has failed to perform marital obligations for three years, without any reasonable cause.
- The husband is impotent.
- Husband is suffering from insanity (for two years), leprosy or virulent venereal disease.
- Wife being married before 15 years, rejects the validity of marriage after attaining the age of 18 years, provided marriage must not be consummated.
- Husband treats her with cruelty, such as imposing physical assault. making defamatory statements that affect her reputation etc.⁸

Rights conferred by personal laws based on religion is not absolute. For instance, the two most popular and important judgments of the Supreme Court in this regard are discussed hereinafter,

⁸ <https://blog.ipleaders.in/handbook-marriage-divorce-muslim-law/>

in the case of *Mohd. Ahmed Khan vs Shah Bano*, Shah Bano⁹ at the age of 62 was divorced by her husband Mohammed Ahmed Shah, and she along with her five children were disowned and tossed out from her marital home. When she approached Madhya Pradesh High Court to restore her maintenance amount of rupees 200 which was halted by her husband, and to increase its amount to rupees 500, she was divorced by her husband through instant triple talaq or Talaq-ul-Biddat, who used it as a defence not to pay maintenance as she no longer was his wife. But the court granted maintenance to Shah Bano under Section 125 of CrPC on the grounds that she is unable to earn and maintain herself. Though it was against the provisions of Islamic law, Section 125 of CrPC override the personal law and gave effect to the judgment¹⁰.

Similarly, in the case of *Shayara Bano vs Union of India*¹¹, Shayara Bano married to Rizwan Ahmed, was a victim of domestic violence, while she was visiting her parents, Rizwan Ahmed sent her a divorce letter of Talaq-ul-Biddat declaring instant divorce. She filed a petition before the Supreme Court to declare triple talaq, nikah halala, and polygamy to be unconstitutional. Although the court took into account only the plea of triple talaq declaring it to be unconstitutional and it also held that until the government formulates a law regarding instant triple talaq, there would be an injunction against the pronouncement of triple talaq by husbands on their wives.¹²

Talaq-ul-Biddat or triple talaq is unconstitutional as it violates Article 14 of the Constitution in two ways; firstly, it discriminates Muslim women from Muslim men on the basis of gender, as only Muslim men have the right to declare triple talaq, and secondly, it is discrimination on the basis of religion, women of no other religion are subject to cruelty and unjust behaviour of triple talaq except Muslim women. Talaq-ul-Biddat also violates Article 21 of the Constitution on the grounds of the right to live with human dignity, Muslim women are subject to derogatory and cruel behaviour of the Talaq-ul-Biddat, which reduces their presence to mere unwanted beings in the eyes of their husband and society. A divorce that is arbitrary, without justified reasoning and a reconciliatory process is never allowed by the Koran. Thus, personal laws of Muslims are

⁹ 1985(3) SCR 844 or, 1985(2) SCC 556 or, AIR1985 SC 945.

¹⁰ <https://blog.ipleaders.in/handbook-marriage-divorce-muslim-law/>

¹¹ AIR 2017 9 SCC 1 (SC)

¹² <https://blog.ipleaders.in/handbook-marriage-divorce-muslim-law/>

given prominence unless and until they are against the right of women to live a dignified life or are unconstitutional.

CHANGES BROUGHT BY THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

The Muslim Women (Protection of Rights on Marriage) Act, 2019 brought the following changes:

- **Section 3-** Pronunciation of triple talaq on wife by husband in any manner (including electronic), by words either spoken or written, is void or illegal.
- **Section 4-** Any person who pronounces talaq to his wife in a manner prescribed in section 3, shall be subject to imprisonment extendable to 3 years or shall be liable to a fine.
- **Section 5-** Muslim women who are being divorced can seek allowance from their husband to maintain themselves and children dependent on them.
- **Section 6-** Muslim women divorced by husband are entitled to seek custody of their minor child.
- **Section 7-** Magistrate can grant bail to the accused after hearing both the parties, if he feels that reasonable ground exists for granting bail. The offence is compoundable and there is also an option of compromise at the instance of a married Muslim wife, which will drop the charges on the basis of fulfilment of certain terms and conditions.

EFFECT AND CONSEQUENCES OF DIVORCE

Divorce is the tragic end of a marital relationship. It imparts great socio-psychological and emotional issues. Its impacts rests not only on the wife and children, but the larger family as well as the society. Divorce has been conceptualized in terms of multiple losses-loss of an adult household member, loss of a source of income, loss of a familiar residence and regular contact with children. Divorce leaves the spouses in a state of shock, depression, and the problem of coping with the unknown and the unexpected assume overwhelming proportions¹³.

¹³ Dr Kauser Edappagath, *Divorce And Gender Equity In Muslim Personal Law Of India*, 123, (1st edn, Lexis Nexis,2014)

There seems to be a general agreement between social scientists and legal scholars that marital instability and the breaking up of a family. Have grave social consequences. It is gratifying to note that unfettered extra-judicial power given under the Muslim personal law in India to the Muslim husband to liquidate the marriage at will, is looked upon by the society with abhorrence. Discriminating law on divorce adversely affects the socio-economic well-being of the women concerned. When divorce breaks up a marriage of long duration, the wife particularly may find her life difficult and miserable. Unilateral divorce has always been detested as harsh and unjust to Muslim women.

The Indian society is peculiar in its nature and in its treatment of women. Divorce carries with it many disqualifications for her. A girl in her teens who has been divorced by her husband can thereafter expect only a man in his mid-fifties or will have to remain single throughout her life, while a husband who had divorced his wife can get a girl of sweet sixteen the next day. It will not be far from truth to say that in matters of marriage and divorce the society continues to be man's society. We can say with confidence that the evil of divorce and the consequent miseries of divorced women are a reality. One witnesses daily the sorry spectacle of young girls in their teens with children astride their waist, waiting in the corridors of courts, claiming maintenance from their husbands, only for their children and not for themselves as they are divorced¹⁴.

Divorce shatters both the parties emotionally, but the immediate financial and social implications on women are devastating. The change of labels from 'grihalekshmi' to destitute or 'deserted' woman strips her of the respectability she had a melancholic marriage and often leaves her penniless and without a roof over her head. Out on roads, she looks up and tries to cling to the first possible support and at this juncture, hesitation on the part of her own parents and other natal relations strikes her and comes as a rude shock. Labeled as a financial burden, she sees herself as an object of pity and her life as being meaningless with nothing to look forward to in future. In complete contrast, the man is never confronted with the problems of finding a roof, as he owns it, finances, as he is gainfully employed, and support as the society usually looks at him with sympathy and immediately blames the women for her failure to keep her husband happy and blames her mother for not teaching her the art of making the in-laws better disposed towards her. This, in reality, is the primary reason why the husband can command superiority and

¹⁴ Kunhi Moyin v Pthumma, 1976 KLT 87

security in a matrimonial relationship, while a woman hangs on desperately to even an unhealthy relationship due to lack of an adequate financial, emotional, and social security. A separated man can generally find a second spouse more readily than a separated woman; although parents may be reluctant to marry their daughter to a man with a history of marital breakdown and the second wives of such are generally widowed or separated women.

Divorce brings vagaries and upheaval in the life of women. According to Bohannon, divorced women pass through six stages .he identifies these as emotional, legal, economic, co-parental community and psychic. The classification is based on the various steps the divorce has to undergo during the process of acquiring the divorce. Each of these steps presents the individual with unique challenges that demand time, effort and skill to manage and resolve. By emotional divorce, Bohannon means the perceived erosion of love and respect between the marital pair and the effects of this erosion. Emotional divorce results in the loss of loved ones just as fully as the death of a partner¹⁵.

It is gratifying to note that unfettered extra-judicial power given to the Muslim husband to liquidate the marriage at will is looked upon by the society with abhorrence. Discriminating law on divorce adversely affects the socio-economic well-being of the women concerned, studies reveal. Marital instability and the breaking up of families have grave social consequences. When divorce breaks up a marriage of long duration, the wife, particularly, may find her life difficult and miserable. Indian society is peculiar in its treatment of women. A divorce carries with her many disqualifications. While the husband of much older age may re-marry a girl of sweet sixteen the next day of his divorce, the wife, even of much younger age, may find her marital possibilities considerably lower. The evil of divorce and the consequent miseries of divorced women are a reality¹⁶.

We cannot also overlook the traumatic effect divorce can have on children. They suffer not only in terms of immediate trauma of the breakup of their homes, but through subsequent divided loyalties and breaking up of parental control. Sociological studies confirm that children often do not get along well with single parents or stepparents.

¹⁵ Dr Kauser Edappagath, *Divorce And Gender Equity In Muslim Personal Law Of India*, 125, (1st edn, Lexis Nexis, 2014)

¹⁶ Id

NEED FOR UNIFORM CIVIL CODE

Implementation of the Uniform Civil Code is the need of the hour. Article 44 of the Indian Constitution talks about the creation of the Uniform Civil Code for all the citizens of India. The creation and implementation of UCC will bring drastic changes in the Muslim personal laws, this is the reason it is being opposed by the Muslims. It will lead to the permanent abolition of triple talaq, all the marriages will be dissolved through Court proceedings. The practice of polygamy will be abolished and monogamy will be the norm. It will also bring change in maintenance provisions; Muslim women will be able to claim maintenance for a lifetime. Civil contractual nature of marriage will be abolished. Registration of marriage will be compulsory practice, and implementation of Uniform Civil Code will also lead to a violation of the period of iddat. These changes are pro-women and are actively welcomed by Muslim women, as it will lead to the positive betterment of women and society as a whole. But these changes are opposed by Muslims as a whole because they feel the imposition of Uniform Civil Code as an imposition of Hindu law over their personal laws, which is the wrong notion. Uniform Civil Code will be secular in nature containing essentials of all the diverse religions in India. Thus, Uniform Civil Code is necessary for strengthening national unity and integrity among citizens of India¹⁷.

CONCLUSION

A closer scrutiny of the sharia law would show that Islam has prescribed an easier, simpler and expeditious approach to the idea of dissolution of marriage without the intervention of courts and other authorities. No fault divorce without the necessity of the divorce court having to go into the reasons for the breakdown of marriage is a significant characteristic of the modern divorce law. Modern divorce legislation simply recognizes that a marriage can breakdown in such a way that it is 'irremediable', 'irreconcilable' or 'irretrievable' the law does not require information on the reason for the breakdown theory which is now being adopted by modern laws on matrimonial disputes. Without prescribing any specific 'grounds' for divorce, it allows dissolving marriage at the instance of the husband or the wife and by mutual consent.

Under the present Muslim personal law applicable to the Muslims in India, a Muslim husband has been given unbridled and unfettered extra judicial power to dissolve the marital tie at his will and without assigning any reason whatsoever by unilateral pronouncement of talaq. At the same

¹⁷ <https://blog.ipleaders.in/handbook-marriage-divorce-muslim-law/>

time, a Muslim wife has not been given such a power. It amounts to discrimination on the ground of sex and religion and thus violates equality before law and equal protection of law envisaged under the Indian Constitution and the Universal Declaration of Human Rights adopted and proclaimed by General Assembly of the United Nations. This ‘discrimination’ on the ground of sex alone arises serious social, legal and constitutional issues.

According to the true law of Shariah, talaq is permissible under exceptional and unprecedented circumstances after the pre-divorce conference. It is permitted subject to several conditions that are dissuasive nature. Talaq must be for a reasonable cause, to be resorted to as the last option and it should be preceded by conciliation. Almost similar power that is available to the Muslim husband by way of talaq, has been given to the wife also under Shariah law. She can have recourse to unilateral extra-judicial divorce by khula mode and by talaq-e-tawfeez. Thus there is absolutely no gender bias or sex based discrimination on the issue of divorce in the pristine sharia law.

However the Muslim personal law, as applied in India, has taken course contrary to the spirit of what the true Shariah law or Holy Quran has laid down. As per the present Muslim law administered in India, while a husband under Muslim law can unilaterally walk out of the wedlock at his will or pleasure by resorting to talaq, a wife married under that law, cannot unilaterally get rid of the marital tie. She can have a unilateral extra judicial divorce by talaq-e-tawfeez only when such power has been conferred on her by the husband. She can also have extra judicial divorce by the mubaraa’t mode only when her husband consents thereto. Even though the Shariah law gives wife the right to resort to extra judicial divorce by Khula mode, the present Muslim personal law now administered in India does not permit the same. The Muslim personal law as exists today, had bestowed upon the husband the unfettered complete and exclusive right to his wife whenever he so wished, the wife has been denied any such power and cannot have the marriage dissolved except through court and that too only at one or more of the grounds specified in the legislation. There is no doubt that this reflects gender bias. The discrimination is obviously grounded on sex alone and therefore squarely offends Articles 14 and 15 of the constitution of India.

Under the Muslim Law, there are more than one form of ways through which marriage can be solemnized and divorce can be initiated for dissolution of marriage. To cater to the needs of

changing circumstances along with Muslim personal laws certain legislations are brought by the Government of India such as the Muslim Dissolution of Marriage Act, 1939, the Muslim Women (Protection of Rights on Marriage) Act, 2019 etc., to govern Muslim marriage and divorce. However, apart from these legislations and personal laws, there is a need for the Uniform Civil Code for creating single informed laws governing all the citizens of the nation to strengthen national unity and integrity.

STRUGGLE FOR A SOCIAL CHANGE BY THE DALITS

Sai Srinivas Reddy B¹

Sivapuram V.L. Thejaswini²

INTRODUCTION

Caste was shaped by factors other than Hindu religious texts. Ecologies, languages, religion, production practises, and political systems are all examples of this. In India, exploitation of the lower castes is done through social relation rather than an economic relation.³ In any debate about social transformation in India, the question on caste is always at the forefront. The Dalit movements deserve a lot of credit for bringing caste into the spotlight. The Dalit struggle made it clear that the emancipation of the untouchables is not an isolated task. Similarly, social change cannot disregard several layers of caste oppression. A century-long anti-caste movement, particularly the Dalit movement of the twentieth century, prompted academics to include caste issues in their analysis of social movements.

Adivasi Movement, Telangana Peasant Movement, Telangana Statehood Movement, Naxalite Movement, Tendu Movement, Civil Rights Movement, Women's Movement, Students Movement and Environmental Movements have all occurred in Telangana. In almost all the movements the involvement of Dalits is undeniable and they played a critical role in the movements. They have played a significant role in the current state of society.

Social movement means an informal establishment (or) huge assemblage of persons. These movements are generally directed towards the issues relating to the society and politics. They are to bring about a social change, resist against specific practices (or) policies. Over a period of time, there has been an advancement in social movements which expanded the space for Dalits in the economy, society and polity of Hyderabad State.

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³ Yagati CR, *Dalits' Struggle for Identity: Andhra and Hyderabad 1900-1950* (Kanishka Publishers Distributors 2003) 195.

Hyderabad state was considered to be a laboratory for International Institutions in order to experiment with the economic reforms. One of the objectives was to grab the response from different social groups and from those who are involved in social movements ranging to the autonomous groups from the extreme left groups.

Bhagya Reddy Verma was the first person to lay the foundation for Dalit movement. He had utilized the colonial policies such as the census reports and communal award for the advancement of the Dalits welfare. In 2017, during the Telangana Movement the G. M. C. Balayogi Athletic Stadium at Gachibowli was renamed as Bhagya Reddy Varma Stadium by the students. Bhagya Reddy Verma became pioneer of Dalit self-respect movement in Hyderabad and in also Andhra.

Our research was limited to the state of Telangana. The caste-class dynamics of Telangana have a long history of being unique. In this region, there is a form of solidarity between the Dalit Movement and Radical Left praxis that is unique to this region.

THE IDEA OF DALIT

Dalit was coined in the 1930s as a Hindi term and Marati translation of the British term "depressed class," which referred to individuals who are today known as Scheduled Castes.

The word was revived by 'the Dalit Panthers' in 1970s by expanding its meaning in order to include women, poor peasants, people who are exploited politically, economically (or) religiously'. So, we came to conclusion that *Dalit is a social category, not a caste*.

Dalit is an etymological term that refers to something that is formed of Dal. 'Dal' denotes multi-sected, shattered into pieces, fractured, violated, ruined, dominated, exploited, kept disunited and helpless according to Monier Williams' Sanskrit-English dictionary. They are the Shudras and Adi-shudras among them. They are termed by different titles by the dominant such as 'Avarnas', 'Outcastes', 'Panchamas' 'Dark skinned Dasyua', 'Rakshasa', 'Nishidas' and 'Mlechas.' Dalits today refer to our country's Scheduled Caste (the ex-untouchables) in the precise sense of state recognition.

SOCIAL CONDITIONS IN TELANGANA

Understanding the social practises and social position of communities in India, which are directly related to caste requires an understanding of the region's social conditions. The region's identity is inextricably linked to its social landscape, and vice versa. In India, caste was shaped by factors other than Hindu religious texts. Ecologies, languages, religion, production modes, and political systems are all examples of this. In the same way that different regions in India have different castes, so does Telangana. Particular socio-economic and political practises have influenced the outcome. The socioeconomic life of Telangana region is generally characterised by Feudal practices which entails the merciless exploitation of the population under the caste system. In India, exploitation of the lower castes happens through social rather than economic relationships. Because of low status and caste status, one is continually exploited, destitute, and subservient. There was a constant struggle between castes and conflict between communities. The dominating castes go even further, by subjugated castes which were subjected to a number of restrictions and degrading behaviours on the lower castes to maintain permanent subordination.⁴

Telangana has traditionally been an area dominated by Adivasis, nomads, pastoral groups, and castes of service and craftsmen. Many of these villages were able to thrive due to the region's geographical location. It now occupies nearly the whole Deccan plateau. The Sahayadri hills, which span north to south, were once densely forested. The districts of Karimnagar, Adilabad, Warangal, Khammam, Nalgonda, and Mahbubnagar were particularly densely forested. Adivasi and pastoral and service communities such as the Gonds, Rajgonds, Kolams, Nayakpods, Kondareddis, Koyas, Chenchus, Gollas, Kamras and Waddiras lived in these forests.

The Velamas arrived from the north of the Narmada River in quest of settlements. Initially, they worked for the Kakatiyas as army soldiers and local chiefs.⁵ Around the same time, the Reddy Nayaks arrived from the coastal county of Andhra Pradesh. Due to significant intra-community conflicts in the Andhra region. Under the Kakatiyas, they rose to become strong local chiefs. Following the collapse of the At Rachakonda, the Kakatiyas, Velamas, and Reddys emerged as independent rulers. Kondavidu ruled over a huge portion of the Telugu-speaking areas.⁶ They

⁴Shetty, V. and Shetty, V., 1978. *Dalit movement in Karnataka*. Madras, 93.

⁵ Siraj Ul Hassan, S., 1920. *The Castes and Tribes of H.E.H. The Nizam's Dominions*. Bombay: Times Press, 453

⁶ *History of medieval Deccan, 1295-1724*. Hyderabad: "Published under the authority of Government of Andhra Pradesh.", 305.

coalesced as the governing nobility of the country during the Qutub Shahis powerful chiefs and magnates who blended the required Hindu and Muslim lifestyles. They were granted ruling positions and titles, which they utilised to not only dominate the population, but also to cultivate waste land by establishing new communities. They became contemporary landowners (locally known as doras) with legal privileges under the ryotwari system during the Nizam's reign. When the State's watan right was abolished by the new revenue policy, the Reddys and Velamas who were functioning as deshmukhs, deshbandyas, maktadars, and other revenue agents under the old system were parcelled vast amounts of land by the State. Aside from that, they used their ties with officials to seize enormous swaths of land in the communities. Many of them were also given village police patel and Karnam awards. From the early 20th century, the Andhra Kammas (another important dominant peasant caste) began settling in Telangana as large landowners, owning great swaths of land in the Godavari districts.

As a result of the Sudra upper caste immigration, Telangana evolved a separate social and economic system based on Brahmanical ideals. Although the presence of the Brahman caste in the region was minimal, the caste customs were very much popular in the region. Telangana's Dalits were the worst victims by these practises. Vetti, bhagela/jeetham, and jogini practises relegated dalits to a sub-human status. Telangana has had a Vetti practise since the medieval period.

Almost all castes, including Brahmans, were subjected to vetti under the doras' rule. The Dalits, on the other hand, were the worst victims of this practise. Each Dalit family was required to send one member to perform vetti in the homes of doras and village leaders. Cleaning the houses of patels, patwaris, malipatels, and deshmukhs, transporting reports to police stations and the taluk office, keeping watch over the village chavadi and the poundage, cleaning the village chavadi, and serving officials on their visits to the village are among their responsibilities. The Dalits who worked in shoemaking, leather tanning, and leather accessories for agricultural were required to provide them to the landowners at no cost to the *doras*, while the other castes had to pay.⁷

Bhagela or jeethagadu was another practise associated with dalits. It's difficult to translate precisely what these terms imply. It denotes a form of bonded labour with limited freedom. On

⁷ Puchalapalli, Sundarayya, 1972. *Telangana people's struggle and its lessons*. Calcutta: Calcutta, Communist Party of India (Marxist), 390.

these terms, a substantial number of dalits were employed. The landholder kept a number of jeethagallu, depending upon the land area and workload.

Remuneration was normally yearly, besides from interest-free advances for special occasions such as children's weddings and festivals, as well as for everyday needs such as clothing as well as gunta chutta (a kind of cigar). Once a jeethagadu was registered, the procedure was followed. It was difficult for him extract himself; sometimes the bond extended to his children.⁸ Each landowner would have ten to fifty bhagelas - the more bhagelas they had, the better their social rank and power. On his one thousand or more acres of property, Pratap Reddy of Ghanapur village in Mulugu taluka in Warangal district has forty-three bhagelas.⁹

Another horrible practise among the dalit community was jogini/murali (devadasi). Unmarried dalit girls were dedicated to a local goddess and exploited by caste Hindus. Joginis were living a disgusting prostitution lifestyle. Untouchability was a major horrific practise inflicted on Dalits across the subcontinent. Hyderabad's Dalits had waging war against these abuses. Modern education had a critical role in instilling such awareness.

EDUCATIONAL DEVELOPMENT IN TELANGANA STATE

Hyderabad State has begun to pay more attention to the general welfare of the people in the late nineteenth century, while real political reforms were not implemented until the end of the Nizam's reign. Mir Osman Ali Khan, the last Nizam had played an important role in the State's educational growth. Unlike British colonial rulers, the Nizam worked to establish an indigenous education system in the State blending English with Deccan cultural values. Despite the fact that the medium of teaching was in Urdu, which was official language of the state, English was taught as a second language from elementary school. The last Nizam indeed, paid special attention to obtain all the relevant engineering books translated into Urdu. In this the people can see a true nationalist in him.

Many educational institutions were established in the state beginning in 1880s. During 1872-1873, the State had 141 schools in the districts and fourteen in Hyderabad city. There was a significant transformation in the following decades. By the end of the first decade of the 20th century, the number of schools were 1000 and thus rose to 4,500 by 1936, while the number of

⁸ Iyengar, S. Kesava, 1931. *Economic Investigations in the Hyderabad State 1929-30*. Hyderabad: The Government Central, Hyderabad, 212

⁹ Ibid

people had risen from 65,000 to 3, 27,000. Mir Osman Ali, the last Nizam, when Khan took the throne in 1911, the entire expenditure on education was nine and a half billion dollars. By 1936, the expenditure on education had risen to more than a crore.¹⁰

The powerful peasant castes were the first to take advantage of the educational opportunities. However, the subaltern castes eventually realised the value of education and began sending their children to school. Indeed, the last Nizam made great efforts to educate the people. Apart from the general school, special schools for women, tribal and downtrodden were established.

According to the 1931 census, the Hyderabad state had 97 depressed castes or Harijan castes. Telangana had 10,65,153 dalits out of a total of 20,02,290. In 1941, Hyderabad had a population of 1,00,450 dalits. The Finance Minister chaired a Trust established by the Nizam Government for the advancement of education and welfare of the downtrodden castes. Out of the 8 members of the trust 4 were representatives of depressed castes. During the later years of the Nizam reign, it was estimated that more than two and a half crores of rupees were spent annually on the welfare and educational advancement of downtrodden classes.

In 1945, the state had 186 special depressed class schools with Telugu as the medium of teaching. In the same year 8,764 depressed caste boys were studying with these special schools and another 7,500 in the schools. However, it was supplied free of charge to the indigenous and disadvantaged communities from school through university level. Apart from that, they were given a hostel and a stipend to help them continue with their education. Scholarships to study abroad were also given to depressed caste students.

This tremendous development in schooling occurred against the backdrop of the Mulki (local) and non-Mulki (non-local) issue in Hyderabad State. The mulkis were state residents, whereas the non-mulkis were men from outside the state who were brought to restructure the government of Hyderabad. The percentage of mulkis and non-mulkis percentage of civil officers (total 476) in 1886 was 52 and 42 per cent respectively, and 5% officials from Europe. A large number of non-mulkis were brought into the country during Salar Jung I's Prime Ministership from North India particularly from the United Provinces. Until the late 19th century, non- mulkis had no

¹⁰ Sheela Raj, 1987. *Medievalism to modernism: socio-economic and cultural history of Hyderabad during the reign of Nizam VI, 1869-1911*. Hyderabad: Narhari Pershad Charitable Trust, 2013, 246.

access to political power, although they grew to be fairly powerful in the state later on. They began to occupy political positions as well.

Both the Muslims and Hindus in the state were not prepared to tolerate this. By the early twentieth century, the growth of education had resulted in an increase in the number of unemployed young in the state. They blamed their failure on the state's alleged discrimination against Mulki. The educated young of the dominant peasant castes, particularly the Reddy, Velama and other Kapu formed their own caste associations from the beginning of the 20th century and these identified themselves with the mulki agenda.¹¹

The establishment of Osmania University in 1918 exacerbated these issues while also allowing communal politics to flourish. Both Hindus and non-mulkis opposed the University's adoption of Urdu-medium classes, believing it was done on purpose to encourage local Muslims to take administration positions. In the process Muslims were denied access to them. A new dimension was added to these conflicts when the Arya Samaj supported the caste-Hindu Peasants. The Arya Samaj was founded in the state in 1891 and became a political platform in the early twentieth century to safeguard Hindu interests. The state's communal tension grew as a result of this. In response to the Arya Samaj, the Ittehad-ul-Muslimin (commonly known as the Razakars) was founded in 1927 to protect the interests of local Muslims. Various groups began entering the state in favour of their own religious communities and castes, and these interconnected antagonistic conflicting groups and communities received support from within and beyond the state.

Interestingly, these changes resulted in the state's rise of identity politics. As stated in the preceding paragraph, the dominant castes began to organise and form caste associations in the 20th century, whereas the lower castes also began to organise themselves only from the 1920s. The depressed caste movements were more widespread in the state than in the Telugu-speaking areas of Madras Presidency. The last Nizam recognising the significance of preserving the history and culture of these communities had lavishly rewarded them for organising their community meetings. Many community associations used government funds to manage schools for their children while also articulating and representing community aspirations and demands.

¹¹ Leonard, K., 2013. Political players: Courtesans of Hyderabad. *The Indian Economic & Social History Review*, 50(4), pp.423-448.

These were the social and political conditions that gave birth to the Dalit movements that we can properly term as DALIT MOVEMENTS. However, the consciousness such as Dalit (or) Depressed classes (or) to be precise the non- Brahman identity has its roots in the 10th century with the rise of Bakti Movement.

BHAGYA REDDY VARMA'S ROLE IN SOCIAL MOVEMENTS IN HYDERABAD STATE

Bhagya Reddy Varma was born as Madari Bhagaiah to a Dalit, Mala caste family in the princely Hyderabad State to Madare Venkaiah and Madare Ragmamba on 22nd May 1888. He is a young boy from an untouchable Mala community. He grew up to lay the foundation of the Dalit movement in the Nizam's kingdom.

He was influenced by a learned Shaivite Guru, who believed in the fact that the so made untouchables had been the rulers of the land prior to the migration of Aryans to these regions of the country. This is the origin of the name Reddy (derived from redu which means 'ruler') that he suffixed to his name. In the year 1913, at the annual function of the Arya Samaj, the title Varma was conferred on Bhagya Reddy in respect of his laudable social services to the Hindu society.

There are many people who are not aware of Bhagya Reddy Varma who is "Father of the Dalit Movement" in Andhra Pradesh (United). He is the reformer who fought against the aspect of untouchability in Hyderabad state.

He has raised voice against discrimination by the upper castes. He was inspired by Jyotirao Phule. He took the name "Bhagya Reddy Varma" when he was employed by the Brahmo Samaj. This name indicates the rights of Dalits to claim a high social status. 'Reddy' indicates a non-Brahmin of high status where as 'Varma' indicates a Brahmanic status.

A social organization called "Adi Hindu" was established by him in order to bring awareness in the Dalit population of that time. A group called "Jagan Mithra Mandali" was formed to educate the Malas and Harijans through a traditional folk theatre art called Harikathas. At the end of each program, a punch line was added by him to motivate the Dalits.

Some slogans popularised by him are-

‘We are Adi Hindu

Dalits are not untouchables

they are backbone of this country’.

The first self-respect & identity movement in Hyderabad state is Adi-Hindu movement which is against caste discrimination and untouchability. Madari Bhagya Reddy Varma is the pioneer of this movement. In 1906, Jayan Mitra Mandali was founded to illuminate the illiterate by Bhajans and Harikatha performances.

In the year 1912, he founded Manya Sangham which after a decade was given the name of Adi-Hindu Social Service League. The object of the organization was eradicating the evil habits that had craps into the society, such as drinking, sacrificing the animals, dedicating the girls to the deities and performing child marriages. He organized volunteers by name – Swastik Dal to achieve these objectives.

He founded Adi-Hindu Murali Nivaran Mandali to eradicate prostitution. About 40 primary schools were started in Hyderabad state for the students by ‘The Adi-Hindu Social Service League’. However, due to paucity of funds those schools were handed over to the government.

He participated in Adi-Hindu conferences held at Allahabad and Lucknow also. He supported Dr. Babasaheb Ambedkar who demanded a separate electorate for the Depressed Classes. He started a Telugu weekly ‘Adi-Hindu’ in the year 1930 and the printing press.

He has campaigned on social issues like alcohol prohibition, black magic, child marriage etc., People from the neighbouring states like Tamil Nadu, Karnataka have followed this revolution by raising their voices.

A PHASE OF POLITICAL TURMOIL – 1930s TO 1950

Despite the fact that the Telangana Dalit Movement was confined to Hyderabad, it was strong in terms of organisation and articulation of the Dalit cause. However, the Dalit movement in Hyderabad has been seriously harmed by the rapidly changing political landscape at the National level. The Nizam Dominion's Hindu-Muslim tensions have provided a platform for Dalits to organise and struggle for their rights inside a Hinduized society. The entry of Ambedkar into

Dalit movement in Maharashtra has a great effect on Dalit Movement in Telangana. Ambedkar's worldview has inspired a slew of organisations.

B.S. Venkat Rao led the Maharashtra delegation to the Maharashtra Asprishya Youth's Conference in Pune in 1936, which was presided over by N. Shivaraj and addressed by Dr. Ambedkar.¹² They organised the youth league of Ambedkarites with Venkata Rao as President and Venkataswamy as Secretary, influenced by the words of Maharashtra Dalit leaders. Its goals were to mobilise the youth to support Ambedkar in leading the untouchables out of the Hindu fold, to educate the public about Hinduism's problems, and to create a dynamic campaign against social and economic disadvantages.

By the late 1930s, disagreements emerged over pro-Muslim versus Ambedkarite reactions to the pronouncement of Hinduism's demise. The state branch of the Harijan Sevak Sangh was founded in Hyderabad in 1933, the Congress attempt to reintegrate Dalits into Hindu religious fold had only a minimal influence and Ambedkar's choice to abandon Hinduism was described as a "bombshell" that sparked a nationwide debate on conversions. Several Dalit leaders and activists became active, notably Kusuma Dharmanna, a famous poet in coastal Andhra region. P. Veerani, a Hyderabad Dalit, faced Gandhi during his 1935 visit and afterwards became a propagandist for Islam under the name of P.V. Sardar Ali. Another pro-Muslim Dalit activist was Syam Sunder (1908-73) B.S. Venkata Rao began work in this direction after the intensified Hindu-Muslim conflict of 1938-39.

The Depressed Classes Association chose Venkata Rao as President and K. Jagannadham as Secretary. On May 7th 1938, the association wrote to Hyderabad's Prime Minister, Akbar Hyderi, requesting separate electorates and population-based representation in municipalities and local boards. This was followed by the declaration of constitutional reforms in July 1939 not only polarised Dalit attitudes, but also created differences within Dalit leaders.

Most of the young radicals associated with the Depressed Classes Association, notably J.H. Subbaiah and Venkata Rao, were embroiled in quarrels that reached its peak and led to a division in the organisation. Subbaiah accused Venkata Rao of assisting Kusuma Dharmanna in his efforts to spread Islam. Later, he joined Arigay Ramaswamy's along with youth and started revitalizing the Hyderabad state Adi- Hindu Mahasabha. This division lasted until 1942, when

¹² P. R. Venkataswamy, 1955. *Our Struggle for Emancipation*. Hyderabad: Hyderabad Book Trust, 129.

both factions travelled to Nagpur to attend the scheduled caste federation's foundation meeting in July, 1942.

Despite their appeals to Dr. Ambedkar to help bring the split leaders of Hyderabad state together, the disagreements could not be bridged, leading to the formation of another scheduled caste federation. Without a formal affiliation to all Indian body; the revived Adi-Hindu Mahasabha was compounded in it. They chose Subbaiah as the President and Venkataswamy was elected General Secretary adopted the Resolutions of Nagpur. By this time, the factions' personal rivalry had devolved into a war contest between the Depressed Classes Association (DCA) and Schedule caste federation to lead the Dalit's.

The usage of the Indian army hampered these reformers' development, while the Congress progressed in the State for Dalits, instead establishing itself as a Hinduistic organisation dominated by Brahmans, land lords, middle-class peasants, and upper castes.

Until the late 1940s, Dalit organisations in Hyderabad were organised into six factions that worked together. With the British Declaration of transfer of power in 1947, the Dalit organisation was non plussed.¹³ On June 11th 1949, the State of Hyderabad declared independence, sparking further factionalism among the Dalits. The Scheduled Castes Federation (SCF), led by Subbaiah, and the Depressed Classes Association (DCA), led by Venkata Rao, remained the two most powerful organisations. The SCF, together with the Congress and Communists, rejected the constitutional reforms while the DCA approved them.

Both the dominant organisations of Subbaiah and Venkata Rao, as well as R.P. Venkataswamy and Shyam Sundar came together under the banner of the Independent-Scheduled Castes Federation, which proposed conditional acceptance of the reforms, whereas an Arundatiya Mahasabha, based primarily on Madigas, pressed for separate electorate and conditional acceptance in the elections. Venkata Rao and Syam Sundar were elected, with five additional nominees. Both of these elected individuals moulded their Pro-Muslim positions by appealing to the Dalits for support of the Nizam's ruling classes in Hyderabad in order to maintain political power.

¹³ Id.

The Adi - Hinduism Social Service League, which was later revived by M.B. Gautham, son of Bhagya Reddy Varma as well as the Dalits gathered under Arigay Ramaswamy and working within the Congress.

Despite the Dalit leaders' personalised politics on one hand and the congress and Muslim co-optive attitudes on the other, some local Dalit leaders organised several meetings at the grass root level in contrast to earlier Dalit movements and urban based internal factional mobilizations of Dalit leaders. For instances, Butti Rajaram (1911-78) gathered the rural people in Karimnagar and Kusuma Achalu in Nalgonda. Rajaram conducted many public meetings in the district under the presidency of J.H. Subbaiah and K.R. Veeraswamy. On one hand, the Telangana armed movement dominated rural Telangana, while on the other, the DCA and SCF Dalit organisations clashed to rally Dalits over Ambedkar's ideology. Ambedkarites in Hyderabad had become feeble both organizationally and politically by that time. At the time of the State elections in 1952, an intriguing alliance formed between Dalits and communists. Although it was unpopular with Ambedkar, it was useful to the Dalits for a short time.

The Scheduled Caste Federation (SCF) fought the election alongside the Progressive Democratic Front (PDF), which is a front organisation for banned communists. In Telangana, the PDF won 36 of the 45 contested seats. Two of them had previously been members of SCF. Furthermore, 10 socialist Dalits allied with PDF's own seats, while SCF gained five assembly seats and one Parliament member with PDF's aid. However, the 1956 merger of Telangana and Andhra Pradesh solidified Reddy feudalism in the region. By the early 1960s, the newly created Andhra Pradesh feudal Reddy leadership, which merged traditional and contemporary politics, had crushed not just the Communist Party but also Dalit politics in the state.

During this time, many Dalits began to seek refuge in the Communist Party as grassroots activists and as the electoral alliance had already laid the groundwork for such migration, although a considerable number of Dalits had gone into the congress.

DIFFUSION IN DALIT MOVEMENT

Due to broader developments in the State as well as in India, however, Dalit politics began to fade. The Dalit movement was severely impacted by the Indian government's police action against Hyderabad in 1948. Because of their pro-Nizam stance, Dalits faced severe harassment from both the military forces and local landlords following the police intervention. The

landlords expelled the Dalits from the Nizam's allotted lands and reclaimed them. Notwithstanding this repression, many Dalits sought refuge in Congress or its linked Harijan associations. Shyam Sunder dodged the military government's anger because the Nizam sent him to Europe to represent Hyderabad's right to independence before the U.N.

The Dalit masses in rural regions were being persuaded into diverse ideologies without any clear direction and objectives as a result of this type of political and factional turmoil. If the coastal Andhra Dalit Movement ended in the 1940s with the establishment of Brahman-led congress hegemony, the Hyderabad movement disintegrated due to factional leadership, culminating in the "police action" against the Telangana movement and the integration of Hyderabad into the Indian union via police action in 1948.

As a result, there was a tremendous demand for an alternative ideological plank among Dalit activists in the State in order to continue the fight against oppression and injustice. As a result of the disturbance, Ambedkar Yuvajana Sangalu (Ambedkar Youth Leagues) was established.

DALIT MOVEMENT IN ANDHRA PRADESH – THE BEGINNING

Jagan Mitra Mandali, an organization which was founded by Bhagya Reddy in 1906 for the awakening of social consciousness among untouchables. This event marks the beginning of the Dalit movement in Andhra Pradesh.

He conducted Harikatha Kalakshepams, a popular narrative mode, to stimulate the community on various issues. Bhagya Reddy spoke with great articulacy at the end of these performances telling the Dalits that they were the original inhabitants of the country and that the others had migrated from central Asia for their livelihood. Jagan Mitra Mandali has spread the political message of the misery of untouchables, Hinduism's treachery through Harikathas.

The primary aims and objectives of Manya Sangham that was formed in 1911 were

- 1) to discourage child marriages
- 2) to impart education to untouchable children etc.,

In 1912, he organized a band of Swasthy Dal Volunteers to serve the people particularly the untouchables during period of epidemics especially plague.

One of his most significant achievements was the effort to abolish the dedication of young girls to temples to serve as 'jogins (or) murlis'. Under the aspect of temple dedication, girls were pushed into a life of prostitution. He put all his efforts to abolish it and the Nizam Government enacted a law making this practice a crime.

A remarkable aspect of Bhagya Reddy's life is that though he worked with Hindu cultural organizations he never compromised on his self-respect and dignity. He was mainly recognized as an activist and a social reformer.

He organized the first All India Adi-Hindu (Untouchable) Conference in Hyderabad from the 29th to 31st of March 1922. He did not confine his activities to untouchables and also tried to bridge the gap between untouchables and caste-Hindus.

Significantly, Bhagya Reddy did not confine his organizational activities to untouchables, but attempted to bridge the gap between caste-Hindus and untouchables.

In our estimate, he has played a significant role by shifting to a political position from a reformist position in 1930s.

CONCLUSION

The caste system continues to plague the Indian subcontinent more than half a century even after independence. Even after new countries emerged from the Indian subcontinent with new identities and aspirations, they failed miserably in obliterating caste system. Every effort is made to analyse and comprehend caste-based discrimination, exploitation and practise falls short before its ability to transform and reinvest with every passing decade. On the surface, it appears as if everyone recognises that the caste system is inhumane and degrading and that it must be abolished. Despite the fact that it has been outlawed, it is nevertheless practiced in every city, town and hamlet as well as in every family. This reveals the dubious character of Hindu upper castes, who will never let caste die because the death of caste is the death of their power and control over the society. In order to maintain and perpetuate their dominance, they require the caste system to be intact. Dalits, on the other hand, who have been the most affected by the caste system needs to demolish if they want any change in their lives and social status. And there's a never-ending battle between upper-caste conspiracies to keep the caste system in place and

Dalit's fight to destroy it and the struggle is still on. This research attempted to explain caste on its own and in the context to the class.

Dalits have adopted every possible theory and technique to challenge and abolish the caste system in the course of their struggle. The significance of Dalit Movement is that it had engaged and experimented with every feasible political practice as we have pointed in our paper. Caste issues were not addressed by political parties because they even recognise caste as an issue. Radical Marxism has provided a ray of hope to Dalits in their battle for emancipation. With the goal of constructing an equitable society, radical left parties had effectively organised and mobilised Dalits against feudal land lords with the aim of establishing an egalitarian society

SALLEKHANA AND SANTHARA OR SAMADHIMARANA VIS-A-VIS EUTHANASIA AND SUICIDE: A LEGAL CONUNDRUM

Sayan Das¹

INTRODUCTION

In 2015, the Rajasthan High Court ruled that the practice of ceremonial voluntary suicide, known as sallekhana or santhara, was illegal. The petition to criminalize it and the court's decision were both phrased in the language of religious reform and evoked the judicial memory of sati. The Jain advocates of the practice, claimed that it was distinct from sati and suicide and euthanasia, which both remained illegal in the eyes of the law. However, in order to qualify it as a "essential practice" under Article 25, they drew on both the ethical teachings of Jainism – citing a variety of ancient texts that detail religious and historical figures who met "death with equanimity" – and the moral and legal arguments advanced by proponents of euthanasia, particularly those centered on the Right to Life.

There has been a recent debate in the country about suicide law, and the Jaipur Bench of Rajasthan High Court has opened a legal issue with massive social and political implications; whether the practice of Santhara in Jain tradition amounts to suicide under section 309 of the Indian Penal Code, 1860 (hereinafter IPC) and whether the people who propagate and worship the person who promised to commit suicide under section 309 of the Indian Penal Code, 1860 (hereinafter IPC). This judgement² has had a significant influence on the nation's socio-political landscape, and the Jain community has reacted angrily to it. The ruling is currently being appealed to India's Supreme Court, which has issued a stay of execution pending a judgement on the merits.

Once again, this country's supreme court must decide "whether the practice of Santhara equates to suicide" and examine the existing legal situation, which would re-ignite discussion over people's "right to die" within an unprecedented setting. Since all faiths in the country believe in a soul's redemption, the ruling would be of importance to the majority of the country's religious groups, not only the Jain community. More crucially, it raises problems about governmental action on the premise of religious freedom. While the Rajasthan High Court's ruling is being

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² *Nikhil Soni v Union of India & Ors.* (2015) CriLJ 4951

challenged, a number of legal professionals, jurists, social activists, and other knowledgeable people have expressed their disapproval of the verdict, which makes this subject ripe for investigation and analysis through thorough interpretation and research.

“Santhara,” “Sallekhan,” and “Samadhimarana” are all Jain practices that are illegal and punishable under the law of the land, according to Nikhil Soni, an Indian lawyer who has filed public interest litigation against the Union of India, Rajasthan, and other Indian jurisdictions. Soni’s litigation are in the public interest because the “right to die” is not explicitly protected in Part III of the Indian Constitution. There also have allegations that santhara violates an individual’s “right to life.” The petition was submitted in 2006, and the matter was eventually heard on April 24, 2015, following the issuance of notice to the relevant parties in 2006. According to the court’s findings on August 10, 2015 after hearing arguments from both the prosecution and the defence, “Santhara” or “Sallekhana” is not an essential religious practice of Jains that is protected under Article 25, 26 or 29 of the Indian Constitution; and “Santhara” is punishable under section 309 of the IPC as “suicide,” and aiding and abetting Section 306 of the IPC makes it an offence.³

It was decided to approve the writ petition and give the following directions: In India, the Indian Penal Code Section 309 and Section 306 define “Santhara” and “Sallekhana” as acts of suicide and abetment, respectively. This means that states should prohibit “Santhara” and “Sallekhana” activities. The Jain religion’s ‘Santhara’ and ‘Sallekhana’ practices must be eradicated at all costs by the state. There would be a criminal investigation into any complaint in this respect, as required by law and in accordance with the constitutional recognition of law and Section 309 or Section 306 of IPC. In this view, Article 21 of the Indian Constitution guarantees the right to life to every human being, regardless of gender, race, or ethnicity.⁴ The Jain community was left to argue that the right to life included the right to die, as well as that the practice was protected by Articles 25 and 26 of the Constitution as well as Article 18 of the Universal Declaration of

³ Santhara: A Path to Death, Vol 3 Issue 4 2017 IJARIE-ISSN(O)-2395-4396
<http://ijarie.com/AdminUploadPdf/Santhara__A_path_to_death_ijarie6019.pdf> accessed on 21 January 2022

⁴ Santhara: Right to Profess Religion or an Offence? The Human Rights Communiqué Vol. II Issue (2 September 2015) <<https://rgnul.ac.in/PDF/c28a8953-68b4-469b-b9c8-b8e9bf0cbff1.pdf>> accessed on 19 January 2022

Human Rights within the constraints of the legal system that existed. The Supreme Court of India stayed the High Court's verdict subsequently.⁵

SALLEKHANA AND SANTHARA OR SAMADHIMARANA: SYNONYMOUS!

Sallekhana and Santhara or Samadhimarana are often used interchangeably, however there are subtle differences. Sallekhana is an exercise that progressively weakens the body and reduces the intensity of one's emotions. They underline that sallekhana is an ongoing exercise intended at weakening both the body outwardly and the passions inwardly, as outlined in the commentary on the Tattvarthasutra by Acharya Shrut Sagar. As a preliminary exercise, an open-ended sallekhana is truly preparatory to santhara or samadhimarana. Sallekhana differs from santhara in that it is characterized by the term "maranatiki" (ending in death), indicating that it is intended to end in the death of the aspirant. In this case, it is clear that this practice is not designed to terminate in death because it has a set duration of time, such as twelve years, twelve months, or twelve fortnights.⁶ Where Sallekhana is the preliminary exercise and is followed by santhara. Those who wish to finish one or more santhara or samadhimarana must retire to the mountain depths; a hill or cave; and find a suitable place to do so. On the way up the grassy slope, the two santharas that are most commonly used are emergent (conditional) and unconditional (unconditional). Emergency santhara can either be temporary or permanent, depending on the severity of the issue. Free will aspirants take death vows of their own, and the vows they take only lead to their own doom. Sukhna (preparatory) and santhara (peaceful death) are two different terms for the same thing. The santhara of bhakta-pratyakhyana, Ingini, and Padapopagamana-marana are examples of santhara that may be practiced by anybody.⁷

SUICIDE

An act of intense desperation to end one's own life, suicide is the ultimate act of self-destruction (Atmaghat). Self-murder, self-destruction, and purposeful, self-inflicted death are all definitions of suicide in the dictionary. Suicide is defined by Acharya Amritachandra as occurrence when one's vitality is severed by the use of methods such as halting one's breathing, drowning, setting

⁵ Ratna Kapur, 'The Santhara Issue Requires a Deeper Philosophical Debate' The Wire (5 September 2015) <<https://thewire.in/law/the-santhara-issue-requires-a-deeper-philosophical-debate>> accessed on 20 January 2022.

⁶ Udit Raj Sharma, 'Nikhil Soni v. Union of India' (2015) Summer Issue 2016 ILI Law Review <<https://ili.ac.in/pdf/paper15.pdf>> accessed on 18 January 2022

⁷ Dr. I.L. Jain and Dr. N.L. Kachhara, 'Sallekhana and Santhara or Samadhimarana' National Seminar on Engaging Jainism on Modern Issues, Ladnun (Feb 2017) <<http://www.spiritualsciencesg.com/poems-lectures/prog5.pdf>> accessed on 20 January 2022

oneself ablaze, consuming poison, or using weapons.⁸ In the opinion of Pt. Asadhar “In the case of aspirant practitioners, the ritual of Bhakta pratyakhyana (sallekhana-Samadhiran) is not suicide, but suicide is committed when “the life forces (Prana) are severed with the lethal means like taking poison, piercing weapons, drowning or entering fire” are used.

Self-inflicted fatalities are both suicide and sallekhana. But the corpse is slain in suicide whereas it is politely and sweetly buried in samadhi. It is a common misconception that the ksapaka (practitioner of sallekhan-santhara) suffers from hopelessness or helplessness, futility, and incompetence in dealing with difficulties, but suicide is characterized by a feeling a person lacks the ability to deal with their problems. Suicidal thoughts are associated with extreme exhaustion, mental and/or physical exhaustion, and unjustified tension, worry, or depression. Despite his frailty, the ksapaka is content inside himself and his ideas. Suicide causes a person to feel disorganized and chaotic, but the ksapaka is completely organized in his practice. Suicidal people often experience mood swings from excitement to indifference or even retreat, therefore the ksapaka is always on guard. In the case of a suicidal individual, the ksapaka has nothing to occupy him or her. Suicidal people experience bodily suffering such as sleeplessness and anorexia and psychosomatic symptoms; the ksapaka keeps his mind at ease by continually thinking of positive thoughts (Subh-Bhawana). Suicide and sallekhana-samadhimarana have nothing in common other than the fact that they both involve a person’s desire to terminate his or her life prematurely. However, in some cases the person’s death might be characterized as “violent,” while in other cases it can be characterized as “peaceful.”⁹

Self-murder or self-destruction are other terms used to describe suicide, although under the Indian Penal Code (IPC), such a broad definition cannot be utilized to prosecute a person for the act of taking one’s own life as the general meaning encompasses handing up one’s life without any consideration of context, logic, or background, a literal interpretation would be useless in this situation. To distinguish suicide from santhara, there were a number of areas of disagreement, including the following:

⁸ Dr. Namrata Kothari, ‘Sallekhana/Santhara: An art of dying is joy’ IOSR Journal of Humanities and Social Science (IOSR-JHSS) Volume 25 Issue 5 Series 7 (May 2020) 34-38 <<https://www.iosrjournals.org/iosr-jhss/papers/Vol.%2025%20Issue5/Series-7/D2505073438.pdf>> accessed on 21 January 2022

⁹ Kokila H. Shah, ‘The Jain Concept of Sallekhana: A Loss or a Gain?’ National Seminar on Bio Ethics (24 & 25 January 2007) <<https://www.vpmthane.org/Publications/Bio-Ethics/Kokila%20H.%20Shah%201.pdf>> accessed on 21 January 2022

- (1) the victim's emotional stress;
- (2) the victim's overwhelming sense of disgrace;
- (3) The primary motivation for suicide is to escape the negative repercussions of one's actions or experiences, such as shame, misery, punishment, social stigma, or the stigma of receiving medical care;
- (4) Religious or spiritual considerations do not play a role in this type of death;
- (5) Weapons of offence or death are used to bring about the victim's death;
- (6) Only if the person can be saved early on does the death generally come quickly;
- (7) When it's done in secret, it's a crime and
- (8) It is a source of pain and sorrow for those close to the sufferer.

EUTHANASIA

Euthanasia, which means “good death” or “dying peacefully,” aims to ease the suffering of persons who are terminally ill and unable to alleviate their agony. Euthanasia is defined as the right to die with dignity at the end of life. Both the patient's owner and the doctor are acting on their own volition. To put it another way, giving someone the gift of death is known as “voluntary euthanasia” or “active euthanasia” (sometimes referred to as “mercy killing”). Use of legally prescribed chemicals or methods, such as providing a lethal injection, is what is considered active euthanasia. The goal is to ease the suffering of those who are unable to ask for help, such as accident victims who have lost consciousness, or babies who have suffered physical or mental disabilities. Passive euthanasia is the denial of life-sustaining therapy or support system. If one is suffering from an incurable and unbearable illness, you've long argued whether or not you should be given control over your own death. Supporters of euthanasia (gifting death to people who are suffering or terminally ill) do not regard human life as a personal concern, but rather as a matter of individual choice. A moment must come when his closest friends, family members, and the rest of society realize that he has endured enough and give him a gift of painless, peaceful, and dignified death. Despite all the arguments, euthanasia and Sallekhana-Samadhimarana aren't as simple as they look.¹⁰

¹⁰ Aman Jain & Sanya Gangar, ‘Suicide is Sin, Santhara is Religion’

Euthanasia is carried out from a medical and a personal standpoint, whereas *sallekhana-samadhimarana* is practiced for the sake of spiritual freedom. Euthanasia results in the patient wanting to die, whereas *Sallekhana-samadhimarana* involves the patient facing their suffering and waiting patiently for death to occur. *Sallekhana-samadhimarana* is calm and composed, but the individual requesting euthanasia is not. According to *Sallekhana-samadhimarana*, euthanasia refers to the wish to die. Whereas the *Niryapakas* (Guru or supervisor) constantly seek to protect the practitioner's peace of mind when it comes to euthanasia, the physician is responsible for administering the lethal dose of chemical during *Sallekhana-Samadhimarana*. Despondency and fury accompany the practice of Euthanasia, whereas pious sentiments accompany the practice of *Sallekhana-samadhimarana*.¹¹

A spiritually unsatisfactory death results through euthanasia whereas a spiritually satisfying one is achieved through *sallekhana-samadhimarana*. For those who cannot suffer the results of their karma, euthanasia is sought out, whereas *sallekhana-samadhimarana* is sought out by those who are bold and patient enough to bear them with courage and fortitude. Passive euthanasia is a form of euthanasia in which the victim is unable to decide for himself. The aspiring practitioner's voluntary permission is required for the practice of *sallekhana-samadhimarana* to continue.

While euthanasia focuses on the objective of a painless death, *sallekhana-samadhimarana* focuses on the ultimate goal of attaining 'nirvana' or immortality. Euthanasia, on the other hand, has nothing to do with living well; it's all about dying properly. Those who lead a virtuous life are said to "die peacefully" per the text.

In contrast, euthanasia and *sallekhana-samadhimarana* are not subject to legal problems. Because killing, even if it is done without suffering, is still a violent act, euthanasia may appear kind on the surface, but its true character is one of cruelty; in contrast, *sallekhana-samadhimarana* is nonviolent from start to finish. While the technique of *sallekhana-samadhimarana* includes de-addiction and psychological strengthening, euthanasia has no effect on the subject's quality of life. As a result, euthanasia and *sallekhana-santhara* share only the

Volume 3 (January 2018) *Supremo Amicus* ISSN: 2456-9704 <<https://supremoamicus.org/wp-content/uploads/2018/06/v3f6.pdf>> accessed on 21 January 2022

¹¹ Udit Raj Sharma, 'Nikhil Soni v. Union of India' (2015) Summer Issue 2016 *ILI Law Review* <<https://ili.ac.in/pdf/paper15.pdf>> accessed on 18 January 2022

possibility of voluntary participation. A spiritual advantage from the act of euthanasia is impossible to predict.¹²

RELIGION AND CONSTITUTION

“No individual should be deprived of his life or personal liberty unless in accordance with the method provided by law,” declares Article 21 of the Indian Constitution. The right to a dignified and purposeful existence is guaranteed under Article 21. Only in accordance with legally prescribed procedures may an individual be denied the right to a dignified existence, and that is the sole purpose of this article.

If one has been diagnosed with an incurable sickness or illness, you’ve been granted the “right-to-die,” according to the Supreme Court of India, but it doesn’t apply to everyone. These are the kinds of situations in which a person has the “right to die with dignity,” since, as the court has ruled, they do not involve ending a person’s life; rather, they involve speeding up the natural dying process that has already begun. Supreme Court ruling on the issue stated, “A question may arise, in the context a dying man who is terminally sick or in persistent vegetative State, that the man may be authorized to terminate it by prematurely terminating his life in certain circumstances.” As a component of the right to live with dignity, this type of case may be included in the definition of ‘right to die with dignity,’ as long as the process of natural death has already begun. Natural death has already begun, and these deaths are merely a speeding up of that process, not an end to life itself. Even in these circumstances, the argument over physician-assisted death remains unresolved. Jainism’s practice of Santhara can be practiced only by those who are terminally ill or old, and so have no purpose in life left. Similarly, to this, Article 21 does not provide for a right to limit the length of life.¹³

In both Jainism and other religions, the practice of fasting till death is an age-old one. Santhara’s religious activities are comparable to those of “Prayopavesa” (fasting of a terminally sick person till death) and “Sokushinbushu” (ascetism unto death and then being mummified alive) among

¹² Kokila H. Shah, ‘The Jain Concept of Sallekhana: A Loss or a Gain?’ National Seminar on Bio Ethics (24 & 25 January 2007) <<https://www.vpmthane.org/Publications/Bio-Ethics/Kokila%20H.%20Shah%201.pdf>> accessed on 21 January 2022

¹³ Aman Jain & Sanya Gangar, ‘Suicide is Sin, Santhara is Religion’ Volume 3 (January 2018) Supremo Amicus ISSN: 2456-9704 <<https://supremoamicus.org/wp-content/uploads/2018/06/v3f6.pdf>> accessed on 21 January 2022

other instances of religious practices. As part of their cultures and beliefs, they've been doing these rituals from time immemorial.

Article 25 provides for the right to freedom of religion and belief, including freedom of conscience and the free exercise of such rights in religious worship and teachings, is guaranteed to all Indian citizens by the Constitution. To the extent permitted by law and subject to the other provisions of this Part, everyone has the right to freedom of religion and belief and the freedom of expression that goes along with it.

According to the Hon'ble Supreme Court, in the case of *Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*,¹⁴ "Religion is a question of faith with people or groups and it is not always theistic. ", A large number of well-known Indian faiths such as Jainism and Buddhism reject the existence of God or any intelligent first cause. Although adherents of a particular religion believe that the doctrines and views, they espouse are beneficial to their spiritual well-being, saying that religion is nothing more than a set of doctrines and ideas is incorrect. Not only may a religion establish a set of moral principles for its adherents to follow, but it can also prescribe rituals, observances, and other forms of worship that are seen as vital to the religion itself, including restrictions about what to eat and how to dress. Freedom of religious belief and practice are not the only things protected by the Indian Constitution, as "practice of religion" is used to make this plain in its language. The practice of *Santhara*, as contested by many jurists, does not interfere with public order, health, or morality, nor does it harm anyone or violate morality in the true sense because it is a means of achieving peace and "*Moksha*" in the truest sense. Any rule that has been consistently and uniformly observed for a long time has acquired the force of law...in any local area, tribe, community, group, or family...if it is certain and not unreasonable or contrary to public policy," according to the Hindu Code, is a custom or usage followed by various religions.

CONCLUSION AND THINKING FORWARD

There are several ways to tell if a tradition is legitimate or not. There is no reason to believe that all customs are based on rationality. When it comes to customs, there are several aspects that play a role in determining whether or not they are acceptable. In order to determine whether or not a custom is reasonable, it is necessary to examine the values and beliefs of the culture or

¹⁴ *Madras v Sri Laskhmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282

religion in which it arose. An outdated tradition can nevertheless be upheld by a court as long as it has a sound historical basis, no matter how absurd it may seem in the present day. While a religion's ethical precepts are well-established, it also has the authority to establish customs and practices such as religious rites and practices. Under Articles 25 and 26 of the Constitution, they are protected if they represent an integral/essential element of a religious belief system.

Part III of the Constitution protects individual rights, which, according to this concept, supersede all other laws. As a result, no legislation may be considered sacred. According to Jainism, the ultimate purpose of life is Moksha, and as such, Santhara is protected by Article 25 of the Constitution of India and cannot be contested by the penal code or any other similar law.

Public attention and response to any decision that impacts religious freedom in India, which is a significant part of citizens' lives, has been tremendous. This is one of many similar cases where the role of the state has been questioned as an intruder into religious affairs of a particular community. Santhara is not a "essential practice" in Jainism, according to the impugned judgement, and consequently does not qualify for constitutional protection under the "religious liberties" of the Constitution. However, the study's focus is restricted to the allegation that santhara practice constitutes "suicide" (leaving the issue of essential practices). Following the Nikhil Soni verdict, the following concerns should be kept in mind:

1. According to Section 309 (IPC) and Section 306 (IPC), does the Rajasthan High Court have the right to declare the Jain practice Santhara as a criminal crime and its spread and practice by others as an offence?
2. Is the existing precedent for 'right to die' in the area of suicide and euthanasia adequate to address 'right to die' issue in the instance of Santhara?

Due to the fact that the Supreme Court will review this issue and there are serious doubts about its findings as the case has been widely criticized, the above inquiries only concern the court's finding under section 309 of the IPC, and no comment is made on the finding that "santhara does not form the essential religious practice" among the Jains is provided. It is a Jains practice known as "Santhara" or "Sallekhana" to fast till death, on the basis that "Moksha" is reached when all the goals of existence are fulfilled when the body is unable to serve any purposes of life. Those who choose santhara, on the other hand, abstain from eating or drinking while they wait for death to arrive; however, it should be noted that santhara is only taken after consulting

with the Jain gurus and that those who take it may later decide to reverse their decision. To the Jain community, the discipline of renunciation and acceptance of death as inevitable is a highly respected practice. Despite the fact that no certain age is specified, only the elderly participate in santhara since it necessitates the completion of one's life's goals.¹⁵

Colonial legislation, IPC is based on Anglo-Saxon thinking and cultural values. Due to the fact that there are no pre-British Indian Statutes (civil or criminal, substantive and procedural) that are based on pre-Plassey Hindu and Mahomedan law textbooks that have been translated into English. Furthermore, the laws were drafted by law commissions that did not include any Indians and relied heavily on English law. Consider that rules based on Anglo-Saxon philosophy cannot possibly include the customs and traditions of a completely alien place, especially one as diverse as India, which has an even older and more ancient civilization than the rest of the globe. In particular, the Christian and Indian approaches to the concept of "death" diverge significantly.

To be sure, this raises an important matter for law enforcement, which is whether or not "an act of ending one's life" includes santhara practice, which differs greatly from the psychological and physical elements associated with suicide.¹⁶ According to common sense and tradition, suicide has long been seen to be an unnatural death, and this is not simply based on a lack of comprehension, but also on a lack of grasp on law. In spite of the Supreme Court's decisions in *Gian Kaur*¹⁷ in which Section 309 IPC's constitutionality was affirmed by the Constitution Bench, which ruled in favour of its constitutionality not relying on *P. Rathinam's* case¹⁸ and holding that the "right to die" or "right to be killed" is not included in Article 21 of the Constitution and *Aruna Ramchandra Shambhaug*¹⁹ in which Aruna Shanbaug's next-of-kin friend and author of book on Aruna filed a petition under Article 32 of the Indian Constitution, asking for permission to discontinue life support for her.. *Gian Kaur* only recognizes passive euthanasia yet in both situations; death was sought as an escape from the pain of living as well as an escape from one's own guilt and responsibility. Whereas one deals with the cases where a person decides to end their life out of remorse and dissatisfaction with life, and the other deals

¹⁵ Udit Raj Sharma, 'Nikhil Soni v. Union of India' (2015) Summer Issue 2016 ILI Law Review <<https://ili.ac.in/pdf/paper15.pdf>> accessed on 18 January 2022

¹⁶ *Maruti Shripati Dubal v State of Maharashtra* (1986) 88 BOMLR 589

¹⁷ *Gian Kaur v The State of Punjab* AIR 1996 SCC 648

¹⁸ *P. Rathinam v Union of India* 1994 AIR 1994 SCC 394

¹⁹ *Aruna Ramachandra Shanbaug v Union of India* (2011) 4 SCC 454

with an extremely painful and unbearable situation in which it is viewed or perceived that death would be preferable than living on indefinitely rather than purposefully ending one's life. In this scenario, neither the desire to end a person's life out of discontent nor the ongoing and terrible agony and suffering that a person is subjected to necessitates 'mercy killing' are present, hence it does not fit into any of the two categories. If a person thinks that all of his/her worldly responsibilities have been completed, then he/she must also embrace death as a natural part of life and celebrate it. The Supreme Court of India should consider all aspects of the case, including whether the practice of 'equanimity with the death' falls under the definition of suicide under section 309 of the Indian Penal Code. A number of concerns need to be asked about this case and the law of suicide in light of its unique history and setting, which is a novelty before the judiciary and necessitates it to reassess the rule on suicide in light of its distinctive circumstances.

Another fascinating element that has come to light is the question of the legitimacy of this decision in view of the impending elimination of Section 309 from the country's penal code in an effort to make it more humane. The verdict's practical viability is in doubt. "Santhara" "Suicide," and "Euthanasia" need to be contrasted and elaborated upon more explicitly. Santhara's concept is not adequately explained in the ruling. Attempting to define santhara in its genuine meaning and then taking a tougher stance on the deviations of the practice would have been appreciated by the court. This time it's up to the country's highest court to decide what interpretation of santhara the court will accept and if it can fill any gaps in a challenged ruling. The whole country is watching to see what happens.

THE ROLE OF LINGUISTIC RIGHTS IN ENSURING DEVELOPMENT AND REALIZATION OF FUNDAMENTAL RIGHTS OF INDIGENOUS TRIBAL MINORITIES COMMUNITIES (ITM)

Sheikh Sultan Aadil Huque¹

INTRODUCTION

Indian constitution under its provision of fundamental rights and directive principles and various International Conventions and treaties which India has ratified provides to ensure the highest attainable standards of physical and mental health. But still, there is an exclusion especially of Tribal Population, from attaining the same because of failure of Governmental Policy failures. There are also major concerns regarding the lack of data on indigenous peoples' health and social conditions. As a result, there is a lack of information, analysis and evaluation of programs and services relating to indigenous peoples' health situation. One of the important areas for health care for indigenous peoples lies in intercultural frameworks and models of care, but it seriously lacks proper attention and cause of which tribal are facing injustice both in terms of linguistic and health access. Language is also about political power. The scheduled languages are linguistic citizens of this country, but non-scheduled languages are linguistic non-citizens. But we all have equal stakes in the country and equal responsibility. By giving the non-scheduled languages their due, we can create responsible citizens by protecting their languages. Linguistic citizenship is as important as political citizenship. Moreover, language is also about bargaining power of the people with the State. The lack of a common language between a local administrator and the citizens severely curtails both sides from expressing their needs.

This paper examines the importance of language in the health spaces for *Indigenous Tribal Minority (ITM)* communities in India. ITM has been defined by Annamalai & Skutnabb-Kangas², they define ITM by stating that "it stands for Indigenous (such as the Sami in the Nordic countries) / Tribal (such as Gond in India) peoples / Minority groups. It basically refers to people in relation to other people in a power structure. They are appropriately called minoritized people as "minoritized" carries the semantics of transitivity. They are marginalized by someone denying them agency. Further, The ITM languages in general do

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² Annamalai, E. & Skutnabb-Kangas, Tove (in press). Social justice and inclusiveness - an overview. In Handbook on Social and Affective Factors in Home Language Maintenance and Development eds. Andrea Schalley & Susana Eisenclas. Series Handbook of Applied Linguistics, Mouton de Gruyter

not have a dominant status”.³ Further If we go by the definition given by World Bank the terms, "indigenous peoples," "indigenous ethnic minorities," "tribal groups," and "scheduled tribes," describe social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process”.⁴ Similarly, if we refer to the district of Dantewada in the state of Chhattisgarh which has got comparatively a higher percentage of ITM community in terms of use of their language, as per 2011 census 64.16% of the population in the district spoke Gondi, 14.88% Halbi, 3.81% Duruwa, means majority of the population speaks all these Tribal languages but neither the same is recognized under the 8th schedule Tribal-language.⁵

STATUS OF ITM LANGUAGES IN INDIA

As, stated by Bhattacharya, “Status of a language is the total sum of what one can do with a language, legally, culturally, economically, politically and demographically. The status of a language varies in time and space, and the status may be changed by promotion or by pressure”.⁶ Further in-order to understand the link between language and ITM, we need to first understand the concept of what exactly is considered as linguistic minority, The Indian Constitution recognizes the concept of linguistic minorities, but is silent regarding the definition of the term. Articles 29 and 30 comprise the right of children of minority communities to be taught in their mother tongue, but they do not indicate any definition of what is a “mother tongue” and under which conditions this right can be claimed. Hence the judiciary had to define it for the purpose applying Article 30 of the Constitution: “A linguistic minority for the purposes of Article 30 (1) is one which must at least have a separate spoken language. It is not necessary that the language should also have distinct script for those who speak it to be a linguistic minority. A further indication on this term is given by the Supreme Court of India, which in 1958 presented a parameter for defining a minority language as “the language of the minority community, a parameter which is applicable only at the State level as there is no linguistic group in India which can claim the majority status on federal level”.⁷ Now, that we have understood the concept of linguistic minority further for our study on ITM, we need to go deeper and understand some more concepts such as “relative minority”

³ *Ibid*

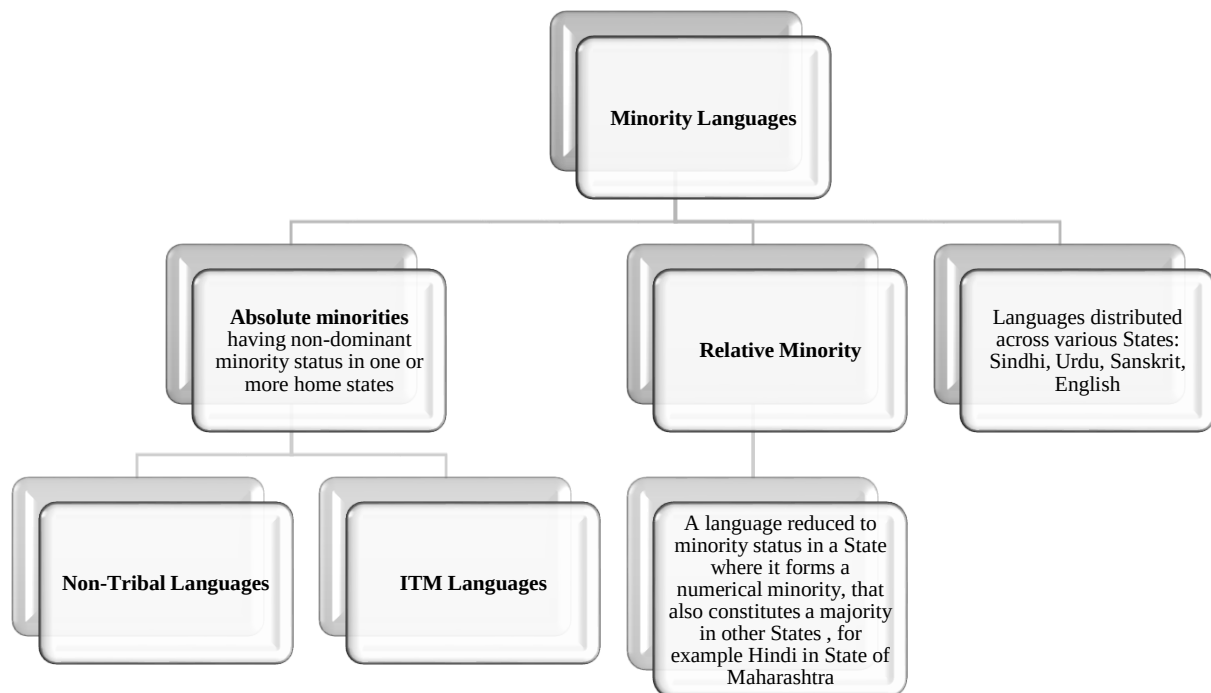
⁴ World Bank, "The World Bank Operational Manual Operational Directive (OD) 4.20: Indigenous Peoples

⁵ Census by Mother Tongue, 2011 Census, (Available at: <http://www.censusindia.gov.in/2011census/C-16.html>, last accessed on 28th January 2022 at 03:34pm)

⁶ S.S. Bhattacharya, Languages in India – Status and functions, p.62

⁷ Chaklaer S., Linguistic Minority as a Cohesive Force in Indian Federal Process, New Delhi, Associate Publishing House, 1981, p. 14

and “absolute minority language” . The term "relative minority" refers to the fact that there is a "kin-state" that has a language that isn't the official language of that state. When the language of a linguistic minority is used as an official language in another state, it is called a "relative minority." When no other state has used its language as an official language, whether it is scheduled or not, it is called an "absolute minority." In this way, Pandharipande says that three groups of minority languages can be found.:⁸



The Constitution of India doesn't say what linguistic minorities are. The Supreme Court said that even if a language doesn't have a separate script or has no script at all, it is still a separate spoken language. Thus, even though the Constitution doesn't say that "non-scheduled languages" are "minority languages," it does have a general way to protect smaller languages from being discriminated against. In Article 29 the Constitution provides explicit guarantees for the protection of minorities. But the same is yet to be used for providing linguistic protection to the ITM language.

⁸ Rajeshwari Pandharipande, Minority matters: issues in minority languages in India, in: International Journal of Multicultural Societies, Vol. 4, No.2, UNESCO 2002

CONCEPTUALIZING LANGUAGE: INEQUALITY, DISADVANTAGE & DISCRIMINATION

We can define linguistic inequality as a specific form of language contact which is a consequence of the unequal social valuation of languages, varieties, or dialects (by region, age, class, etc.).⁹ For better understanding of this concept, reliance can be placed on Jonathan Pool paper “Thinking about Linguistic Discrimination”¹⁰ According to the Pool, at least five language-associated inequalities appear in political discourse. They are:

- unequal attributes of different languages,
- unequal privileges granted to the users of different languages,
- unequal linguistic skills of different persons,
- unequal statuses conferred on different persons by linguistic rules and customs, and
- inequalities covering with language but not caused or motivated by language.

When someone says that there is a linguistic inequality, it can be hard to figure out what kind of inequality it is and how it is defined. Beliefs about linguistic inequality show up in both what people do and what they say. It's not clear which kind of inequality a given action is responding to, though. In complicated situations, there are many ways to measure linguistic inequality, and one can change or even change the conclusions by changing the measurement methods. Even if there is only one source of linguistic inequality, a change in how that resource is used can be seen as both a rise and a fall in linguistic inequality. In legal terms, inequality is when there is no rule of law or when there is arbitrariness and discrimination. Here, if we refer to the above five pointers as given by Jonathan Pool to indicate linguistic inequalities, all the five pointers exactly fit into our linguistic scenario of ITM and the linguistic policy of our state. And the same when applied to health care facilities then it becomes more evident, nor we have doctors who are trained with such language, no translators, nor even the sign boards in the health care centres are in any ITM language, rather it seems by imposition of bilingual approach by using only Hindi and English in public sphere, we are forcing the ITM communities to get lost in the forest of multilingualism and haunted by inequalities and thereby falling prey to unjust policy approach of the state and endangering their basic right to health.

⁹ Juan Eduardo Bonnin, *New Dimensions of Linguistic Inequality: An Overview*, *Language & Linguistic Compass*, Vol.7, 2013.

¹⁰ Jonathan Pool, *Thinking about Linguistic Discrimination*, *Language Problems and Language Planning*, 11 (1987), 3–21

Conceptions of Linguistic Disadvantage

Speakers of different languages can be advantaged i.e., naturally privileged or disadvantaged depending on how their language repertoire ‘fits’ with their linguistic environment. On this ground, Andrew Shorten in his article “Four Conceptions of Linguistic Disadvantage”¹¹ provided four rationales to articulate a possibility of Linguistic Disadvantage. Major arguments in the paper revolve around these four conceptions and the four conceptions according to Andrew Shorten are:

- “To treat a person’s language repertoire as a resource, whose value depends on the language skills of others”.
- “The second approach focuses on how satisfied people are with their linguistic environments whether they are able to avail the necessary services which demands linguistic proficiency”.
- “The third equates linguistic disadvantage with diminished access to resources and recommends comparing different language repertoires according to the share of external resources their holders have access to”.
- “The fourth focuses on what a language repertoire equips a person to be and do within a given linguistic environment and equates linguistic disadvantage with capability deprivation”.

Applying the same conception to that of ITM language, how due to lack of their linguistic recognition especially results into disadvantage in public spaces like access to health care facilities which are only available in bilingual manner in India and nowhere considers the essence of the ITM speakers and totally remains ignorant to the linguistic barriers they face . Status policy planning of a language begins with its recognition as a language. When linguistic minorities are denied rights through state language policy, it influences their verbal independence.

Concept of Language Discrimination

i. Discursive discrimination

¹¹ A. Shorten, Four Conceptions of Linguistic Disadvantage, Journal of Multilingual and Multicultural Development, Volume 38, 2017 - Issue 7, pp. 607-621.

In her opinion, Kristina Boreus¹² says that “discrimination is not only against the ideal of a fair and equal society, but it also violates this ideal by making groups of people feel like they are less than the rest of the population.” Kristina Boreus also talks about “*Discursive discrimination*,” which is important from a language point of view. She says that when this treatment takes linguistic expressions into account, it is called “*linguistic discrimination*” (and not, for instance, the expression of physical violence). The discriminating part might find similarities between people that these people don't think are similarities, or that aren't important enough to make them belong to the same group. The main types of discursive discrimination”¹³:

- exclusion,
- negative other presentation,
- discriminatory objectification,
- arguing for unfavourable treatment of group members

So, if people go by the definition of *discursive discrimination* and the criteria provided under it completely full fills the status of ITM speakers in India, due to their language they are excluded from availing public services like in health care spaces, further due to imposition of bilingualism in most of the health care spaces it results in an unfavourable treatment of ITM group members, to have in depth understanding of Linguistic Discrimination.

ii. Structural discrimination¹⁴

A deeper understanding of how linguistic inequity leads to discrimination is also necessary. We must refer to Van Dyke's concept of language discrimination, which has two key tenets, and these are also its two major flaws. When it comes to the theory of justice, Van Dyke asserts first and foremost that discretion plays an important role. As a second point, it assumes that inefficiency is a legitimate basis to deny equal treatment to all citizens by the state. The following are additional criteria offered by Douglas Rae¹⁵ when it comes to classifying instances of language discrimination:

- Languages must be treated same, which means that whatever the authorities do to one, they must also do to the others. For instance, if English, Twi, and Ukrainian are all deemed the same, any traffic sign displayed in English must also be displayed in Twi

¹² Kristina Boréus, *Discursive Discrimination a Typology*, *European Journal of Social Theory* 9(3): 405–424 2006.

¹³ *Ibid*

¹⁴ *Supra* fn. 8

¹⁵ Rae, Douglas, *Equalities*. Cambridge, Mass.: Harvard University Press, 1981.

and Ukrainian.

- Language equality necessitates that all important languages are treated equally. For any linguistic treatment that falls short of the standard, a higher standard must be used to compensate.
- It's even more important to treat everyone the same when it comes to linguistic non-discrimination.

The Indian Constitution provides the possibility for a State to declare a minority language to be official in part of its territory or in the whole State, provided the President retains that this accords with the wishes of a substantial proportion of the population of a State speaking that language. But only few States adopted regulations to recognizing minority languages as official languages for a section of their territory but same has not been made for ITM communities and still struggling with linguistic barriers.

UNDERSTANDING THE ROLE OF LANGUAGE IN ACCESSING HEALTH SPACE

While much of the health care debate is being guided by how the arguments for or against reform are “framed,” policymakers are paying scant attention to a more basic linguistic issue: many persons are deprived of adequate care because they are unable to communicate with their providers. Language barriers are very real and affect how care is provided and received. Communicating across language barriers is a challenge for clinicians and health systems as well as patients and when it comes to the speakers of ITM communities, and then it becomes more critical. The greater the differences, the more likely the frames of reference drawn on will be different. Therein lays the potential for misunderstanding. Thus, in this section we will be discussing various types of linguistic barriers & it’s impact. As well as how there is a need of change of approach from the side of Government in addressing this issue & how it can be addressed from a linguistic as well as legal perspective.

Language Barriers in Health Space

There is strong evidence that language barriers have an impact on how quickly people can get health care. These problems don't just happen when you see a doctor or go to the hospital. Patients have a lot of problems with health promotion and prevention programmes. There is also a lot of evidence that they have a hard time getting in touch with a lot of different providers at the start. Language barriers to healthcare haven't been given much attention in India, even though there has been a lot of talk about how important it is for doctors and patients to communicate. A lot of people in India speak more than 22 major languages, and English is used as the “language of choice” for biomedicine. Indian politicians need to show

more support for non-discriminatory health care, especially for vulnerable groups like the ITM population.

As Kymlicka and Patten have pointed out, “not even liberal states have been neutral towards language”¹⁶. While Kymlicka argues that a liberal state cannot be neutral, Patten suggests that this is an achievable goal. The history of nation-building has traditionally involved the promotion of the official language and the repression of others, even in liberal states.¹⁷ States have assumed, openly or implicitly, that minorities should adapt to the majority language. In general, one of the major determinants of language policy decisions and their linguistic and social consequences is that these decisions are frequently complicated by local political interests and frequently disregarded when it comes to ITM languages in the Indian setting. Language helps individuals and communities adapt to their surroundings by arming them with required knowledge that has been accumulating and growing over ages. As stated by Pattanayak¹⁸, in India, “linguistic diversity is taken as ‘a fact of life’ and, by extension, is considered not only unproblematic but as integral to the rich texture of living”. Which further he has epitomized in the following remark:

*“In the developed world, two languages are seen as a nuisance, three languages are seen as wasteful, and many languages are seen as silly. Multiple languages are a fact of life in countries where people speak many different languages. Any restriction on the choice of language is a nuisance, and having just one language is not only uneconomical, but it is also ridiculous.”*¹⁹

As, already have stated, the linguistic barriers created often impact the fundamental rights that has been ensured by our constitution. Language is as basic as food & shelter but the same has often been ignored and the plight of especially ITM because of linguistic barriers is the major reason for their under development. We try to impose a foreign language in the name of integration, thereby endangering their basic identity and their fundamental rights. We can frame it as ‘*Linguistic Colonisation of Tribals*’, as it has been researched and been proved whenever it comes to protection of an endangered entity , it may be an animal, plant, human

¹⁶ Kymlicka and Patten, Language Rights and Political Theory. Law and Politics Book Review, Vol. 14, No. 8, pp. 630–633, 2004.

¹⁷ Daniele Archibugi, The Language of Democracy: Vernacular or Esperanto? A Comparison between the Multiculturalist and Cosmopolitan Perspectives, Center for European Studies Working Paper No. 118,pg.4.

¹⁸ Multilingualism in India by Debi Prasanna Pattanayak Review by: Braj B. Kachru Language in Society Vol. 24, No. 4 (Dec., 1995), pp. 608-611

¹⁹ *Ibid*

or here in our study ITM, then the best way to protect is by providing them with a familiar scenario without any external imposition or influence. But the action of the state & policies especially in terms of Language is rather highly arbitrary and acting as an eraser instead of being a protector or retainer.

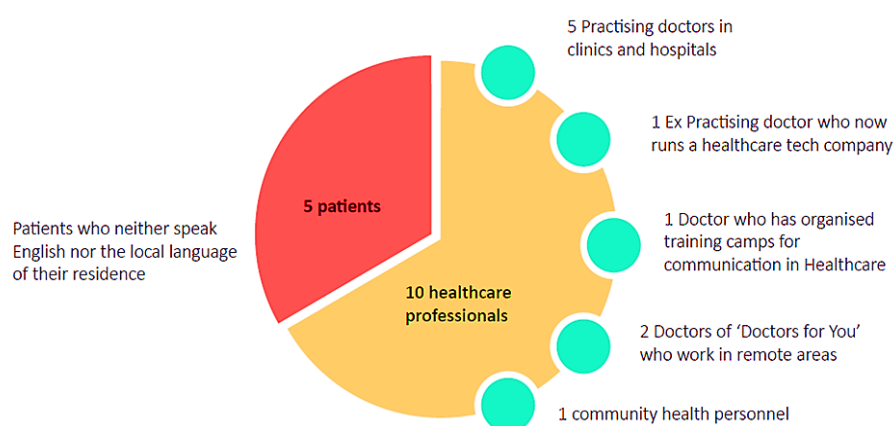


Fig 1. Effects of Language Barriers on Patient Access and Care

HOW NON-RECOGNITION OF LANGUAGE RIGHTS VIOLATES THE FUNDAMENTAL RIGHTS?

The State official languages have become more prominent in public life and in the life of a major part of the population. Their use in all media has increased drastically, establishing them as languages with high prestige. In almost all States a sort of linguistic convergence towards the majority language is in progress, which not only endangering absolute minority languages like that of ITM but also it is directly affecting the public life and fundamental facilities to which ITM are entitled under the Indian Constitution. Thereby, resulting in violation of their fundamental rights under Article 14 which provides for equality, Article 15 which prohibits discrimination based on religion, caste, race and place of birth, Article 19 which provides for freedom of speech & expression as ITM people are forced to learn majority language and their expression of their own languages are limited especially in public spaces due to non-recognition. Also, most importantly their right to life under Article 21 is highly endangered and infringed especially when it comes to right to access to health care facilities as; because of language barriers created due to non-recognition of their language they face a lot of challenges in communicating regarding their health issues to the doctors who are mostly majority language speakers.

This right to health is supported by the India Constitution's Part IV's Directive Principles of State Policy. Workers' health is protected by Article 39 (E), Article 42 (just and humane conditions of work and maternity relief) and Article 47 (raising nutrition levels and standard of living of people and improving public health) of the Declaration of Helsinki. In addition, Article 243G of the Constitution gives the Panchayats and Municipalities the authority to improve public health in addition to the State (read with 11th Schedule, Entry 23). So, we can clearly see that there is a lot of room for the development of language policies to improve the health standards of ITM, as language is one of the most important aspects when it comes to access to health facilities.

Judicial engagement with the question of Access to Health Space: Indian context

Now, that we have seen how the courts in international scenario especially the European Committee of Social Rights played a vital role in defining forms of indirect discrimination against the vulnerable people and directed states for a constructive approach to rectify and prevent various forms of indirect discrimination which also included right to access health care facilities. If we refer to our Indian Constitution, first it does not expressly recognize the fundamental right to health. However, Article 21 of the Constitution of India guarantees a fundamental right to life & personal liberty. The expression 'life in this article means a life with human dignity & not mere survival or animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic condition in workplace & leisure. The right to health is inherent to a life with dignity, and Article 21 should be read with Articles 38, 42, 43, & 47 to understand the nature of the obligation of the state to ensure the effective realization of this right.

In India, there are many factors that contribute to the poor health of the country's indigenous peoples. Tribes in the country have a poor health status because of a lack of health workers, poor access to health care, and a lack of health infrastructure. The broad framework of the right to health includes several essential elements, one of which is the right to health care. Health care rights cover a wide range of services, including the right to care, screening, and hospitalisation if necessary. They also cover the needs of older people and pregnant women, as well as the provision of family planning services, including health care for both mother and child. The right to health care includes primary health care and the provision of essential drugs as part of the core content of this right. The provision of this core content must also be non-discriminatory, as this is an important criterion. The right to health care and the right to

equal access to health care both include the requirement for non-discriminatory access to health care.

India's Supreme Court has made numerous rulings enshrining the right to health in the constitution. A few of the first judicial rulings have to do with cases involving public interest. Since the mid-1990s, the Indian Supreme Court has only articulated and recognised the Right to Health as an integral part of the right to life. PILs and public interest litigations in the Supreme Court ranging from PILs on worker health hazards to individual rights of public health have led to the recognition of the right to health.

Indian Judicial Approach & Right to Health

There was a landmark decision by the Supreme Court in the case of ***Vincent Panikurlangara v. Union of India & Ors***,²⁰ which established a principle that in a health-welfare state, the government has an obligation to ensure that conditions conducive to good health are created and maintained. In this way, the right to live a peaceful existence, superior to that of a typical animal, is acknowledged. A constitutional reality is that of personal autonomy, free of intrusion and appropriation. The right to live includes the right to live in peace, the right to sleep in peace, and the right to health and well-being. As a result, this decision emphasises the significance of the right to health and the state's duty to create conditions that promote the health of its citizens.

The government's primary duty in a welfare state is to ensure the well-being of its citizens, and this includes providing them with access to adequate medical care, as was held in the landmark judgement of ***Paschim Bangal Khet Mazdoor Samity & Others v. State of West Bengal & Others***²¹. The government fulfils this duty by making medical care available to those who need it. It is thus clear that Article 21 states that the state must protect the right to life of every person, and that human life is thus of utmost importance to the government. It is the duty of the state-run hospitals to provide medical assistance to preserve human life. Under art. 21, a person's right to life is violated if a government hospital fails to provide timely medical treatment for a person in need of it. In this case, the importance of the state's role in ensuring that citizens have access to medical care was once again emphasised.

Even if you're working in a government hospital, you're still required to provide the best possible care for your patients, according to the case of ***Pramand Katara v. Union of India &***

²⁰ Vincent Panikurlangara vs. Union of India & Ors, AIR 1987 SC 990

²¹ Paschim Banga Khet Mazdoorsamity v. State of West Bengal and Anr. 1996 SCC (4) 37

*others*²². A physician's primary responsibility cannot be avoided or delayed by state action or legislation. It is a duty that cannot be avoided or delayed. There can be no law or procedure that interferes with the fulfilment of this obligation, whether it be in statutes or otherwise. Defining and expanding the scope of state responsibility when it comes to ensuring health care facilities is also critical in this case's outcome.

In 1995, the Supreme Court for the first time explicitly stated that 'the right to health is an integral fact of a meaningful right to life' in the case of ***Consumer Education and Research Centre v. Union of India***²³. Read in light of articles 39(e), 41, and 43, the Supreme Court determined that access to health care is a fundamental right, and that it gives the worker's life meaning, purpose, and respect as a human being. An important step forward was taken when the Court recognised that public health issues could be addressed in public interest litigation, and in a series of subsequent cases, the Court ruled that not only must state governments provide emergency medical services but also must provide basic curative and preventive health services as well as ensure that healthy living and working conditions are maintained. While adjudicating on social rights, the Supreme Court specifically addressed the issue of resources, and rejected the argument that social rights are non-enforceable because of a lack in resources. Although this case is not directly related to indirect discrimination, it does serve as a good example of how the state has a serious obligation to provide health services, and that a lack of resources cannot be used as an excuse. Regardless of this case, the importance of Article 41, which states that the state must ensure public assistance, is highlighted by the fact that language is a critical component of ensuring public assistance, which may or may not be in the form of health care. Consequently, when we apply this case law's principle to our core issue of not providing health facilities in ITM communities' mother tongues, which results in a form of indirect discrimination, since language is very important in health care and state cannot take the defence of lack of language proficiency or resources, and just because we have a bilingual policy, we cannot deny the right to health of ITMs.

As we can see from the preceding decisions, the Supreme Court of India has incorporated the right to health care into Article 21 of the Indian Constitution by separating out the various judicial pronouncements that came before it. A wide range of health care and service options are included in the right to privacy protections. Supreme Court began to address the importance of health as a fundamental right to Indian citizens after recognising that Article 21

²² Pramand Katara v. Union of India & others, 1989 AIR 2039

²³ Consumer Education and Research Centre v. Union of India, 1995 AIR 922

and the Preamble of the Constitution emphasise human dignity. According to Article 47, in the Declaration of Rights in Part IV of the Constitution, “the state shall regard... improving public health and enhancing the quality of life of its citizens as among its primary duties.” With Articles 38 (social order to promote the welfare of the people), 39(e) (health of men, women and children must be protected against abuse) and 41 (right to public assistance, including sickness and disability) of the Directive Principles, the right to health is also derived from Articles 38, 39, 41 and 48A (the state's duty to protect environment). The Court has found that the right to good health is included in the right to live with human dignity in several cases that deal with the substantive content of the right to life.

The shift in judicial opinion from the early health debates to the late 1990s clearly shows that Article 21 now includes the right to health and access to medical treatment. Consequently, while Article 21's negative language was intended to place only a negative duty on the State not to interfere with an individual's right to life and liberty without due process, judges have now imposed a positive duty on the State to take steps to ensure an individual's right to life and dignity is better protected. With financial constraints, the state has been placed under an obligation to provide better-equipped hospitals with modernised medical technology facilities in *Paschim Banga*²⁴. When we talk about conditions necessary for good health, we're thinking of *Mahendra Pratap Singh v. State of Orissa*²⁵, a landmark case that's somewhat connected to our research because the judiciary has explicitly recognised the right to health as an essential component of living a dignified life for all people.

*Mahendra Pratap Singh v. State of Orissa*²⁶ is a case in which the Government of Orissa didn't open a health facility in a rural tribal village, even though they met a lot of rules about how to do so. The first rule was that the local people had to provide a certain amount of land in a certain amount of time. The second thing that had to be done was make sure there were enough buildings for the facility and its workers. There had been a lot of work done to set up a primary health centre, but it wasn't working, and the government wasn't doing what it needed to do to run it. They filed a petition in the Orissa High Court under Article 226 of the Indian Constitution, claiming that the right to health, which is based on Article 21, had been violated.

²⁴ *Paschim Banga Khet Mazdoor Samity & Ors v. State of West Bengal & Anor.* (1996) AIR SC 2426

²⁵ *Mahendra Pratap Singh v. State of Orissa*, AIR 1997 Ori 37

²⁶ *Ibid*

The court said that the government must help people and its "end goal should be to make sure that the people get treatment and live a healthy life." Primary health centres, on the other hand, should be the most important thing to think about, and it would be bad for public health if a government tried to stop these centres from being built. The court told the government of Orissa to follow the rules and procedures by the end of December 1996. The court also said that "great achievements and accomplishments in life can be made if one is allowed to live a healthy life." In this way, there is a strong impression that the state has a responsibility to enforce the right to life, and that this responsibility also includes the right to health care, which the state must do. People have the right to live, which means they also have the right to health care.

CONCLUSION

Wherever we find arbitrariness or unreasonableness there is denial of rule of law. Hence, also based on the interpretation of Article 14 of our Indian Constitution, further on the basis of relationship of human rights with that of prevention of discrimination and positive obligation we can clearly see the arbitrariness in terms of denial of exclusive linguistic policy for ITM communities in health care facilities rather arbitrarily the state is imposing a bilingual policy resulting in discrimination and denial of equality in accessing health care services. Even, under Indian constitution and judicial pronouncements we have seen a constructive approach has been adopted to ensure equality of vulnerable groups may be under Article 14, 15, 16 or 17 and based on the theories of constitutional borrowing and with a common objective of achieving right to access health care and to preventive language based indirect discrimination. Indian courts can adopt a similar approach as taken by various other international courts to serve the purpose of ensuring health care rights of ITM communities.

Chapter 2

Child Welfare and Law; and Women Empowerment and Gender Justice

A NEED FOR REFORMS IN CHILD RIGHTS IN 21ST CENTURY IN INDIA

Aatmajaa¹

INTRODUCTION

*Bestow blessings on those Little, innocent lives Bloomed on earth, which have brought the message of joy from heavenly garden.*²

- By Rabindranath Tagore

They have great hopes for the future, for humankind, as well as for the onset of social development. Children's legal policy has moved radically, from a position of non-entity and mere object material to a position of human dignity, wherein they are not only protected from exploitation and abuse, but yet also are allowed to fulfill their full potential through equitable access to food, health, and education. The powerful motivational aim of this plan is to bring about social change so that children can enjoy their right to a childhood. The goal of creating a child-friendly environment came as a result of a shift in human rights perceptions about children.

At the Geneva Conference in 1924, the need for special child safeguards was widely acknowledged. Children, because of their physical and mental immaturity, deserve extra care and legal protection, according to the proclamation. The United Nations General Assembly voted on November 20, 1959, to adopt the Declaration of the Rights of the Child³, 30 years later, leaders of the world identified the importance of providing children with exclusive human rights, requiring the formation of a Charter.⁴ Every human being under the age of eighteen is referred to as a "child" according to the United Nations Convention on the Rights of the Child (UNCRC). The United Nations Convention on the Rights of the Child (UNCRC, 1989) was the very first legally binding international treaty to confront all aspects of human rights in the context of children, including civil, cultural, economic, political, and social rights.⁵ These rights are enumerated in 54 articles of the Convention and two optional

¹ Student, 3rd year, BBA LLB, RV Institute of Legal Studies, Bengaluru.

² "Child Welfare Programme in Colonial Mysore - IJSRP" <http://www.ijsrp.org/research_paper_jun2012/ijsrp-June-2012-28.pdf> accessed February 14, 2022

³ Declaration] of Geneva, League of Nations (Adopted 26 September) DOC A. 107. 1924 IV (1924)

⁴ Charter refers to a universally agreed set of non-negotiable standard obligations.

⁵ "Eclipse Guard: Relative Debugging in the Eclipse Framework". Retrieved from [Http://Citeseerx.ist.psu.edu/Viewdoc/Download?Doi=10.1.1.128.5814&Rep=rep1&Type=Pdf](http://Citeseerx.ist.psu.edu/Viewdoc/Download?Doi=10.1.1.128.5814&Rep=rep1&Type=Pdf) (CiteSeerX) <<https://citeseerx.ist.psu.edu/showciting?cid=10773981>> accessed February 14, 2022

protocols.⁶

This defines the basic rights that every child should have, regardless of where they live: the right to life, the right to development, the right to be protected from negative influences, exploitation, and the right to actively participate in family life, cultural, and social life.

In 1992, the Indian government ratified the treaty, promising to review national and state legislation in accordance with the convention's basic principles, as well as organize the administration and society to put the convention's basic principles into practice. This is consistent with the Constitutional goals of ending child labor and exploitation, safeguarding children's health, and promoting their development through education and other means. As a result of these circumstances, the legal system and society as a whole take child welfare policy seriously, both in terms of the minute aspects of legal norms and their sincere implementation. But since the private individual's cooperation or control is critical to the accomplishment of legal policy, implementing social change in its realm through public action is a delicate task; however, despite the existence of the aforementioned legal frameworks, India's children continue to be vulnerable.

The objective of this research is to identify areas of law and governance that need more attention in order to deter criminals and human rights, violators. The main aim of the research is to suggest a few solutions that will assist the country in reforming its laws and legislative measures related to "child rights and child protection" in order to protect children from any socio-economic challenges while deviating from "traditional" views. In order to recommend remedies, it is necessary to first understand the issues that affect the minor population, such as child trafficking, child abandonment, and other issues that are on the rise as a result of insufficient enforcement of laws and a lack of child welfare organizations in the country.⁷

DOMESTIC AND INTERNATIONAL CONVENTIONS

It is important to invest in children's protection and opportunity for growth if they are to discover their full potential. One of the most prominent achievements of progressive democracies in the past century has been the acknowledgement of the child's rightful position in society, both internationally and domestically. Various UN conventions, State

⁶ 'Convention on the Rights of the Child' (Adopted by the Committee at its Fifty-first session Geneva, 25 May-12 June 2009), General Comment, No. 12.

⁷ "Child Rights & Child Development in India: A Regional Analysis" (ResearchGate)
<https://www.researchgate.net/publication/267633481_Child_rights_child_development_in_India_a_regional_analysis> accessed February 10, 2022

Law, and Court interpretations and pronouncements depict that children's rights are being recognized. The role of the law in social engineering has brought a whole new perspective due to child jurisprudence.

The Indian government has made significant attempts to improve the situation for children's rights. In this sense, the 86th Amendment establishes a fundamental right for children aged 6 to 14 in the constitution. Children are an important and potentially significant human resource for the country's development.

The Directive Principles of State Policy (Article 39) 5 of the Indian Constitution empowers the government to implement policies that preserve children's vulnerable ages and childhood. India enacted a National Policy on Children (NPC) in 1974 as a result of this constitutional commitment and as a signatory to the 1959 United Nations Declaration on the Rights of the Child. This policy emphasized constitutional values and enabled the State to provide necessary assistance to children during their developing years in order to promote their total physical, mental, and social development. As a signatory to the UN Convention on the Rights of the Child (1992), India has recognized child rights as a globally binding constraint. Following the adoption of the UNCRC in 1992, India revised its Juvenile and Justice Act, 2000 to ensure that anyone under the age of 18 who requires state care or protection is entitled to it. The Commission for the Protection of Child Rights Act of 2005 established the National Commission for the Protection of Child Rights (NCRC) in March 2007.⁸

- A. The Child Rights Commission was required to make sure that the concept of child rights was incorporated into all laws, policies, projects, and administrative procedures. As of now, India's Constitution guarantees certain rights to all children, including the following:
- B. All children aged 6 to 14 have the right to free and compulsory primary education. Article 21A of the Indian Constitution protects women's rights.
- C. Article 24 of the Indian Constitution guarantees the right to be protected from hazardous employment until the age of 14 years.
- D. Under Article 39(e) of the Indian Constitution, people have the right to be protected from being exploited and coerced into occupations that are unsuitable for their age or strength.
- E. Article 39(f) of the Indian Constitution guarantees equal opportunities and facilities for children and adolescents to develop in a healthy, free, and dignified way, as well as assured protection of childhood and youth against exploitation and moral and material

⁸ *Ibid.*

abandonment.

ISSUES FACED BY THE MINOR POPULATION ACROSS THE GLOBE AND THELEGAL PROVISIONS

Child Labor

International Labor Organization (ILO) defines the term child labor as, “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children, or work whose schedule interferes with their ability to attend regular school or work that affects in any manner their ability to focus during school or experience a healthy childhood.”

Earlier, children used to work as helpers and learners in hereditarily predetermined household activities under the benevolent guidance of elders in India’s pre-industrial farming culture. Due to unsophisticated technology, the workplace was an extension of the house, and the nature of the activity was easy. The rise of industrialization and urbanization resulted in a rural-urban migration. The child was expected to labor independently and under the supervision of an employer, or without his guardian’s supervision. Hazardous chemicals, poisons, and hazardous occupations affected children, and they were subjected to monotonous, uninteresting, and unpromising drudgery, as well as long working hours with insufficient leisure and revenue.⁹The Western industrial revolution undermined traditional sources of employment, resulting in a massive demand for workers and widespread child labor. Child labor is a social evil because of the dangers of work, denial of natural development, exploitation as a result of low wages, loss of bargaining power on the part of adult workers as a result of the availability of cheap child workers, which resulted in the loss of a potential means for schooling for the children, and the loss of a potential means for better equipment with competence. The figures below indicate the seriousness of the problem of child labor, the 1991 census in India counted 11.28 million working children. Despite the fact that child labor has decreased from 13.64 million in 1981 to 10.1 million in 2011, various research surveys indicate that childlabor will increase in the future.¹⁰

Children make up 5.2 percent of the workforce in India. It’s a phenomenon that occurs more commonly in rural settings than in urban places. Agriculture and similar occupations

⁹ Report Of Committee On Child Labor (Gurudaswamy committee, 1979) 8 (2.3)

¹⁰P. Ishwara Bhat ,Law and Social Transformation, (1st edn,EBC Publication 2009) 611

employ 80 percent of working children in rural areas. Only 6% of children's employees indulge in acts that are illegal under the law.¹¹

The rest of the child workforce is not covered by the law, either because the employment is not hazardous or because the child works within the family economic enterprise. A number of factors have contributed to the development and perpetuation of the child labor problem. Chronic poverty is the primary cause of child labor. Despite the fact that half of India's population lives in poverty, the bottom 50% of households own 4% of the country's land. Children are forced to work long hours to supplement the family's income, which is frequently compromised due to elders' ill health, death, and alcoholism. Poverty, illness, illiteracy, and exploitation are all factors that contribute to the rise of child labor in our society. The Oslo Conference on Child Labor stated in 1997 that "child labor is both a consequence and a cause of poverty." Child labor hinders a country's economic progress while also infringing on the minor population's basic human rights. As a result, the government and citizens of the country should focus their efforts on lowering and eliminating poverty in order to eradicate child labor in our country.

International Legal Norms

The International Labor Organization signed the Geneva Declaration in early 1924. (ILO). It adopted 18 agreements and 16 recommendations on issues such as the minimum age of employees in various occupations, medical and health-care policies, and the length of time minors worked, to name a few.¹² According to the International Labor Organization's Convention 59, no child under the age of 14 may work in any industry, mine, or hazardous activity. India has ratified this Convention.

The development of human rights at the international level benefited the cause of children's rights against exploitative labor as part of an effort to safeguard child development and the right to human dignity. The following clauses are found in Article 32 of the United Nations Convention on the Rights of the Child, which was established in 1989:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the

¹¹ P. Ishwara Bhat, *Law and Social Transformation*, (1st edn, EBC Publication 2009)

¹² "Child Labour in India - Jstor.org" <<https://www.jstor.org/stable/27767746>> accessed February 7, 2022

relevant provisions of other international instruments, States Parties shall in particular:

- A. Provide for a minimum age or minimum wages for admission to employment;
- B. Provide for appropriate regulation of the hours and conditions of employment;
- C. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular;
- D. Provide for a minimum age or minimum wages for admission to employment;
- E. Provide for appropriate regulation of the hours and conditions of employment;
- F. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.¹³

DOMESTIC LAWS IN INDIA RELATING TO CHILD LABOUR

The Royal Commission on Labor 1929 had noticed wide prevalence of the practice of the child labor in India with long hours of work, with very low wages and without leisure. The recommendations of the commission were discussed in the Central Legislative Assembly and the children (pledging of labor) Act, 1933 came to be passed, which may be said to be first statutory enactment dealing with child labor. It had the objective of eradicating the pledging of young children by their parents. It imposed a penalty upon the employers and parents and invalidated the agreements pledging the children below the age of 15 years. The Employment of Children Act of 1938 identified two different types of job in which children under the ages of 14 and 15 were not permitted to work. The first class included bidi making, explosive, and fireworks manufacturing, Mica cutting and splitting, and manufacturing processes that included toxic metals and substances such as lead, mercury, um, cadmium, benzene, pesticides, asbestos manufacturing, and so on, Printing (as defined in section 2(k) of the factories Act 1948) is illegal, as are other hazardous procedures (as defined in section 2(cb) of the factories Act 1948) and dangerous activities (as defined in section 87 of the factories Act 1948).¹⁴ However, children employed directly within the

¹³ AB and others, "What Are the Laws Related to Child Labour in India" (iPleaders November 11, 2019) <<https://blog.ipleaders.in/laws-related-child-labour-india/>> accessed February 10, 2022

¹⁴ Convention on the Rights of the Child (Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990) Art 32

family enterprise, without hired labor, or in state – aided schools were exempted. The second category included employment related to railway transportation and ports. The employment of children between the ages of 15 and 17 was needed to meet the requirements of leisure and the exclusion of night shifts. The Act established supervisory provisions for law enforcement through the regulatory authority and the imposition of penalties. In 1944, the Indian government established a labor investigative panel to highlight the shortcomings of statutory prohibitions against child labor, as well as industries' open disregard for the law due to a lack of competent control. This was realized in the case of *People's United for Democratic Rights v. Union of India*, which involved forced labor and child labor in the construction sector and exposed flaws in the Employment of Children Act of 1938.¹⁵

The following are a few similar sufficient statutes condemning and prohibiting child labor:

- The Factories Act of 1948 makes it illegal to employ children under the age of 14 in any factory. The law also specified who, when, and for how long pre-adults aged 15–18 could work in any factory.
- The Mines Act of 1952 prohibits the employment of minors under the age of 18. Mining, One of the most dangerous industries that have resulted in countless serious events taking the lives of children in the past, is strictly prohibited for minors.
- The 1986 Child Labour (Prohibition and Regulation) Act prohibits the employment of Children under the age of 14 in certain dangerous occupations. The list was amended in 2006 and again in 2008.
- Act of 2000 on Juvenile Justice (Care and Protection) for Children: Procuring or employing a juvenile in any dangerous employment or in bondage became a crime punishable by prison time under this rule. This law penalizes people who break previous laws by hiring minors to work.

JUDICIAL INTERPRETATIONS

The Supreme Court has made some significant decisions in identifying and rectifying our country's terrible child labor situation. In the landmark case of *MC Mehta v State of Tamil Nadu*¹⁶, the Supreme Court noted that on December 31, 1985, there were 221 registered match factories in Sivakasi, employing 27338 workers, 2941 of whom were minors; and that the manufacturing process of matches and fireworks is dangerous, resulting in

¹⁵ AB and others, "What Are the Laws Related to Child Labour in India" (iPleaders November 11, 2019) <<https://blog.ipleaders.in/laws-related-child-labour-india/>> accessed February 10, 2022

¹⁶ AIR 417 1990 SCR Supl. (2) 518 1991 SCC (1) 283 JT 1990 (4) 263 1990 SCALE (2)947

accidents, including fatal cases. It included a number of recommendations on how to improve the quality of life for factory- worked children, based on Articles 39 (f) and 45 of the constitution.

The Court took suo moto cognizance of the situation and appointed a commission of inquiry to examine the facts. The committee recommended that the State of Tamil Nadu should be directed to ensure that children are not employed in fireworks factories; that children employed in match factories packing purposes work in separate premises for a period of not more than six hours per day; that proper transportation facilities and facilities for recreation, diet, insurance, and other amenities be provided either by the factory or close by the factory; and that piece-rate wages be abolished.

CHILD LABOR POLICIES

National Policy on Child Labor-The National Policy on Child Labor, enacted in August 1987,lays out a strategy for addressing the problem of child labor. It includes the following:

- The legislative approach.
- General development programs for the benefit of all children.
- Action plans are based on initiatives that start programs for the welfare of children where there is a lot of child labour.

The National Child Labor Policy [NCLP] was created to help children who have been forced to work as children. Its initial purpose is to rehabilitate children who are involved in hazardous jobs or procedures. This was accomplished using the sequential technique.

Legislative Action Plan -The Child Labor (Prohibition and Regulation) Act of 1986, as well as other labor regulations, influenced the system. It was established to remove children from hazardous activities and procedures and ensure that they are never employed in such activities again, as well as to regulate the working conditions of children in non-hazardous jobs. Other occupations and practices may be deemed hazardous under this plan if they endanger the health and safety of children.

Despite the fact that India has numerous laws prohibiting child labor, many children are still employed in homes, restaurants, and industries around the country. These children are subjected to a variety of forms of exploitation, which include sexual and mental abuse. Although June 12 is declared as Anti-Child Labor Day, activists claim that numerous incidents of child labor still exist around the world due to a lack of implementation of the Child Labor Act of 1986. Furthermore, we frequently encounter child labor, which we refer

to as “Chhota”, in our daily lives, but instead of assisting them and placing them in a rehabilitation center to help them live a better life; we force them to perform our work.

CHILD PROSTITUTION AND SEXUAL VIOLENCE

“India would be free when women feel at ease strolling the streets of India at midnight,” said the country’s father, Mohandas Karamchand Gandhi. This, however, still remains a faraway dream that has yet to actualize. In India, young girls are idolized, but the same young girls are mercilessly raped, assaulted, and subjected to a variety of other hardships. Perhaps because of this, there has been an increase in paedophilia incidents in India. Between 2009 and 2014, the number of reported cases of child rape in India rose by 151%.¹⁷ Children with disabilities are especially susceptible since they are the easiest targets. Low-income families lack the resources to refuse and expose the abuse. Lack of data on the subject of sexual abuse of disabled children also contributes to the agglomeration of the problem. According to the National Crime Records Bureau, the rise in cases is attributed to an increase in case reporting and the development of new criminal law. The decrease in the stigma associated with child abuse and rape cases increased awareness of the issue on social media platforms, and the introduction of the Protection of Children from Sexual Offence (POSCO) Act in 2012 and the Criminal Law (Amendment) Act in 2013 all contributed to increase reporting of rape cases against children.

According to the VC Mahajan committee, 9 per cent of those admitted to the profession are under the age of 15, 24.9 per cent are between the ages of 16 and 18, 27.7 per cent are between the ages of 19 and 21, and 32.9 per cent are over the age of 22. Dalit’s and tribes make up 36% of the caste system, while other backward castes make up 24% and 40% for the rest. The ITPA prioritizes heavy sanctions for offenders, rehabilitation of children and juveniles involved in prostitution, intermediate custody, and good care of protective homes in its child prostitution policy.¹⁸

In India, child sexual abuse (CSA) is a long-standing issue that has just recently been recognized by the general public. According to a 2007 survey, barely 25% of children have told anyone about the abuse, and only 3% have informed the police.¹⁹ This is mostly due to

¹⁷ DR and others, “Child Sexual Abuse in India : Where Does the Law Lack” (iPleadersOctober 9, 2021) <<https://blog.iplayers.in/child-sexual-abuse-in-india-where-does-the-law-lack/>> accessed February 10, 2022

¹⁸ P. Ishwara Bhat ,Law and Social Transformation, (1st edn,EBC Publication 2009) 642

¹⁹ P. Ishwara Bhat ,Law and Social Transformation, (1st edn,EBC Publication 2009) 641

the deeply embedded societal stigmas connected with the terms “sex” and “CSA”, as well as a lack of specific legislation recognizing the entire range of harmful CSA behavior, such as harassment, fondling, exhibitionism, voyeurism, and exploitation for pornography. The only non-child sexual offences covered by three parts of the Indian Penal Code were rape (Section 375), insulting a woman's modesty (Section 354), and unnatural actions defined as “carnal intercourse against the order of nature with any man, woman, or animal” (Section 377). As a result, crimes such as non-penetrative sexual assault, harassment, and exploitation went unpunished.

FACTORS CONTRIBUTING TO CHILD PROSTITUTION AND CHILD VIOLENCE

(i) Social Factors

The socio-cultural factors that contribute to the practice of child prostitution include family members involvement in prostitution, early marriage and desertion, ignorance and illiteracy, religious and cultural customs such as offering into Devdasi, Basavi, or Venkatasani systems, and a lack of sex education.

(ii) Economic and Systematic Factors

The economic reasons include poverty and unemployment. The systemic causes of its persistence are the organized flesh trade racket, sex tourism, and the apathetic attitude of the police and administration. The prevalence of child prostitution is relatively high, accounting for 30% of total prostitutes. According to one estimate, the number of girl prostitutes in four metro cities of Bangalore, Kolkata, Delhi, and Hyderabad exceeded 10,000 in 1991, while the overall figure in India exceeded 5 lakhs.²⁰

LEGAL PROVISIONS

Immoral Traffic Prevention Act (ITPA)

Under the Immoral Traffic Prevention Act (ITPA) (section 2(aa)), the term “child” is defined as a person who has not completed the age of 16 years, “Minors” are those within the range of 16 and 18, Section 2(cb) of the Act protects the interests of both of these groups of people who are victims of prostitution. The term “prostitution” is defined in section 2(f) of the act as the commercial sexual exploitation or abuse of persons. “Prostitution” often

²⁰ India legal S, “Lawyers - Our Offices in India” (Lawyers in India - Advocates, Law Firms, Attorney directory, Lawyer, vakil) <<https://www.legalserviceindia.com/legal/author-83-artsjabs.html>>> accessed February 10, 2022

means an act of promiscuous sexual intercourse for a greater price or an offer or promise to do an act of sexual intercourse or other illicit sexual act for a higher price or any other thing in return, as it did in the previous act. The act of a female and the commercial exploitation of her person by anybody taking unfair advantage of her situation of trapping for one's benefit have been brought within the scope of the amendment.²¹

Protection of Children from Sexual Offences (POCSO)

Through the reports “Breaking the Silence,” many non-governmental organizations (NGOs) and the Ministry of Women and Child Development of the Central government worked hard to bring the issue to the forefront of public conversation and politics. Following sufficient momentum created by increased agitation by the media and the Ministry of Women and Child Development, new legislation called the Protection of Children from Sexual Offences (POCSO) 2012 was enacted. It is gender-neutral and recognizes boys as sexual abuse victims. It criminalizes juvenile sexual assault, harassment, and pornography, as well as requiring the creation of special courts to expedite prosecutions. The POCSO Act defines penetrative sex as not only penile penetration but also oral sex and the insertion of any object into the anus, mouth, or vaginal canal (under section 3 of the act)²². In the case of *State v. Pankaj Chaudhary*²², the Delhi High Court refused to prosecute the accused with rape since inappropriate touching of a 5- or 6-year-old girl's anus; vagina was not recognized as a crime under the Indian Penal Code. The definition of rape has been expanded as a result of the POCSO Act and the 2013 Amendment, ensuring that children are better protected, however, the POSCO Act failed to prevent CSA since the number of POCSO-related cases has increased, as has the backlog. This is a matter of concern as it makes the law ineffective. Victims are being denied timely justice. Due to frequent adjournments and police officers' refusal to file FIR's, the conviction rate is low. POCSO cases are dismissed by the police due to a lack of evidence and a lack of clues. Because the public is hesitant to register CSA complaints, direct evidence is lost as a result of the delay. Similarly, the medical examination fails to detect minor injuries received during the unfortunate incident, resulting in the loss of crucial biological trace evidence.

Legislation to protect children from sexual abuse is required. The number of CSA occurrences recorded has risen as public awareness of the problem has grown. The

²¹ The Immoral Traffic prevention Act, 1956, s(2)

²² *State v. Pankaj Chaudhary* [2011] CRL. A. 813, [2009] 993

requirements of the POCSO Act also aided in the detection of harmful sexual behaviors that endanger children. A sexual assault or harassment act has a long-term effect on the mental health of a child or adolescent. This trauma may have a long-term impact on their mental and social development, leading to a variety of psychiatric problems. The victim may suffer as a result of the failure of Fast Track Court. As a result, the Act's inadequacies may render its implementation in India difficult. Judges must be more effective to make the fast track courts work.

IMPACT OF COVID-19 ON CHILDREN

COVID-19 has plunged the entire globe into an unforeseen state of emergency. Despite the fact that the COVID-19 pandemic is a relatively new phenomenon, a growing number of studies on its harmful effects on children's safety, their psychological, and physical health have been published. Although the unfavorable perspectives presented thus far, it is important, like with any crisis, to measure the impact on the most vulnerable communities. Various data suggests that children's rights are being violated across the country and that such concerns have increased in recent years due to the pandemic. People who have been adversely affected are highly susceptible. However, since the epidemic does not affect all demographic groups equally and disaster relief and mitigation services and resources are not equally available, some People are more severely affected than others, with long-term consequences. The Covid-19 pandemic has had a major impact on India's and the rest of the world's economies. The Indian economy is expected to be in a state of recession for a longer period of time as a result of the extended national lockdown, the global economic crisis, and the consequent disruption of demand and supply networks. India's unemployment rate has risen to 26% on April 19, 2020, from 6.7 per cent in mid-March. More than half of all households in the country have suffered major financial losses as a result of the outbreak.²³ The implementation of the lockdown has had a negative effect on vulnerable populations. Despite the fact that all children will feel the effects of the lockdown, such as limitation, social isolation, and uncertainty, many children will be able to return to school and continue their normal lives once the lockdown is lifted. However, a (sub) group of children would be unable to do so; they will be affected considerably more severely than others, and,

²³ Ramaswamy S and Seshadri S, "Children on the Brink: Risks for Child Protection, Sexual Abuse, and Related Mental Health Problems in the COVID-19 Pandemic" (Indian journal of psychiatry September 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7659798/>> accessed February 10, 2022

moreover, these children will be at greater risk after the lockdown is lifted and economic activity resumes. This subgroup, which has a significant population in India, is made up of small children who have experienced and survived in challenging situations.

The COVID-19 pandemic's economic issues are likely to result in child abuse and exploitation in needy children, either indirectly through child labor or directly through sex trafficking. Furthermore, child marriage is a common means for children to be sexually abused, and it has been shown to increase during the pandemic. Surprisingly, there is a deafening silence in the literature on child labor about sexual abuse individuals' experiences who deal with children, and much of it focuses on street children, who are engaged in a variety of activities for survival and/or income generation for their families. The risk of sexual assault is high because of the fragility and powerlessness of children forced to work, as well as their separation from their families.

However, experts believe that in times of emergency, children are more likely to relocate to cities and enter the labor force, putting them at risk of exploitation. Many of these children work on the streets, making them more exposed to exploitation, verbal, physical, and sexual abuse. Both male and female juveniles have reported adults approaching them for sexual encounters. Many young people who work in the informal sector are sexually abused, particularly girls who work as domestic assistance and on the streets (hawking or begging). As a result of starvation and the stress of supporting their families, they are sexually exploited and driven into prostitution, placing them at risk of pregnancies and sexually transmitted diseases.

CONCLUSION

As of now, governmental and nonprofit organizations are debating the child safety and mental health issues that have arisen as a result of the COVID-19 situation. Various stakeholders are producing activity and training manuals for children's mental health and child protection systems/staff, often with more zeal than the understanding of the situation and complexities of the COVID-19 disaster. Some suggest that psychological therapeutic for institutions children are necessary. Given the scope and depth of the crisis, as well as the likelihood of poor economic growth, threats to child safety and "psychosocial" challenges are projected to persist indefinitely. The resulting mental health issues are substantial, and the children involved are likely to suffer long-term consequences. As a result, the government (together with its NGO partners/collaborators) must extend child care and

protection activities throughout the country, including crisis response into ongoing, normal programs and services.

The modern mantras for providing children with a joyful environment in which they have their rights are as follows: Three factors, i.e., require increased attention from the standpoint of childwelfare: To begin with, there is a lack of awareness about the rights that are granted to children. In retrospective, it is critical to realize that adopting legislation itself is not the solution, but instead a step toward it. Hence, the need for in-depth research into the basic issues plaguing society, as well as making people aware about them. Child marriages continue to occur in several rural areas of India, a plethora of rapes go unreported, and the literacy rate remains poor. The laws governing the same require detailed scrutiny and attention. The abundance of laws clearly indicates the apparent loopholes and liberal implementation which leave scope for heinous atrocities to still occur. Secondly, in order to provide security, child care and development institutions must be established in the country. Child welfare organizations must be cautioned, cajoled, and compelled to participate. Because a legal framework alone cannot achieve a better environment for children, people's engagement and leadership from NGOs and civil society organizations are essential for legal policy's success. As a result, all state parties, the media, and non-governmental organizations must have some responsibility in the area of child protection. Finally, private individuals such as parents, adoptive parents, employers, and anybody else who works with children must act responsibly and with self-control in order to prevent child exploitation.

THE DEFENCE OF PROVOCATION AND BATTERED WOMAN SYNDROME IN INDIA

Aradhya Singh¹

INTRODUCTION

Dr. Lenore Walker propounded a theory named as “Battered Woman Theory” in which she explained that why such ill-treated women instead of just parting ways from their male counterparts; choose to kill their abusive husbands. She developed a theory to be termed as the “**Walker Cycle Theory**”.² The jurisprudential aspect of this theory, seems to set foot into the system as a Lawful Defence and gained significance due to the reason that it highlighted the victim’s action since in those times it such matters were not ordinarily taken up by the juries. The theory elucidates three different phases of an abusive relationship, the first being the ‘*tension building phase*’³ where verbal altercations between the husband and the wife lead to an ‘*acute battering incident*’⁴ that brings us to the next phase, in which batterer portrays anger, animosity, and rage. Now, comes the third phase of ‘*loving contrition*’⁵ where the batterer regrets his acts and makes a promise of not repeating such acts again in near future. The abused woman takes this as a positive statement and reinforcement to continue being in a relationship with her abuser. Nonetheless, this behaviour goes in continuum and leads to the first phase of *tension building phase*.⁶ The violence turns out to be a complete loop and converts into “learned helplessness” a condition in the mind where an abused woman presupposes that she is stuck in a loop of a helpless cycle. This concept was introduced by psychologist **Martin Seligman** wherein he describes a condition of paralysis which is generated by consistent and regular battering that makes the female feel constantly trapped within the relationship.⁷ These females consider themselves in a desperate and helpless situation over which they have no dominion either wholly or partially.⁸ As per Walker, battered women, have no authority over their pathetic condition, sequentially these

¹Ph.D. Scholar, Banaras Hindu University.

²Lenore E Walker, *The Battered Woman Syndrome* (1st edn, New York: Harper 1979).

³*Ibid.*

⁴*Ibid.*

⁵*Ibid.*

⁶*Ibid.*

⁷Joshua Dressler, “Battered Women and Sleeping Abusers: Some Reflections” (*Ohio State Journal of Criminal Law* 2005)

⁸Rebecca D. Cornia, “Current use of Battered Woman Syndrome: Institutionalization of Negative Stereotypes about Women” (*UCLA Women’s Law Journal* 1997)

abused woman starts believing that it is impractical to flee the present scenario, even when escape is a possibility. As females continue the forbearance of abuse despite of their struggles to prevent it, they set free the need to escape, believing that no such chance will ever subsist. It produces a suspicion that the husband is tyrannous which plunges the response of a woman, the urge and determination to move out of this deplorable scenario diminishes. The social factors and societal fear bind such woman and they are stuck in this never-ending cycle of violence. The fear and perception in the minds of such abused females arises when they feel that the legal system will fail them. This state of helplessness leads an abused woman think that the only way she can escape this reality is the death of her abusive partner. There are a few battered women who kill their abusive partners' i.e., male counterparts to get rid of the obnoxious marriage.

DOCTRINAL JUXTAPOSITION OF SELF DEFENCE AND BATTERED WOMAN SYNDROME

A movement initiated in the American jurisdiction and other countries of the west for the protection and preservation of abused woman, the identification and protection of such women from atrocities by men had given a sharp priority for the beginning of such movements. The United Nations (UN) in the mid-1970s started focusing upon the removal of violent activities and atrocities against females, this being a crucial strategy for women to achieve equal parance with males and to live with dignity. Sexual abuse, sexual harassment, sexual assault, rape, sexual exploitation by males utilizing their authoritative positions, as well as violence taking place at their homes were certain crucial debatable topics that needed deepest deliberations. **The Fourth UN Conference on Women**⁹ in 1995 was held in Beijing (China), wherein each nation was compelled to show the results of their efforts to as to how to eradicate violence against women in their countries.

A British woman, Erin Pizzey in the early 1970s, initiated a shelter in Chiswick, England that came out as the first and foremost refuge for abused woman. She was moved by folklores stating that the females lack excitement in their lives therefore, they are getting infatuated from the chaos that intimate partner violence creates. The refuge for such abused females started growing all around the world, providing a loud and clear message to the males that if they commit atrocities on their wives, the society and the refuge will not let that female be alone. It was not at all that smooth as there were backlashes and comments from different sects of the society one being the radical feminists who believed that focusing on women will

⁹< <https://www.un.org/womenwatch/daw/beijing>>accessed on 19 January 2022.

further make her a victim. The doctrines of provocation and self-defence show a lenient attitude towards males and violence. The doctrines have been grounded in masculine notions of violence and reasonableness. Females have faced harsh experiences in the patriarchal setup, the male dominated presumptions often exclude an efficacious way for understanding this harshness faced by women. It is a complete failure of the system that cannot adequately protect the women.

The self-defence doctrine seems neutral on its face; however, the doctrine has been largely shaped by male perceptions.¹⁰ An accused woman suspects precariousness in the intermittent timings of tranquillity between chapters of violence because the women are in constant fear in the initial and the second phases of the cycle. The peaceful periods between the episodes renders an opportunity to the abused woman for striking off her counterpart. This situation is showcased in *State v. Wanrow*¹¹ where the Supreme Court of Washington talked about “extending the objective test to take into consideration the circumstances surrounding the defendant as well”¹². As per the Supreme Court the extension provided was necessary for the jury to “**stand as nearly as practicable in the shoes of the defendant, and from this point of view determine the character of the act**”. Therefore, from this viewpoint “any reasonable person in her position would be in a constant fear of imminent harm, thereby satisfying the first element of self-defence”¹³.

The theory assists in clarifying the application of reasonable force against the person aggressing; however, it is convenient for an abused woman to resort to deadly force when her life is endangered because her anticipation about a stronger and larger man makes her physically intimidated.¹⁴ In *State v. Kelly*,¹⁵ the apex court of New Jersey stated that “battered women develop ‘learned helplessness’, a condition similar to depression, due to which they do not retreat from the relationship”¹⁶ and “recognized the above statement, emphasising that some females “become so demoralized and degraded by the fact that they cannot predict or control the violence that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation.”¹⁷ The economic structure and

¹⁰R. Holten & S. Shute, ‘Self-Control in the Modern Provocation Defence (2007) 27(1) OJLS

¹¹[1977] 88 Wn.2d 221

¹²*Ibid.*

¹³*Ibid.*

¹⁴David L. Faigman, ‘The Battered Woman Syndrome and Self-Defence: A Legal and Empirical Dissent’ (1986) 72 Virginia L. Rev.

¹⁵[1985] 285 S.C. 373

¹⁶*Ibid.*

¹⁷[1985] 285 S.C. 373

patriarchal upbringing of these women determines whether the abused woman has the power to go for retreat or not.¹⁸ Taking this into consideration, *American and Canadian courts* started accepting BWS as a basis for self-defence when established through expert testimony. ‘*The Victoria Law Reform Commission*’ in Australia justify giving recognition to self-defence in such cases. The report of the Commissioner helped with guidance related to the family violence and domestic abuse in respect to defences to homicide.¹⁹ Additionally, the Government of Victoria, Australia has made a remarkable move by introducing the offence of ‘defensive homicide’ to provide a safety blanket for women stuck in a domestic violence situation.²⁰ Thus, ‘learned helplessness’ coupled with socio-economic and societal pressures, in India especially, causes a battered woman to carry on in an all abusive relationship, satisfying the pending requirements for the defence.²¹

GENDER BIAS AND MALE LENIENCY IN DEFENCE OF PROVOCATION

Most legal systems are dominated by male and shaped by male influences. Most male judges at the apex court epitomize this. These members of legal fraternity execute lawful doctrine that come out as an enactment through legislations and “grounded in traditional notions of men’s crimes” and fails miserably to make home for feminine experiences and perspectives. The rate in which male homicide perpetrators are increasing shows that it is primarily a male act. The gay panic defence or jealous man provocation highlights that defence of provocation has primarily been used by the males and also this doctrine has been utterly gender biased in nature as it gives a right to the males to consider their wives as their property. There are enormous numbers of cases wherein merely on the suspicion about an affair of a wife has resulted in the death of either the wife herself or her suspected paramour. This defence is deeply engrossed with patriarchal views and notions, therefore, create biasness for females. Voluntary manslaughter doesn’t count as an exception; “the legal standards that define adequate provocation and reasonableness reflect patriarchal views”.²²

Lord Devlin characterised a ‘reasonable man’ in a landmark case of *DPP V. Camplin*²³, wherein he stated that the reasonable man should be a man with lowest level of self-control that the society expects from its citizens. The Courts in India started following the test of reasonable man and deviated from the statutory statement of the law. The courts attributed

¹⁸Elizabeth Kenny, ‘Battered Women Who Kill: The Fight Against Patriarchy’ (2007) U.C. London Juris. Rev.

¹⁹Thomas Crofts and Danielle Tyson, ‘Homicide Law Reform in Australia: Improving Access to Defences for Women Who Kill Their Abusers’ (2014) 39(3) Monash U.L. Rev.

²⁰*Ibid.*

²¹*Ibid.*

²²Elizabeth Kenny, ‘Battered Women Who Kill: The Fight Against Patriarchy’ (2007) U.C. London Juris. Rev.

²³[1978] AC 705.

characteristics of the person accused in a case to that of an ordinary person. The anger and rage borne in males were used or rather misused to lower the sentence and make the offence come under the first exception to Section 300. It is hard to believe that the landmark case²⁴ in our country that deals with provocation as a defence is yet again about the infidelity of a wife to her husband. Mitigating the punishment on sheer basis of rage and jealousy towards a partner of to the partner's paramour resulted in blatant misuse of the defence of provocation.

THE JUDICIAL DISCOURSE IN USA, UK, AUSTRALIA, AND INDIA

(A) USA:

The United States of America allowed BWS as evidence however, it was not used as a legal defence but started to be counted through an expert testimony as a justification for proving self-defence.²⁵ The expert's testimony was of great relevance for proving the self-defence.²⁶

In a case of *Ibn- Tamas v United States*²⁷ the accused relied heavily upon the testimony provided by Dr. Lenore Walker that helps in proving the suddenness requirement of self-defence. And, if the defendant's behaviour matched to that of a woman who exhibits BWS, the defence could be used for justifying the emotions of the woman in the present case. The emotions comprise of imminent danger towards her and thus this case was sent to the trial court for considering BWS testimony. In *State v Leidholm*²⁸ the Court ruled that "expert testimony was admissible and that the court should consider the abuse in the past in determining the guilt of the accused"²⁹. This was further elucidated in *State v Wanrow*,³⁰ where the court held that "the reasonability of a person's actions in self-defence needs to be judged by considering her own perception of the threat"³¹. "It is to be evaluated in light of all circumstances around the defendant and then determined if the amount of force used was in reasonable and honest belief"³².

²⁴[1962] AIR 605

²⁵Christina England, 'The Battered Women's Syndrome: A History and Interpretation of the Law of Self-Defence as it Pertains to Battered Women who Kill their Husbands' (2007) 3(1) Vanderbilt Undergraduate Research Journal

²⁶Holly Maguigan, 'Battered Women and Self-Defence: Myths and Misconceptions in Current Reform Proposals' (1991) 140 (2) University of Pennsylvania Law Review.

²⁷[1979] 407 A. 2d 626, 634

²⁸[1983] 334 N.W.2d 811, 818

²⁹*Ibid.*

³⁰[1977] 88 Wn.2d 221

³¹*Ibid.*

³²*Ibid.*

(B) UK:

United Kingdom faced contrasting outcome of the path of this defence. The paramount expansion was adding BWS to the part of partial defence of provocation. A landmark case in this course is of ***R v Ahluwalia***³³ in which the accused had put the sleeping husband on fire resulting in his death after ten days. The accused when presented in the court stated that she was suffering at the hands of her husband from a very long period, her body was tortured and her soul was screaming and on that unfortunate night, she finally took all the vengeance out on her husband. The Court held that the accused was guilty of murder and had convicted her for life imprisonment. However, a new ray of hope emerged when accused while serving her sentence came across an activist who told her to move the higher court for a retrial. It was decided in the retrial that accused can be given the benefit of ***diminished responsibility*** and hence her sentence was reduced to that of manslaughter. Court took cognizance of long-term abuse faced by the accused and paved their way in new judicial era by eliminating the requirement of suddenness while claiming defence of provocation. It became crucial to intricate the nuances arisen due to the above case. In ***R v Duffy***³⁴ the conventional status in English law was discussed by **Lord Devlin**³⁵, defining “provocation as an act or a series of acts done or words spoken which would cause in any reasonable person and actually does cause to the accused, a sudden and temporary loss of self-control such that he does not remain, for the moment, the master of his mind”. In ***R v Thornton***³⁶ the trial court stated to “put on the conviction the defendant who stabbed her long-time abusive husband based on the requirement of suddenness”³⁷. The standards developed in this case were upheld in further cases. Coming to conclusion one can say that the journey of BWS in English courts have travelled from the condition of self-control instantaneously to the other way of recognition of delayed response by the accused.

(C) AUSTRALIA:

In the Australian continent with the advancement of reforms that has been made the defence of battered women has also expanded its scope and has recognised sustained provocation as a defence. In the case of ***Chaay***³⁸, where in a Pacific Asian immigrant who killed her husband

³³[1993] 96 Cr App R 133, 142

³⁴[1949] 1 All ER 932, 935

³⁵*Ibid.*

³⁶[1993] 96 Cr. App. R. 112, 112

³⁷*Ibid.*

³⁸[1994] 72 A Crim R 1, 2

stating that the reason she committed the crime is because she faced years of torture at the hands of her abusive partner.³⁹ The Court ruled that “the loss of self-control can occur in the case of a lengthy period of abuse even in the absence of a specific triggering incident”.⁴⁰ The judiciary also considered certain cultural factors to determine the rationale behind the act of the defendant. There has been a lot of work done in a noteworthy debate between defence of provocation and duress and it has been highlighted in case of *Runjanjic and Kontinnen v The Queen*,⁴¹ the court accepted the testimony of BWS and allowed duress as a defence to the two female convicts. The facts of this case are interesting to know as they demarcate line between duress and defence of provocation. In this case there were three people inclusive of two females and one male in one common house and one fine day the man threatened that the moment he gets up from his sleep there would be one person remaining in the house. There was a past of torture and abuse of these two females at the hands of that man therefore, under deep fear of losing their own lives, these women killed the victim.⁴² The conviction was solely dependent upon the objective or a subjective test that was required to be fulfilled for claiming the defence of duress in the present case. The lordships in this case analysed that the woman’s subjective perception is not based on the suddenness requirement, but on her fear and anticipation of the loop of violence.

(D) INDIA:

The BWS was initially recognised and paid heed to in a case of *Manju Lakra v State of Assam*⁴³, by Guwahati High Court wherein an abusive husband was killed by his wife after he entered home intoxicated and began thrashing her. The accused was held guilty of murder but as what happened in *R v Ahluwalia*⁴⁴, the accused applied for a retrial and was given benefit of the defence of BWS. This was a new dawn in the Indian history of male dominated judgments related to provocation, there is juxtaposition, and it seems to a reasonable man that the person who lost his life was a real victim however, the victim was the accused, who was in constant threat of losing her life any day at the hands of her husband. In this case court placed its reliance to the case of *R v Ahluwalia*⁴⁵ and moved ahead to culminate taking hold of BWS as per other common law jurisdictions like **USA, Canada, and Australia**. The Court

³⁹*Ibid.*

⁴⁰*Ibid.*

⁴¹[1991] 56 SASR 114, 114

⁴²*Ibid.*

⁴³[2013] 4 GLT 333

⁴⁴[1993] 96 Cr App R 133, 142

⁴⁵*Ibid.*

considered “the fact that the accused had been suppressing her animosity and rage for a decade and anger had been continuously boiling inside her mind, wanting to burst open and that the intolerant behaviour of her husband made her spill her anger that resulted in the final act”⁴⁶. The Court considered that the action performed by the accused was grave and sudden. With respect of the same, the Court reduced her sentence and held it will be dealt by the first exception⁴⁷ of **Section 300**.

In **Suyambukkani v State of Tamil Nadu**⁴⁸ the wife was unable to bear the cruelty and oppression of her abuser, so she decided to jump with her offspring, resulting in death of her kid, however, she survived. After this incident she was charged with murder and attempt made for suicide. The court convicted her for the offence of murder, however, she went for an appeal and the High Court of Madras provided her with defence of sustained provocation and lessened her sentence. The similar facts arose in the case of **Amutha v State**⁴⁹ where Amutha survived, and her daughters died. The court again “highlighted the exception of sustained provocation and granted anticipatory bail holding that the case was prima facie in her favour”⁵⁰ in these cases ‘Nallathangal syndrome’ was taken into consideration by the courts, as well as the natural reaction of a woman, and her social and cultural environment. It was very well accepted that the intention was never to cause death of her children, but to put a full stop to the pain and cruelty that the children would have been opened to, post her death. In conclusion, the court was of the view that if the law recognizes that a battered wife may commit suicide due to surrounding circumstances; it should also recognize that proximate circumstances may cause her to kill the batterer. If a woman were to put an end to her life instead of that of her husband who is the batterer, then her husband would have been charged with dowry death and here, the intention was more to end the continuing violent regular acts of violence, rather than to take life of her husband. Thus, a victim becoming an aggressor due to surrounding circumstances would be within the ambit of sustained provocation causing ‘grave and sudden provocation’ and would hence be held liable for culpable homicide not amounting to murder.

⁴⁶*Ibid.*

⁴⁷Exception 1 to Section 300, Indian Penal Code, 1860: “Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

⁴⁸[1989] LW (CrL.) 86

⁴⁹[2014] 3 MLJ (Cri) 562

⁵⁰*Ibid.*

The concept of Sustained Provocation and Battered Women in India contrary to the evolution in English law has bloomed at a slower pace. From the foregoing analysis of BWS jurisprudence in the three jurisdictions and of course our country, several conclusions can be drawn.⁵¹ Firstly, in multiple cases, women were convicted in the court of first instance and after the admittance of BWS testimony in an appeal, were often acquitted or had their sentence reduced. Secondly, the use of BWS in all three countries has been to the effect of altering the rigid standards applicable to existing exceptions. The tendency of courts to convict battered women and the ways in which BWS testimony helps to fit women's behaviour within existing exceptions or under an altogether new one, have a bearing on how BWS is to be applied in India.⁵²

CONCLUSION AND SUGGESTIONS

The amendments in cross cultural jurisdictions and the discussions made by the scholars have rendered less or no effect on the situation in India. It is difficult for the legislature and the judiciary to understand a concept as new as this and its relevance in the system. Today, after three decades, shelters for such abused woman remain to be crucial part of the movement that was taken ahead by the stalwarts for protecting woman and children from such abuse and violence. The health professionals along with the activists started to work for the betterment of these women and there were also psychologists who could reform their mental health and aid them in removing such memory. The theory of masochism was blamed for the violence faced by these women. A complete abolishment would not fetch a fruitful result as it will deny a vast majority of accused who can get their sentence reduced in a court of law. But that does not mean we should not move ahead with the progressive reforms and fulfil community expectations. There should be a law reform to make the defence of BWS more approachable and accessible to the females. In simple words, it says that provocation must be limited to criminal acts only. Presently in our country the sole defence that exists for the woman who retaliates is defence of provocation. However, provocation is qualified by no time gap between the provocative act done by the victim and the retaliation done by the accused. This expressly discounts the experiences and the behavioural attitude of a battered woman. ***There should be legislative reformulation of the defence of provocation and self-defence in India.*** The reformulation of the defences must be viewed from a feminist perspective and not patriarchal lenses and take into consideration the experiences that a

⁵¹Manju Lakra v. State of Assam, (2013) 4 GLT 333.

⁵²*Ibid.*

woman in her lifetime faces. From the judicial point of view, it is hard to focus on procedural equality and feminist perspective of judgments. However, this will ***empower the voices of women*** who are specifically excluded. In the end one can say that there is exhaustive literature on battered woman syndrome in American and Australian jurisdictions working as a legal defence, however, not much in our country i.e., India has emerged yet. One can say that lack of physical, emotional, and mental support especially in the socio-cultural fabric of our country makes it extremely difficult for women to liberate themselves from the stronghold of their abusive counterparts.

CHILD RIGHTS AND EDUCATION IN INDIA: A CRITICAL LEGAL ANALYSIS

Homa Bansal¹

INTRODUCTION

All across the lengths and breadths of the entire country, there exist millions of children who are routinely abused, rampantly exploited, and stand stripped of mere bare necessities of living a meaningful or dignified life, every single day all around the year. In every single case, the root turns out to be that the families are economically, socially, and politically marginalized in society. A recent example of the larger malaise in Indian society is witnessed in Nithari (a small urban village near Delhi), where around 38-odd children have gone missing for more than over two years, many of them are believed to be allegedly sexually abused and murdered, these cases completely ignore and make the rights of the children invisible, till the media presses the situation with shock-value interests so as to pressurize the authorities to become more vigilante². Nobody will ever be forgetting the gruesome rapes/mutilation and inhumane killings of innocent children by the M.S. Pandher and his domestic-aide Surendra Koli, who were recently convicted to death by a Special CBI Court putting their unspeakable crimes into the rarest of rare category, making the perpetrators deserving of capital punishment.³

Such terrible incidents throw shame and blot on any nation's face, and it affects more to our global image as India is ranked as the second fastest-growing economy in the world.⁴ There have been several reports of missing children in different parts of the country at regular intervals, given at innumerable number of places. Many are never to be found, most abductions or kidnappings end with the most tragic news of abuse or worse, rape, assault, and subsequently death. A child who hasn't returned home is a parent's worst nightmare, no parent can ever recover from the trauma and moreover, they are unable to forgive

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² 38 children still missing in Noida. Hindustan Times. (2006, November 24). Retrieved February 4, 2022, from <https://www.hindustantimes.com/india/38-children-still-missing-in-noida/story-Se4kZvVInfgwSuSYtoabpM.html>

³ Nithari killings: Koli, Pandher get death sentence for murder of Pinki Sarkar. Hindustan Times. (2017, July 24). Retrieved February 4, 2022, from <https://www.hindustantimes.com/noida/nithari-serial-murders-given-death-in-7-cases-eighth-sentence-for-koli-today/story-but2kjjQOAPIXdNUd54RKO.html>

⁴ India to be the second fastest growing economy after China this year. The Economic Times. (n.d.). Retrieved February 4, 2022, from <https://economictimes.indiatimes.com/news/economy/indicators/india-to-be-the-second-fastest-growing-economy-after-china-this-year/articleshow/83953637.cms?from=mdr>

themselves for not taking care of their child when it was required the most.⁵ It is the duty of the State to look after social and economic welfare of children. The State should come up with strict laws and policies that provide equality, security and justice to each and every child. However, mere enactment and laws and policies for child care and welfare will not serve the purpose unless the child is educated of the rights and remedies provided to him under those laws and policies.

INDIA'S INTERNATIONAL COMMITMENT AND ACTION RELATED TO CHILD RIGHTS

The United Nation Convention on Rights of the Child that is taken care by the General Assembly of United Nations in November 1989 is both a culmination of numerous efforts in the past and a new beginning of the era of children's rights. The Convention on the Rights of the Child (CRC) takes into account the numerous socio-economic, cultural, and political realities in which children live today. It lays down the principles of non-discrimination in the best interest of the child along with the common standards for the various rights of children. India ratified the Convention on the 11th of December, 1992.⁶

Article 26 of the Universal Declaration of Human Rights along with the Article 28 of the Convention on the Rights of the Child directs the partner states to implement the provisions after modifying them according to needs of each respective state so as to provide:

1. Free and compulsory primary education to each and every child of that state.
2. To encourage and promote secondary education by providing financial assistance and making it accessible to maximum children.
3. Ensure that every child attains higher education according to his intellectual capacity and Interest.

Besides Universal Declaration of Human Rights and the Convention on the rights of child, there are many other treaties which are also emphasizing on providing free and compulsory education, at least in the elementary stages. These treaties are:-

- The European Convention of 1950.

⁵ 3,770 minors kidnapped in Delhi, number of those traced higher: NCRB report. Hindustan Times. (2021, September 16). Retrieved February 5, 2022, from <https://www.hindustantimes.com/cities/delhi-news/3770-minors-kidnapped-in-delhi-number-of-those-traced-higher-ncrb-report-101631730301240.html>

⁶ Convention on the rights of the child. UNICEF, Retrieved February 6, 2022, from <https://www.unicef.org/child-rights-convention>

- International Covenant on Civil and Political Rights.
 - International Covenant on Economic, Social and Cultural Rights.
 - The Convention on the Elimination of All Forms of Racial Discrimination (CERD).
 - The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
 - The American Convention on Human Rights (dealt with civil and political rights).
 - African Charter on Human and People's Rights.
 - Charter on the Rights and Welfare of the African Child.
4. Other treaties which incidentally deals with the issue of right to education while formulating guidelines on the issues of Child labour, securing tribal people's rights, equal opportunities and fixing minimum age of employment etc.

Despite these rights granted to the children under the Convention, the reality of the situation exists far away today in India. Children's involvement and their absolute right of participation have been upheld and ratified by the Convention on the Rights of the Child that implies the very right to participation to express, to be subsequently heard, right for their valuable opinion to be taken into consideration in all the matters that are related to them or have any significance in their life. They deserve to have a right to completely participate in the process of changes and be involved in the creation of new structures and society for themselves.

RIGHT TO EDUCATION FOR CHILDREN IN INDIA

In today's rights-based approach of the modern world, children are no longer viewed as mere children, as the world comes to global age, they are viewed as citizens, entitled to each and everything that has been rightfully promised to them under the Constitution of India. Children will no longer be seen as residual categories who are just appendages of the families or the adults. They are young, bright and are citizens filled with potential with their own set of rights which are now being slowly, but strongly recognized by the global community.

In India, the rights of children are protected through the Constitution of India. There are various Constitutional provisions that are specifically meant for children as well as there are certain other provisions that are meant for adults as well as children. Firstly we will

discuss articles specifically for children such as: - Article 21A, which says right to free and compulsory education for children aged 6 to 14 years; Article 24 provides the right to be protected from any hazardous environment, right to be protected from being abused and forced by economic necessity to enter occupations that are heavily unsuitable to their age or strength as enumerated under Article 39(e). Under article 39(f) children are supposed to be given various opportunities to develop and grow in a healthy manner so that their childhood and youth are safeguarded from any undue exploitation and also against moral or material abandonment so that their dignity is protected. Under article 45 there is the provision of early childhood care and education to children below the age of six years.⁷

Secondly, children are citizens of India so they have some rights which are the same as adult males or females. Such as right to equality (Article 14). Right against discrimination (Article 15), right to personal liberty and due process of law (Article 15). Article 23 protects children from trafficking and bonded labor. Article 29 talks about the rights of minorities and their interests are protected.

Article 46 promotes the education and economic interest of SC and ST and other weaker sections of society to protect them any kind of social injustice and haphazard exploitation. Article 47 informs us about the right to nutrition and standard of living to improve public health of these children in this instance. It is the foremost duty of any State.⁸ Although there are various constitutional provisions as well as international treaties, which provides for child rights and child protection but sadly we are still not able to achieve the objectives set there in. Still the problem of child abuse, child illiteracy, child marriage, poverty etc., prevails in our society.

GOVERNMENT POLICIES WITH RESPECT TO EDUCATION

There are two major acts that govern the entire schooling system of India. These two are the founding stone upon which rest many subsidiary policies that further help the students and facilitate their education by means of ancillary support provided to them.

RIGHT TO EDUCATION ACT, 2009

The Right to Education Act 2009, better known as the RTE Act 2009, was enacted on 4

⁷ G.G. Mirchandani. (2003). Subverting the Constitution 141 (1st Ed.). Abhinav Publications, New Delhi.

⁸ L.M. Singhvi. (1988). Citizenship Development and Fundamental Duties 12 (1st Ed.). Abhinav Publications, New Delhi.

August 2009. It lays down the peculiar key modalities of the sheer importance of free and mandatory education for children who are of ages 6-14 years in the country stipulated under Article 21A of the Constitution of India.⁹ This act was brought into effect on 1 April 2010 and it made India one of the 135 countries to have stipulated education as a fundamental right for every child. It prescribes minimum requirements for all elementary schools, prohibits and penalizes any unrecognized schools to be able to practice and mandatorily warrants against any kind of donation fees and interviews of children and their parents to be conducted at the time of admission into the school.¹⁰

Compulsory and free education for all: It has been made mandatory for the Government of India to provide free and compulsory primary education to each and every child living and existing, in a neighborhood school within 1 km of the area, at least till class 8 in India¹⁰. This concept of free education also involves the provisions of including required textbooks, uniforms, and any stationery items and special educational material required by children with learning/ physical disabilities in order to reduce or rather completely remove the burden of school expenses on the parents low income categories.

Special provisions for special cases: The Right to Education Act strives to stipulate that every child must be admitted to their age-appropriate class and should be provided with special training or credit exercises to enable the child to reach their age-appropriate learning level in shortest possible time.

Quantity and quality of teachers: The Right to Education Act provides and stipulates for adherence to a specific ratio regarding of deployment of teachers by ensuring that the mandated Pupil to Teacher Ratio is present in every school with no urban-rural discrepancy whatsoever. It also mandates appointing appropriately trained teachers i.e. teachers with the requisite entry and academic qualifications.¹¹

Zero tolerance against discrimination and harassment: The Right to Education Act 2009 categorically prohibits all and any kind of physical punishment and any mental harassment, any discrimination that has been based on gender, caste, class and religion,

⁹ What is right to education act (RTE act)? Times of India Blog. (2021, May 15). Retrieved February 6, 2022, from <https://timesofindia.indiatimes.com/readersblog/igoravsharma/what-is-right-to-education-act-rte-act-32034/>

¹⁰ National curriculum framework 2005 - NCERT. (n.d.). Retrieved February 6, 2022, from <https://www.ncert.nic.in/pdf/nc-framework/nf2005-english.pdf>.

¹¹ "The Right of Children to Free and Compulsory ... - Education" <https://www.education.gov.in/en/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_rev_0.pdf> accessed February 7, 2022

complete ban on screening procedures for admission of children, unauthorized the collection of capitation fee, private tuition centers, and functioning of unrecognized schools.¹²

Ensuring all-round development of children: The Right to Education Act 2009 provides for the holistic development of a curriculum, which would ensure the all-around development of every child.¹³ Build a child's quest to garner knowledge, realize their human potential and refine their respective talent. National Education Policy, 2020

The National Policy on Education was originally drafted in the year 1986 and was subsequently modified in the year of 1992.¹⁴ Since then the policy has been modified and revised several times. The policy is built on the foundational pillars of access, equity, quality, affordability and accountability and is courteously aligned to the 2030 Agenda for Sustainable Development.¹⁵

Ensuring Universal Access at all levels of school education: NEP 2020 ensures emphasis on universal access to school education from pre-school to secondary level of education.¹⁶ It brings the innovative concept for education centers to be able to bring back dropout students into the mainstream, analyzing and tracking students and their appropriate learning levels, facilitating numerous pathways to learn. It is estimated that more than about 2 crores out of school/drop out children will be brought back into the colossal mainstream under the initiative of NEP 2020.¹⁶

Early Childhood Care and Education with new Curricular and Pedagogical Structure: With focus on Early Childhood Care and Education, it has been planned that the pre-existing 10+2 structure of school curricula is to be replaced by a new and more efficient system of 5+3+3+4 curricular structure corresponding to age blocks corresponding with 3-8, 8-11, 11-14, and 14-18 years respectively. This will bring the crucial and major developmental age group of 3-6 years old children under the school curriculum umbrella, which has been globally recognized as the most important stage for development of mental

¹² "School Education: Government of India, Ministry of Education" (School Education | Government of India, Ministry of Education) <<https://www.education.gov.in/en/rte>> accessed February 8, 2022

¹³ (Violation of rights of women and children) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=124086>> accessed February 8, 2022

¹⁴ "10 Things to Know about the RTE Act, 2009 - Oxfam India" <<https://www.oxfamindia.org/blog/10-things-rte>> accessed February 9, 2022

¹⁵ "Cabinet Approves National Education Policy 2020, Paving Way for Transformational Reforms in School and Higher Education Systems in the Country" (Press Information Bureau) <<https://pib.gov.in/PressReleasePage.aspx?PRID=1642049>> accessed February 9, 2022

¹⁶ "National Education Policy 2020 Aims to Bring Two Crore out of School Children into Mainstream" (Hindustan Times July 30, 2020) <<https://www.hindustantimes.com/education/national-education-policy-2020-aims-to-bring-two-crore-out-of-school-children-into-mainstream/story-fYFPIEtwtatNFz4055TZSL.html>> accessed February 10, 2022

faculties and abilities of any child. This new system will have the pre-existing 12 years of schooling along with three years of Anganwadi/ pre schooling.¹⁷

Reforms in school curricula and pedagogy: The academic courses and pedagogy will aim for a very holistic development of learners by equipping and engaging them with the crucial 21st century proficiency¹⁸, reduction in curricular content to enhance essential knowledge and critical thinking and lesser focus on existential knowledge, the pupils will have increased resilience and choice of subjects. There will be no rigid separations between crafts and sciences, between curricular and extra-curricular exercise, between vocational and academic courses. Vocational education will start in academies from the 6th grade, and will include apprenticeships.

NATIONAL PROGRAM FOR EDUCATION OF GIRLS AT ELEMENTARY EDUCATION (NPEGEL)

The NPEGEL program has been initiated by the Government of India to reach girls, especially the girls that aren't enrolled in an academy. The program was started in July 2003¹⁹ and this program is a significant element of the SSA (Sarva Siksha Abhiyan).²⁰ The program provides support for enhancing the education of girls. Some plans that come under this scheme are the development of knowledge accoutrements that are gender-sensitive and aims towards providing basic facilities like stationery, uniforms, and workbooks etc. The main focus of this program is to break gender generalizations and to make sure girls get a good education at the fundamental stratum.

MIDDAY MEAL SCHEME

Also known as the National Program of Nutritional Support to Primary Education, this plan was launched in 1995 to feed mid-day meals to children studying in primary class. The main ambition of creating this scheme was to shut out classroom hunger of children and

¹⁷ "Highlights of New Education Policy-2020" (Press Information Bureau)
<<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1654058>> accessed February 21, 2022

¹⁸ (Learning Compass 2030 - OECD Future of Education and Skills 2030)
<<https://www.oecd.org/education/2030-project/teaching-and-learning/learning/learning-compass-2030/>>
accessed February 11, 2022

¹⁹ Misra S, "VO.10 Issue 1 February 2021. Education India Journal" (Academia.edu March 7, 2021)
<https://www.academia.edu/45418212/Vo_10_Issue_1_February_2021_Education_India_Journal> accessed February 11, 2022

²⁰ P; R, "School Mid-Day Meal Programme in India: Past, Present, and Future" (Indian journal of pediatrics)
<<https://pubmed.ncbi.nlm.nih.gov/30637675/>> accessed February 11, 2022

to increase attendance and registration of children at academies.²¹ This scheme also aims to enhance the commerce between children of all classes and creeds. It also addresses the issue of shy and indecorous nutrition among children. Women are also socially empowered since the scheme creates employment chances. Consequently, this scheme can help in developing children emotionally and socially.²²

KASTURBA GANDHI BALIKA VIDYALAYA

Launched in 2004, the KGBV scheme aims at setting up residential academies for girls belonging to minority communities at the upper primary degree. This scheme is substantially enforced in the region of the country where girls aren't enrolled in school. This scheme provides reservation of 25 percentage to girls from families below the poverty line and the rest 75 percentage to the girls belonging to ST, SC, OBC, and other communities. The main idea behind this scheme is that by setting up residential academies, girls from underprivileged groups of the society can enter quality education.²³

LANDMARK JUDGEMENTS IN FAVOUR OF CHILDRENS' RIGHT TO EDUCATION

There are various landmark case laws that have shaped the legal framework to protect the right of children to get access to quality education in India. In *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. Cited as: 1993 AIR 217*,²⁴ the case involved a challenge by certain private professional educational establishments to the constitutionality of state laws regulating capitation charges charged by correspondent institutions. The Supreme Court held that the right to elemental education is indicated by the fundamental right to life (Article 21) when read in convergence with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the contexture of the Directive Principles of State Policy, including Article 45 which provides that the state is to endeavor to deliver, within a period of ten times from the inception of the Constitution, for free and incumbent education for all children under the age of 14. The Court ruled that there is no elementary right to education for a professional degree that

²¹ P; R, "School Mid-Day Meal Programme in India: Past, Present, and Future" (Indian journal of pediatrics) <<https://pubmed.ncbi.nlm.nih.gov/30637675/>> accessed February 11, 2022

²² "MDM - Objectives of Mid-Day Meal Programme" (Akshaya Patra Foundation) <<https://www.akshayapatra.org/objectives-of-mid-day-meal>> accessed February 11, 2022

²³ "Rights of the Girl Child in India" (SAGE Publications Inc February 12, 2022) <<https://us.sagepub.com/en-us/nam/rights-of-the-girl-child-in-india/book274237>> accessed February 11, 2022

²⁴ 1993 AIR 217, 1993 SCR (1) 594

flows from Article 21. The state responded to this assertion nine years after by edging in, through the Ninety-third amendment to Constitution, Article 21-A, which provides for the abecedarian right to education for children between the ages of six and fourteen. In addition, several States in India have passed legislation making primary education mandatory. These acts have even so remained un-enforced due to varied socio-remunerative and cultural factors as well as directorial and fiscal constraints. There is no central legislation making fundamental education obligator.

In the case of **Avinash Mehrotra v. Union of India & Others, (2009) 6 SCC 398**,²⁵ the Supreme Court of India interpreted the right to education to include the right to the provision of a safe surroundings in academies, and levied an obligation on academies to conform with certain fire safety preventives which were detailed in the judgment. The Court decided that there is a basic right to receive education free from fear of security and safety, and the right to education incorporates the provision of safe academies pursuant to Articles 21 and 21A of the Constitution. No matter where a family seeks to educate its children (i.e. including private academies), the State must guarantee that children suffer no affliction in exercising their elemental right to education.

State Governments and Union Territories were directed to insure that academies stick to essential safety norms and that school structures are safe and secure according to the safety morals specified by the National Building Code and affidavits of compliance were necessitated to be filed by authorities concerned. In interpreting the right to education Dalveer Bhandari, J. reasoned,, Educating a child requires more than a educationist and a blackboard, or a classroom and a book. The right to education requires that a child studies in a quality academy, and a quality academy clearly should pose no risk to a child's safety. The right to education became an essential right in the Indian Constitution in 2002 and Article 21A provides that, the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. This decision furnished that the State's duty cannot be discharged by the provision of unsafe academies. The State must insure that children suffer no detriment in exercising their basal right to education and, consequently, must insure that academies give safe installations as part of a mandatory education.

²⁵ W.P.(C) No. 483 of 2004 SC

CONCLUSION

To conclude, it may be mentioned that the Government of India has over the years brought progressive policies, legislations and programmes for the wellbeing of children of India. The Integrated Child Development Scheme (ICDS) and ChildLine Services are two programmes that are the largest in the world which support the development and protection of children in India. However, despite all the best efforts, the situation of children and child rights in India is grim and far beyond any satisfactory level. Poverty is the central issue that needs to be tackled. The wellbeing of a child rests upon a child having a caring and protective family environment. Thus, nothing less than a consolidated and holistic approach towards integrating income generation, providing access to education, health services, access to safe water and a healthy, protective environment is desirable. This can change the lives of millions of children and ensure their rights for survival, protection, development and participation.

Finally, it should be noted that the potential of constitutional provisions cannot be realized to its true zenith without being accompanied by a culture shift among political and legal actors so that they are committed to advocating and advancing children's rights provisions and judgments through enforcement. This is not something that can be done in a span of one night. Thus, giving constitutional status to children's rights needs to be seen as a starting point rather than an end in itself, and even constitutions that score highly on all spectrums need to be accompanied by steps and documentation that will encourage all courts and other government agency to embrace them and place them at the heart of law-making, policy, and adjudication.

A STUDY ON THE IMPACT OF THE PROPOSED RAISING IN THE LEGAL AGE OF MARRIAGE FOR WOMEN IN INDIA

Prof. Mihir Dash¹
Anusha K²

INTRODUCTION

Early marriage of girl children is a serious source of concern for many developing countries. India ranks 11th from the bottom in terms of girl child marriages, with about 23% of women aged 20-24 marrying before the age of 18 years, according to the National Family Health Survey 2019-21.³

Early marriage of girl children is associated with many adverse consequences including early pregnancies, negative impact on health of women, and higher maternal and infant mortality rates. Early marriage also prohibits a woman to get access to proper education and earn a proper livelihood.⁴ In order to safeguard the rights of women and to ban the practice of child marriage in India, the Government has recently presented the Child Marriage (Amendment) Bill in the Parliament. The bill provides to rise the legal age of marriage of women from 18 years to 21 years.⁵ India is a signatory to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), a convention that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights, including ensuring that the marriageable age for men and women should be uniform⁶. The amended bill aims to achieve this objective. The Government has argued that the bill will uphold gender neutrality and will empower women in India.

The bill is based on the recommendations of the Jaya Jaitley Committee, a task force set up by the Ministry for Women and Child Development to find a link between marriage age of women and issues such as nutrition, anaemia, maternal mortality rate and other social issues. The committee received feedback from young adults from universities all over India, from several

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³ National Family Health Survey 5, India (2019-2021) http://rchiips.org/nfhs/factsheet_NFHS-5.shtml accessed 18 February 2022

⁴ Esha Roy, 'Raising legal age of marriage for women: the law, the reasons and the criticism' *The Indian Express* (New Delhi 16 December 2021) <https://indianexpress.com/article/explained/raising-legal-age-for-marriage-for-women-law-reasons-criticism-7675447/> Accessed 17 February 2022

⁵ Child Marriage (Amendment) Bill in the Parliament, 2021

⁶ Convention on the Elimination of all Forms of Discrimination against Women, 1979

NGOs, and from women belonging from marginalised communities, based on which it recommended an increase in the legal age for marriage for women from 18 years to 21 years.⁷

The bill once passed will also bring amends to the legislations like the Hindu Marriage Act 1955, Special Marriage Act 1954 and Prohibition of Child Marriage Act 2006, as all these acts provide the legal age of marriage for a woman as 18 years. The committee has also recommended the Government to increase the access to schools and educational institutions for women, to provide trainings and workshops to women, and to provide sex education in schools so that the increase in the legal age for marriage in women can be implemented properly.⁸

The main objective of the bill is to enable women to have better access to educational as well as employment opportunities, while also ensuring the health of women, particularly women nutrition levels and maternal mortality rate.⁹ According to the Government, the bill will solve such societal issues as early pregnancy, low nutritional level of women, increase in maternal and infant mortality rates, and so on; moreover, women will be more empowered and education which will help them achieve financial independence.

However, the bill has attracted a lot of criticism, the foremost being that, despite the passing of legislation such as the Prohibition of Child Marriage Act 2006, the practice of child marriage has been prevalent in India, though it has declined drastically over the last decade due to globalisation and urbanisation, as per the National Family Health Survey 2019-21.¹⁰ Further, child marriage mainly prevails in families that do not have the resources to educate their daughters and resort to marrying them off; thus, child marriage is related to deep-rooted socio-economic factors. The question that is raised is whether a law can bring amendments to the social practice of child marriage? Instead, the Government should work towards improving the socio-economic factors, such as providing better educational and infrastructure facilities for women to stop such practice of child marriage. Another question that arises is that under Article

⁷Vageshwari Deswal, 'Prohibition of Child Marriage (Amendment) Bill, 2021: A critique.' *The Times of India*, (25 January 2022) <https://timesofindia.indiatimes.com/blogs/legally-speaking/prohibition-of-child-marriage-amendment-bill-2021-a-critique/> Accessed 17 February 2022

⁸'Women's Legal Marriage Age: Cabinet Clears Proposal to Increase It From 18 To 21' *Outlook* (16 December 2021) <https://www.outlookindia.com/website/story/cabinet-clears-bill-to-increase-womens-legal-marriage-age-from-18-to-21/405282> Accessed 17 February 2022

⁹Kenneth Mohanty, 2021. 'Explained: Why Centre is Pushing for 21 Yrs as Minimum Age of Marriage for Women' *News18* (17 December 2021) <https://www.news18.com/news/explainers/explained-why-centre-is-pushing-for-21-yrs-as-minimum-age-of-marriage-for-women-4564898.html> Accessed 17 February 2022

¹⁰Aarya Parihar 'Achieving Parity in Legal Age of Marriage Without Addressing the Elephant in the Room' *Jurist* (13 January 2022) <https://www.jurist.org/commentary/2022/01/aarya-parihar-marriage-legal-age-india/> Accessed 15 February 2022

21 of the Constitution of India, the right to marry is fundamental right,¹¹ so can the state put such restrictions on the fundamental rights of an adult? In India, for the purposes of law a person becomes an adult at the age of 18 years.¹²

Also, it must be noted that in a secular country like India where several religions co-exist and have their own personal laws, the bill to rise the marriage age for women would supersede the existing personal laws with relation to marriages. The main amendment to the act would be amending the definition of a child to “where a male or a female hasn’t completed twenty-one years of age.” Another legal implication if the bill is passed would be criminalisation of many women who have been coerced to marry under-age by parents and guardians would be declared void and voidable at the option of the minor party.¹³

METHODOLOGY

The objective of the study was to examine the assumptions upon which the government’s decision to increase the marriageable age of girl children to 21 years. The central issue concerning these assumptions is that of girl child marriage.

The first assumption examined is that reduction in girl child marriage would result in an increase in girls’ education levels. In fact, the reverse could also be argued: if girl children could be retained in schools longer, the incidence of girl child marriage may be reduced. A recent study¹⁴ found the social norms of early marriage to be a significant factor affecting girls’ education levels; they further found that girls who are disinterested in academics, and those who marry early, are less supported by family and existing programs to remain in school, while girls who are more determined, with support from parents and teachers, are able to stay in school and delay marriage. Thus, a bi-directional relationship between them is expected. To test this assumption, the variables considered were the percentage of women with ten or more years of schooling (x_1) and the percentage of girls aged 20-24 married

¹¹ Constitution of India 1950, Article 21

¹²Sai Priya Chodavarapu, ‘Why raising the legal age of marriage for women is more posturing than *progress*’ *First post* (21 December 2021) <https://www.firstpost.com/india/why-raising-the-legal-age-of-marriage-for-women-is-more-posturing-than-progress-10230501.html> Accessed 15 February 2022

¹³APURVA VISHWANATH, ‘EXPLAINED: LEGAL IMPLICATIONS OF ENFORCING AGE OF MARRIAGE’ *THE INDIAN EXPRESS* (NEW DELHI 17 DECEMBER 2021) [HTTPS://INDIANEXPRESS.COM/ARTICLE/EXPLAINED/LEGAL-AGE-MARRIAGE-FOR-WOMEN-INDIA-LAW-7676748/](https://indianexpress.com/article/explained/legal-age-marriage-for-women-india-law-7676748/) ACCESSED 16 JANUARY 2022

¹⁴ Raj, A., Salazar, M., Jackson, E. C., Wyss, N., McClendon, K. A., Khanna, A. & McDougal, L. Students and brides: a qualitative analysis of the relationship between girls’ education and early marriage in Ethiopia and India.(2019) *BMC public health*, 19(1), 1-20. <https://bmcpublikealth.biomedcentral.com/articles/10.1186/s12889-018-6340-6> Accessed 16 January 2022

before 18 years (x_3). A possible mediator of this relationship is the adult female literacy (x_2), so this has been included in the analysis.

The second assumption examined is that reduction in girl child marriage would result in a decrease in fertility. Studies have found that girl child marriage was closely related with rapid repeat childbirth, multiple unwanted pregnancies, and pregnancy termination, as compared with women who married after the age of 18 years.¹⁵ To test this assumption, the variables considered were the percentage of girls aged 20-24 married before 18 years (x_3) and the adolescent fertility rate (x_5), with the percentage of girls aged 15-19 who are/were pregnant (x_4) as a mediator.

The third assumption examined is that reduction in girl child marriage would result in an improvement in child nutritional health. Studies have found that women who married early were more vulnerable to frequent childbearing, unplanned motherhood, and abortions, all of which adversely affected their nutritional status, and in turn their children had lower chances of survival and a higher chance of under nutrition.¹⁶ To test this assumption, the variables considered were the adult female literacy (x_2), the percentage of girls aged 20-24 married before 18 years (x_3), and the percentage of children with adequate diet (x_7).

The fourth assumption examined is that reduction in girl child marriage would result in an increase in longevity. A study has found that women's marriage age was crucial for public health; early marriage and childbirth results in adverse health consequences to the mothers and their offspring, including malnutrition and high rates of morbidity and mortality.¹⁷ To test this assumption, the variables considered were the percentage of women with ten or more years of schooling (x_1), the adult female literacy (x_2), the percentage of girls aged 20-24 married before 18 years (x_3), and the infant mortality rate (x_6).

The fifth assumption examined is that reduction in girl child marriage would result in an increase in women participation in the workforce. Studies have found that early marriage limits girls' access to education, in turn adversely affecting employment opportunities and the

¹⁵ Raj, A., Saggurti, N., Balaiah, D., and Silverman, J.G., "Prevalence of Child Marriage and its Impact on the Fertility and Fertility Control Behaviors of Young Women in India," (2009) *Lancet* 373(9678), 1883–1889. <https://www.sciencedirect.com/science/article/pii/S0140673609602464> Accessed 19 January 2022

¹⁶ Prakash, R., Singh, A., Pathak, P.K., Parasuraman, S. "Early marriage, poor reproductive health status of mother and child well-being in India. (2011) " *Journal of Family Planning and Reproductive Health Care* 37(3), 136-45. <https://srh.bmj.com/content/37/3/136.short> Accessed 17 January 2022

¹⁷ Marphatia, A.A., Ambale, G.S., and Reid, A.M., "Women's Marriage Age Matters for Public Health: A Review of the Broader Health and Social Implications in South Asia," (2017) *Frontiers in Public Health* 5, 1-23. <https://www.frontiersin.org/articles/10.3389/fpubh.2017.00269/full> Accessed 17 January 2022

nature and terms of their employment.¹⁸ To test this assumption, the variables considered were the percentage of women with ten or more years of schooling (x_1), the adult female literacy (x_2), the percentage of girls aged 20-24 married before 18 years (x_3), and the percentage of women who have worked in the last 12 months and were paid in cash (x_8).

The sixth assumption examined is that reduction in girl child marriage would result in a decrease in violence against women, particularly spousal violence. A recent study suggested that child marriage is itself a form of violence against girls; further, child brides are most often subjected to physical and sexual violence by their husbands and physical, sexual, emotional, and other forms of violence in the home by their husbands' families and in-laws¹⁹. To test this assumption, the variables considered were the percentage of women with ten or more years of schooling (x_1), the adult female literacy (x_2), the percentage of girls aged 20-24 married before 18 years (x_3), and the percentage of married women experiencing spousal violence (x_9).

The final set of variables considered for the study include: the percentage of women with ten or more years of schooling (x_1), adult female literacy (x_2), the percentage of girls aged 20-24 married before 18 years (x_3), the percentage of girls aged 15-19 who are/were pregnant (x_4), adolescent fertility rate (x_5), infant mortality rate (x_6), the percentage of children with adequate diet (x_7), the percentage of women who have worked in the last 12 months and were paid in cash (x_8), and the percentage of married women experiencing spousal violence (x_9). The data was cross-sectional, pertaining to different states for the year 2019-20, collected from the National Family Health Survey - 5 (2019-21).²⁰

The study uses regression modelling to identify significant relationships between the considered sets of variables.

FINDINGS

The state-level data of the percentage of women with ten or more years of schooling (x_1) and adult female literacy(x_2) are presented in the table below.

¹⁸ Parsons, J., Edmeades, J., Kes, A., Petroni, S., Sexton, M., and Wodon, Q. "Economic Impacts of Child Marriage: A Review of the Literature," (2015) *The Review of Faith & International Affairs* 13(3), 12-22. <https://www.tandfonline.com/doi/full/10.1080/15570274.2015.1075757> Accessed 19 January 2022

¹⁹ Parsons, J., Edmeades, J., Kes, A., Petroni, S., Sexton, M., and Wodon, Q. "Economic Impacts of Child Marriage: A Review of the Literature," (2015) *The Review of Faith & International Affairs* 13(3), 12-22. <https://www.tandfonline.com/doi/full/10.1080/15570274.2015.1075757> Accessed 19 January 2022

²⁰National Family Health Survey 5, India (2019-2021) http://rchiips.org/nfhs/factsheet_NFHS-5.shtml accessed 18 February 2022

Table 1: State-level data of women's educational level and female literacy²¹

Region	State	women with 10+ years of schooling	adult female literacy
South	Andhra Pradesh	39.60%	66.70%
	Telangana	45.50%	64.80%
	Tamil Nadu	59.10%	84.00%
	Karnataka	50.20%	73.40%
	Kerala	77.00%	97.40%
North	Uttar Pradesh	39.30%	66.10%
	Uttarakhand	50.40%	79.80%
	Himachal Pradesh	65.90%	90.70%
	Punjab	56.00%	79.80%
	Haryana	49.50%	79.70%
	Bihar	28.80%	55.00%
	Jharkhand	33.20%	61.70%
	Madhya Pradesh	29.30%	65.40%
	Chhattisgarh	36.90%	72.50%
	Rajasthan	33.40%	64.70%
West	Gujarat	33.80%	73.50%
	Maharashtra	50.40%	82.30%
	Goa	71.50%	92.20%
	West Bengal	32.90%	72.90%
East	Odisha	33.00%	69.50%
	Assam	29.60%	75.10%
North-East	Arunachal Pradesh	39.40%	71.30%
	Meghalaya	35.10%	87.60%
	Manipur	48.10%	85.30%
	Mizoram	50.00%	94.00%
	Nagaland	44.40%	83.40%

²¹ National Family Health Survey 5, India (2019-2021) http://rchiips.org/nfhs/factsheet_NFHS-5.shtml accessed 18 February 2022

	Sikkim	49.00%	87.10%
	Tripura	23.20%	78.30%

The percentage of adult women with ten or more years of schooling ranged between 23.2% and 77.0%, with a mean of 44.1% and a standard deviation of 13.3%. The adult female literacy rate ranged between 55.0% and 97.4%, with a mean of 76.9% and a standard deviation of 10.7%.

The state-level data of the percentage of girls aged 20-24 married before 18 years (x_3), the percentage of girls aged 15-19 who are/were pregnant (x_4), and adolescent fertility rate(x_5) are presented in the table below.

Table 2: State-level data of girl child marriage, teenage pregnancy, and adolescent fertility rate

Region	state	girls aged 20-24 married before 18 y	girls aged 15-19 pregnancy	adolescent fertility rate aged 15-19
South	Andhra Pradesh	29.30%	12.60%	67
	Telangana	23.50%	5.80%	48
	Tamil Nadu	12.80%	6.30%	34
	Karnataka	21.30%	5.40%	40
	Kerala	6.30%	2.40%	18
North	Uttar Pradesh	15.80%	2.90%	22
	Uttarakhand	9.80%	2.50%	19
	Himachal Pradesh	5.40%	3.40%	22
	Punjab	8.70%	3.10%	21
	Haryana	12.50%	3.90%	27
	Bihar	40.80%	11.00%	77
	Jharkhand	32.20%	9.80%	64
	Madhya Pradesh	23.10%	5.10%	37
	Chattisgarh	12.10%	3.10%	24
West	Rajasthan	25.40%	3.70%	31
	Gujarat	21.80%	5.20%	34
	Maharashtra	21.90%	7.60%	47

	Goa	5.80%	2.80%	14
East	West Bengal	41.60%	16.40%	81
	Odisha	20.50%	7.60%	40
North-East	Assam	31.80%	11.70%	61
	Arunachal Pradesh	18.90%	6.00%	38
	Meghalaya	16.90%	7.20%	49
	Manipur	16.30%	8.60%	43
	Mizoram	8.00%	4.10%	22
	Nagaland	5.60%	3.80%	19
	Sikkim	10.80%	3.10%	22
	Tripura	40.10%	21.90%	91

The percentage of girls aged 20-24 married before 18 years (i.e., girl child marriages) ranged between 5.4% and 41.6%, with a mean of 19.3% and a standard deviation of 10.9%. The percentage of girls aged 15-19 becoming pregnant (i.e., teenage pregnancies) ranged between 2.4% and 21.9%, with a mean of 6.7% and a standard deviation of 4.6%. The adolescent fertility rate ranged between 14.0 and 91.0, with a mean of 39.7 and a standard deviation of 21.0.

The state-level data of infant mortality rate (x_6) and the percentage of children with adequate diet (x_7) are presented in the table below.

Table 3: State-level data of infant mortality and percentage of children with adequate diet²²

region	state	infant mortality rate	children aged 6-23 months with adequate diet
South	Andhra Pradesh	30.3	9.30%
	Telangana	26.4	9.20%
	Tamil Nadu	18.6	16.30%
	Karnataka	25.4	12.80%

²² National Family Health Survey 5, India (2019-2021) http://rchiips.org/nfhs/factsheet_NFHS-5.shtml accessed 18 February 2022

	Kerala	04.4	23.50%
North	Uttar Pradesh	50.4	6.10%
	Uttarakhand	39.1	12.50%
	Himachal Pradesh	25.6	19.00%
	Punjab	28.0	11.90%
	Haryana	33.3	11.80%
	Bihar	46.8	10.90%
	Jharkhand	37.9	10.50%
	Madhya Pradesh	41.3	9.20%
	Chattisgarh	44.3	9.30%
West	Rajasthan	30.3	8.30%
	Gujarat	31.2	5.90%
	Maharashtra	23.2	9.00%
	Goa	05.6	21.50%
East	West Bengal	22.0	23.40%
	Odisha	36.3	20.40%
North-East	Assam	31.9	8.00%
	Arunachal Pradesh	12.9	22.00%
	Meghalaya	32.3	29.80%
	Manipur	25.0	19.60%
	Mizoram	21.3	13.40%
	Nagaland	23.4	14.50%
	Sikkim	11.2	24.70%
	Tripura	37.6	13.50%

The infant mortality rate ranged between 4.4 and 50.4, with a mean of 28.43 and a standard deviation of 11.49. The percentage of children with adequate diet ranged between 5.9% and 29.8%, with a mean of 14.5% and a standard deviation of 6.4%.

The state-level data of the percentage of women who have worked in the last 12 months and were paid in cash (x_8) and the percentage of married women experiencing spousal violence (x_9) are presented in the table below.

Table 4: State-level data of percentage of women working and percentage of married women experiencing spousal violence²³

Region	state	women worked in the last 12 months and were paid in cash	married women experiencing spousal violence
South	Andhra Pradesh	42.10%	30.00%
	Telangana	45.10%	36.90%
	Tamil Nadu	40.80%	38.10%
	Karnataka	37.00%	44.40%
	Kerala	25.80%	9.90%
North	Uttar Pradesh	15.50%	34.80%
	Uttarakhand	21.60%	15.10%
	Himachal Pradesh	20.20%	8.30%
	Punjab	22.30%	11.60%
	Haryana	18.80%	18.20%
	Bihar	12.60%	40.00%
	Jharkhand	18.00%	31.50%
	Madhya Pradesh	26.80%	28.10%
	Chattisgarh	39.10%	20.20%
West	Rajasthan	17.40%	24.30%
	Gujarat	30.80%	14.00%
	Maharashtra	34.70%	25.20%
	Goa	31.90%	8.30%
East	West Bengal	20.20%	27.00%
	Odisha	25.70%	30.60%
North-East	Assam	19.00%	32.00%
	Arunachal Pradesh	23.50%	24.80%
	Meghalaya	40.00%	16.00%
	Manipur	42.10%	39.60%
	Mizoram	29.20%	10.90%

²³ National Family Health Survey 5, India (2019-2021) http://rchiips.org/nfhs/factsheet_NFHS-5.shtml accessed 18 February 2022

	Nagaland	23.60%	6.40%
	Sikkim	32.70%	12.10%
	Tripura	23.10%	20.70%

The percentage of women working ranged between 12.6% and 45.1%, with a mean of 27.8% and a standard deviation of 9.3%. The percentage of married women experiencing spousal violence ranged between 6.4% and 44.4%, with a mean of 23.5% and a standard deviation of 11.2%.

The correlation between the variables is presented in the table below. The significant correlations are highlighted in red/pink.

Table 5: Correlation between study variables

	x1	x2	x3	x4	x5	x6	x7	x8	x9
x1	1.0000								
x2	0.7216	1.0000							
x3	-0.7558	-0.6896	1.0000						
x4	-0.5800	-0.2998	0.8418	1.0000					
x5	-0.6533	-0.4952	0.9382	0.9461	1.0000				
x6	-0.6789	-0.6668	0.4086	0.2105	0.3092	1.0000			
x7	0.3376	0.5628	-0.2551	0.0000	-0.0790	-0.5868	1.0000		
x8	0.2176	0.2496	-0.2117	-0.0679	-0.0678	-0.3010	0.1689	1.0000	
x9	-0.4005	-0.6452	0.5843	0.3688	0.5172	0.3711	-0.2996	0.1584	1.0000

There were significant correlations between several of the variables, as observed in the table. Interestingly, the percentage of women who have worked in the last 12 months and were paid in cash (x₈) was found to be not significantly correlated with any of the other variables, and in particular with the percentage of girls aged 20-24 married before 18 years (x₃). Also, the percentage of children with adequate diet (x₇) was found to be correlated only with adult female literacy (x₂) and infant mortality rate (x₆).

Based on the significant correlations, the following models were developed for further analysis.

The first model (Model I) considered the strong inter-relationships between the percentage of women with ten or more years of schooling, adult female literacy, and the percentage of girls aged 20-24 married before 18 years. This is represented in the following figure.

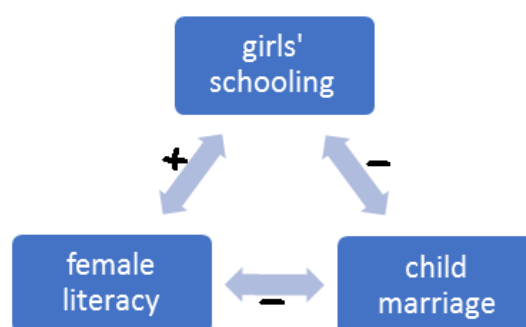


Figure 1: Model I

The regression results for the impact of girls' schooling and female literacy on girl child marriage are presented in the following table.

	<i>Coeffs</i>	<i>Std Err</i>	<i>t Stat</i>	<i>p-value</i>
Intercept	0.6229	0.1050	5.9346	0.0000
women with 10+ years of schooling	-0.4410	0.1468	-3.0046	0.0060
adult female literacy	-0.3067	0.1829	-1.6775	0.1059

dept variable: girls aged 20-24 married before 18 years ($R^2 = 61.47\%$)

The results indicated that girls' schooling had a significant negative impact on girl child marriage, while female literacy had no significant impact.

The regression results for the impact of girls' schooling and girl child marriage on female literacy are presented in the following table.

	<i>Coeffs</i>	<i>Std Err</i>	<i>t Stat</i>	<i>p-value</i>
Intercept	0.6675	0.1035	6.4478	0.0000
women with 10+ years of schooling	0.3751	0.1609	2.3311	0.0281
girls aged 20-24 married before 18 years	-0.3298	0.1966	-1.6775	0.1059

dept variable: adult female literacy ($R^2 = 56.92\%$)

The results indicated that girls' schooling had a significant positive impact on female literacy, while girl child marriage had no significant impact.

The regression results for the impact of female literacy and girl child marriage on girls' schooling are presented in the following table.

	<i>Coeffs</i>	<i>Std Err</i>	<i>t Stat</i>	<i>p-value</i>
Intercept	0.1905	0.1864	1.0220	0.3166
adult female literacy	0.4760	0.2042	2.3311	0.0281
girls aged 20-24 married before 18 years	-0.6016	0.2002	-3.0046	0.0060

dept variable: women with 10+ years of schooling ($R^2 = 64.78\%$)

The results indicated that girl child marriage had a significant negative impact on girls' schooling, while female literacy had had a significant positive impact.

Thus, there was a significant negative bi-directional relationship between girls' schooling and girl child marriage, a significant positive bi-directional relationship between girls' schooling and female literacy, and no significant relationship between female literacy and girl child marriage.

The second model (Model II) considered the impact of the percentage of girls aged 20-24 married before 18 years on the percentage of girls aged 15-19 who are/were pregnant and in turn on the adolescent fertility rate. This is represented in the following figure.

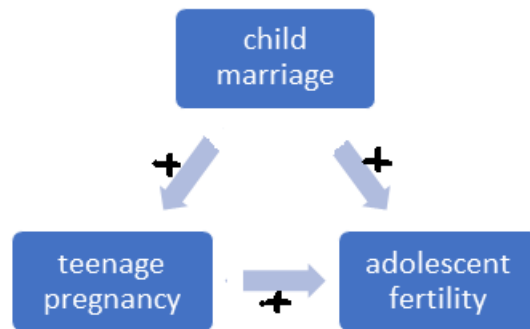


Figure 2: Model II

The regression results for the impact of girl child marriage on teenage pregnancy are presented in the following table.

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>
Intercept	-0.0018	0.0099	-0.1819	0.8571
girls aged 20-24 married before 18 years	0.3563	0.0448	7.9513	0.0000

dept variable girls aged 15-19 who are/were pregnant ($R^2 = 70.86\%$)

The results indicated that girl child marriage had a significant positive impact on teenage pregnancy.

The regression results for the impact of girl child marriage and teenage pregnancy on the adolescent fertility rate are presented in the following table.

	<i>Coeffs</i>	<i>Std Err</i>	<i>t Stat</i>	<i>p-value</i>
Intercept	5.3683	1.6096	3.3352	0.0027
girls aged 20-24 married before 18 years	93.7405	13.5305	6.9281	0.0000
girls aged 15-19 who are/were pregnant	244.0780	31.9699	7.6346	0.0000

dept variable: adolescent fertility rate ($R^2 = 96.40\%$)

The results indicated that both girl child marriage and teenage pregnancy had significant positive impacts on adolescent fertility.

The third model (Model III) considered the impact of adult female literacy on the percentage of children with adequate diet. This is represented in the following figure.



Figure 3: Model III

The regression results for the impact of female literacy on child nutrition are presented in the following table.

	<i>Coeffs</i>	<i>Std Err</i>	<i>t Stat</i>	<i>p-value</i>
Intercept	-0.1142	0.0754	-1.5150	0.1418
adult female literacy	0.33701	0.0971	3.4714	0.0018

dept variable: percentage of children with adequate diet ($R^2 = 31.67\%$)

The results indicated that female literacy had a significant positive impact on child nutrition.

The fourth model (Model IV) considered the impact of the percentage of women with ten or more years of schooling, adult female literacy, and the percentage of girls aged 20-24 married before 18 years on the infant mortality rate. This is represented in the following figure.

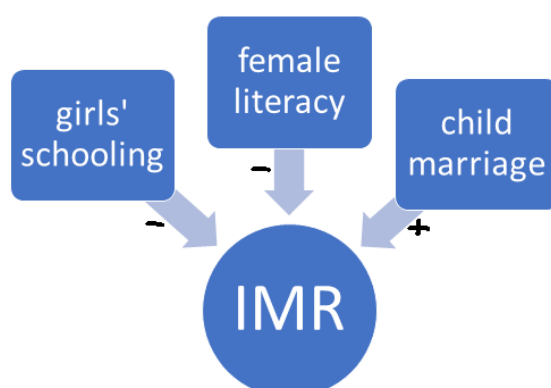


Figure 4: Model IV

The regression results for the impact of girls' schooling, female literacy, and girl child marriage on infant mortality rate are presented in the following table.

	<i>Coeffs</i>	<i>Std Err</i>	<i>t Stat</i>	<i>p-value</i>
Intercept	101.5571	18.0687	5.6206	0.0000
women with 10+ years of schooling	-54.6570	18.9917	-2.8779	0.0083
adult female literacy	-52.9261	21.3924	-2.4741	0.0208
girls aged 20-24 married before 18 years	-43.1773	22.1831	-1.9464	0.0634

dept variable: infant mortality rate ($R^2 = 59.08\%$)

The results indicated that both girls' schooling and female literacy had significant positive impacts on infant mortality, while girl child marriage had no significant impact.

The fifth model (Model V) considered the impact of the percentage of women with ten or more years of schooling, adult female literacy, and the percentage of girls aged 20-24 married before 18 years on the percentage of married women experiencing spousal violence. This is represented in the following figure.

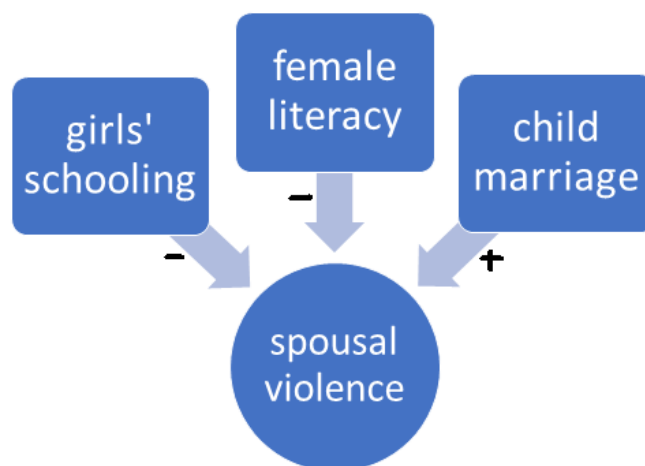


Figure 5: Model V

The regression results for the impact of girls' schooling, female literacy, and girl child marriage on spousal violence are presented in the following table.

	<i>Coeffs</i>	<i>Std Err</i>	<i>t Stat</i>	<i>p-value</i>
Intercept	0.4945	0.1940	2.5489	0.0176

women with 10+ years of schooling	0.3196	0.2039	1.5672	0.1302
adult female literacy	-0.6365	0.2297	-2.7710	0.0106
girls aged 20-24 married before 18 years	0.4657	0.2382	1.9554	0.0623
dept variable: percentage of married women experiencing spousal violence ($R^2 = 50.41\%$)				

The results indicated that female literacy had significant negative impact on spousal violence, while girls' schooling and girl child marriage had no significant impact.

DISCUSSION

The results of the study suggest that girl child marriage is bi-directionally related with girls' schooling, which in turn is bi-directionally related with female literacy. Thus, girl child marriage may be reduced by increasing girls' schooling and increasing female literacy. Thus, rather than increasing the legal age of marriage for women, the Government should focus on providing greater educational access for girl children and women, as well as incentives for retaining girl children in schools and educational institutions. They should also design schemes to address the socio-economic aspects of girl child marriage. Specifically, schemes that fail to address the underlying socio-economic issues are unlikely to have much of an impact on girl child marriage. A recent study has discussed an intervention to increase secondary school completion, thereby reducing child marriage among adolescent girls.²⁴

The results of the study also suggest that girl child marriage has significant impact on teenage pregnancy and adolescent fertility. These in turn have several adverse consequences for both underage mothers and their children have reported similar results.²⁵

The results of the study also suggest that issues such as infant mortality and child nutrition are affected by female literacy and not by girl child marriage. This may be as increased female literacy implies greater awareness of women, leading to better decision-making regarding their own and their children's nutrition and health. This finding is contrary to an earlier study which argued that the age at first marriage has a significant and long-term

²⁴ Prakash, R., Beattie, T.S., Javalkar, P., Bhattacharjee, P., Ramanaik, S., Thalinja, R., Murthy, S., Davey, C., Gafos, M., Blanchard, J., Watts, C., Collumbien, M., Moses, S., Heise, L., Isac, S., "The Samata intervention to increase secondary school completion and reduce child marriage among adolescent girls: results from a cluster-randomised control trial in India," (2019) *Journal of Global Health* 9(1), 1-13. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6684866/> Accessed 17 January 2022

²⁵ Prakash, R., Singh, A., Pathak, P.K., Parasuraman, S. "Early marriage, poor reproductive health status of mother and child well-being in India," (2011) *Journal of Family Planning and Reproductive Health Care* 37(3), 136-45. <https://srh.bmj.com/content/37/3/136.short> Accessed 17 January 2022

impact on general public health.²⁶ Perhaps a more detailed analysis would be required to validate the results.

The results of the study suggest that women's participation in the workforce is not impacted by girls' schooling/education and girl child marriage. This could be due to social factors; some communities still do not permit young women to engage in employment outside the house.

The results of the study also suggest that spousal violence is affected by female literacy and not by girl child marriage. This may need to be examined in greater detail.

There are several limitations inherent in the study. The data used for the study was cross-sectional, collected for the 28 states. A finer data, e.g., district-wise, may give more stable results. Also, the study has ignored the socio-economic aspects of girl child marriage. A more detailed analysis controlling for the relevant socio-economic aspects would give better insights.

²⁶ Marphatia, A.A., Ambale, G.S., and Reid, A.M., "Women's Marriage Age Matters for Public Health: A Review of the Broader Health and Social Implications in South Asia,"(2017) *Frontiers in Public Health* 5, 1-23. <https://www.frontiersin.org/articles/10.3389/fpubh.2017.00269/full> Accessed 17 January 2022

JUDICIARY AND GENDER JUSTICE

Remya R.¹

INTRODUCTION

Gender Justice is a concept that has been deployed in many disciplines in many ways. In the area of law, the concept of gender justice can mean formal equal rights of men and women. It can relate to uncovering gender biases that are integral to the legal process and which affect the ways women come to experience the law.² According to Justice A.S. Anand the process of gender justice covers rights of women against exploitation and victimization.³

India is one of the first countries in the world to give right to vote to women. But by analysing changing status of women in our society we can clearly identify that we have been living in a male dominated patriarchal society⁴ which considers women as subordinate group. Women are generally confined to the boundaries of their homes and expects women's priority should be home making, bearing children, and taking responsibility of elders in the family. According to feminist jurisprudence nobody should be disadvantaged due to their sex and radical feminists say that the reason behind oppression of women is patriarchal society.

In our country there exist a number of legislations for the upliftment and protection of women. Our constitution, which is considered as the fundamental law of the land the makers of the Constitution in order to fulfil the pledge for an egalitarian society, guaranteed equality, and prohibited discrimination and derogatory practices against women. Thus, we have Article 14, 15(3), 16, 39 (e) and 51 enshrined in the Constitution which guarantee equality and special protection for women⁵. In spite of all these protection gender equalities continues to be an elusive goal in our country. There exists a huge gap between the legislation and practice in our society. So, women are not able to perform effectively in all spheres of significant human activities.

So, the need of the hour is equal treatment of both sexes, there is unanimity on the concept of gender justice, but there are conflicting responses regarding the mode of achieving the same. Currently, the demand is towards a structural transformation, which makes women to

¹ Research Scholar, Institution: Govt Law College, Thiruvananthapuram

² B.R. Trivedi, Constitutional Equality and the Women's Right (1st edition, Cyber Tech Publication, 2010) 247

³ A. S. Anand, Justice for Women Concerns and Expressions (Universal Law Publishing Co Ltd, 2002) 5

⁴ Patriarchy means a male centered social system.

⁵ Murlidhar C. Bhandare, Struggle for Gender Justice (Justice Sunanda Bhandare Memorial Lectures, 2010) 9

participate and contribute to larger decision making, while also fulfilling their responsibilities towards their children, elders and the family as a whole.⁶

JUDICIARY AND SOCIAL TRANSFORMATION

The Supreme Court of India has evolved gender jurisprudence over a decade ago and has shown activist approach in gender specific issues and securing gender justice. Supreme Court in many occasions widened the scope of fundamental rights and said violation of women rights is violation of basic human rights. So, in my opinion judicial activism can be used as an instrument for obtaining social transformation of women.

Women social transformation means a movement towards equality and participation in all spheres of life. The sociological understanding of social change is that it is an alteration of the underlying structures of society, which entails a transformation of social behaviour.e.g., thought, beliefs, practices, etc.⁷ Social transformation can take place only when a previous practice is altered. The alteration must be practiced and reproduced as a community effort because it is a social change. Space for transformation and the creation of alternatives must be made that is where the judiciary can play an important role.

The foundation for this transformation can be traced in our Indian Constitution in Article 14, 15, 21 etc. It is the duty of our judiciary to effectively enforce these constitutional mandates by effectively interpreting the provisions, because law is only an instrument which has to be effectively used. And this effective use is in the hands of judiciary.

Recently the Supreme Court of India has broken stereotypes that existed for centuries and created a milestone in gender justice through Sabarimala case⁸, triple talaq⁹ case and adultery case.¹⁰

JUDICIAL DECISIONS ON ENSURING GENDER JUSTICE

In reference of gender justice and equality, the judiciary has always attempted to act as a social reformer by upholding and ensuring the rights of women. Judiciary has acted as a watchdog and interpreter of fundamental rights, economic freedom, etc. The contribution made by the judiciary to the improvement of status of women and to ensure their dignity of life can be analysed from a number of decisions delivered while interpreting various social-

⁶Justice Sujata V. Manohar, Judiciary, and gender Justice 21

⁷Christine crisol, Gender and social Transformation (Philippine Sociological Review, Vol. 49, 2001) 105

⁸Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors. 2018 SCC Online SC 1690

⁹ShayaraBano vs. Union of India AIR 2017 9 SCC 1 (SC)

¹⁰ Joseph Shine vs. Union of India AIR 2018 SC 4898

economic welfare laws and the constitution.¹¹ But as stated earlier ours is a patriarchal society and we cannot expect every judge to be free from the cultural values and biases of his society, it can be evidenced by analysing earlier judicial decisions like Mathura rape case¹², Sowmithri Vishnu case¹³ and Revathi vs. Union of India¹⁴ through these decisions court widened the inequalities faced by women in their marriage.

The history of gender justice judgement can be traced back to pre- independence era in Dada Bhikaji v. Rukhma Bai¹⁵. In September 1885, Justice Pinhey of the High Court found in favour of Rukhmabai, held that since she had never lived with her husband, Bhikaji was not pleading for the restitution of conjugal rights, but their institution an idea for which the judge could not find any English authority.

After 1950, many landmark judgements have been made which strengthened the rights of women. There is much evidence which shows the proactive role of the judiciary.

In 1975 C.B. Muthumma vs. Union of India¹⁶ service conditions of Foreign Service personnel requiring female employees to obtain government permission before marriage and denying married women a right to be employed, were struck down as discriminatory.

In 1981 Air India vs. Nargesh Meerza¹⁷ the court struck down the rules which stipulated termination of service of an air hostess on her first pregnancy. So, by analysing above case laws, we can see how courts have upheld the rights of women in relation to service rules.

In 1996 Madhu Kishwar and others vs. The State of Bihar¹⁸ right of tribal women are discussed the court held custom can never overtake or over ride over the provisions of the constitution.

¹¹ Ms. Poonam lamba, gender justice: legislative and judicial intervention (2020)

¹² Tukaram and another vs. State of Maharashtra [1979] AIR 185, In 1972 young tribal girl Mathura was raped by two policemen in a police station, Nagpur session court gave clean chit to the rapists declaring that she was a girl of loose character because she was eloped with her boyfriend. This judgment was challenged in Bombay High Court, high court observed there is a difference between consent and passive submission, a fifteen-year-old tribal girl is not able to resist two constables and also stated that passive submission due to fear induced by serious threat could not be considered as a consent for sexual intercourse. But the judgment of high court was challenged in the Supreme Court but and Supreme Court reversed the high court judgment. The Supreme Court held that Mathura has raised no alarm and there is no visible injury on her body so no rape. The judgment was highly criticized and resulted in Criminal Law Amendment Act 1983 and shifted burden of proof from the victim to the offender and also banned the publication of victim's identities and held that rape trials should be conducted as in camera-proceedings.

¹³ Sowmithri Vishnu vs. Union of India 1985 AIR 1618 in 2018 this case was overruled now adultery is decriminalised and was left only as a ground for divorce.

¹⁴ 1985 AIR 1618.

¹⁵ (1886) ILR 10 Bom 301.

¹⁶ 1979 AIR 1868

¹⁷ AIR 1981 SC 1829

¹⁸ 1996 AIR 1864

Later in 1997 the court gave guidelines to prevent sexual harassment at workplace in Vishaka vs. State of Rajasthan¹⁹ the case is special in many ways because it provided temporary respite to working women. The court held women working in workplaces have a right to gender equality, to work with dignity in a safe working environment. The main aim of the judgement was to provide fair, secure and comfortable work space for women.

In Laxmi vs. Union of India²⁰ Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013. The ruling banned over the counter sale of acid. Dealers can sell the acid only if the buyer provides a valid identity proof and states the need for the purchase. It is mandatory for the dealer to submit the details of the sale within three days to the police. It also made it illegal to sell acid to a person below 18 years.

In Centre for enquiry into Health and Allied themes (CEHAT) vs. Union of India²¹, with the advent of pre-natal diagnostic techniques that could determine the sex of a foetus, the growing trend of aborting female foetuses was observed. In a bid to curtail female feticide, the government of India issued the PNDT Act in 1996. The provisions of the PNDT Act, however, were not being effectively implemented by the state and central government. The Centre for Enquiry into Health and Allied themes filed a petition which led to the Supreme Court directing the Central and State governments to enact the provisions of the act immediately and banned all advertisements relating to pre-natal sex determination techniques.

Gita Hariharan vs. Reserve Bank of India²² through this case mother can be natural guardian of a child during the lifetime of the father. This decision shows a mother is standing in equal to father.

Young Lawyers Association vs. State of Kerala,²³ the Court held that the restriction of women in Sabarimala Temple is unconstitutional. To suggest that women cannot keep the *vratam* is to stigmatize them and stereotype them as being weak and lesser human beings. The practice is violative of fundamental right to equality, liberty, and freedom of religion.

¹⁹ (1999) 6 SCC 241

²⁰ (2014) 4 SCC 427

²¹ (2001) 5 SCC 577

²² (1999) 2 SCC 228.

²³ 2018 SCC Online 1690

Religion cannot become a cover to exclude and to deny the right of every woman to find fulfillment in worship.

In *Vineetha Sharma vs. Rakesh Sharma*²⁴ talks about right to property of daughters the court held that notional partition is not actual partition, and the provisions are retroactive whether father is dead or alive on or after 2005 is immaterial. That daughter and son have same rights on property these rights are conferred on daughter by birth.

The Hon'ble Supreme Court took a very different perspective towards the offence of 'adultery' in *Joseph Shine*²⁵. The Court declared Section 497 of the Indian Penal Code, 1860 to be unconstitutional being violative of Articles 14, 15 and 21, as it considers women subordinate to men in as much in laying down that "when there is connivance or consent of the man, there is no offence". This treats wife as the "property" of husband and reflects social dominance as the basis of such a penal provision.

The above decisions of court show how pro-actively judicial system approached matters relating to gender justice.

CONCLUSION

Education, health, good nutrition etc. are necessary to ensure the dignity and gender equality of women in every country. Our government has announced many policies e.g., Policy for free education. But that by itself is not enough the public officials have to take steps to see that these are effectively implemented. The judiciary is making efforts to gender justice. In many areas courts have given timely interpretation to laws in order to help women. What however wants is the social will to bring about gender justice, the common people must adopt the principles of gender equality and make it a part of their culture. The courts are acting as a catalyst as far as the rights of women are concerned. By analysing recent judgements, we can say that good legislations and judicial activism is helping to bring positive social transformation.

The decisions made by judiciary have changed our society and, in many cases, judiciary has come forward for making a social change, public protests were seen in tackling menace like dowry, acid attack, rape and all, but it stopped when judiciary started actively participating it. Unlike some other countries, there is a strong positive approach in our country from the part of judiciary to support fair laws and fair decisions in cases relating to women. The primary

²⁴(2020) AIR 3717 (SC).

²⁵ AIR 2018 SC 4898

goal of the judiciary is to provide justice. But it is also true that we cannot expect every judge to be free from the cultural values and biases of his society. In order to overcome this, gender justice education is necessary as part of judicial training programme.

LAW AND SOCIAL TRANSFORMATION ON EVOLUTION AND CONCEPT OF CHILD RIGHTS UNDER LEGAL AID SERVICES, WITH SPECIAL REFERENCE TO BANGALORE DISTRICT

Shilpa BP¹

INTRODUCTION

The Protection of child rights has one of the most vibrant issues in the world. As per many studies and statistical data on crime, represent the children as victims and as perpetrators. In early age of child why they are conflict with law face certain risk factors like poor educational background, lack of parental care, abuses in family by physically and sexually many more. As a result, when such children drawn into criminal Justice system by giving appropriate support is very essential are else, they may be suffered are detained unfair or face disproportionate charges. To give support to these children's the right to providing legal aid is criminal justice system recognised as essential in human and constitutional rights.

METHODOLOGY

The researcher adopted a mixed design, where both quantitative and qualitative information was obtained. Quantitative information was obtained by application in Bangalore District legal Services Authority and qualitative information was obtained through in person interview mechanism from visiting Juvenile Justice home and interaction with official and only few children who conflict with law.

LEGAL DEFINITIONS OF CHILD

The term child not defined in the Indian Constitution, but many International and National convention and regulations are defined the definition of child.

1. Article 1 of the United Nations Convention on the Rights of the Child 1989 refers 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.'²

¹ Ph.D. Research Scholar, Alliance School of Law, Alliance University, Bangalore.

² "Convention on the Rights of the Child"

(OHCHR)<<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> accessed February 2, 2022

2. The Child Labour (Prohibition and Regulations) Act, 1986, child means a person who has not completed his fourteen years of age.
3. The Juvenile Justice Care and Protection of Children Act, 2015 defined Child under sec. 2(12) – Child means a person who has not completed eighteen years of age.
4. United Nations Convention on the Rights of the Child 1989 defines Child as a person under the age of 18 years.

LEGAL DEFINITION ON CHILD IN CONFLICT WITH LAW AND CHILD IN NEED CARE AND PROTECTION

The Juvenile Justice Care and protection Act 2015 under sec. 2 (12) defines Child in conflict with law means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.³

1. The child in need of care and Protection Means a child-Child who found without any home or shelter, working contravention of Labour laws, found begging or living in the street, who resides in guardian or as such person has injured, exploited, abused or neglect the child , threatened to kill, mentally assaulted, or child abuse of incurable disease, and child whose parents have abandoned or surrendered , child who sexual abuse or illegal acts, inducted into drug abuse or trafficking, the child who victim of any armed conflict, civil unrest or natural calamity, etc.⁴
2. Article 37(d) of the UNCRC provides, that “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, and right to challenge for the same in appropriate authority for any such action.”⁵
3. Article 14 (3) of the International Covenant on Civil and Political Rights provides- “In the determination of any criminal charge against child everyone shall be entitled to follow the equality with minimum guarantees.
4. Sec. 2(21) ‘childcare institutions’ means children home, open shelter, observation home, special home, any adopted agency and a fit facility recognised under the Juvenile Justice care and protection Act to provide such care and protection.
5. Sec. 2(35) ‘juvenile’ means a child below the age of eighteen years.

³ The Juvenile Justice (Care and Protection of Children) Act, 2015, (2 OF 2016) Mohan law publishers-pg-5

⁴ Ibid page 6

⁵ *Ibid.*

PROVISIONS OF INTERNATIONAL LAW WITH RESPECT TO CHILDREN IN CONFLICT WITH LAWS

The United Nations Standard Minimum Rules for Administration of Juvenile Justice 1985⁶

Popularly this Convention call it as Beijing Rules, the rules explain the administration of child justice through comprehensive manner. The rules divided in six parts covers fundamental principles of caring child who conflict with law and procedures for the hearing of cases and treat the child.

The rules explain the fair and humane treatment of child who under the respective legal system dealt with for an offence in a manner which is different from the other offences, it could be treated neither in special manner nor by serious imprisonment for the children. The rules also explain the provision of education and other social re-integrative services for those children who are institutionalised.

The United Nations Convention on the Rights of the Child 1989

The Convention specifically explains in its Articles about the Rights of the Child development. Mainly the child has the right to life, must do all they can to ensure that children survive and grow up healthy.⁷ Recognition through Nationality⁸, freedom of speech and expression, freedom of thought and belief, freedom of association, decent life of disabled child, health and security measures,⁹ under Art.40 it explains the a child who conflict with law or juvenile justice according to this Article the child who accused or guilty of breaking the must be treated with dignity and respect. And the child has the right to seek help of lawyer to plead his case and maintain the privacy and respect this concern.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990¹⁰

The rules popularly call it as Havana Rules, also focused mainly the treatment of juveniles who are conflict with law. According to this rule the imprisonment is last resort for such

⁶ “Www.ncjrs.gov” <<https://www.ncjrs.gov/pdffiles1/Digitization/144NCJRS.pdf>> accessed February 2, 2022

⁷ Article 6 UNCRC-1989

⁸ Art.7 UNCRC 1989

⁹ Article 8 to 29 UNCRC 1989

¹⁰“United Nations Rules for the Protection of ... - OHCHR”
<https://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf> accessed February 2, 2022

child, by giving all the treatment where child can realise his mistake and become a good citizen in his state, the states need to treat them by giving liberty and treat them innocent and trial must kept in confidential manner wherever it is necessary. By providing these liberties and comply with some procedure respect the child rights too.

The United National Guidelines for the Prevention of Juvenile Delinquency, 1990.¹¹

The Convention popularly calls it as Riyadh Guidelines adopted one year after the adoption of CRC.¹² These guidelines include the persons who are caring the child who are juveniles. It interpreted and implemented within the broad framework of Universal Declaration of Human Rights – 1948. It gives measures to the officers that give awareness to the children, creation of opportunities in education social awareness, and member state must monitor the mass media in specific manner.

INDIAN CONSTITUTIONAL PROVISION RELATING TO CHILDREN

Specific Constitutional Guarantees that are meant specifically for children includes-

1. Article 21A provides that state shall provide free and compulsory education to children of the age of six to fourteen years in such manner as it determines.¹³
2. Article 24 A provides that the child below the age of 14 years prohibited of employment in factories or mine or engaged any other hazardous employment.¹⁴
3. Article 39(e) provides that securing the health and safety of children and women and held they cannot work beyond their strength.
4. Article 39(f) provides and secures the children by giving good opportunities and facilities to develop in a healthy manner and live in dignity with childhood. They also protected against exploitations and moral and material abandonment.¹⁵
5. Article 45 Directive principles of State Policy provides early childhood care of children and their education until they complete the age of six years.

Besides, above specific rights to children they also enjoy some rights which are available to all. Those areas are as follows:

¹¹ “The Protective Environment: Development ... - Archive.crin.org”

<https://archive.crin.org/en/docs/resources/publications/child_protection.pdf> accessed February 2, 2022

¹² Convention on Rights of the Child 1989

¹³ Commercial’s Constitution of India, 1950-Bare Act 2019 CLA publishers, p-7

¹⁴ *Id.*

¹⁵ *Id.*

1. Article 14 – The State not to deny any person equality before law and equal protection of Law
2. Article 15- Right against discrimination in the case of religion, race, caste, sex, place of birth.
3. Article-21- provides the no person shall be deprived of his life or personal liberty except according to procedure established by law.
4. Article 23- Right of being protected from being trafficked and forced into bonded labour.
5. Article 29 Right of minorities for protection of their interests.
6. Article 46 Right to protection of weaker sections for social injustice and all forms of exploitation
7. Article 47 provides everyone have the right to live standard of life with good nutrition supplement.¹⁶

LEGISLATIONS WHICH DEAL WITH CHILD RIGHTS

The Factories Act, 1948

The Act prohibits the employment of children below the age of 14 years in factories. If the factories wanted to join the child whose age between 14 to 15 years they can comply with section 68, 69 and 71 of the Act. It explained the obtaining certificate by the surgeon to carry such work and they cannot work in night.¹⁷

The Child Labour (Prohibition and Regulation) Act, 1986

The objective of the Act is specified the banning the employment of children who have not completed the age of 14 years, in specified work failure to which if any children are working are employment given to children under the age have punished according to procedure established by the Act.

The Pre-Natal Diagnostic Technique (Regulation and prevention of Misuse) Act 1994

This Act provides the regulations to avoid the detecting genetic or metabolic or chromosomal abnormalities, detect child sex is prohibited.

The Juvenile Justice (Care and Protection of Children) Act 2000 and Amended Act 2015.

¹⁶ Commercial's Constitution of India, 1950, CLP publishers ed.2019 p-7 to 17.

¹⁷ Venkatesh, 'Laws and policies for protection of Interest of children: A critical analysis (2018) ,<http://www.legalserviceindia.com/legal/article-346>> accessed on 2-2-2022

The Act deals with the law relating to Juveniles in conflict with law and children in need of care and protection by providing proper care. The ultimate aim of this Act to rehabilitate the child through various institutions established under this Act.

Right to Education Act, 2009

With a view to provide free and compulsory education guaranteed by the constitution the government adopted this Act. The Act gives an opportunity to every state in India to implement the central law on their territorial basis for the betterment of child elementary education to improve quality education to those who really benefited this.

SALIENT FEATURES OF THE JUVENILE JUSTICE ACT ¹⁸

- The Juvenile Justice Act describes the uniform age of 18 years for both boys and girls to be treated as children. This is in conformity with the UN convention on the Rights of the Child 1989.
- The Act prescribes the treatment of two categories of children namely, 'child in need of care and protection' and 'juveniles in conflict with law'.
- The Act establishes the Juvenile Justice care and protection Board for the reintegration of children and their care.
- The Act also focuses the adoption of child under the Act.
- The Act also provides the facilities which provide NGOs and other authorities for the handling and rehabilitation of delinquent children at various stages.

PROTECTION OF CHILDREN WHO CONFLICT WITH LAW THROUGH LEGAL AID SERVICES

Article 39-A of the Constitution of India obligates the state to ensure that the operation of the legal system promotes justice, on a basis of equal opportunity, and to provide free legal aid, by suitable legislation or schemes or other means. To ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

The Legal services Authorities Act, 1987 was enacted in furtherance of this directive principle, and defines legal service to include "the rendering of any services in the conduct of

¹⁸ The Juvenile Justice (Care and Protection of Children) Act, 2015, published by Mohan law house-2019, p-2t0

any case or other legal proceedings before any Court or Authority or Tribunal and the giving of advice on any legal matter.¹⁹

The National Legal services Authority (here in after called NALSA) was established under the Act as a nodal body providing access to free legal aid to the concerned person. The child is also considering one of the categories to seek legal aid services by the concerned authorities.²⁰

NALSA (CHILD FRIENDLY LEGAL SERVICES TO CHILDREN AND THEIR PROTECTION) SCHEME, 2015.²¹

The Scheme aim to provide the legal assistance in meaningful, effective and affordable to children who will came contact with conflict with law in early age.

Objectives of the Scheme

- To make outline of the basic rights of the child rights and benefits.
- To provide legal assistance to the children in need care and protection and Conflict with law.
- To strengthen the legal services in all levels of the authorities.
- To create environment in Juvenile Justice home where children are valued, encourage them and their rights.
- To undertake support of all levels of functionaries, NGOs, CWCs, JJBs, etc. view to provide friendly legal aid services to the child who really needs that service.
- Maintain database awareness programmes, and schemes in all sectors.
- Organize awareness program to child and educate public at large, etc.

The principles which should follow functionaries under the Scheme

1. To promote the welfare of the child early intervention and support should be provide
2. Treat child in dignity
3. Child should not be discriminated while obtaining the services
4. Right to be heard and to be sued

¹⁹ Sec. 12(c), Legal Services Authorities Act, 1987

²⁰ *Id.*

²¹ “Schemes of Nalsa English” (National Legal Services Authority, May 9, 2019) <<https://nalsa.gov.in/brochures/schemes-of-nalsa-english>> accessed February 2, 2022

5. Child must be protected in all stages involving with safety and confidentiality.

Constitution of boards, committees, commissions, etc. under the Scheme

- a. Under JJ Act state has been authority to establish JJ home²² in every district. It constitutes in each district.
- b. Section 29 JJ Act provides that constitution of Child welfare committee it includes a chairperson and 4 other members to be appointed
- c. The Act provides to establish Special Juvenile police Unit to deal with juvenile in conflict with law. For this the state government give training to one police officer in each station to deal with the cases of juvenile.
- d. The SLSA shall ensure the list designated Juvenile Justice officer and members contact details permanently displayed in every police station in the state.
- e. Under sec.62 A the Stage government constitute a child protection Unit for the state in each district.
- f. State has the obligation to establish State commission for protection of child Rights Act 2005.

Observations of Shelter Home

The juvenile who conflicts with law are kept in a home and not in jail or lockup. There are two types of homes namely observation home and special home.

In observation home the pending inquiry against juveniles are kept and maintained it. The special homes are set up in every district separately for boys and girls juveniles, found guilty on conclusion of enquiry.²³

During these stays the juveniles can be look after utmost care and protection by rehabilitate them provide education, and other needs for the development of their own.

Legal Services Clinics

The Scheme also provides the provision and make obligation to state government through Stage legal Services Authorities open the Legal Services clinic in such Juvenile homes and Child Welfare Centre with view to provide assistance to them.

²² *Id.*

²³ Sec. 9 of JJ Act r/w rule 16(1) of JJ rules.

Legal Representations

Under sec.12 (c) of LSA Act provides that every child who has to file or defend a case is entitled to free legal services in any authorities or any clinics which established in NGOs, or by universities or any functionaries.

Legal Awareness program and role of SLSAs

The State Legal Services authority has to meet the requirement of law in such juveniles, constitute a separate panel advocate to represent child and supervise it periodically by giving nominal remuneration to such advocates manner prescribed by the Act. The State Legal Services authority strictly adhere to the guidelines and Schemes which are issued by NALSA based on that train the panel advocates, and other members of Authorities and functionaries. And also establish a unit in all police stations and train one of the police officers in matter connected with child in conflict with law. And arrange legal awareness program in all sectors time to time based on their action plan and yearly calendar. And same has to be maintain in database and submit it too periodically to NALSA and submit reports to concerned authorities.

OBSERVATION IN JUVENILE JUSTICE HOME

In Bangalore Urban division the Juvenile Justice Board in Koramangala. The Juvenile Justice Board was in session and it contained of 2 judges of which one was a Lady Judge, under the Juvenile Justice board. Under jurisdiction, the following are the JJ Board members.

1. Sri. Shrinivas, Chief Investigation officer,
2. Smt. Kalpana Purushottam
3. Sri. Bijju Thomas
4. Sri. Nagarathana

The Juvenile Justice Board was seated without Judges Uniform. All the lawyers are also in plain clothes.

1. The case which researcher observed when session is going on A, the accused juvenile has committed murder under sec.302 of IPC, and various sections. The commission of the crime happened, when the accused was aged 17 years. They were presented before the court for the grant of bail application.

2. The second case which researcher observed the accused juvenile was the resident of Nepal had come to the city of Bangalore in hopes of finding employment and was employed in a hotel as a cook, he had come to Bangalore in the year 2015. The Juvenile was the accused in a crime where he and few others with him, being under the influence of some illegal substance and in a fit of rage, smashed the head of the victim and killed him. The Juveniles, other accomplices absconded, both the accused was arrested by the police and handed over to the JJ Board; he was presented for hearing on his bail applications.

CLASSIFICATION OF OFFENCES

Based on the data collection the classification of offences made based on the punishment prescribed for the offence.

- Petty offences – based on the criminal law where maximum imprisonment is less than or equal to 3 years.
- Serious offences- includes where minimum imprisonment is more than 3 years and maximum are less than 7 years, or where punishment is maximum 10 or 14 years.
- Unclassifiable- sections where maximum punishment is up to 7 years and minimum number of years of punishment is not explicitly provided.
- Heinous Offences- sections where minimum imprisonment is more than or equal to 7 years, or where number of years of punishment is not mentioned but the section only says death or life imprisonment.

PROFILE OF CHILDREN IN CONFLICT WITH LAW

A total 18 children in conflict with law but 7 were interviewed for the orally. The average age of the children between 15 to 22 years, and all of them were male. These 7 children were arrested based on the case of ragging in the school, assaulted by fellow classmate, and theft. Among these 5 were in early age itself working as a labourer in hotel and transportation. And they have single parent now after being staying and getting education and rehabilitating these were completing their period of imprisonment and yet to release in few months. They were happy when officers said, and they assured them that they will live as good citizens in future.

JUDICIAL TRENDS TOWARDS JJ ACT

Darga Ram v. State of Rajasthan²⁴

In this case Apex Court observed that while determination of age on juveniles on the basis of medical examination as per sec. 7A of the Juvenile Justice Act 2000. According to this section whenever there is a question regarding accused was juvenile on the date of commission of an offence, the court shall make inquiry and take such evidence, if in the absence of matriculation certificate then court in its discretion examines the accused in medical practitioners for proceed with case.

Mukesh & Ors v. State of Delhi²⁵

Popularly known as Delhi gang rape case in this case Supreme Court refused to grant harsh punishment on the account of heinous conduct by juvenile. And held that to re-integrate in this age is difficult but to try to make it for the mainstream of society rather than keeping them with the hardened criminals in the jail.

In Sanjay Suri v. Delhi Administration²⁶

In this case the Supreme Court ordered the release of juvenile under trial prisoners. And held that jail authorities while deciding the age of juvenile look into the documents supporting to detention in enough to that.

Jayendra v. State of UP²⁷

In this case juvenile convicted imprisonment for committing an offence it was challenged by the Supreme Court called the record and found when offence committed the juvenile was 16 years and 4 months and the sentence of imprisonment was quashed by the court and convicted released immediately.

Munna v. State of UP²⁸

In this case the court held that when child found guilty of offence, he should not be mistreated, and child should not lock-up their fundamental rights when they enter in jail.

Raj Singh v. State of Haryana²⁹

In this case court held that the age of the boy and girl has to be determined at the time of happening of an offence.

²⁴ AIR 1986 3 SCC 632

²⁵ AIR 2013 7 SCC 705

²⁶ AIR 1986 SC 414

²⁷ AIR 1982 SC 685

²⁸ AIR 1982 SC 806

²⁹ 200 (6) SCC 759

CONCLUSION AND SUGGESTIONS

Conclusion

The above discussion analyses that juvenile who are not punished for serious crimes like rape and murders also not imprisoned but they will treat as per Juvenile Justice rules. The Juvenile crimes cannot be stopped only through the proper implementation and amendments of Juvenile Justice Act. Juveniles who involved in crimes are not criminals in fact they are victims of society in some cases. Instead of labelling the juvenile delinquency the parents and teachers play a major role in fostering the mind of a child and importance has to be given on understanding needs of children and give them a scope of rehabilitation.

Suggestions

The Legal Services Authority has to increase the awareness programmes to be conducted, in Juvenile Justice Home and Childcare Centres as well as schools in effective manner.

1. Involve the Law Colleges Legal Aid Clinics and Students volunteers to demonstrate with play for the better understanding of children
2. The Legal Service Authority proactively involves the good panel lawyers and support of NGOS.
3. The Juvenile Justice Board while conducting the process of inquiry it must be child friendly and encourage them to engage the process and clarifications from the Juvenile Justice Board and lawyer at any point.
4. The Juvenile Justice Board strictly adhere to their functions and responsibilities for their process of Inquires.

A SYSTEMATIC LITERATURE REVIEW ON THE ROLE OF EDUCATION ON WOMEN EMPOWERMENT IN INDIA

Dr. Shilpi Sharma ¹

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INTRODUCTION

Education is the cardinal prerequisite that shall mould the future lineages of the society. It is the main element that shall uplift, develop individuals and in extension help increase credibility in the scenario we live in today.

India is a country that has rich cultural, social, philosophical roots and descent. We are a country where women are synonymous to Goddess Shakti, Goddess of Learning. It is a blessing when a daughter is born into a family. It is a good omen that Goddess Laxmi has visited them. It is because, women play an active and pivotal role in empowering what lays ahead. When, the scenario that we are brought up is extremely progressive, the reality is stark opposite. It is influenced by patriarchy along with other factors are still at play and are hindering the path to women being empowered, to say the least.

When women are given an equal opportunity to educate themselves, they shine. They not only shine but also, pass it along the way to the ones who need it. They empower, themselves, as well as everyone around them. Hence, we need to break the shackles of gender bias and attain the goal of empowering women.

OBJECTIVES OF THE STUDY

The researcher undertook the study to understand:

1. The role education plays towards empowering women in India
2. The barriers that are present in the way to attain women empowerment with particular emphasis on education

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RESEARCH METHODOLOGY

This paper is descriptive and analytical in nature, with a systematic review of literature with the keywords, education, girl child, women empowerment, NEP 2020, India.

DATA ANALYSIS

Following set of Literature brings out the significance of the research problem from multiple perspectives. The Review has been presented under multiple themes such as:

IMPACT OF EDUCATION ON EMPLOYMENT

When one is educated, the knowledge received by them makes them susceptible and open to many schools of thought. This in extension paves the way for better opportunities and understanding of the society. The ones who aren't on the receiving end, always find it harder to perceive things. According to Khushboo Singh (2016)³, education is a milestone for women, as it enables them to respond to obstacles and break free from the traditional norms set for them. It is a tool to change their lives. She also mentioned about the disparity in the literacy rates among men and women in our country and quoted Eileen Malone Beech, who said, Education, Health Care and Income are the blessed trinity. The paper went onto discuss the impact of education on women empowerment of women and the challenges also faced the changes that can be brought about while mentioning that the concept of women empowerment is relatively new and was only introduced at the International Women Conference at Nairobi in 1985. It also discussed the challenges and changes that need to be brought for the empowerment to take place. The paper points out a few barriers to women education, firstly being the girls in rural areas are seen as a mother figure and then looking at doing all the household chores. Secondly, bonded labour, thirdly, dowry system, it is still a major taboo in a few pockets as a lot of wealth shall be given, when the daughter gets married and lastly, gender bias.

The author went onto explain the goal of the National Policy for Empowerment of Women, 2001, was to bring out the advancement, development, empowerment of women. To promote women empowerment, a holistic environment needs to be created where there are policies developed for the well-being and promotion of women in all sectors.

³ Khushboo Singh, 'Importance of Education in Empowerment of Women in India' (2016) 1 Motherhood International Journal of Multidisciplinary Research & Development.

Kr. Sonowal (2013)⁴ spoke about the biases constructed socially, where in order to achieve something, women had to go the extra mile. He associated this with strength and went on to explain that this strength empowers women and that comes from education. Education should not be urban, rural education should also be investigated. He came to this conclusion, by conducting a study in the Sontipur District of Assam. The study highlights that the village girls do not have proper education and in extension lag in general awareness, communication skills, familial and health aspects. The author also went on to say that the impact of modern education is unsatisfactory.

Rupali Sharma and Zia Afroz (2014)⁵ in women empowerment through higher education, stated that, literacy is not only a principal factor, but it is the only factor that shall uphold the way empowerment is taking place. They went on to state that, proper implementation of policies is a must, and the policy makers should have more policies keeping the empowerment of women in the forefront, while creating them.

In Impact of Education and Employment on Women Empowerment⁶, the authors examined the status of women and the impact of education and employment on women empowerment in Quetta. After analysing a significant amount of data, the results indicated that education and employment have a positive relationship with women empowerment in decision making, having control over resources, and having their voice heard. The authors also said that, when one woman is empowered, they reach out and empower other women. As, education helps them understand the rudimentary necessities and rights they have and break free from the patriarchal views and construct. And employment makes them financially sound and put themselves in the first place.

'Education leads to fulfilment' is what Nayak P and Mahanta B (2009)⁷ in their paper women empowerment in India want to convey. They have taken into note the attributes like the Human Development Index, Gender Empowerment Measure, Gender Equity Index (which was a tool used by the Government of India's Planning Commission in 2002) and come to conclude that there is a persistent gender gap with respect to people having access to basic

⁴ Mukut Kr Sonowal, 'Impact of Education in Women Empowerment: A Case Study of SC And ST Women of Sonitpur District, Assam' [2013] International Journal of Computer Applications in Engineering Sciences.

⁵ Rupali Sharma and Zia Afroz, 'Women Empowerment Through Higher Education' (2014) 1 International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS).

⁶ Habib Habib and others, 'Impact of Education and Employment on Women Empowerment' (2019) 8 European Online Journal of Natural and Social Sciences 2019.

⁷ Purusottam Nayak and Bidisha Mahanta, 'Women Empowerment in India' (2009) 5 Bulletin of Political Economy.

education and employment. And the enabling factors should not be the ones that hinder the development and empowerment.

In *Women Empowerment: Role of Education*⁸ the authors aimed to create awareness about different empowerments amongst women and pin-down the impact of education in empowerment in Madurai District. The authors mentioned about how education is the window to realise about the inequalities and the discrimination that takes place on a regular basis. Once they educate themselves, they can fight for their rights and in the process inspire themselves with movements happening in and around the world and empower themselves. Through analysis, the authors concluded that there is a lot of scope to improve, as gender biases still prevail in rural areas.

Jamil, M and Bukhari, K (2020)⁹, in *Intergenerational Comparison of Women Empowerment and its Detriments*, bring an innovative school of thought out, as to measure empowerment, inter and intra-generationally and the impacts that it creates on various indicators like demographic, social and economic. The results were eye opening, as empowerment was significantly affected logistically and that, if one generation even was having basic education, it was seen that the following generations were motivated to achieve more than the previous. Making them conclude in saying that, empowering one woman means empowering generations to come. This stimulates growth, reduces poverty and social inequality.

Nabanita Bera (2016)¹⁰ in *Women Empowerment through Education*, walks through the National Education Policy (1986), the provisions provided constitutionally, legislative provisions and the directives given by the United Nations Organization. The author then states our literacy condition given by Census (2011) and the Human Development Indicator (UNDP, 2013) where the numbers indicate that only 26% of women in our country have access to formal education. Furthermore, the author mentioned how education can be used as a tool for reducing the stigma and inequalities prevailing. States should also take initiatives to empower women, like build exclusive schools for women, provide grants, etc.

⁸ M.Shunmuga Sundaram, M. Sekar and A. Subburaj, 'WOMEN EMPOWERMENT: ROLE OF EDUCATION' (2014) 2 International Journal in Management and Social Science

⁹ Muhammad Jamil and Khalood Bukhari, 'Intergenerational Comparison of Women Empowerment and Its Determinants' (2020) 6 International Journal of Women Empowerment.

¹⁰ Nabanita Bera, 'Women Empowerment Through Education' (2016) 2 International Journal of Humanities & Social Science Studies (IJHSSS).

In *Education and Women Empowerment in India*¹¹, the author links the upliftment of individuals and national development with education. The authors go on to explain the types of gender inequalities, those are, implicit and explicit. The implicit inequalities relate to empowerment and the explicit inequalities mean statistics, sex-ratio, wage differentials, literacy rate, etc. The author, furthermore, mentioned the steps taken by the Government of Andhra Pradesh with the Government of India like introducing various schemes and programmes at all levels from Primary to Post Graduation.

Rouf Ahmad Bhat (2015) in *Role of Education in the Empowerment of Women in India*¹², mentioned the obstacles that are pervasive like, gender discrimination, pre – conceived notions, little to no representation and male dominant jobs. It was supported by facts stating that, there is only 10% representation of women in Lok Sabha and securing a spot in the army, judiciary, police etc is next to impossible. The author concluded by saying that the bias needs to be dialled down and participation should be thoroughly encouraged.

After reviewing the literature, the researcher can say that education holds the key to making the future brighter for the society, only when women are empowered and shown the path to conquer the biases laid down in the society. Also, the Government has taken initiatives that are women centric, and it marks the start of a new beginning. Having said that, the progress that has taken place lags little and faster steps need to be taken.

GENERAL SCENARIO OF WOMEN EMPLOYMENT AND GENDER JUSTICE

In concept and types of women empowerments¹³, the author addresses, social empowerment to the existing discrimination based on disability, race, ethnicity, religion, or gender. When one talks about social empowerment of women, it is about having equal rights, status, and freedom of self-development along with men. Educational empowerment is regarded to be one of the most important instruments for the socio-political and economic transformation. Economic empowerment is the need of the hour, and the author was found quoting Elliott saying, “Wage employment means economic power”.

Political empowerment basically means, to have representation. If women want to break free from the shackles of patriarchy and ill treatment, they will have to come to the forefront and

¹¹P. Prameela Margaret, 'Education and Women Empowerment in India' (2021) 7 INTERNATIONAL JOURNAL OF ADVANCE RESEARCH, IDEAS AND INNOVATIONS IN TECHNOLOGY.

¹² Rouf Ahmad Bhat, 'Role of Education in The Empowerment of Women in India' (2015) 10 Journal of Education and Practice.

¹³ Keshab Chandra Mandal, 'Concept and Types of Women Empowerments' (2013) 9 International Forum of Teaching and Studies.

speak their truth along with their opinion. Psychological empowerment helps transform all subjectivities and transgress the preconceived notions which will in turn help, transform themselves.

The author concluded by saying, that there is progress, but it is a little too slow and less than what is expected.

Rekha Mehra (1997)¹⁴ in *Women, Empowerment and Economic Development*, stated that women aren't seen to be playing a pivotal role, when it comes to developing policies and programmes. She went ahead and supported the statement with examples, as to how women working in the informal sector earn relatively less than their counterparts. The development agencies in the 1950's would make small investments in projects that were income generating but they would more than often fail, as the motivation factor wasn't development but welfare. Gradually, organisations like SEWA, came into existence with the proposition that women are elemental to economic development. In conclusion, it was stated that success shall come once we respond to priorities set, that is, to obtain employment and earn equal wages, as that shall provide an entry to attaining economic empowerment.

In *Women Empowerment in Indian Society*¹⁵, the authors take us through the Indian history and give us instances where women were given equal opportunities and what integral role does a woman play in providing guidance to the culture and framing and nurturing the future generations. The authors also provided for a few role models that have broken the mould and helped in empowering others.

Women shall be empowered only when there is a system in place. When they are given equal opportunities, equal pay and equal stand in all aspects of life. It will not only help themselves but also make a change in the way they are perceived. It is sad to see that, women still must fight for the necessities.

WOMEN EMPOWERMENT PLAYS A VITAL ROLE IN DEVELOPMENT

In *Women Empowerment through Skills Development and Vocational Education*¹⁶, the authors have laid down that, women participation and empowerment are fundamental

¹⁴ Rekha Mehra, 'Women, Empowerment, And Economic Development' (1997) 554 *The Annals of the American Academy of Political and Social Science, The Role of NGOs: Charity and Empowerment* (Nov., 1997).

¹⁵ Neelam Juneja and D. D. Aggarwal, 'Women Empowerment in Indian Society' (2018) 15 *Journal of Advances and Scholarly Research in Allied Education*.

¹⁶ Tauffiqu Ahamad, Ambalika Sinha and Rajesh Kumar Shastri, 'Women Empowerment Through Skills Development & Vocational Education' (2016) 2 *SMS Journal of Entrepreneurship & Innovation*.

women's rights, and they are fundamental as they enable women to control their surroundings and by those means, their lives. The paper also stated that with skill development along with measures from the government like Pradhan Mantri Kaushal Vikas Yojana, National Skills Development Corporation, etc. would help women put a firm hold, anywhere they stand, be it in making familial decisions or career decisions. The key takeaway was, that empowerment can come through economic self-sufficiency and also social, political and legal awareness. Also, many positive steps are taken by the Government to uplift women by taking women-centric initiatives. But, to make those a success all stakeholders should work around the clock, hand-in gloves under a defined structure to make the vision come true.

Dr. Madhu Mathur and Ms. Beena (2012),¹⁷ also agree to the fact that employment has a vital role to play in the wholesome development. In their paper *Role of ICT Education for Women Empowerment*, after analysing data, have mentioned that Information Communication Technology is budding sector and if women are given basic knowledge about ICT and its workings, it would become a potent force to reckon. And, in the end it would benefit women in various areas like, social education, personal issues, psychological and economic matters, amongst others.

In *Role of Education in Women Empowerment and Development: Issues and Impact*¹⁸, the authors, state that education is a tool that shall minimize inequality and would mean to accelerate their status within the family. The authors explained Gender Gap Index on 4 fundamental categories, economic participation and opportunity, educational attainment, political empowerment and health and survival, and mentioned that India stands at a position of 101 from a total of 136. They went onto to state that the number portrays the situation of women in our country. But, on the brighter side, with having changes made in the 5-year plans, National Education Policy, and initiatives like *Beti Padhao*, *Beti Bachao*, we are progressing towards our goal of empowerment.

Saima Khan (2018) in *Women Empowerment: Key to Socio – Economic Development*¹⁹ mentioned that women empowerment and economic development are intertwined but even though it is an integral part, but the active economic activities are low. With respect to the

¹⁷ Dr. Madhu Mathur, 'ROLE OF ICT EDUCATION FOR WOMEN EMPOWERMENT' (2012) 3 International Journal of Economics and Research

¹⁸ Sowjanya S. Shetty and V. Basil Hans, 'Role of Education in Women Empowerment and Development: Issues and Impact' [2015] SSRN Electronic Journal.

¹⁹ Saima Khan, 'Women Empowerment: Key to Socio-Economic Development' (2018) 4 International Journal of Women Empowerment

rural civilizations there needs to be a balance struck between the male and female contributors and both the genders should be given equal chances.

In *Empowering Women through Financial Inclusion*²⁰, mentioned as to how financial inclusion marked to be an extremely critical indicator for the well-being and the development of society, worldwide. They also mentioned that the G20 nations have also pressed on the inclusivity of finance as a pivotal factor. The authors analysed data from the urban slums of Ludhiana, Punjab and concluded that policies like Pradhan Mantri Jan-Dhan Yojana, have had a positive influence on women, as they have the power to take financial control.

Shail Mishra (2017) in *Women Empowerment and Development in New India*²¹, looked at Women Empowerment with education as the point of reference since education gives one the ability to react to adverse situations and challenge the prevalent norms. The author mentioned that the empowerment mediocre to the say the least when you look at the rural areas. It was concluded that even though we live in the 21st century, women empowerment hasn't reached the epitome. It shall happen only when there is equality in all aspects from education to workplace.

Along with education and adding skills, Bigi Thomas and Chandrik Rajdeep (2021) in *Life Skill Education: Enhancing Empowerment among Rural Primary School Children in Gujarat, India*²², mention that with basic education, students need to equip themselves with primary life skills education as it will help them manoeuvre the social system and also, help them in their everyday lives.

Acquired skills are an added feather to our hat. If utilised properly, it can be a source of having added revenue for oneself. The situation upon reviewing the literature, is nowhere up to the mark. Without women given proper training to learn or acquire the skill, it shall make them dependent and not empower them. Empowering women is the key to making our GDPs rise. As, the values instilled in them shall be passed down the generations.

CONCLUSION AND WAY FORWARD

After doing a systematic literature review, it comes to light that we have not completed broken the shell of patriarchy and still has a long way ahead of us to completely imbibe the

²⁰ Shivangi Bhatia and Seema Singh, 'Empowering Women Through Financial Inclusion: A Study of Urban Slum' (2019) 44 Vikalpa: The Journal for Decision Makers.

²¹ Shail. Mishra., 'WOMEN EMPOWERMENT AND DEVELOPMENT IN NEW INDIA.' (2017) 5 International Journal of Advanced Research.

²² Bigi Thomas and Chandrik Rajdeep, 'Life Skill Education: Enhancing Empowerment Among Rural Primary School Children in Gujarat, India' (2021) 8 Space and Culture, India.

concept of Women Empowerment. While reviewing the papers, the researcher has found a gap in the research. The majority of the papers covered the rural area, but one can find a lack of research about the women living in the urban areas. We still have a lot of ground to cover and with the correct implementations of the policies and by educating ourselves and the people around us, we can reach the milestone. The paper tries to put forward the scenario that is faced by women in the present times. There is a harrowing need to update our policies, create more opportunities, and see women as an asset and a torchbearer and not a liability.

A COMPARATIVE ANALYSIS OF MECHANISM OF CARE AND PROTECTION OF CHILD IN INDIA, UNITED STATES OF AMERICA, UNITED KINGDOM, SINGAPORE AND CANADA

Shivangi¹

Dr. Ashok Kumar²

INTRODUCTION

Children are viewed as one of the most esteemed fortunes for a country, the fortune which is continuously being appreciated for assuming an essential part in a country like India³. Each country which looks to thrive itself ought to guarantee the improvement of its children in the most ideal way. Each nation should make such strategies which ultimately helps in the progression of its children. Every country of the world alongside the International Institutions is intending to work flawlessly to protect the interest of children all over the planet. For motivation behind this, United Nations has characterized children as an under 18 individual years old.

Around the world, there are 2.2 billion children in entirety and around 2 million children live in non-industrial nations⁴. In the race of the relative multitude of non-industrial nations, India is the home to 19% of children of the world. Besides, as indicated by the segment scale, there are 42% of children who are essential for India's absolute populace and out of which, half of children are in direct need of care and protection. Today, when children are relied upon to dream, develop, and support, they are compelled to engage in risky offenses presenting them to confront difficulty at such a youthful age. They are taken advantage of, tormented, constrained, abused, dealt denying them of the fundamental necessities and solace of life. All over the place, the children get presented to such issues in their everyday life except the most extreme issue being looked by them is child work. Child work has been considered as the significant obstacle in the improvement of the nation and its children. Worldwide work association (ILO) has characterized child work as, the contribution of the child in that nature of work which slows down the psychological, social, physical, and moral conduct of the child

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³ Jayita Poduval, Murali Poduval, *Working Mothers: How Much Working, How Much Mothers, And Where Is The Womanhood?*, At <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3151456/>

⁴ Humanium, Children in the World, at <https://www.humanium.org/en/children-world/>

and put the child into unfortunate, destructive and hazardous circumstances which eventually influences the potential and nobility of a child that forestall him to partake in his childhood and go to standard school. Sadly, there are around 218 million children from one side of the planet to the other who are associated with child work and the greater part of them are experiencing its most terrible structure. According to the report of the Census of India there are around 10.13 million children between the age gathering of 5-14 years in India and 22.87 million children between the age gatherings of 15-18 years who are directly occupied with child work. The investigations uncover that previously the grouping of child work in India was generally found in the country regions yet with the progression of time a noticeable number of child laborers have expanded in metropolitan regions as well, demonstrating the developing interest for child laborers in humble job. Thus, the circumstance of child work is a lot of disturbing in India, as it prompts underdevelopment, in the total mental and actual advancement of children that eventually causes negative or no development of the children. The Juvenile Justice (Care and Protection of Children) Act, 2015 states that the reception of a child is last on the issuance of a reception request by the common court. The Bill gives that rather than the court, the area judge (counting extra region justice) will issue such reception orders. Under the 2015 Act offenses submitted by adolescents are arranged as grievous offenses, genuine offenses, and negligible offenses. Genuine offenses incorporate offenses with three to seven years of detainment. The Bill adds that genuine offenses will likewise incorporate offenses for which greatest discipline is detainment of over seven years, and least discipline isn't recommended or is under seven years.

CHILD PROTECTION

It is a term utilized all the more regularly in the Canadian framework. It alludes to a particular kind of administration gave to explore, survey hazard, and need for administration in light of obviously characterized, lawfully based reason for giving a smaller scope of care. A wellspring of disarray is that, generally the terms child government assistance and child protection have regularly been utilized reciprocally in the Canadian framework. Progressively, nonetheless, the utilization of the term child protection is supplanting child government assistance, mirroring an attention on the protection elements of the framework. Beside the functional and even minded purposes behind looking at Sweden and Canada, the two nations likewise reflect intriguing differences with regards to the “regime debate” utilized in Esping-Andersen’s typology. Canada can be depicted as approximating a liberal, Anglo-American model with a somewhat high extent of non-administrative associations and

with a moderate degree of desire to intercede with redistributive measures in various “free” markets and in day-to-day life. As far as the commodification of social government assistance and its way in friendly turn of events, Canada is nearer to the American framework than that of the UK. Sweden is the “crown gem” of the social vote based, Scandinavian model with broad and freely supported and created government assistance frameworks. Its desire to reallocate wages and to mediate in labor market, real estate market and government backed retirement has generally been among the most noteworthy on the planet. As per the World Index of Social Progress, it remains in the lead position close by Denmark. Canada positions is 26th.

OBJECTIVES

1. The design of child government assistance administrations at two organizations in Canada, looking at and investigating the specific situations and administration highlights of childcare.
2. Study on care and protection of child in USA.

COMPARATIVE ANALYSIS OF U.S. AND INDIA

India and U.S., both the nations have been dealing with the issue of child labor. In combating this problem, both have taken steps at various levels which are summarized and analyzed as follows⁵:

- Child take care of is a boundless problem and because of its creating hugeness, the overall foundations expected to familiarize worldwide regulations and program with take out this widespread social fiendishness. For the same, the most tremendous and unequivocal regulations overseeing it are: UNCRC, MAC and Worst Form Convention. India has checked and endorsed every one of the three conventions anyway USA has sanctioned unquestionably the Worst Form Convention rest two are as yet not affirmed by US This obviously demonstrates that perhaps US doesn't really have to deal with this issue of child work.
- India has endorsed all of the shows as well as has taken severe measures to fight this issue in congruity with these overall regulations. Significantly, subsequent to

⁵ Arjit Pandey and Tanisha Yadav, *A Comparative Analysis of Child Labor Laws in US & India*, *International Journal of Law Management and Humanities*, Volume 4, Issue 2, Page 570 - 591

endorsing the Worst Form of show and MAC legislature of India has drafted the Trafficking of Persons Bill (for updating punishments for disturbed sort of managing); severe arrangements and punishments in Child and Adolescent Labor Act spread out new group to complete the laws and has chipped away at working of legitimate specialists and cops for something similar. While, US has not approached any successful strategy in such manner from the a few arrangements which were by then fused in its law. Today, the inclusion of US children in most extremely horrendous types of child work is significantly upsetting and alarming. A couple of stages were taken at state levels, yet no such uniform advances have been taken at government level in the country.

- Indian government alongside the planned exertion of US government had started a task named as INDUS Project in 21 regions of India to take out and keep children from perilous child work. It is fitting to observe that USA has cooperated with various other non-industrial nations to crash most horrendously dreadful sort of child work, yet it has itself not showed any drive to take out this issue in its own country.
- Besides, in the two India and USA, children are generally used in agribusiness region including unsafe and non-perilous cultivating work. In India, Legislature and Judiciary have eliminated dynamic strides to keep children from such practices anyway in US the circumstance is breaking down. U.S. have regulations to check child work, yet those regulations have been made so that they personally grant the children to work for limitless number of hours. As it turns out, the laws of U.S. restricting child work, license it in some or the other structure as various age social occasion of children have been prescribed allowing them to work inside endorsed limit.
- Besides, both the nations are significant makers of Tobacco in the world in which enormous number of children are busy with Tobacco farm and tobacco making ventures. India has presented express guideline for itself, and the Indian Judiciary has moreover given specific rules and proposal to kill inclusion of children around here as it hampers prosperity of children since energetic age with probabilities of breathing related significant infections. Regardless, USA has not done anything up until this point and the truth of inclusion of children in tobacco farm is really disturbing.

- India has joined a ton of child work laws at public as well as state level with an expert to destroy this issue in the country by consolidated endeavors of focus and state in a uniform way. While of course, US have scarcely barely any administration laws, the autonomy has been given to states to make their own laws. In like manner, USA don't have sufficient government laws to resort this issue in every one of its states in a uniform manner.
- India is in better situation as it has presented sporting, restoration, professional and instructive planning phases, plans and arrangements for the children who are casualties of child work anyway no such strategies and projects are accessible for the survivors of child work in US.
- The Judiciary of India is very concise and straightforward to change the issue of child work. It has given numerous rules and suggestion to government for controlling child work anyway in US, Judiciary has stayed calm on such issues. As it is presently clear that in US numerous children are associated with most horrible kind of child work, still no such powerful work has been played by Judiciary to control something basically the same.

CHILD ABUSE PROTECTION AND PROCEDURE IN UNITED KINGDOM

The child protection mechanism is undeniably more evolved in the United Kingdom. Guidelines by the public authority are intended to safeguard the survivors of youngster maltreatment of additional mischief and to give them protection under Crown Prosecution Services. The child protection mechanism in UK is undeniably more evolved at neighborhood level as offices like Local Safeguarding Children Boards was made in 1974 in light of the public shock of not being ready to give any regulation for protecting youngsters in the country. The method set somewhere near the offices include:

- Concerns about a specific child should be reported immediately by telephone to the DSP
- Confirmed in writing within 24 hours. Delay could prejudice the welfare of a child.

NATIONAL SOCIETY FOR PREVENTION OF CRUELTY TO CHILDREN

It gives certain guidelines regarding protection and procedure regarding child victim⁶.

⁶ *Procedural Aspects of Child Abuse: Comparative Study of India and United Kingdom*, International Journal of Legal Developments and Allied Issues, May 24, 2017

Criminal Investigation of Child Abuse

All police powers in UK have a practice unit known as youngster misuse investigation unit. Their main design is to investigate the situation of child maltreatment in their ward. The unit settles on the choice of filing criminal complaint against the blamed in the wake of looking into the matter. Different offices relating with child protection can likewise work with police units in helping them in taking care of the child's manhandled.

Criminal Prosecutions in Cases of Child Abuse⁷

The Crown Prosecution Service concludes whether an arraignment is in the public interest. The Code for Crown Prosecutors (Crown Prosecution Service, 2010) is a public archive that sets out the fundamental principles to be followed while making a choice. Crown Prosecutors should be fulfilled that there is sufficient proof to give a 'sensible possibility of conviction' against every respondent on each charge. They should likewise conclude whether the proof can be utilized and regardless of whether it is dependable. On the off chance that the evidential phase of the dynamic interaction is passed, the case moves to the public interest stage. Public interest factors that can influence the choice to arraign normally rely upon the reality of the offense or the conditions of the suspect.

Police Protection

In a crisis circumstance the police can remove the child from the family and can hold that person under protection for 72 hours. The police needn't bother with the authorization of the court for doing so yet the neighborhood specialists must be informed with regards to the youngster and where the individual in question is being kept. Assuming the circumstance appears to be protected the youngster can be gotten back to the family and if not then the court might make a legitimate move.

Children as Witness

In numerous youngster misuse cases child is the observer during the proceedings. Assuming that happens, police inform this to Crown Prosecution Services about it. Many Crown Courts have child contact which helps the child during the proceedings. Numerous guidelines are likewise given by CPS for child who need to go to the proceedings-

- Entry of the child from various door away from the overall population.
- Placing a child in various waiting region and the individual who is with the youngster.

⁷ *Id.*

- Arranging the child to visit the court before the preliminary so they can get to know the climate.
- Requesting the court to minimize the ideal opportunity for a child for giving proof.

Organizing Lunch and Toilet Facilities

Taking an Oath

A few casualties of youngster misuse need to remain in court before a jury and the individual who has harmed or mishandled them. In any case, to see the respondent or their family while you're answering inquiries, you could want a screen around the observer box.

If you are 14 years or over, you may be asked to take an oath if you've⁸

- made a written statement, and
- Decided to give evidence in the court room.

Other special rules

The judges and lawyers go to an extent of taking off their wigs to make the child comfortable in the atmosphere of the court.

Identification of child

A couple of losses from young person abuse need to remain in court before a jury and the individual who has hurt or misused them. For any situation, to see the respondent or their family while you're answering inquiries, you could need a screen around the spectator box.

COMPARATIVE STUDY BETWEEN INDIA AND UNITED KINGDOM

As child misuse has forever been an issue in the nations, the public authority has thought of numerous regulations and regulations regarding safeguarding interest of children. On the off chance that in the event that youngster is the survivor of any kind of misuse, more care must be taken in dealing with the matter that is how the regulation is trying to treat framing the technique of the preliminary and investigation in the instances of child misuse.

The regulations and method regarding youngster misuse and badgering are pretty much same in both the nations. The two nations center after rehabilitating the youngster, providing the

⁸ *Procedural Aspects of Child Abuse: Comparative Study of India and United Kingdom*, International Journal of Legal Developments and Allied Issues, May 24, 2017

person in question with most extreme protection so as they are not any more mishandled in some other structure during the preliminary.

Unique courts are made for dealing with the preliminaries and proceedings of youngster misuse. What's more both the nations have investigate this matter. As in India POCSO is administered under which unique courts can be arrangement for the preliminary of these kinds of cases. In United Kingdom Crown courts are there to deal with these kinds of cases.

Judges and backers make a special effort to make the child open to during the preliminary, as again these things can take a terrible picture in the mind of the youngster and the individual can be mentally can get affected by it.

Police in both the nations take unique care while dealing with these kinds of cases. NGOs and different offices are likewise permitted to assist the children and their folks during the preliminary and investigation with processing.

CHILD DEVELOPMENT SERVICE IN SINGAPORE

In public that puts an incredibly high worth on scholarly accomplishment, youngsters who are unique and who digress from the 'ordinary' pathways of progress have a noticeable hindrance. Growing proof shows that the enthusiastic parts brought about by the handicaps address a more genuine danger than the problem as such. Repeated disappointments and absence of achievement encounters lead to a negative mental self-portrait and absence of confidence. On one hand, melancholy among these youngsters might bring about self-mutilation, self-destruction, disregard and withdrawal. Then again, some of them might grow up with unfriendly practices like adolescent delinquency, become wanderers or dropouts and medication victimizers. In Singapore, up to the mid-1980s, youngster improvement administration had been restricted and rehabilitative in nature, focusing on children with serious handicaps like mental impediment and cerebral paralysis. As the norm of youngster wellbeing started to improve, it was observed that increasingly few quantities of children suffering from extreme physical and mental debilitations because of better and clinical care. Taking the spot of this gathering of youngsters is a bigger number of children with formative and conduct issues of low to direct seriousness, for example, mental imbalance range problems, consideration deficiency hyperactivity issue, learning incapacity, gentle cerebral paralysis, visual and hearing imperfections, and formative postponements. These children might be naturally weakened or denied of their basic rights.

A debilitated youngster will impede the whole family. There is along these lines a requirement for a far-reaching youngster advancement program for early recognizable proof and management of child with formative issues, to address formative brokenness if conceivable, minimize the effect of a child's inability, fortify families, and lay out the establishments for ensuing turn of events. In 1988, the Advisory Council on the Disabled made a few recommendations with critical effect on the improvement of youngster advancement services in Singapore. One of them was to set up a program for the early ID and management of children with formative issues. The Development Assessment Clinic was set up at Singapore General Hospital in 1991. Further improvement prompted the advancement of an exhaustive cross country local area-based child advancement program in 2002, coordinated by an Inter-Ministerial Committee comprising the MOH, MCYS and MOE. The program comprises of an organization of formative screening in broad daylight and private areas, an emergency clinic based formative evaluation, trailed by a local area based multidisciplinary restoration and intervention program. Solid working relationships and organizations with social services locally, as well similarly as with schools, have been produced. Experience from the child advancement program has given significant insights and information on additional planning and improvement for services for children with extraordinary necessities in Singapore. Certain basic variables have been recognized as keys to a fruitful youngster improvement program. To start with, it requires guardians who are devoted and submitted, have sensible assumptions and never surrender trust on their youngster. Secondly, schools are responsive, accommodating and set out to allow the child an opportunity. Also, thirdly, peers are understanding, accepting and forgiving of a portion of these youngsters' clear irregularities. The jobs of the experts are mainly to give an early finding of the youngster's concerns, distinguish the child's assets and shortcomings, treat the child as being different rather than unusual, guide the guardians, and supporter for the child.

Child Protection Services in Singapore

Child protection in Singapore is a multi-disciplinary and multi-office exertion with the Child Protection Services (CPS) of the Ministry of Social and Family Development playing the leading job and collaborating with different organizations, for example, healthcare institutions, local area based intentional social work offices, schools, police, the Courts and the Attorney General Chambers (see Fig. 2)⁹. The Child Protection Services, which has legal abilities to act when youngster misuse or disregard is suspected, plays the lead job in child

⁹ Interagency management of child protection cases in Singapore (Ministry of Social and Family Development, 2012).

protection and avoidance of child misuse. It is all around staffed by submitted and thoroughly prepared experts and comprises of the Intake and Assessment Unit, the Investigation Unit and the Intervention Unit (see Fig. 3). The Child Protection Services utilizes a systems way to deal with guarantee the care and protection of children associated with misuse or disregard (Ministry of Social and Family Development, Singapore, 2012). It works with professional stakeholders, the child, his family and the community to address problems within the family that had contributed to the abusive or neglectful behaviors.

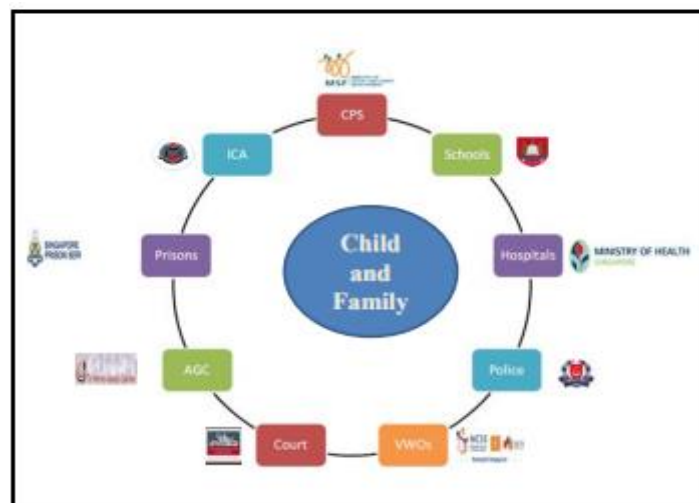


Fig. (1). Interagency management of child protection cases in Singapore (Ministry of Social and Family Development, 2012).

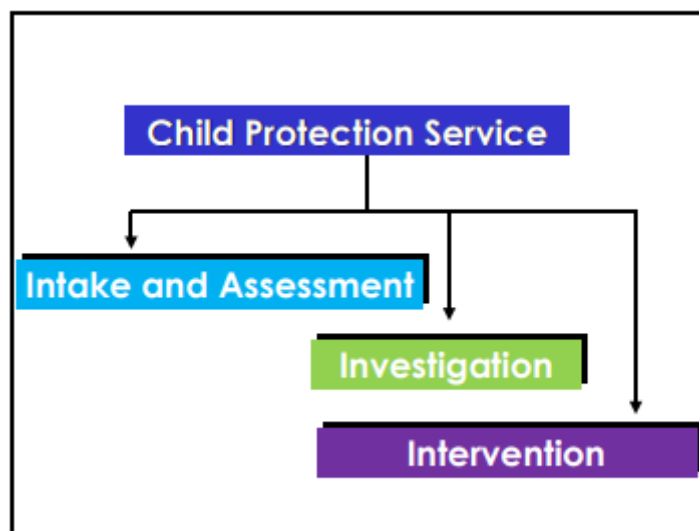


Fig. (2). Organisation of the Child Protection Services (Ministry of Social and Family Development, 2012)¹⁰

It works with proficient partners, the child, his family and the local area to resolve issues within the family that had added to the oppressive or careless practices. At the point when the Child Protection Services gets a complaint of suspected child misuse, the Intake and Assessment Unit will initiate an investigation. The relegated Child Protection Officer will address the child and assemble information from every important party, like the youngster's educators, childcare laborers, social specialists and specialists, to survey the probability of misuse and impending gamble to the child. In the event that clinical appraisal or care is important, the child is sent for a quick clinical evaluation/treatment. In the event that re-visitation of the house is considered to represent an impending gamble to the child's security, he is taken out to a position of wellbeing pending further investigations and court orders. Where vital, the police send the child for a clinical examination to help ascertain assuming maltreatment has happened and to archive any significant scientific proof. The youngster is eliminated and put in elective cultivate or kinship care or a Children's Home assuming the caregiver is evaluated to not be able to shield the child from additional mischief. If important, this interim course of action to defend the child is expanded. An interagency, multi-disciplinary meeting with every significant expert and senior child protection officials is directed within 14 days of receipt of a child misuse complaint. At this week after week Child Abuse Protection Team (CAPT) meeting, the different experts, (for example, senior youngster protection officials and the therapist, pediatrician, child specialist, instructor, educator and police who have been straightforwardly involved for the situation), share pertinent information and opinions about the child and his family. The requirements and hazard evaluation, which distinguishes the youngster and family's extraordinary necessities and the gamble of future mischief to the child and some other child in a similar family, is finished by the child protection official in-control and is imparted to the colleagues. In light of the evaluation, a protection and government assistance plan is figured out and executed with the assistance of different organizations. The protection and care plan is then checked for progress. When an instance of child misuse has been affirmed, the youngster is put on oversight under the Intervention Unit of the Child Protection Service. The points of the management interaction are to forestall repeat of the maltreatment by working with the youngster and family to further develop the parent-child relationship and to guarantee the

¹⁰ Organisation of the Child Protection Services (Ministry of Social and Family Development, 2012)

child's continued wellbeing and wellbeing. In the wake of identifying the particular requirements and qualities of the child and family, local area and family assets are assembled, and the family is given psychosocial and material help to improve their functioning and care for their youngster. The Child Abuse Review Team gains intermittent headway surveys and adjusts interventions if essential. The oversight cycle is terminated when there could be no further gamble of misuse or when the youngster is put in an elective spot of security.

At the point when the guardians are considered to be not prepared or ill-suited to care for the youngster, the child is set in elective care. Such elective care includes kinship care by appropriate family members, childcare by endorsed temporary moms or a gazette Children's Home. Although the child is put in elective care, administered youngster contact with the guardians is empowered, assuming that it is in the wellbeing of the child. Such ongoing contact assists with maintaining the youngster parent relationship and ultimately work with reintegration into the family, if conceivable. The outline underneath shows the work process when a youngster is surveyed to be in danger of damage in the care of his caregivers (see Fig. 4). Other than investigating complaints of youngster misuse and disregard and providing prompt protection and intervention, the Ministry of Social and Family Development, by means of the Family and Child Protection Branch, gives casework and counseling services to child's and families facing pain and social challenges. Particular instructors and advisors within the branch offer specific types of assistance to more mind-boggling cases.

The Clinical and Forensic Psychology Branch of the Ministry of Social and Family Development gives mental appraisal and individual, family and group-based interventions for youngster and adolescent survivors of misuse. The services gave include the Triple-P Parenting course for guardians who need parenting direction and a gathering treatment program for youngster or youth overcomers of child sexual maltreatment. The Careers Recovery and Support Group offers help and counseling for caregivers whose youngsters have been survivors of interfamilial child sexual maltreatment. The Positive Adolescent Sexuality Program and the Program for Child Sexual Abuse Perpetrators works with the two grown-ups and adolescents who have carried out sexual violations against youngsters and have criminogenic needs. While the Ministry of Social and Family Development through The Family and Child Protection Branch, cares for the requirements of high gamble instances of child misuse and disregard, youngsters and families with moderate or low necessities and hazard of misuse are served via trained instructors and social laborers from local area-based

Family Service Centers. In Singapore, different deliberate government assistance offices run an aggregate of 41 Family Service Centers that are, situated in various areas all around the island. Other than providing evaluation and intervention services for mishandled and disregarded youngsters, these focuses likewise offer help and help to individuals and families facing social, individual and inner hardships and other troublesome difficulties throughout everyday life. The Family Service Centers additionally give local area backing and state funded instruction projects to address the local area's issues. As of late, after an intensive audit of the existing youngster protection system in Singapore and different exchanges with different experts from different key offices involved in child protection work, the Ministry of Social and Family Development thought of an assortment of measures and recommendations to additional improve the act of child protection and close existing holes.

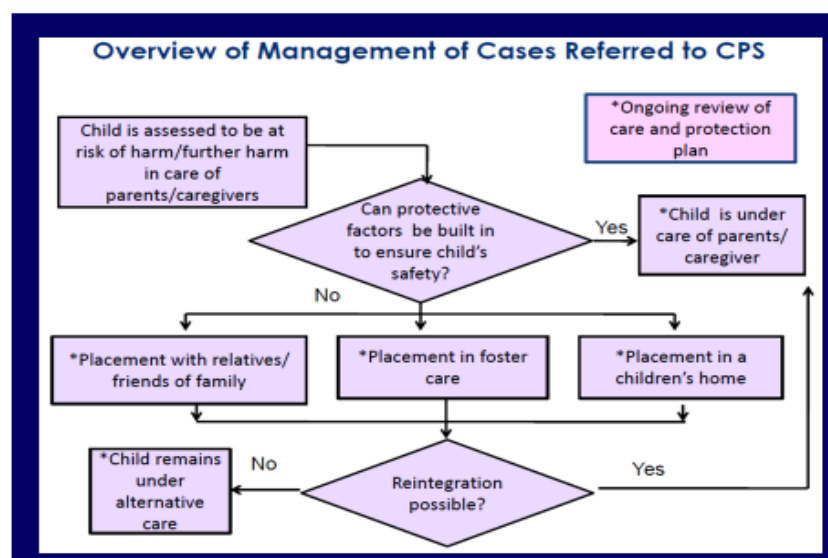


Fig. (3). Overview of management of child abuse cases by the Child Protection Services (Ministry of Social and Family Development, Singapore, 2012).

CHILD PROTECTION IN CANADA AND ENGLAND

Canada and England's child protection systems are notable for their "legitimate, administrative, investigative and antagonistic methodology," where the intervention is put on the youngster's individual privileges and on the investigation of the dangers suggested. Although one would expect that out of these two nations England would be the one with the longest custom in child protection, apparently the premise of the current child protection systems in England and Canada created around a similar time. In England, the regulative structure for the current child protection system was laid out in 1989 under the Children Act.,

while in Canada it was laid out in 1984 under the name of The Child and Family Services Act. While England some way or another followed a moderate methodology and went against protection from interference into the private everyday life, Canada was more inspired by its neighbor in utilizing the intervention of the public authority as an instrument that breaks insurmountable obstructions in request to guarantee the protection of its children. Canada's child government assistance continues to be known for having a methodology that is centered around wellbeing rather than the child and family government assistance, regardless of the way that the differential and elective reaction was introduced in a portion of the Canadian wards with the desire to move the equilibrium towards a child and family government assistance approach. The child protection system in Ontario has changed and developed throughout the long term and various child government assistance changes have occurred. Strategy changes initiated in 2005 by the Ontario Child Welfare Transformation Agenda introduced an essential arrangement that took into consideration a more adaptable result situated help conveyance model. (Ministry of Children and Youth Services). By introducing the new Child Protection Standards in 2016, alongside the 2016 improved adaptation of the 2005 Eligibility Spectrum, the youngster protection system endeavors to all the more likely serve the child's out of luck. (Ontario Child Protection Standards, 2016). Somewhat recently Canada's child government assistance has begun to move towards a Best Practice approach that endeavors to further develop arrangements and services by providing principles for planning and delivering services in request to obtain "better results". Proof Base practice intends to become the reinforcement of the prescribed procedures and offer the most ideal types of assistance.

In any case, the improvement of proof-based methodologies is a confounded errand because of a restricted agreement about the targets of child protection services, as the youngster protection laborers need to choose an intervention that centers just around the child or perspectives the child within the family setting, where family and local area are significant accomplices in ensuring the child's security and wellbeing. A significant achievement in child protection across Canada was met in 2016 when most of provinces and domains, with the main special case of Quebec, sanctioned the Provincial/Territorial Protocol on Children and Families moving among provinces and regions. This convention plainly defines the jobs and obligations of every purview providing child government assistance services to youngsters and families moving among provinces and domains, along these lines it better safeguards all children no matter what their home. (Provincial/Territorial Protocol 2016). Another recording

system in Ontario, separately the CPIN (Child Protection Information Network) began its direction in Ontario in 2015, with the objective of full execution across the province by 2020. As of now, all Children's Aid Societies across Ontario, except for Indigenous youngster protection organizations, stuck to CPIN. This new system empowers the Children's Aid Societies across Ontario to safely share current and chronicled child protection information, and better oversees case documents and finances.

Conceptual Issues in Child Protection in Canada

In Canada, the distinctions in the youngster protection systems along its provinces and domains block the method involved with collecting information regarding child abuse. All things considered, the sufficiency of the peculiarity of youngster abused the nation over and the need of services to address it can't be precisely reflected by the child government assistance approaches in an opportune style. These distinctions are established in the verifiable setting that has produced from the official systems governing Canada's wards. Also, the provincial funding plan is reflected in the individual regulations and guidelines in youngster protection, as every ward wishes to react to the networks that they serve. While in England information assortment regarding youngster abuse is directed consistently (Department for Education, 2019), in Canada, on account of the distinctions among the child protection systems across the alliance, the information is gathered like clockwork. Accordingly, two genuine inquiries that ascent in Canada are: how exact is the appraisal for the need of services, and how before long are the services that react to the contemporary requirements of the children and families needing protection executed? Although the original exploration was finished in 2012, it was the year 2020 that was expected to bring huge upgrades in Canada's youngster government assistance system, in light of the five-year information assortment plan.

WORKING IN COLLABORATION WITH THE COLLATERALS

Comparing with England, Canada is missing a reasonable official demonstration that puts the obligation on every one of the experts involved with the children and their families, so the risk and obligation regarding safeguarding the child's wellbeing isn't similarly imparted to the child protection laborers. As it takes time to bring up a youngster, it additionally takes a local area to safeguard a child and backing the family. In England, the Children Act 2004 alongside the Working Together to Safeguard the Children Act 2006, broadened the legitimate obligation on nearby specialists to defend and advance the government assistance

of youngsters¹¹. Thus, different organizations, for example, the police, wellbeing services and school are answerable for the security and wellbeing of the youngsters and should help out the neighborhood specialists by regulation. Additionally, the Local Safeguarding Children's Boards (including wellbeing services, instruction, the police and different offices) came to presence to empower the sharing the obligation with the youngster protection office.

In Canada it is challenging to get information back from the guarantees or to have them involved. The researcher experienced issues to arrive at these securities, and they were not returning my calls or responding to my correspondence. On various events, during the existence of the case the researcher would not be offered the chance to have direct contact.

A youngster protection laborer can follow up on what is had some significant awareness of the gamble and wellbeing of the child, yet can neglect to secure if different experts, however mindful of a circumstance of misuse or disregard, are concealing the information for the apprehension about over-reporting or trying to safeguard the relationship with the child folks. In England, then again, the cooperation with different experts was accounted for to be awesome, and generally, the experts were accounted for to be dynamic players during the time spent helping the youngster and the family and ensuring the security and wellbeing of the child. In Canada, in any case, the association with the experts involved with the family requires further turn of events. The child protection experts who work in Canada indicated that numerous insurances do not recognize their critical job in protecting the youngsters alongside the child protection organizations and neglect to return calls/react to the correspondence in request to furnish refreshes regarding their work with the family. The inter-proficient joint effort and coordination of services play an essential part in helping youngsters and families out of luck. The coordinated effort between experts is leading assistance availability to clients "assuming that clients experience prior interventions through a speedier reaction from specialist organizations and the accommodation of the help area". Services cooperation that utilization formal arrangements are shown to be more fruitful than informal arrangements since they "systematically address matters, for example, voice, value offers, and question goal arrangements that add to association achievement". Regulation resembling the one that is at present functional in England could encourage open and

¹¹ Working Together to Safeguard Children, Statutory Framework: Legislation Relevant to Safeguarding and Promoting the Welfare of Children, July 2018, at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942455/Working_together_to_safeguard_children_Statutory_framework_legislation_relevant_to_safeguarding_and_promoting_the_welfare_of_children.pdf

continued correspondence between the child protection offices and different experts locally, and thusly involve the pledges during the time spent planning and exchanging information towards ensuring the security and wellbeing of the children and their families.

SERVICES

It has been accounted for that in Canada the sit tight rundown for services that are helping the children and families needing protection are broad. Albeit in Canada there are an assortment of services that react to the youngsters different requirements, the long shortlists make them scarcely available for the families and children out of luck. Albeit the youngster protection laborers have some influence and, through support for their clients, can some way or another assist the shortlists, the families are as yet incapable to get to the help right away. In request to increase openness and decrease the standby time, various offices executed the stroll in-counseling model that generally comprises of a single-meeting treatment that assists clients with coping with long shortlists. In any case, this counseling model is not so proficient as long-haul counseling, and the clients who are not happy with the adjustment of advisors would be hesitant to utilize this help. Because of deferrals in accessing the suitable services, the circumstance frequently weakens, and now and again prompts removing the child from the family, as it becomes risky for the youngster to remain within the family climate. It has been accounted for that in less extreme cases, due to the broad stand by an ideal opportunity to get to the services, the family is deterred and loses inspiration to get to that assistance when it in the long run becomes accessible. Subsequently, after the emergency has passed and the family some way or another settled, the case is shut, albeit practically zero change has been enlisted. The greater part of these cases has been accounted for to get back to the system. A child protection specialist dynamic in the system for various years depicted his involvement in the services as follows: A large portion of my clients experience issues to get to services because of the long waiting rundown. Additionally, there are an assortment of services that could fundamentally change the existence of the researcher's clients, yet they are not available. Because of this, a portion of the families get deterred and lose confidence in these services. The researcher's responsibility becomes overwhelming as she really wants some way or another to substitute these services. The youngster protection laborers from England revealed having a positive involvement with accessing the services for the families and children out of luck. It was accounted for that in England the child protection, security and wellbeing of the youngsters is by order an obligation of the relative multitude of experts who work with the children. All insurances were accounted for to be involved with the

family, including doctors, who similarly take part in the advancement of the Child Plan. At the point when a letter is conveyed in England by the youngster protection services to the securities informing them of a child protection inquiry, the insurances have the commitment to react. Moreover, after the child has been found needing protection, within 15 days a case meeting happens, a Child Plan (CP) is created, and the guardians are given 4 to about two months to resolve the issue and associate with the services. After the specialist co-ops get the reference and are informed that the CP was made, the family is overhauled in a convenient style, most frequently in under about fourteen days after the arrangement was formed. The interviewees from Canada and England revealed troubles in accessing such services as hair-strand tests and parenting appraisals that are basic in planning and monitoring, because of the restricted financial plans and the expenses involved (the two services are exceedingly expensive). Thusly, they utilize elective services, like medication urine/blood screens or internal appraisals, as they are minimal expense or involve no expense by any means. In any case, they have been accounted for not to be as productive, and not to hold a similar legitimacy as proof in court. In Canada, the shortfall of a yearly information assortment because of the distinctions among the youngster protection systems across the alliance and the five years information assortment makes troubles in determining the help need precisely. Services that are accessible quickly fortify the family and bring huge change, and any deferral in assistance increases the gamble as well as assembles opposition in commitment. The services accessible for families in Canada and England are differentiated. In England they are open in an opportune design, while in Canada there are broad shortlists for these services.

CONCLUSION

The issue of child work is hurtful which has impacted many countries. India has introduced good guideline and courses of action, yet it has been lacking in its needs anyway. America needs more regulations to determine the issues of child work. Notwithstanding reality, both the countries with their undertaking have seen an abatement in instances of youngster work in any case nevertheless, after so much, the issue seems to continue to recall children for risky work. In like way, to stop child work, the two countries need a sensible mix of guideline and their execution to clear out this evil from our general populace. There are a few fascinating measures that ought to be unequivocally embraced by India to battle this issue; such measures are according to the accompanying the critical trouble in the destruction of youngster work from India is the vulnerable execution of regulations. India has differed guideline overseeing

the particular sorts of youngster work at any rate it needs execution of them. As such, the focal and state assemblies in India ought to be enduringly occupied with the solid execution of child work regulations. The definitive obligation regarding checking this issue should be broadened and an appropriate mechanism for observing their work ought to be made. The out-of-date regulations ought to be changed considering the way that in view of multiplicities of regulations, it prompts disorder and chaos, finally going most likely as a deterrent in dealing with the issue of child work. Over a brief time, frame range, Singapore has gained huge and astounding headway in the space of youngster protection and the advancement of the privileges of the child. It has been generally accomplished through the coarseness, responsibility and commitment of the public authority and different experts who accept that a youngster has the right not exclusively to get by, yet additionally to flourish and create in a nurturing and caring climate liberated from misuse. Abusing a youngster is a grave offense in every one of the nations all over the planet. Extraordinary care and consideration are to be required while dealing with these cases and their casualties. Both the nations have thought of new regulations and regulations for protecting the children and framing the methodology for it. As prior to India, there was just the code of criminal methodology that set out the system of criminal offenses in the nation, yet it did not have any extraordinary technique regarding children wellbeing and their protection. Be that as it may, many new demonstrations have been outlined from that point and presently explicit guidelines have been given for the system and dealing with youngster misuse cases like POCSO. In United Kingdom too, many studies have been done and guidelines are given by NSPCC for the methodology and lead of the preliminaries and investigation of these kinds of misuse cases. By exploring the lived insight of the child protection laborers with the youngster protection system in Canada and England, this study is hoping to inform the choice and strategy producers. As confirmed by the result of this examination, a few methodologies utilized by the child government assistance system in England could be executed in Canada, to give more exhaustive models that would in general be able to further develop the child protection system and administration conveyance. These techniques steamed from the immediate work insight of the child protection laborers, who practice their obligation to safeguard the children within the limits given by the child protection regulation and approaches existent in Canada and England. Contrasted to England, Canada is missing a unique administrative demonstration that puts the obligation on all experts involved with the youngsters and their families, and offers the risk and obligation regarding safeguarding the well-being of the children.

EMPOWERING HER WITH EDUCATION

Shubhankar Kaushal¹

Priyanka Bhasin²

“Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”

-Kofi Annan

INTRODUCTION

From the most skilled homemakers to the world’s finest kingmakers, the true strength of the women is underestimated today. ‘WOMEN’, the word itself is an integration of both male and female, yet the evils of the society have assigned gender specific roles to them. Indian history is filled with women leaders from Draupadi, Sita to Bhikaji Cama, Rani of Jhansi etc. Hardly, there is any domain today where women are not willing to participate. The strength of the women was realized during WWII, yet the world’s oldest democracy has never had a women president.

The Constitution of India grants equal status to all, and numerous laws have been specially formulated to promote and protect the interests of the women. Legislations have a limited extent; the true fight is empowering women in the minds of the society. Restoring the honor and gender parity we had in early Vedic civilization requires political, social and economic reforms. The practice of polyandry in Mahabharata is absent in today’s globalized ‘Bharata’.

The spike in heinous sexual crimes against women is an indication of aggressive reaction of shallow minded pupils towards women who are becoming successful in challenging the age-old practice of women being restricted within the four walls of the household. According to Manusmriti, ‘women always need protection and cannot be independent’³ was proved to be inconsistent as during WWII the world witnessed various roles played by women in armament factories, public transport, trade and commerce.

The gender gap alleviation programs are a helping hand towards women empowerment that makes women the driver of her life. The pace at which Indian economy is growing requires more women to assume key leadership roles at influential positions for establishing gender

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³ Chapter IX

equality in the system. The participation of women at employer levels is crucial for sustainable and socio-economic development.

Adopting a broad approach while defining gender justice covers the misuse of laws made specifically for women empowerment⁴. Gender justice is to treat women equal as men with equal rights, but the reality is far-behind. As women are expected by the society to adjust according to their husband, therefore questionnaire for recruiting women differs. Fundamental changes in thought process require structural changes in the societal norms that are supported by emerging modern legislations towards empowering women. According to Liberalization of Indian society would enhance the participation of women in social and political domain.

Women are considered more of a liability for parents in marginalized Indian society. The legislation to increase the age of marriage for women from 18 to 21 makes women eligible to get higher education. Education is a cheque cashable anytime and anywhere. Therefore, state sponsored education is a much-needed tool. Discrimination, eve-teasing, and harassment at workplace are basic challenges faced by women in their day-to-day life.

METHODOLOGY

This research is being done with the objective of having a clear understanding about the factors holding back women from being empowered. It also aims to find out the potential links that can be built to support women in attaining a better position in this society. Keeping in mind the aims and objects of the paper this section will be elaborating upon the various qualitative and quantitative methods of data collection that have been adopted by the researchers. After collecting the data from multiple primary and secondary sources available like surveys, books, journals newspaper articles, blogs and other articles, the data has been carefully skimmed in order to justify the results and its detailed analysis.

Women empowerment and gender justice is presumed to be a waste field of research and it depends on various indicators. Thus, keeping in mind the sanctity of the topic the primary sources include the analysis of present social atmosphere of women coming from different strata of the society. The survey involved an extensive questionnaire comprising of multiple questions of both objective and subjective nature. Objective questions like, are women empowered in our society or is it the sole responsibility of the women to look after the

⁴ Sarabjit v State of NCT of Delhi 2014

childcare in a household setup and subjective question were designed in a manner that we could get the opinion of general public irrespective of their gender and age. This questionnaire was circulated to around 200 subjects out of which we received 150 responses in which the subjects of our research are talking about the factors which according to them have significant impact over women empowerment and gender justice in the society.

Once all the relevant information was gathered, a comparative study was done which helped in anticipating the possible reforms and solution for the issues raised. The selection of subjects was done with proper care keeping in mind the effectiveness of their opinion and good understanding of the topic as they would also give a shape and direction to the outcomes of the present research. Further, the method of research involved series of one-to-one interview with working women and some legal educators in order to find out their opinion and solutions towards the questions in concern.

During the survey a significant number of subjects answered that women of our society are not or rarely empowered, and this is due to lacking in their education qualification which keeps them away from their rights and basic positions that men usually get in this society. There exist some people who still consider girl child as a liability and their ultimate aim is to raise a daughter and get her settled with a boy who earns a decent income. Parents of such women remain helpless either due to their economic or social conditions that they fail to provide higher education to their daughters and make her self-sufficient. Knowing that education and literacy rate are basic indicators of development, India's target of becoming a five-trillion US Dolled economy by 2025 is a far-fetched dream if the society stays in same shape. It is necessary for us to understand that education plays a crucial role in leading a good life and bringing a change in the society. Girls who are unable to attain basic education to earn their livelihood lead a life as dependents on their father initially and after marriage on their husband.

REVIEW OF THE LITERATURE

The article opens by stating that women's empowerment is a contentious issue. Previously, they were accorded the same status as males⁵. During the post-Vedic and epic periods, however, they experienced certain challenges. They were often regarded as slaves. The author also used history to make a contrast in the position of women, stating that their

⁵ Sharma G, 'Women Empowerment in India: A Brief Discussion' (Academia.edu, 2022)
<https://www.academia.edu/39042819/Women_Empowerment_in_India_A_Brief_Discussion> accessed 10 February 2022

statuses have been slowly and progressively changing from the early twentieth century (national movement). In this respect, we have discussed the British people's name. Following India's independence, constitutional authors and national leaders worked for equal social standing for both men and women, which was eventually achieved. Women are now able to hold respectable positions in a wide range of fields and occupations. Although they have made significant progress, they have not eliminated some types of social bias and harassment. Only a small number of women have been able to achieve their full potential to yet. Consequently, everyone should take special effort to elevate the standing of women. Several Acts and Schemes of the national and state governments have been enacted in recent years with the goal of empowering Indian women. Female suffrage and disenfranchisement are widespread in India, with discrimination and disenfranchisement occurring at every level of society, including in social engagement as well as political participation, economic participation, educational access, and reproductive healthcare.

Women are noted to be economically disadvantaged in almost every part of India. Women engage in volunteer work and other activities in small numbers. Therefore, in order to be able to stand on their own in contrast to men, women need economic power. It has been shown that women are less literate than men, according to research. Women have a literacy rate of just 54 percent in India, according to the 2001 census, compared to 76 percent among men. Therefore, increasing women's educational opportunities is vital to their empowerment. Aside from that, it has been observed that some women are unable to work because of physical constraints. They eat less, yet they put in longer hours at work. This will have the effect of making health-conscious women who are weaker more powerful. Another problem that must be addressed is female harassment in the workplace. Rape, female abduction, dowry harassment, and other forms of violence have been reported on several occasions. Therefore, they seek all types of empowerments in order to protect themselves and retain their purity and dignity, among other things. To summarize, the author asserts that women's empowerment will not be accomplished unless they actively participate in and aid in their own empowerment efforts. In order to reduce gendered poverty, increase women's educational attainment, and prevent and eliminate violence against women, policies must be developed.

This article is an empirical investigation on the topic of women's empowerment and the influence of education⁶. Education, according to the author, is the most important aspect in women's empowerment, prosperity, progress, and wellbeing. Women have always faced discrimination from the womb to the grave. Women continue to face inequity and vulnerability in all sectors, and they are oppressed in all phases of life; they must be empowered in all aspects of their lives. Women must swim against the system that demands greater strength in order to combat socially built gender prejudices. Such strength is derived from the empowerment process, and empowerment is derived through education. Women's empowerment will also contribute to rural development.

The purpose of the authors' article is to raise awareness among women about various forms of empowerment and to determine the influence of education on women's overall empowerment in Madurai district. 455 women between the ages of 20 and 50 were chosen for the study. If women want to be more powerful, they need to get more education. This is what the study found. The results of this study show that gender barriers are still there, especially in rural areas. The research area includes a lot more rural place. Women in rural areas haven't been able to use their full potential because of current social and economic constraints. They have been pushed down the social ladder. Most educated women think that they can do more than men can. However, there is a long-held belief that women can do less work and are less productive than men. Lack of education makes it more difficult to become more powerful. Considering all of the above, we can see that the transition is very important, even though the speed may be slower than we thought. Education is very important for moving this process forward. This means that education is the only way that women can become more powerful. That's why women need to get more education, so that they can do better in their jobs.

The author's article begins by stating that global empowerment of women is a novel notion, and that during the second half of the twentieth century, the topic of women's empowerment has acquired prominence among university researchers, as well as on national and worldwide forums⁷. According to the author, it was not until the announcement of the 'Women's Decade' in 1975 that the notion became thoroughly established in the governments' policies and initiatives. However, even though the Indian government granted the right of vote to all

⁶Sundaram D, M. Sekar D, and Subburaj A (2022) <https://www.researchgate.net/profile/Sekar-M/publication/280218999_WOMEN_EMPOWERMENT_ROLE_OF_EDUCATION/links/55ade53608aee079921e3e4a/WOMEN-EMPOWERMENT-ROLE-OF-EDUCATION.pdf> accessed 12 February 2022

⁷'Concept And Types of Women Empowerments' (*Americanscholarspress.us*, 2022) <http://americanscholarspress.us/journals/IFST/pdf/IFOTS-2-2013/IFOTS_v9_n2_art3.pdf> accessed 11 February 2022

citizens regardless of caste, creed, gender, or colour as soon as independence was declared, the right was primarily limited to paper voting, and most women were essentially powerless until the last decade of the previous century. Because of women's poor socioeconomic status, academics, bureaucrats, and governments have started to devote significant attention to the issue of empowering women in recent years. As a result of the feudal structure that exists in India, the progress of women has been slow. The author of this article discusses the difficulties and reality of the current scenario. It calls on the government, political decision-makers, non-governmental organizations, and other stakeholders to step up to secure women's overall development for India to become a developed nation. The author closes his article by claiming that it is now a well-known reality that the topic of women's empowerment for the purpose of bringing about good change and transformation in an unequal society is becoming more critical and significant. Women's traditional roles as mothers, homemakers, spouses, and sisters are well-known, but their significance in transforming the overall power structure of a society is a relatively new notion in political science. His wife, Harriet Taylor Mill, wrote the article *The Subjugation of Women*, which is widely considered to be the first effort to create equality between males and females. John Stuart Mill was a British Member of Parliament at the time of its publication. Furthermore, with the publication of Mary Wollstonecraft's *Vindication of the Rights of Women* in the eighteenth century, the movement for women's emancipation began to take root and develop. Although women's causes, including voting rights, began to take on a concrete shape in the second half of the nineteenth century with the formation of the world Women's Christian Temperance Union (WCTU) in the United States in 1874 and the German Social Democratic Party (GSDP) in Germany in 1889, respectively, under the leadership of Francis Williard and Clara Zetkin.

The author's article is based on research titled *Women Empowerment: A Study Using the Women Empowerment Index*. In his introduction, the author states that "women's empowerment is a process in which women learn how to organize themselves in order to increase their own self-reliance, assert their independent right to make choices, and control resources that will assist them in challenging and eliminating their own subordination." It is one of the United Nations' Millennium Development goals for women to be more powerful. Women's empowerment is a goal of India's Human Resource Development Strategic Plan, which was drawn up by the Union Governments Ministry of Women and Child Development. The goal of women's empowerment is to make them more equal and help them become more integrated into society. The main goal of this research article is to figure out how much power

women have in India by looking at how well they can make household decisions, how well they can make economic decisions, and how much freedom they have to move around. This is how the author got information from 150 men and women with the help of an online questionnaire. In this case, conducting survey and interview was our main tool for analyzing data. A regression model and frequency tables were employed to do this. For the quantitative analysis, the author chose five important factors as independent variables and overall women's empowerment as the dependent variable, which he then combined to get the total number of empowered women. Hypothesis testing: We chose five hypotheses to test, four of which were approved and one of which was rejected. Women in Sohar can make good decisions, as shown by the index of women's empowerment, which was made through a qualitative study. Women in India are better at making decisions about their home and their money than they are at making decisions about their lives, according to another study. The author has also used perception analysis to solve problems on both sides of the debate, on both sides of the law and on both sides of the politics. Most women living in the rural areas are more concerned about their moral and household responsibilities. After that, the results of the research gave specific ideas for how to help more women in the India and become more powerful.

ANALYTICAL STUDY

The contribution made by women in household is not accounted in GDP. It is estimated by the World Economic Forum that world economy is losing \$12 trillion due to women's potential not being fully utilized. The resources and funds collected towards securing, guaranteeing and implementing women rights are either insufficient or under-utilized. To tackle sexual harassment at work, the Government of India came up with Vishaka Guidelines⁸ in 2013 which addresses all the grievances across formal and informal employment. According to ICC (Internal Complaints Committee) in Vishaka Guidelines for a private sector, the ICC is formed by the leading management within the company which doubts the credibility of the committee itself.

The poll promises to grant monetary aid by contesting political parties in election cannot strengthen the condition of women neither it can root out the marred practices of secluding women in family business and restricting them to household. The solution for women empowerment is exhaustive in nature. It might be agreed that strength in physical activities

⁸ Vishakha vs State of Rajasthan AIR 1997 SC 3011

differs, but the problem lies in the fact that everywhere women strength is underestimated. Women are expected to fulfill both the roles of a breadwinner and bread maker.

In Mahabharata, Arjuna was asked by his mother Kunti to distribute amongst his brothers whatever he has got implies that women are a commodity that can be molded as per her husband's wishes. The cases of wife swapping had been reported in 2013 when a petition was filed in Supreme Court alleging that wife swapping is a common process in our armed forces in which junior officers are sometimes threatened to bring their wives to accompany other officers. This issue is less known because it is less talked about as it involves the pride and prestige of our armed forces.

For women, a key element of empowerment is gaining greater control over the circumstances of their lives. Only then women fully recognize and exercise their right to shape their own lives. Monetary independence is essential for the development of women.

DECISION MAKING POWER

Involvement in making large household purchases, daily household purchases, determining own health care, and visiting family or relatives. Women have the right to participate in decisions that affect their life. The equal participation of women with men at all levels of decision making is then considered as vital for effective action in all aspects of sustainable development. Decision-Making is an important dimension in measuring women empowerment, especially for developing countries.

FREEDOM TO MOVE

The capability of a woman to move freely by her choice is another characteristic of being empowered. It is also a part of basic human rights as human beings we are a social animal and so we need to have a social circle in which we have the right to move in the society, build good relations with other individuals and share each other's experiences.

Women empowerment should begin right from the grass root level i.e., at one's household. So, to bring a change in the society we should first alter the basic setups at our homes. Right from the beginning children should be nurtured in such a way that they respect each other irrespective of being a girl or a boy this would further shape them as a responsible adult of our society. Faulty learning at this initial stage of life can be a reason behind dominating behavior towards women in society. The school's curriculum should include subjects which impart civic values and morals which with time are whipping out from the upcoming generation.

Further, actions towards empowerment should be bilateral which means that the females should also projects confidence in oneself and on the other hand the society should foster the situations which support women empowerment. Literacy adds up an essential input in overall development of an individual, enabling them to recognize their social, political and cultural environment better and respond to it appropriately. Higher levels of education and literacy lead to a greater awareness and also contributes to improvement of economic and social conditions.

The freedom to movement and decision-making power comes when one is at a dominating position. In order to arrive at such position education is must. In our survey, we found that most of the working professionals are of the opinion that mere provision of free & fair education up to 14 years of age, provisions of reservations for women in schools or establishing women centric university is inadequate. Though in last 5 years women enrollment in higher education is 27%, the employment opportunities are restricted due to societal pressure. Family expenditure on education for women is less as compared to males.

CONCLUSION

The state of India lacks quality higher educational institutions to cater to the demands. As a result, a large chunk of population including women are either under-paid or chose to get married and stop pursuing other goals. The recent decision of enhancing the legal age for marriage from 18 to 21 for women is a welcoming step that needs further pillars to strengthen the objective of empowering women. Government needs to enhance its GDP contribution towards education and must make provisions to highly subsidize higher education of women.

GENDER JUSTICE IN THE CONTEXT OF RIGHTS OF TRANSGENDERS – A MYTH

Sonal Pandhare¹

INTRODUCTION

Almost everyone is aware about the term LGBTQ but not everyone having the courage to accept them as a community. Many a times the society even denies accepting them as a normal human being. The major problem that arises is with the sexual orientation of people belonging to this community. Many historians accepted there was a evidence of homosexuality or same sex relationship in ancient Greece. Homosexuality or transgender is not newer concept, its originated in ancient era and mythological scripture. However, LGBTQ is the new tag which evolved with the time. But constitution and law makers are still silent on this aspect of gender. It is obligation of judiciary in such cases has to maintain balance between conflicting interests.

The categories that were classified in the LGBTQ category currently include the terms:

1. **Lesbian:** It is a homosexual woman.
2. **Gay:** It is a homosexual person. Generally, it is used for homosexual men but it can also be used for both homosexual woman and man.
3. **Bisexual:** It refers to both who are attracted to both male and female. or who are attracted to more than one sex or gender.
4. **Transgender:** It refers those who are not exclusively masculine or feminine.
5. **Queer:** It refers all the people who are not heterosexual.
6. **Questioning:** It refers those who are unsure of their sexual identity.

CONSTITUTIONAL PERSPECTIVES

The Constitution of India, from the perspectives of gender-neutral laws, needs to be understood *vis-a-vis* the doctrine of reasonable classification. The promise of equality and equal protection under the Article 14 of the Constitution gives equal treatment to all citizens before the law. It also allows the distinction between different categories of individuals only based on the intelligible differentia with its reasonable nexus with the object. Article 14

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ensures that the State cannot discriminate any citizen only on the grounds of sex, religion, race, caste, or place of birth.²

Further, under Article 19, freedom of speech and expression is guaranteed to all citizens. Over the period the Supreme Court has interpreted Article 21 to include right to live with dignity, right to privacy and right to autonomy. Constitution guarantees above rights, but it lost its significance over the period and while making gender neutral laws.³

The Fundamental Rights guaranteed under the part III of the Indian Constitution are corresponding to the basic human rights. Of all the human rights, the most significant is the Right to Constitutional Remedies under the Articles 32 and 226 of the Indian Constitution.⁴ Those persons whose fundamental or human rights have been violated, have the right to approach the High Courts or Supreme Court of the country directly for judicial rectification, redressal of grievances and enforcement of Fundamental Rights.⁵ The question is constitution provides a redress mechanism but is unable to recognize the right. Since the personhood of the LGBTQ community itself is not acknowledged, the application of redress rights also become questionable.

LEGISLATIVE PERSPECTIVES

Indian Penal Code, 1860

Section 377: It criminalizes homosexual activity and all other sexual activities which were not connected to procreation. It also criticized for discriminating against and disproportionately affecting the LGBTQ community and it is not being in tune with modern morality.

Before scrapping of section 377 of the Indian Penal Code, 1860 the community face long legal battle for almost two decades for the traditional binary of sexuality and gender. Beginning of LGBT rights movement traced back in the 90s but most of the major development happens after scrapping the section 377 of Indian Penal Code, 1860 in 2018.

There were almost three bills are rejected before the passing of Transgender Persons (Protection of Rights) Bill, 2019:

1. Rights of Transgender Persons Bill, 2014

² Lachhman Das v State of Punjab (1963) 2 S.C.R. 353 (India)

³ M.P.Jain, Indian Constitutional Law

⁴ Constituent Assembly Debate, Vol.VIII,953

⁵ RomeshThappar v Union of India AIR 1950 SC 124 (India)

2. The Transgender Persons (Protection of Rights) Bill, 2016
3. The Transgender Persons (Protection of Rights) Bill, 2018

The Transgender Persons (Protection of Rights) Act, 2019⁶

The Parliament has passed the Transgender Persons (Protection of Rights) Bill 2019 which has been criticized for its poor understanding of gender and sexual identity.

Section3: It prohibits any kind of discrimination against them in respect of employment, education, housing, healthcare, and other services for the basic requirements of human life.

Section4: It mandates the recognition as a “Transgender”. District Magistrate is the authority who issued the certificate of identity but again this clause was amended and makes it optional.

It also prohibits the family or parent to discriminate or ignore their child on the ground of being a transgender. Also, transgender can be treated equally like anyone’s.

Section 16: This Act framed the advisory body i.e., National Council for Transgender Person who advise the central Government for making policy and legislation.

Section18: If any person discriminates and abuses any transgender, it is recognized as an offence and its punishable with six months to two years punishment and a fine as per the nature of the offence.

In India, the rights of transgender persons are governed by the **Transgender Persons (Protection of Rights) Act, 2019** and the **Transgender Persons (Protection of Rights) Rules, 2020.**⁷

- Under the Rules, **an application to declare gender is to be made to the District Magistrate.** Parents can also make an application on behalf of their child.
- There will be **no medical or physical examination** for procedures for issue of certificate of identity/change of gender.

⁶ <https://prsindia.org/billtrack/the-transgender-persons-protection-of-rights-bill-2019>

⁷

[https://thc.nic.in/Central%20Governmental%20Rules/Transgender%20Persons%20\(Protection%20of%20Rights\)%20Rules,%202020.pdf](https://thc.nic.in/Central%20Governmental%20Rules/Transgender%20Persons%20(Protection%20of%20Rights)%20Rules,%202020.pdf)

ROLE OF JUDICIARY

On 6th September 2018, the Supreme Court of India struck down the part of section 377 of the Indian Penal Code, 1860 i.e., section 377, which criminalized sexual intercourse against the order of nature. Finally, this historic judgment belatedly puts India into the list of almost 150 countries where homosexual activity is legal. And it is the first step towards recognizing the rights of the LGBT community in India.

Before this, there were almost four separate concurring judgments which struck down section 377 to the extent that it criminalizes consensual sex between adults on the primary grounds of the constitution, i.e., Article 14, 15, 19 and 21.

High court of Delhi held that section 377 imposed unreasonable restrictions over the adults who are engaging in a consensual intercourse in private and that's why it is a direct violation of fundamental rights which given in Article 14, 15, 19, 21.⁸ But various individuals and faith-based groups criticized decriminalizing section 377 because it is against the India's glorious ethics and morality and appealed in Supreme Court to reconsider it. After the long battle, the Supreme Court overturned the judgment of Delhi High Court in 2013 and recriminalized homosexuality and court also quoted LGBTQ community did not deserve the constitutional protection. In this judgment the court suggested that section 377 is not unconstitutional because LGBTQ persons constituted only a "minuscule minority"⁹. This judgment led to LGBTQ activism and faced immense criticism in a public discourse.

In 2014, another judgment brought a new ray of hope to the LGBTQ community and first time they were recognized as third gender for the purposes of various scheme i.e., public health, employment, reservation, and other welfare scheme. Court also quoted that non-recognition of identities is the violation of Article, 14, 15, 16 and 21. Further court directed to the government of India that the member of third gender category need to be considered as economically and socially backward class and should make proper policies for the transgender community to ensure equality of opportunity in education and employment.¹⁰

After this judgment, transgender can change their gender without undergoing sex reassignment surgery.

⁸ Naz Foundation v. Government of NCT Delhi (2009)

⁹ Suresh Kumar Koushal v. Naz Foundation (2013)

¹⁰ National Legal Services Authority v. Union of India (2014)

Justice Chandrachud said that sexual orientation also comes under the right to privacy and rejected the minimis hypothesis principle, interpreting the same in the Koushal judgment. Further minuscule population of LGBTQ cannot be the ground to deprive from the fundamental right. The Supreme Court ruled the right to privacy as an inherent part of the Article 21.¹¹

After overruling the judgment of Delhi High Court in 2013, several NGO's and high profiles from that community come into front and filed petition before the Supreme Court for challenging the constitutional validity of section 377, in opposition to the continued criminalization of people belonging to diverse sexual orientation. Court finally gives its verdict on 6th September 2018 and struck down section 377, which became revolutionary judgment. It provided them a very much needed right and after this verdict many came forward to accept their sexual identity publicly and became part of LGBTQ community.¹² The SC stated that the '**Yogyakarta Principles on the Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity**' should be applied as a part of Indian law.

- Yogyakarta Principles recognize freedom of sexual orientation and gender identity as part of Human Rights.
- They were outlined in 2006 in Yogyakarta, Indonesia by a distinguished group of International Human Right experts.

In February 2021, the **Central Government opposed same-sex marriage** in Delhi High Court stating that a marriage in India can be recognized only if it is between a "**biological man**" and "**biological woman**" capable of producing children¹³

CONCLUSION AND SUGGESTIONS

It is responsibility of a government to give them equal status and make gender neutral laws for protecting their rights such as marital laws, existing marriage laws cannot apply in case of LGBTQ community. Make a new law for same sex marriages to ensure the equality in marriages or can be amend or modify the existing laws. As per the Special Marriage Act/Hindu Marriage Act there are certain prohibited degrees of relations between marriages cannot takes place. This term needs to be redefined. Personal laws also need to redefine or

¹¹ K.S. Puttaswamy v. Union of India (2017)

¹² Navtej Singh Johar v. Union of India (2018)

¹³ <https://indianexpress.com/article/india/same-sex-marriages-legal-recognition-centre-7204303/>

amend for LGBTQ community in respect of adoption regulation, guardianship, inheritance laws, protection against discrimination at workplace and educational institution etc. Recently new surrogacy bill passed in parliament, LGBTQ couple and single person are prohibited to have their own child through surrogacy. The bill is worthy in other aspect, but this community should be granting the right of surrogacy with conditions.

During COVID-19 pandemic many children lost their parents, and they are available for adoption. So, this will be the better option for those who are willing to adopt from this community to allow them with rules and regulations. Basically, it is need of our society to educate and create awareness about LGBTQ community and their rights as a human being.

FRAMEWORK FOR JUVENILE JUSTICE COMMITTEES OF HIGH COURTS

Vilasini. K ¹

INTRODUCTION

The rights of children comes under rights of human rights which has gained national importance in recent years. If child faces any unfavorable experiences like emotional or physical abuse the favorable opportunity is lost and is often irrevocable. At present there are 472 million children. Out of which there are 32,235 Children in conflict with law (CCL) and 36 million Children in need of care and protection. “It is easier to build strong children, but difficult to repair broken children” as said by Frederick Douglass².

Post first world war in 1919 there was formation of The League of Nations and later in 1924 The League of Nations adopted Geneva declaration. “Geneva declaration is a historic document which for the first time emphasized specific rights to children and responsibility of adults towards children”.³ It emphasized five point declaration,

- i. “Child must be given the means needed for its normal development, both materially and spiritually.
- ii. Food should be provided for the child, erring child should be retrieved and the homeless child should be provided shade.
- iii. Child should get relief in times of distress.
- iv. Children should be protected from all ways of exploitation and
- v. Child must be fostered in the consciousness that it shall give its best to the society ”.⁴

The Universal Declaration of Human Rights (UDHR) 1948, was first global expression which has protected universally the fundamental Human Rights, especially the rights of child in its Art 25 (2), which provides “Special care should be provided to the Mother and Child.

¹ Research Scholar, Alliance School of Law, Bengaluru.

²It Is Easier to Build Strong Children than to Repair Broken Men’ (Frederick Douglass, 1817-1895)” (*Dr Andrew Rowland: Churchill Fellow of the Winston Churchill Memorial Trust* April 26, 2014) <[³“Children's Rights History” \(*Humanium* January 11, 2021\) <<https://www.humanium.org/en/childrens-rights-history/>> accessed January 22, 2022](https://drandrewrowland.wordpress.com/2014/04/25/it-is-easier-to-build-strong-children-than-to-repair-broken-men-frederick-douglass-1817-1895/comment-page-1/#:~:text=Skip%20to%20content-,%E2%80%9CIt%20is%20easier%20to%20build%20strong%20children%20than%20to%20repair,Frederick%20Douglass%2C%201817%2D1895)&text=This%20statement%20still%20holds%20true,%2C%20and%20functioning%2C%20within%20society>” accessed February 16, 2022</p></div><div data-bbox=)

⁴Geneva declaration of the Rights of the child adopted 26 September 1924, League of nations, available at <http://www.un-documents.net/gdrc1924.htm> (accessed on January 22, 2022 at 6.41pm)

Every child shall enjoy equal protection”⁵ United Nations (UN) acceded Geneva Declaration in 1946 after 2nd world war and adopted UDHR to overcome the flaws of Geneva Declaration. Then a specialized agency of UN-UNICEF (United Nations children’s Fund) was established for world’s children care. Declaration of Rights of child was reaffirmed by UN General Assembly in 1959.⁶The five point declaration was extended to ten.

- i. Non-discrimination on any grounds like race, caste or religion.
- ii. Special protection for overall development of the child.
- iii. The right have a name and free to belong to a nationality.
- iv. The right to have adequate nutrition, placed in a proper house and get medical facilities.
- v. The differently-abled child to be provided with education.
- vi. The child should be brought up in the environment of family which is filled with love and affection.
- vii. To provide free and compulsory elementary education.
- viii. The child should be given priority in providing assistance in every circumstances.
- ix. Protection against exploitation and child labour.
- x. Protection from bias on any grounds.

Both in Geneva Declaration (1924) and Declaration of Rights of Child (1959) definition of “child” was not clearly explained, which led to unpredictability with respect to beginning and end of childhood. 1979 year was designed as International Year of the Child by recognising importance of child welfare. International Covenant on Civil and Political Rights, (ICCPR) which recognised protection of child rights was adopted by UN General Assembly in 1966.⁷Art 24 (1) *“Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”* and India ratified ICCPR in 1979.UNESCO’s Education for All Declaration 1990 considered education as a instrument for development. “Education for All was sponsored by UNESCO, UNICEF, the world bank and NGO at the world conference on education in

⁵<https://www.un.org/en/documents/udhr/> (accessed on January 22, 2022 at 6.48pm)

⁶*Ibid.*

⁷ICCPR available at <http://www.ohighcourthr.org/EN/Professionalinterest/Pages/CCPR.aspx> (accessed on January 22, 2022 at 7.17 pm)

Jomtien, Thailand”⁸. “The Amman affirmation (1996) received the progress made towards goals set in Jomtien. In 2000, a decade after Education for All declaration 1990, met at World education forum in Dakar, Senegal and agreed on Dakar Framework for Action- Education for All: meeting our collective commitments (2000)”. Convention on Child Rights has been ratified by India in 1992.

CONSTITUTIONAL CONTEXT

Art 15(3) provides positive discrimination for women and children. Early childhood developments are enshrined under Art 21 of the Constitution by Supreme Court (SC) of India. Right to free education from 6 to 14 years came under Article 21 of our Indian Constitution. Article 21-A was inserted through 86th Amendment Act, 2002. Though this amendment to Directive principle of state policy which was ignored yet it disbarred children below the age of 6 years.⁹ Article 39 (e) of Indian Constitution envisages that health and the strength of the tender age of children are not abused. Article 39 (f) which forecasts facilities to develop in a good manner. Article 45 of Indian Constitution provides early childhood care. It is necessary for the state to read the Article 42, 45 and 47 together whenever any policies relating to children are to be introduced. Integrated Child Development Scheme (ICDS) was set in motion in 1975 whereas Integrated Child Protection Scheme (ICPS) was started in 2009-10. Major Programs implemented under ICPS are:

1. A programmed scheme for Children in Need of Care and Protection and Children in Conflict with Law.
2. Open shelters for children in urban and semi urban area.
3. Adoption agenda.
4. Child support through helpline.
5. Funding or financing programme.
6. Vishesha PalanaYojane.

DISCUSSION

In Chief Justice’s conference which was held on March 9th and 10th, 2006 the Supreme Court of India passed a resolution under heading “The plight of juvenile delinquents” where this was determined by setting up of juvenile justice boards where it is not there and to appoint an

⁸<https://lawcommissionofindia.nic.in/reports/Report259.pdf.pg.no.11>.(accessed on January 14th 2022 at 10.52 pm.)

⁹W.e.f. 1-4-2010.

High Court Judge to supervise the functioning of Remand Homes established under the Juvenile justice Act, 2000.¹⁰ In Chief Justice's Conference held on August 14th and 15th, 2009 in Supreme Court of India which passed a resolution under the heading "Progress made in setting-up of Juvenile Justice Boards". The Chief Justices of High courts will nominate a Judge to make often visits to the Juvenile Homes wherever they are setup and to suggest remedies if any to improve the conditions of the Juvenile Homes and inmates.¹¹

A Chief Justice's conference was held on 5th and 6th, 2013 in Supreme Court of India which passed a resolution for building up strong of Juvenile Justice system. The juvenile justice committee was setup in Delhi High Court and needs to be setup in each and every High court. It was perceived that no State Government has taken any serious steps to start the juvenile justice committee and the juvenile justice boards. And it was observed that since 15 years all the workers under Juvenile Justice act were working on temporary basis. It was resolved by requesting the Chief Justices to take-up the matter with State Authorities to make sure that services of such persons working on temporary basis need to be made permanent. If needed can also create a new post for running the Juvenile Justice committees.¹²

In Chief Justice's conference held on 3rd and 4th of April 2015 in Supreme Court of India which passed a decision for providing strong base to Juvenile Justice System. The assistance of State Legal Services Authorities and District Legal Services Authorities shall also be taken into consideration to supervise the Juvenile Justice committees.¹³

The conference resolved that the Chief Justices will set up a Committee for supervising the implementation of the decisions passed in the Chief Justices Conferences. All High Courts have to submit their report on implementation of the decisions of the Supreme Court. It also asks to setup a Secretariat to assist the Juvenile Justice committees.

Firstly, to prioritize the disposal of cases.

Secondly to revisit the cadre strength of subordinate courts by creating additional Courts to deal with such Courts.

¹⁰ Chief justice Conferences <https://main.sci.gov.in/chief-justice-conference> (accessed on January 16, 2022 at 11.28 pm)

¹¹ *Id.*

¹² Chief justice Conferences <https://main.sci.gov.in/chief-justice-conference> (accessed on January 23, 2022 at 3.25 pm)

¹³ *Id.*

In this conference it is noted that for necessity for ensuring institutional support for Juvenile in conflict with Law and Children in need of care and protection such as disposing the cases

- i. That has exceeded one year by Juvenile Justice Boards.
- ii. Juvenile justice committees of High Courts shall supervise the cases relating to adoption cases.
- iii. To see that in every district a Child Protection Unit, Special Juvenile Police Unit, Observation Homes & Children Homes are setup.
- iv. Pending cases need to be supervised by the Juvenile Justice Committees of High Courts.
- v. Training shall be provided to judicial officers.
- vi. Vacancies in Juvenile Justice Institutions need to be filled as early as possible.
- vii. State Legal Services Authorities should play their role sincerely.¹⁴

The preamble of Juvenile Justice Act 2015 cherishes the object of the child friendly approach to provide 'best interest of the child' principle in their overall development of the Child.

In *Suo moto Vs. St. of Karnataka*, several principles have been discussed by High Court of Karnataka, like

- "Principle of presumption of innocence.
- Principle of Participation.
- Principle of Best interest.
- Principle of Dignity and worth.
- Principle of Family responsibility
- Principle of Safety
- Principle of Non stigmatizing semantics
- Principle of Non waiver of rights
- Principle of Equality and non-discrimination Principle of Right to privacy and confidentiality
- Principle of Institutionalization as a measure of last resort
- Principle of Repetition and restriction
- Principle of Fresh start
- Principle of Diversion

¹⁴ Ibid (accessed on January 23, 2022 at 3.25 pm)

- Principle of Natural justice”¹⁵.

The Supreme Court in its judgment in *Re exploitation of child in, Orphanages in the state of T.N. Vs. UOI and Ors*,¹⁶ and *Sampurna Behura vs. UOI and Ors*,¹⁷ has stated that there shall be constituted Juvenile Justice Committee in each High Court to make sure the application of Juvenile Justice Act. It also directed to each State government and Union Territory to provide assistance to Juvenile Justice Committee of each High Court.

In *Re exploitation of child in Orphanages in the state of T.N. Vs. UOI*¹⁸ case it was held that all the child care institutions should be registered under Juvenile Justice Act and submit the reports to State government and UT’S must be made on or before 31st December 2017. It also directed each Juvenile Justice Committee to establish a secretariat for its assistance. In *Sampurna Behura Vs. UOI*¹⁹ it was held that training need to be given to the officers of Juvenile Justice Board’s, Child Welfare Committees, Child Welfare Protection Officer, Special Juvenile Police Unit, District Child Protection Unit, Protection Officer. It was advised to states to look into the matters relating to Child in Conflict with Law and Child in need of care and protection and to provide appropriate assistance. According to Supreme Court if under sec 106 of Juvenile Justice Act every state shall constitute child protection, society and DCPU. If these two bodies function properly then implementation of Juvenile Justice Act would no longer be an issue regarding functioning of the Juvenile Justice boards setup under Juvenile Justice Act.²⁰

ROLE OF HIGH COURT-JUVENILE JUSTICE COMMITTEE

The Secretariat which will be set up for High Court-Juvenile Justice committee will assist in fulfilling all the responsibilities of Juvenile Justice Committee.

1. To check whether the following institutions or authorities are set up under Juvenile Justice Act, such as
 - Child Welfare Committees
 - Juvenile Justice boards

¹⁵ WP NO.4840/2012 <https://indiankanoon.org/doc/184646929> (accessed on December 5, 2021 at 1.17 am)

¹⁶ AIR 2017 SC 2546

¹⁷ 2018 (4) SCC 433

¹⁸ AIR 2017 SC 2546

¹⁹ 2018 (4) SCC 433

²⁰ Final Draft Guiding framework for high court juvenile justice committees_23 Apr 2018-high courts.pdf Pg.no.4, http://mediationcentrephhighcourt.gov.in/jjmc/NOTIFICATION/FINAL%20Draft_Guiding%20Framework%20for%20highcourt%20JJs%20_23%20Apr%202018-high%20courts.pdf (accessed on January 23, 2022 at 12.55 pm)

- State child protection units
 - District Child Protection Unit
 - Special Juvenile Police Unit in every district
 - Juvenile Justice Fund
 - Registered CCIs
 - Child Welfare police officer
 - Juvenile police officer in every police station.
2. It shall evaluate quarterly report for dept. of Women and Child development under
 - Human Rights: Qualified members need to be appointed by providing them proper training and one Child Welfare Committees member should be a women candidate. If necessary, there can be creation of posts also.
 - Infrastructure: Proper infrastructure need to be provided for Child Welfare Committees members to sit and work and to decide with the cases pending and shall also include adequate drinking water facilities.
 - Functioning of Child Welfare Committees District Magistrate has to give a quarterly review on the functioning of Child Welfare Committees. Child Welfare Committees could also prepare Individual child careplans and also see whether there is any complaint against CWC.
 3. To ask help from District Legal Service Authority in paying victim compensation to child victims.
 4. Annually reports need to be submitted by the Department of Women and Child regarding Social Audits of Integrated Child Protection Scheme and Integrated Child Development Scheme.
 5. Department of Women and Child should submit 2 reports for one or two years and subsequently annual reports to ensure equality ²¹

ROLE OF HIGH COURT-JUVENILE JUSTICE COMMITTEE IN CO-OPERATION

1. To work by approaching in child centric programmes in dispensing criminal justice.

²¹ SC orders (2001, 2004, 2009, 2011) in PUCL v/s Union of India and others (Writ Petition [Civil] no. 196 of 2001)

2. Department of Women and Children to include Corporate Social Responsibility to provide good quality of the infrastructure and drinking water facilities, good hygienic wash rooms and to provide all basic necessities for overall development of the child.
3. To Direct Secretariat of High Court-Juvenile Justice committee to arrange seminars or awareness programmes on child development within the state.

ROLES AND RESPONSIBILITIES OF HIGH COURT-JUVENILE JUSTICE COMMITTEES (SECRETARIAT OF ALL THE HIGH COURTS)

1. Judicial Officers of High Court should be appointed NOT as adhoc but on full time basis.
2. Preparation of minutes and follow up with respective concerned departments.
3. Organize Seminar and conferences regarding the same.
4. Maintaining necessary information resources which may be relevant for High Court-Juvenile Justice committees such as Bare Acts, research reports, judgements of Supreme Court and all High Courts on matters relating to Juvenile Justice Act, 2015.

CONCLUSION

The Guiding framework for Juvenile Justice Committees of High Courts are framed. Out of 25 High Courts only 7 High Courts have setup Juvenile Justice Committees till now. In 2013 Juvenile Justice Committee has been setup in Delhi High court. In 2016 Juvenile Justice Committee has been setup in Madhya Pradesh High court. In 2017 Juvenile Justice Committee has been setup in Orissa High court and in Jharkhand High Court. In 2018 Juvenile Justice Committee has been set-up in Punjab and Haryana, Patna and Calcutta High Court. In Allahabad High Court yet Juvenile Justice Boards in the Districts is yet to be setup. In some states there is no infrastructure and no minimum standards are maintained in Child Care Institutions. Though Karnataka High Court has recommended to constitute a Juvenile Justice Committee in 2017 and 2018 judgment of Re exploitation of child in Orphanages in the State of T.N. Vs. UOI and Sampurna Behura Cases, yet they have not yet constituted till date. Hence, these Guidelines should be followed by each High Court in India and should be implemented and further steps should be taken by the concerned High courts in constituting the Juvenile Justice Committees. Supreme Court has already constituted Juvenile Justice Committee.²²

²² <https://www.aninews.in/news/national/general-news/scs-juvenile-justice-committee-organises-national-consultations-for-protection-of-children-in-india20211221215516/> (accessed on January 23 2022 at 3.19 pm)

CHAPTER 3

Balancing IP Rights and Public Interest During the Pandemic; and Science, Technology and Law

A CRITICAL STUDY ON CHILDREN'S EXPOSURE TO THE CYBER WORLD AND LAWS IN NEED OF THE HOUR

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INTRODUCTION

Technology has become a vital and important part of human lives and in today's world almost every aspect has become technology dependent, in other words, technology may not be mandatorily required to achieve tasks at hand but it sure does come in handy to achieve the task in a quality and time effective manner yielding far better results.

Technology, as we know, is a two-sided coin with both merits and demerits and it has the capability to benefit or harm anyone and due to its easy accessibility and widespread use, it has attracted a lot of attention including exploiters and children are the easiest prey to them. Children use technology more than any adults by replacing their play time in playgrounds to video games and technology allows children to explore so many new and interesting areas which easily fascinate them. Perpetrators use the fascinating and lucrative factors as bait to trick naïve children into their devious traps. Children, being naïve and inexperienced, are the most easy and vulnerable target for cyber-perpetrators and this paper focuses on how to identify such traps and avoid falling prey to them.

EVOLUTION OF TECHNOLOGY IN EDUCATION

In early times, education was imparted to the children in Gurukuls which were not necessarily in a classroom with four walls, but under a thick shady tree or a hut with a handful of children and as time passed by, educational institutions were established and classes were conducted physically in classrooms and the children had to ensure their presence to observe the class and later, once technology was adopted in education, Edu-coms came into play and, Educational videos were played in the classroom for better understanding of the subject and to learn new things but now technology has evolved to such an extent where virtual classes are accessible from the comfort of one's home, i.e., Blended learning.

Earlier, technology was a luxury affordable only by the rich but now post the Covid pandemic, it has become a part and parcel of everyday activities in almost everybody's life.

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Computers and the Internet have transformed education. Computers store huge amounts of data in a very small space, shrinking shelves of reference books down to a single flash drive. They enable better presentation of information, making the process of teaching easier and more effective. Online education has provided unprecedented learning opportunities to people all over the world. Lectures and lessons can be uploaded to websites in written or video form, making information more accessible.³

CYBER-CRIME

Though technology helps in development it also attracts Criminal activities called Cyber-crimes which are carried out by the means of computer and/or the internet.

Due to the global pandemic, the schools have come to an unexpected and indefinite halt and the children today have become dependent on technology to attend the classes and gain knowledge. On one hand where the children are being benefited by using the technology, it is pertinent to note that children are the most vulnerable group to be affected by the cons of it. The Cyber-world can be a very useful and beneficial place when used for good but when the internet is misused, it gives space to rise of cyber-crime, to which the children could succumb easily and fall prey to the perpetrators as they lack maturity.

Types of Cyber-crimes against children

There are numerous ways in which children are deceived and victimized to the evil plans of cyber-perpetrators, a few of them are enlisted below.

1. Hacking

A perpetrator gains remote access to someone else's system by breaching the defenses and exploiting the weakness of the computer system or network and gain access to the data available on the hacked machine and on the cloud, connected to the machine.⁴ Children, without proper knowledge and awareness, usually tend to ignore security steps to secure their system/account which makes it easy for the perpetrators to access and infiltrate their system/account without the children even realizing that their system/account has been hacked.

³ Technology in Everyday Life, <<https://www.jfg-nc.com/technology-in-everyday-life/#:~:text=Technology%20has%20vastly%20increased%20productivity,on%20performance%20prior%20to%20prototyping.>>

⁴ Lawrence Williams, what is hacking? 12 February 2021, <<https://www.guru99.com/what-is-hacking-an-introduction.html> .

2. Phishing

It is a technique used by fraudsters where they send a fraudulent email designed to trick the user (victim) into revealing sensitive / personal information such as login credentials or credit card details. In this method, the attacker masquerades himself as a trusted company/entity and dupes the victim into opening a malicious link either by giving alert/warnings or lucrative offers, which when clicked, can lead to installation of malware into the victim's system.⁴

Perpetrators, in the disguise of a genuine/trusted entity, usually design emails in a lucrative and irresistible way such as *"Quick and easy money from the comfort of home and less work hours"* & *"Huge discount on expensive products"*. Such emails easily catch the eye and piques the interest of the child, making them provide sensitive information to avail such offer/opportunity without them realizing that they are walking into a cyber-trap.

3. Smishing

Smishing is the same as Phishing, except the only difference here is that instead of email, the attacker sends an SMS to a victim with malicious intentions.⁵

4. Pharming

Also known as Web jacking, is a cyberattack intended to redirect a website's traffic to another, fake site by installing a malicious program on the computer. It can be conducted either by changing the hosts file on a victim's computer or by exploitation of a vulnerability in DNS (Domain Name System) server software. Pharming requires unprotected access to target a computer, such as altering a customer's home computer, rather than a corporate business server.⁶

Perpetrators, by redirecting a user from a genuine website to a fake one, easily trick and manipulate children since they could not easily tell the minor differences between the original and fake ones. The naiveness of a child makes them a primary target of the perpetrators to trick them into providing sensitive information which is then misused by the perpetrator.

⁵ Norton LifeLock, what is Smishing? 18 January 2018,
<<https://us.norton.com/internetsecurity-emerging-threats-what-is-smishing.html>>

5. Identity Theft

When someone uses another person's personal identifying information, like their name, identifying number, or credit card number, with malicious intentions and without their permission, to commit fraud or other crimes, it is called Identity Theft.⁶

Identity theft is one of the most commonly committed offence against children, since perpetrators easily access all personal information such as Pictures, Name, Date of birth, location etc. of the victim online via their social media accounts. The perpetrators then use the stolen identity of the victim to carry out illegal actions which directly affects the victim of the stolen identity.

6. Cyber-Stalking

Cyberstalking is the use of the Internet or other electronic means to stalk or harass an individual and it is often accompanied by real-time or offline stalking. It may also include monitoring, identity theft, threats, vandalism, solicitation for sex, doxing, or blackmail.⁷ Children usually live their lives out loud on social media by sharing “*Check-in*” posts that reveal their current location which makes it easier for the stalker. Cyber-stalkers keep constant tabs on their prey, observing the daily pattern for a long period. Such preparators often tend to commit offences like Kidnapping, defamation, blackmail, vandalism, harassment, bullying etc.

7. Cyber-Bullying

Also called Cyber-harassment or online bullying is an act of attempt to harm, intimidate, or coerce someone via the internet. Cyberbullying is when someone, typically a teenager, bullies or harasses others on the internet and other digital spaces, particularly on social media sites. Harmful bullying behavior can include posting rumors, threats, sexual remarks, a victims' personal information, or pejorative labels.⁸ Cyber-bullying, if not dealt with properly and in time, often leaves a long-lasting mental scar in the kid's life which either crushes their self-esteem and confidence after which they find it very difficult to socialize and leading to self-isolation or

⁶ Julia Kagan, Identity Theft, 13 February 2021, <<https://www.investopedia.com/terms/i/identitytheft.asp>>

⁷ Sherri Gordon, what is Cyberstalking? 16 August 2021, <<https://www.verywellmind.com/what-is-cyberstalking-5181466>>

⁸ Sherri Gordon, what is Cyberbullying? 5 February 2021, <<https://www.verywellfamily.com/types-of-cyberbullying-460549>>

suicidal thoughts or it makes them more hostile towards every aspect where they often tend to respond with anger, aggression or frustration.

8. Spams & Scams

The words Spams and Scams seem very similar but have a distinct contrast. The word Spam means sending of unsolicited messages through Phishing or Smishing, with malicious intentions, to a large group of random people to trick the recipients into clicking a link with malware or to obtain sensitive and confidential information. Spam becomes a scam when a person falls prey for the tricks and becomes a victim of it. In simple words, Scam is the successful execution of spam.⁹

They don't realize that they have consented to the search engine to collect their data for promotional, research and development purposes. Privacy policies often assure user confidentiality and privacy but despite all protective measures, Data breaches occur and a large chunk of data often gets leaked by the hackers and fraudsters often use such leaked data and target children based on their search and try to lure them into believing their spam messages. Once the child believes such a message falls prey to the spam, the sensitive data is collected by them.

9. Morphing

Morphing is a special effect in motion pictures and animations that changes one image or shape into another through a seamless transition.

¹⁰Morphing is one of the most committed offence against children where the perpetrator uses pictures of the victim child to morph over an indecent or obscene picture and attempt to defame or blackmail them. Spreading of morphed images seriously scar a child's mind for a very long time.

10. Cyber-Extortion / Blackmailing

Cyber extortion is when a cyber attacker demands money or something else in return for stopping the attack or returning access to your systems/data. Cyber extortionists first gain access to a computer, software, or network, usually through

⁹ Kojo Eghan, The Difference between Spam and Scam, 3 January 2017, <<https://www.afd-techtalk.com/spam-scam/>>

¹⁰ Sameera M, what is Morphing? 23 November 2010,< <https://www.techulator.com/resources/4318-What-is-Morphing-.aspx>>

ransomware.¹¹ Perpetrators often target children by gaining access to their personal information and data via methods and threaten to release sensitive pictures or information if their demands are not met with. The demands need not necessarily be monetary in nature, it can also involve coercing the victim to do something illegal / unlawful or threatening the life of someone close to the victim.

Why are children an easy target?

Children are inexperienced, curious, eager and naïve, and unless guided properly, they tend to believe almost anything they see on the internet which makes them vulnerable and an easy target to the perpetrators. Since children are depending on the internet for education today, they easily come across content which should not be accessible to them and also tend to ignore instructions / restrictions regarding age and usage terms.¹²

The children and the elderly are the most vulnerable groups to easily get infected by Covid-19 since the immunity levels in those groups are comparatively lower than that of a regular adult.¹³ Thus the children are restricted from stepping out of their residences due to the lockdown/curfew restrictions and children tend to get bored easily hence they turn towards technology to stay in touch with their friends, to learn new things and to pass time by playing games or entertainment.¹⁴

Technology has become so handy that the children, without any authorization and knowledge of their legal guardians, access the App Store which enables them to easily access and download apps and games which shouldn't be accessed by them. Such Apps and Games often come with complex and elaborate terms and conditions which must be agreed to by the user without which it cannot be accessed and used. Children tend to click "I Agree" even without reading the terms and conditions and even if they do, the technical words used in such agreements are not usually easy for the children to understand.¹⁶

¹¹ Ellen Zhang, what is Cyber Extortion? June 29 2020, < <https://www.zeguro.com/blog/what-is-cyber-extortion> >

¹² Sanjeev Kumar, Crime against children in cyber world, January 2021, <https://www.researchgate.net/publication/348191254_CRIME_AGAINST_CHILDREN_IN_CYBER_WORLD>

¹³ Mary Van Beusekom, Young kids more likely than older kids to spread COVID-19 to household, 16 August 2021, <<https://www.cidrap.umn.edu/news-perspective/2021/08/young-kids-more-likely-older-kids-spread-covid-19-household>>

¹⁴ Western Governors University, Impact of technology on kids today, 3 October 2019, <<https://www.wgu.edu/blog/impact-technology-kids-today-tomorrow1910.html#close>>

Social media platforms, Games and Entertainment apps have become an essential part of almost every child's life due to the isolation and social distancing post pandemic. Children are getting addicted to these apps, in multiple unhealthy and unsafe ways which result in health physical or mental health complications or privacy violation.

Some examples of such adverse effects are as follows,

- a. Lack of sleep due to spending too much time playing games¹⁵,
- b. Spending money on online games without the knowledge of their legal guardians¹⁶,
- c. Lacking interaction with family and drifting apart from the family and communicating with random strangers online to make new friends and sharing personal information to gain attention and falling prey to cyber-perpetrators leading to blackmail and unsolicited acts.^{17 18}
- d. Clicking on links with Malwares by getting lured into attractive (false) offers, falling prey to Phishing / Spamming / Scamming emails. ²¹

IMPACT ON CHILDREN

The internet world is a double-edged sword with great advantages on one side where users can share and simultaneously access and gain knowledge on multitude of levels, understand concepts in a better way using Theoretical and Audio-visual aid, connect with people across the globe, pass numerous amounts of data and information over miles in mere fractions of seconds and so much more while the cynical side with grave repercussions where culprits and perpetrators misuse and exploit the technology and its facilities. It is called a two-edged sword because one needs to carefully balance between the sharp menacing sides where one sharp side being negligence, leads to falling prey to the perpetrators and the other sharp side being malice, where one can become a perpetrator himself and execute unlawful acts, hence one needs to carefully balance and stay on the bright side between the two sharp edges.

¹⁵ Effects of Technology on Children During a Pandemic,
<<https://online.regiscollege.edu/blog/effects-of-technology-on-children/>>

¹⁶ Tech Desk, Punjab teen spends whopping Rs 16 lakh on PUBG in-game transactions, 5 July 2020,
<<https://indianexpress.com/article/technology/gaming/punjab-teenager-khagar-pubg-16-lakh-in-app-purchase-6489572/>>

¹⁷ Janis Wolak, David Finkelhor, and Kimberly J. Mitchell, University of New Hampshire, March 2008, Online "Predators" and Their Victims, < <https://www.apa.org/pubs/journals/releases/amp-632111.pdf>>

¹⁸ Child Crime Prevention & Safety Center, <
<https://childsafety.losangelescriminallawyer.pro/children-and-grooming-online-predators.html>>

Children are the most vulnerable group of the society since they are inexperienced, curious, gullible and easy to manipulate. They lack awareness and understanding of the consequences of their actions which are often committed as an innocent being. Children usually fall prey to the perpetrators while compared to children becoming delinquents and misusing the technology.

Child victims of cyber-crime, who endure the abuse silently show a drastic and incomprehensible change of behavior and respond to everything in an unusual and indifferent manner, the key to help such trapped children and prevent any grave incident is to acknowledge the sudden change of behavior and investigate the cause of such drastic change without spooking the child¹⁹.

“Almost every school-going child has access to social media these days, but shockingly hardly any of them know about the privacy settings on their profiles. With details of their personal lives going public, they make themselves vulnerable to all sorts of cyber harassment.”²⁰

INTERNET AND ITS EFFECTS OF CHILDREN

Although technology has evolved remarkably over years, India observed a drastic surge in usage and dependency on technology post the Covid-19 Pandemic which resulted in Nation-wide lockdown, compelling people to adapt to technology to keep up with daily routines. Working class people had to adapt to Work from Home and children had to adapt to online classes to cope up with education during the period.

1. Data Breach

Rise in usage and dependency on technology also gave a window to the cyber-crimes. The online platform called “Zoom” became very popular among commercial and educational institutions. The very popularity and high usage in a very short period made it a primary target for the cyber-criminals due to its poor security and privacy measures. As per the news a data breach leaked over 500,000 zoom accounts, which were sold on the dark web for less than a rupee. Immediately after the incident was reported, zoom released an official statement

¹⁹ Mehak, Cyber Crime: It's Impact on Youth, August 2019,
<[https://rfppl.co.in/subscription/upload_pdf/Mehak-IJLHB%20VOL.5%20NO.2%20MAY-AUG%202019%20\(Special%20Issue\)_9636.pdf](https://rfppl.co.in/subscription/upload_pdf/Mehak-IJLHB%20VOL.5%20NO.2%20MAY-AUG%202019%20(Special%20Issue)_9636.pdf)>

²⁰Kiran Bharadwaj, Cyber Crimes and Its Impact on Children and The Alternative Solutions, 24 June 2020,
<<https://www.indialegallive.com/cyber-crimes-and-its-impact-on-children-and-the-alternative-solutions/>>

where they assured the users that they were investigating the source of breach and simultaneously locking out the compromised accounts²¹.

The issue to be noted here is that these were damage-control measures where the damage had already been done. Prevention is better than cure. The security measures to prevent such incidents is of utmost importance rather than controlling the damage post disaster.

2. Online Games

Children use the social platforms to stay in touch with their friends and opt for online games to play with their friends since the lockdown restricted any kind of gathering outside residences but unfortunately, they access and use the applications and games without the supervision of their legal guardians and nor do they care enough to read all the terms and conditions of use.

The now-banned, online suicide games such as The Blue Whale challenge and The Momo challenge were online games which seemed simple, fun and interesting where the kids playing the game were initially given a minor task/challenge which they were supposed to complete. The initial few stages of the game were harmless but as the stages of the game progressed, disturbing dares/challenges with elements of self-harm would start surfacing and at this point, the perpetrator on the other side of the game would have had accessed personal information about the player which was used as a leverage, to blackmail and coerce the player into doing the challenges irrespective of their wish. The final challenge of the game always involved Suicide.

The aforementioned issue surfaced in India at Mumbai where a 14 YO student jumped off the terrace of his residence building²² and in another incident at Indore where a student of 7th grade attempted to jump off the third floor of his school²³ and a girl studying 10th grade in

²¹ Monit Khanna, Zoom Data Breach: Over 5 Lakh Zoom Login Data Being Sold on Dark Web for Less Than Rupee, 4 May 2020, <<https://www.indiatimes.com/technology/news/zoom-data-breach-over-5-lakh-zoom-user-login-data-is-bein-g-sold-on-dark-web-512407.html>>

²² Shewali Tiwari, 14-YO Mumbai Boy Falls Prey To 'Blue Whale Challenge', Kills Self by Jumping Off a Building, 1 August 2017, <<https://www.indiatimes.com/news/india/14-yo-mumbai-boy-falls-prey-to-blue-whale-challenge-kills-self-byjumping-off-a-building-326952.html>>

²³ India Today Web Desk, Indore: Class 7 student attempts suicide, Blue Whale Challenge angle suspected, 11 August 2017, <<https://www.indiatoday.in/fyi/story/blue-whale-challenge-indore-class-7-child-suicide-third-floor-chameli-de-vi-school-1029091-2017-08-10>>

Ajmer ended her life by slitting her wrist and hanging herself to death in the Momo Challenge.²⁴²⁵

3. Social Media

Children using social media come into contact with strangers and often make friends with a completely random person and some, being naïve, even fall in love with the person on the other side without even knowing who is actually behind the screen on the other side. Perpetrators often masquerade their real identities and impersonate by lying about their true identity and make friends with children, by spending time and chatting with them, they cultivate trust by being an emotional support.

CYBER-CRIME IN INDIA

Earlier, offline education was the most preferred and used mode of education all over India and out of the blue, the pandemic hit and turned the tables making Online education the only viable option to ensure the continuum of education. While the online mode of education changed the landscape of education in our country, it also paved a way for cyber-crime, where children without proper supervision and guidance fail to differentiate between right or wrong, good or bad and either end up exploiting and misusing the technology leading to bullying, harassing and cyber-stalking or becoming the victims of the same to other online perpetrators.

Education is about knowledge and not speed, the blended mode of learning promotes educational independence where the children are not forced to walk the same path, instead it gives the freedom of choice and time to the children. In 2021, the blended mode of education was proposed to be adopted, where the children could choose the time, mode and course plan for their classes and also select test schedules based on their learning capabilities²⁶.

JUVENILE DELINQUENTS

As said by our first Prime Minister, Pandit Jawaharlal Nehru “Today’s Children are tomorrow’s citizens” the future does really lie in the hands of the children of our nation. The word future here need not necessarily mean a positive and great future, if the children are not

²⁴ Mirror Now Digital, Momo challenge claims first life in India, Class 10 student commits suicide in Ajmer,

²⁵ August 2018,

<https://www.timesnownews.com/mirror-now/in-focus/article/momo-challenge-claims-first-life-victim-india-class-10-student-commits-suicide-ajmer-rajasthan/272664>

²⁶UGC Public Notice regarding: Blended Mode of Teaching and Learning,
https://www.ugc.ac.in/pdfnews/7782448_Public-Notice.pdf

supported properly and guided towards the right path, they may tend to become cynical and destructive, and thus it is our duty to shape the children of our nation in such a way that it ensures a bright future for them and the nation.

Technology has evolved and changed the way the world operates and it is accessible to almost everyone. Children are inexperienced, curious, eager, naïve and they lack understanding to comprehend complex matters and tend to react in a poor manner when they face new situations, the childhood of a child shapes their adulthood. On one hand, without proper guidance and supervision, children tend to lose the ethical values and get deviated from the right path, using the technology for cynical benefits causing harm to others while on the other hand, if the children are left unprotected and unguided, they are most likely to fall prey to perpetrators since they are the easy and vulnerable target.

LAWS AGAINST CYBER CRIME IN INDIA

Laws have been enacted and enforced in our country to prevent crime and to protect and uphold the fundamental rights of every individual as per the Constitution. Despite that, with time, we come across new loopholes in different situations for which prevailing laws do not provide an apt solution or do not apply at all.

With the rapid growth of technology, the cyber-world has become a center of attraction for perpetrators. Cyber-crime is one of the most rapidly growing crimes and Cyber-crime against children has raised over 400% in the year 2020 (in comparison to 2021)²⁷ Cyber-offenders mask their true identity by hiding behind the technology and execute their evil plans by luring naïve and innocent children.

- The Government has established a National cyber-crime reporting portal which provides for preventive measures and safety tips to the public. The Information Technology Act, 2000 amended in the year 2008, penalizes sending of offensive messages under section 66A, which allows the authorities to intercept, decrypt and monitor exchange of any information, which concerns safety and security.²⁸
- The government has also imposed a ban on certain websites with adult and inappropriate content and it has been mandated by the government for the telecom

²⁷ Press Trust of India, over 400% rise in cyber crime cases against children in 2020: NCRB data, 14 November 2021,

<https://www.business-standard.com/article/current-affairs/over-400-rise-in-cyber-crime-cases-against-children-in-2020-ncrb-data-121111400320_1.html>

²⁸ India Code, The Information Technology Act, 2000, 9 June 2000,

<https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf>

companies to abide by the ban and parental authorization criteria to ensure that no child gets access to such inappropriate websites.

- The government has also launched a separate website, specifically for the purpose of educating people regarding cyber-crimes, which is available in multiple languages with audio guides and it also allows the user to file a complaint directly.³¹

CURRENT LAWS

The Indian government has taken great measures to reduce the rate of cyber-crime and to make the internet a safer place for the citizens of India. Despite those measures, the recent report provided by the National Crime Records Bureau (NCRB) about the cyber-crime against children shows about 308 cases registered in the year 2019 alone. Crimes against children usually go unreported since it potentially affects the future of a child.

The law to prevent cyber-crimes has been established by the government as follows,

a. The Information Technology Act, 2000

This act came into force in the year 2000, where the government gave the right to every citizen to access and use the technology which attracted a huge crowd towards the cyber world. The said act provides for punishment for exploitation of children, under section 67B which imposes stringent punishment for the offenders who collect, browse, transmit, or publish an inappropriate, obscene or sexually explicit content of children in any electronic format. And the rules post amendment imposes a duty on every individual to restrain from Browsing, posting, modifying, displaying, hosting or sharing any information which has a potential to harm a child, failing to abide which shall result in violation of law.³²

b. POCSO Act, 2012

A specific act for protection of children was brought into force in the year 2012. No statute for protection of children was enforced before the said act except the “Goa Children’s Act, 2003”. It is a gender-neutral law enacted to prevent and punish crimes against children involving abuse, sexual assault, pornography, sexual harassment, rape and other related offences. Under this act, non-reporting of any abuse is a punishable offence and one of the most important highlights of this act is that there is

no time limit for reporting any abuse and it also maintains the confidentiality of the victim's identity.²⁹

c. The National Commission for Protection of Child Rights (NCPCR)

This act assesses and reviews the safeguards that are provided for child rights protection by presenting reports on the workings of the laws. It Inquires about cases of child rights violations and initiates proceedings against the offender. This act provides for Inquiry into complaints and takes Suo-Motu notice of matters relating to child rights. 'Cyber trivia' app has been launched specifically for children which gives knowledge and understanding about strangers on the internet.³⁰

d. The Indian Penal Code, 1860

The penal code provides protection for all individuals including children under sections 108, 111, 305, 317, 361 and 369 where offences against a child are punishable as prescribed under this code.³⁵

e. ISEA

It is a website managed by the government which focuses on spreading awareness by conducting programs on cyber-crime like quiz and it also offers online courses which educates a person on the cybercrime and how to avoid falling prey to it.³⁶

REPORTING CRIMES AGAINST CHILDREN & IT'S PROCEDURE

The POCSO Act established a child welfare committee which mandates the police to report, any sexual offence regarding a child, to the committee within 24 hours. The committee established is child friendly which provides counseling sessions for the victim / aggrieved child to help the child deal with their fear and anxiety and strengthen them. A helpline has been established called "Childline" which has been solely established for the purpose of reporting any offence against a child. The Courts and its procedures for such matters are designed and established in such a manner that the children do not get intimidated by their surroundings.³¹

²⁹ India Code, The Protection of Children from Sexual Offences Act, 2012, 19 June 2012, <https://www.indiacode.nic.in/bitstream/123456789/2079/1/AAA2012____32.pdf>

³⁰ India Code, The Commissions for Protection of Child Rights Act, 2005, 20 January 2006, <<https://www.indiacode.nic.in/bitstream/123456789/2056/1/200604.pdf>>

³¹ *Id.* at 37

National cyber-crime reporting portal has been established by the government to report such offences through the website which is attended by the law enforced authorities. A national helpline number is also put forth for the complaints to be registered through the portals.³²

SUGGESTIVE MEASURES TO ENHANCE CHILD SAFETY

Cyber-crimes against children have increased tremendously post Covid despite all measures taken by the government. Thus, it is pertinent to take steps to prevent the same. As discussed earlier, the cyber-world is openly available for every individual to access and despite security measures like restrictions and parental controls, children find their way around the security steps. The following measures are suggested to make children safer against cyber-crime.

I. Accountability & Responsibility the part of Guardians

- a. Children are able to bye-pass security measures and protocols due to the negligence of parents/guardians who do not actively participate in monitoring the activities of the children under their custody.
- b. Similar to Motor Vehicle (Amendment) Act, 2019, parents/guardians can be made to stand responsible for any unlawful act committed by their child and heavy fines can be imposed to attract more attention of the parents towards their responsibility.^{33 3435}

II. Authorization by Legal Guardian

- a. Any app/website which restricts a child/minor or advises supervision for a child should be accessible only after verified authorization by the legal guardian.
- b. It should be a legal responsibility of every guardian to ensure that their child does not have access to their email and mobile phones to trick and surpass the authorization step.
- c. The legal guardian should get prompt notifications regarding the cyber-activities of the child under their care.

³² *Id.* at 35

³³ Motor Vehicle (Amendment) Act, Section 199A - Offences by Juvenile

³⁴ Dhananjay Mahapatra, Times of India, Parents to pay for minors causing accidents: SC, 1 October

³⁵ <https://timesofindia.indiatimes.com/india/parents-to-pay-for-minors-causing-accidents-sc/articleshow/3546390.cms>

III. Mandated Training sessions for Guardians

- a. Every school must conduct regular mandated sessions where the parents of the children should also attend the awareness programs.
- b. Such awareness programs must mandate every parent to be present and spread awareness regarding cyber-crimes and cyber-security measures.

IV. Public-awareness promotion

- a. Government can initiate public awareness programs where cyber-security measures are taught to people.
- b. Casting televisions ads showing the importance of cyber-security and guiding the viewers.
- c. Mandatory non-skippable ads, on devices with internet connections, along with other ads.

CONCLUSION

It is not logically possible to completely eradicate the use of technology from our lives but, if proper steps and measures are taken, it is possible to avoid undesired incidents and in the long run, with proper counter measures, even to eradicate cyber-crimes. But to achieve the long-term goal, it is necessary to ensure that children are given utmost importance in the matter of cyber-safety. It is our responsibility to ensure that children are regularly monitored and properly guided to help them avoid taking any wrong turn. Achieving cyber-safety for children is not possible merely by implementing textual legislations with penal actions or establishing help-lines on the part of government alone but it is big time that each individual takes up the responsibility of considering cyber-safety of children as their fundamental duty and take action against any suspicious or unlawful incident. It is possible to build a great future for our nation only if the future of our nation, the children, are protected today.

LEGAL IMPLICATIONS OF INTERNET CONNECTIVITY IN THE DIGITAL ERA

Dhanyakesari Rao Gurpur¹

INTRODUCTION

Connection is an essential component for the functioning of society. In the digital era internet, technology and network form a chain of communication. The world has seen an expeditious rise in networking because of the global pandemic which pushed all sectors into an online mode.

With recent advancements in various digital technologies, some experts have proclaimed the arrival of the Fourth Industrial Revolution. Many breakthroughs in biology, materials, and computing support this technological progression. Among them, the Internet of Things [IoT], and the evolution of connectivity expanded from the Internet, has had the most significant impact on human lives. IoT constitutes a two-pronged network, firstly, connecting devices and secondly, connecting these devices to the internet. The impact is not only economic but also social and political. The ability to connect and perceive physical entities digitally, allows us to process a magnitude of information, that would otherwise be too expansive. It encompasses all internet-enabled devices that are vital to our daily lives. The potential impact of IoT on productivity, job functions, social inclusion, and global competition may both empower and at the same time endanger current human systems.²

We are moving from an era of big data³ to one of the infinite data.⁴ The applications of IoT are boundless, ranging from day-to-day activities concerning individuals to healthcare and operations. This augmentation of data enables the user to paint a mental picture of a person, institution or organisation. This proposition can be illustrated with smart homes, which enable the lights in the room to be switched on at the click of a button, which can then activate your coffee machine and water heater. A smart fridge can order groceries based on your preferences.

¹ RV Institute of Legal Studies, Bengaluru

² Shuo-Yan Chou, 'THE FOURTH INDUSTRIAL REVOLUTION' [2019] 72 (1) *Journal of International Affairs* <<http://journals.mountainuniversity.edu.ng/physics/Journal%20of%20International%20Affairs%20Editorial%20Board.pdf>> accessed 4 February 2022

³ Big data refers to the large, diverse sets of information that grow at ever-increasing rates.

⁴ Jamie Lee Williams, 'Privacy in the Age of the IoT.' [2016] 41 *Human Rights* <<http://www.jstor.org/stable/26423456>> accessed 4 February 2022

A smartwatch can track your movement and connect it with your phone. This exhibits that the internet has permeated our lives such that it is becoming increasingly difficult to distinguish between what is personal and what is not.



Image 1.1

Estimated growth of smart IOT devices by 2050

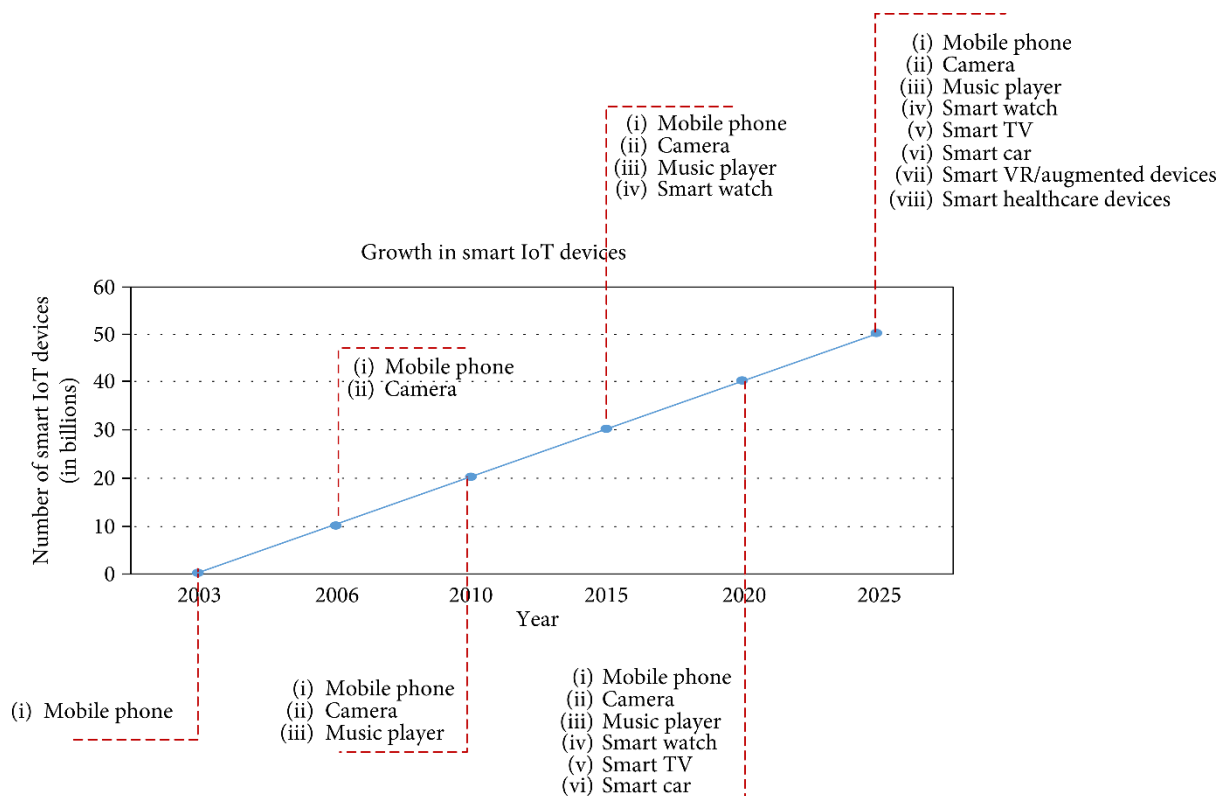


Image 1.2⁵

In 2020, according to Forbes, 646 million IoT devices will be utilised in the medical field. There will be more than 10 billion active IoT devices by 2021.⁶ What happens to the colossal

⁵ Sita Rani and others, 'Threats and Corrective Measures for IoT Security with Observance of Cybercrime: A Survey' Wireless Communications and Mobile Computing, 2021 (9) < <https://doi.org/10.1155/2021/5579148> > accessed 10 February 2022

amounts of data being collected every day? Is the ease of life worth infringing the fundamental right to privacy?

SECURITY

By 2021, annual spending on IoT security measures will have risen to \$631 million. As the Internet of Things (IoT) market expands, it's only expected that the importance of securing and integrating IoT networks increases. The annual spending on IoT security is set to increase to \$631 million by 2021, a significant increase from 2016 with \$91 million spent. This growth statistic assures us that IoT is headed for a massive boom in the next ten years.⁷

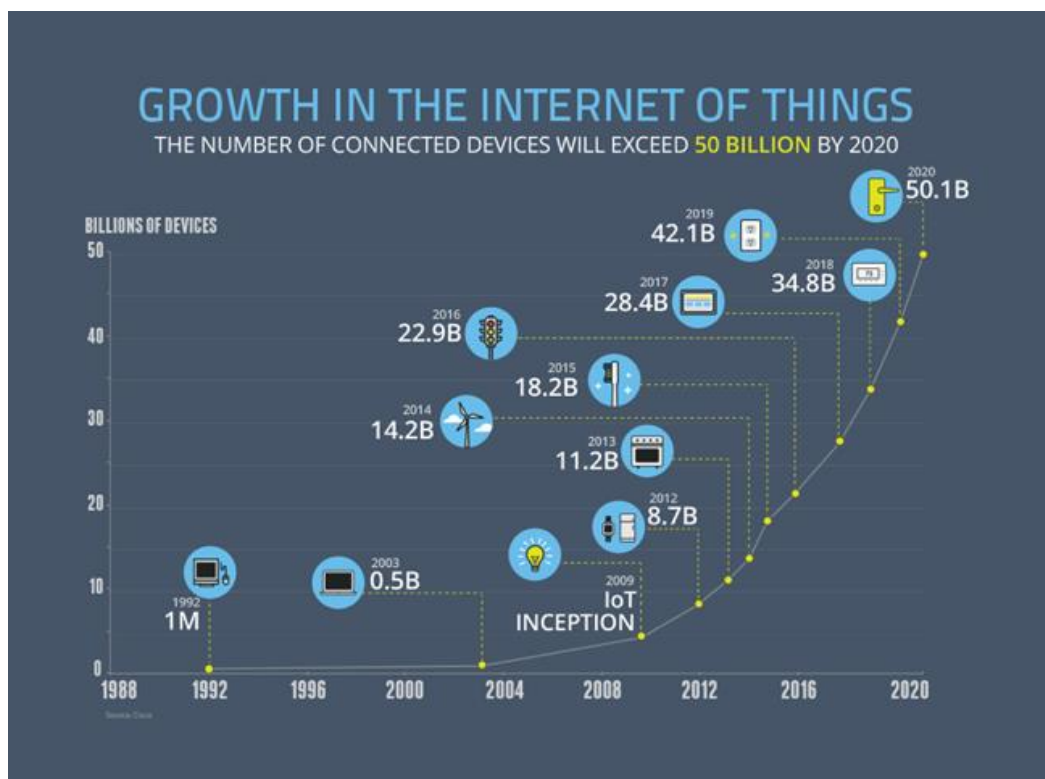


Image 2.1

The IoT has catalysed growing concerns over *data security* since its exponential growth. IoT devices plugged into the internet are attacked within 5 minutes and targeted by specific exploits in 24 hours.⁸

⁶ Bojan Jovanović, 'Internet of Things statistics for 2021 – Taking Things Apart' (DataProt, 24 March 2021) <<https://dataprot.net/statistics/iot-statistics/>> accessed 6 February 2022

⁷ Daniel Newman, 'IoT trends to watch in 2021' (Forbes, 25 November 2020) <<https://www.forbes.com/sites/danielnewman/2020/11/25/5-iot-trends-to-watch-in-2021/?sh=4e77d6db201b>> accessed 1 February 2022

⁸ Hardik Modi, 'Netscout Threat Intelligence Report' (2018) <SECR_004_EN-1901-Threat-Intelligence-Report-Briefing.pdf> accessed 12 February 2022

TOP GLOBAL TARGETS



Image 2.2

In November 2013, security firm Symantec discovered a new Internet worm that targeted small IoT devices, particularly home routers, smart televisions, and Internet-connected security cameras, in addition to computers.⁹ In the first large-scale IoT security breach, experts estimate that the attack compromised over 1,00,000 devices—including smart televisions, wireless speaker systems, and refrigerators—and used them to send out malicious emails. Although attention to such issues is on the rise, computer security experts have known for years that small, sensor based IoT devices are prone to security problems. A team from Florida International University showed that the Fitbit fitness tracker could be vulnerable to a variety of security attacks, and that simple tools could capture data from any Fitbit within 15 feet.¹⁰

These devices are not engineered with data security in mind. There is an inherent technical problem at hand. IoT devices are susceptible to security breaches. First, at the outset of engineering a device, security needs to be inbuilt by design and not because of a breach.

Second, consumer sensor devices often have a very compact form factor. The goal is to make a small health monitor that fits on your wrist or a health monitor that resides in the sole of your shoe. Small form factors, however, do not necessarily lend themselves to adding the processing power needed for robust security measures such as encryption.¹¹ In addition, small devices may not have sufficient battery life to support the extra processing required for more robust data security.

The system assets that make up the IoT must first be identified before security threats can be addressed. Understanding the asset inventory, which includes all IoT components, devices, and services, is critical. An asset is a valuable and sensitive economic resource that

⁹ Broadcom, 'Linux Worm Targeting Hidden Devices' (Broadcom, 27 November 2013)

<<http://www.symantec.com/connect/blogs/linux-worm-targeting-hidden-devices>> accessed 11 February 2022

¹⁰ Mahmudur Rahman, Bogdan Carbutar & Madhusudan Banik, "Fit and Vulnerable: Attacks and Defenses for a Health Monitoring Device" (Cornell University, 20 April 2013) <arXiv:1304.5672> accessed 12 February 2022

¹¹ Stacey Higginbotham, "The IoT Needs a New Security Model Which One Will Win?" (Gigaom, 22 January 2014) <www.gigaom.com> accessed 14 February 2022

corresponds to a company. The system hardware, which includes buildings, machinery, software, services, and data provided by the services, is the most asset in any IoT system.¹²

Attacks are attempts to destroy a system or interrupt regular operations by utilising various strategies and tools to exploit vulnerabilities. Attackers carry out attacks for a variety of reasons, including personal gratification or monetary gain. People who pose a threat to the digital realm are known as attack actors.¹³ They could be hackers, criminals, or even governments.

An attack itself may come in many forms, including active network attacks which monitor unencrypted traffic in search of sensitive information; passive attacks such as monitoring unprotected network communications to decrypt weakly encrypted traffic and getting authentication information; close-in attacks; exploitation by insiders, and so on.

TYPES OF CYBER-ATTACKS

- a) Physical attacks- This type of attack tampers with IoT device physical components. IoT devices, which often operate in outdoor areas and are unattended and spread, are especially vulnerable to physical attacks.
- b) Reconnaissance assaults - This type of attack entails the unauthorized finding and mapping of IoT devices' systems, services, and vulnerabilities. Scanning network ports and sending queries regarding IP address information are examples of reconnaissance attacks.
- c) Denial-of-service (DoS) Attempts to make a machine or network resource unavailable to its intended users. The bulk of IoT devices is vulnerable to such attacks due to their poor memory capacities and restricted computation resources.
- d) Access attacks - This type of attack entails gaining access to a computer system.¹⁴

We must be ingenious to establish effective IoT security:

- **Confidentiality** is a critical security element in IoT, although it isn't always required in situations when data is shared with the public. However, sensitive data must not be

¹² Rabeh Morrar, 'The Fourth Industrial Revolution (Industry 4.0): A Social Innovation Perspective' (2010) <https://www.researchgate.net/publication/321326072_The_Fourth_Industrial_Revolution_Industry_40_A_Social_Innovation_Perspective> accessed 12 February 2022

¹³ Ben Rothke, 'Secrets and lies: digital security in a networked world' (Schneier, February 2001) <<https://www.schneier.com>> accessed 12 February 2022

¹⁴ Mohamed Abomhara and Geir M. K  ie, Cyber Security and the IoT: Vulnerabilities, Threats, Intruders and Attacks (first published 2020, CRC Press) <IoT: Security and Privacy Paradigm – Google> accessed 12 February 2022

exposed or viewed by unauthorised entities in most situations and scenarios. Patient data, confidential corporate information, and/or military information, as well as security credentials and secret keys, must all be kept hidden from unauthorised parties.

- **Integrity** is an essential security attribute in most circumstances to provide trustworthy services to IoT users. Different IoT systems have different integrity needs. For example, because of information sensitivities, a remote patient monitoring system will include rigorous integrity checking against random errors. Communication can result in data loss or manipulation, which could result in human lives being lost.¹⁵
- **Authentication and authorization** are two terms that are used interchangeably. Because of the nature of IoT ecosystems, where possible communication may take place between the device to device, human to the device, and/or human to human, ubiquitous connectivity of the IoT exacerbates the problem of authentication. Various authentication requirements necessitate various solutions in various systems. Some solutions, such as authentication of bank cards or bank systems, must be robust. Only authorised entities (any authenticated entity) are allowed to conduct network actions using the authorization properly.
- **Availability** a device's user (or the device itself) must be able to access services at any time, whenever they are required. Different hardware and software components of IoT devices must be reliable to deliver services even when malevolent entities or adverse circumstances are present. Various systems have different needs for availability. For example, roadside pollution sensors would most likely have higher availability needs than fire or healthcare monitoring systems.¹⁶
- A security audit is a technique of systematically evaluating a device's or service's security by determining how well it is protected. It complies with a set of predetermined criteria Security auditing is important since most systems have many vulnerabilities. In IoT, a system's need for auditing depends on the application and its value.

¹⁵ Ben Rothke, 'Secrets and lies: digital security in a networked world' (Schneier, February 2001) <<https://www.schneier.com>> accessed 12 February 2022

¹⁶ Georgios Mavridis, 'Security mechanisms for Internet of Things (IoT)' (2017) <<https://pdfcoffee.com/download/security-in-iot-pdf-free.html>>

The security development process requires a thorough understanding of a system's assets, followed by identifying different vulnerabilities and threats that can exist. It is necessary to identify what the system assets are and what the assets should be protected against.¹⁷

DATA PROTECTION OBLIGATIONS

When personal data obtained is used privacy concerns emerge, what are the ethical and legal dictates that an organisation needs to abide by?

What are the privacy laws in India, given that privacy is a fundamental right enshrined in article 21 by Apex Court of India in the historic case of *Justice K. S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors.*¹⁸

The Supreme Court recommended that the Central Government put in place a data protection system that upholds the rights of individuals as well as the welfare of the state while promoting an environment for digitalisation. In the same year, the government appointed an expert committee headed by former Supreme Court judge Justice B.N. Srikrishna to draft a Personal Data Protection Bill that will "ensure the growth of the digital economy while keeping personal data of citizens secure and protected."

The RBI circular mandated all system providers to store data relating to financial statements within India.¹⁹

Data Protection = Legal Framework + Technical Standards

Personal Data Protection Bill, 2018{PDPB}

Fair and reasonable processing—Any person processing personal data owes a duty to the data principal to process such personal data fairly and reasonably that respects the privacy of the data principal.²⁰

Components

Data²¹ is of two types, personal data and sensitive personal data

- Personal data is any information that relates to an identified or identifiable living individual.
- Sensitive Personal Data is information that relates to an identified or identifiable living individual based on their:

¹⁸ *Justice K.S. Puttaswamy v. Union of India* (2017) 10 S.C.C. 1 (India)

¹⁹ Nanda S. Dave, 'Storage of Payment System Data' (Reserve Bank of India, 6 April 2018) <<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11244>> accessed 12 February 2022

²⁰ Personal Data Protection Bill (2018)

²¹ Data is any information, opinion, facts, concepts and it can be categorized as health data, biometric data, genetic data, financial data

- Racial or ethnic origin.
- Political opinions.
- Religious or philosophical beliefs.
- Trade union membership.
- Genetic data; and
- Biometric data

Parties involved

- Data Principal
- Data Processor
- Data Fiduciary

The owner of the data is known as the Data principal. Data Fiduciary is defined as “any person, including the state, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of the processing of personal data”. Data processors can either be a data fiduciary or a third party, who processes the data. This bill imposes obligations on the data fiduciary is to protect the data of an individual.

Draft PDPB has a few elements which are like other leading global data protection regulations like EU’s General Data Protection Regulation (GDPR).

COMPARISON OF GDPR-EU AND PDPB

After the implementation of GDPR in May 2018, many organizations that are providing their service in the European Union have changed their data processing policy as per the GDPR standard. PDPB framework is proposed concerning the Indian context and has been inspired by GDPR. Both protect individuals in the processing and free movement of personal data. There is a good deal of similarity between GDPR and PDPB with few differences. Here the major differences that exist between GDPR and PDPB are examined²²

²²Ram Govind Singh, ‘A Technical Look at The Indian Personal Data Protection Bill’ (2020) Indian Statistical Institute Kolkata <<https://arxiv.org/pdf/2005.13812.pdf>> accessed 12 February 2022

Detail	GDPR-EU	PDPB
Status	Implemented	Draft
The entity whose data is being processed	Data subject	Data principal
The entity who is processing data	Data controller	Data fiduciary
Cross border transfer of sensitive personal data	May be transferred without any restriction, if commission/authority assure appropriate safeguard and protection	May be transferred if data fiduciary follows the guidelines of authority. Also, data fiduciary has to store one local copy within India.
Critical personal data	May be transferred without any restriction, if commission/authority assure appropriate safeguard and protection	Processed and stored within India
Data breaches	Data controller may inform to data subject, in case of high risk	Data protection authority will decide whether it should be reported to data principal or not
Right to object	Data subject may object further processing of data	Not specified
Right to restriction	Data subject may restrict processing	Not specified
Children consent	Approval of parental authority is required to process children personal data for children below 16 years	Children data shall be processed with appropriate safeguard which protects the rights of children; Age verification and parent's/guardian's consent is required
Children data processing	Not specified	Guardian data fiduciary shall be barred from profiling, tracking, behavioural analysis and target based advertisement that can cause significant harm to the child.
Right to object automated decision making	Data subject may have right not to participate in automated decision making like profiling which can harm him/her significantly	Not specified
Right to access	Data subject may obtain copy of personal data being processed	Data principal May obtain summary of personal data being processed
Social media significant data fiduciary	Not specified	Specified, have to maintain user verification records also
Data audit	✓	✓
Consent Manager	Not specified	Record and manage consent of data principal
Trust score	✗	✓
Certificate	✓	✗

Image 2.1

PROCESSING DATA

As the ratio of users on IoT is increasing, it leads to increased risks of different types of cyber-crimes. Crimes are unpredictable due to the development of new technologies. Cyber-crimes are not limited to computers only, electronic devices such as telecommunication tools, financial transaction machines are all susceptible. IoT is diversified in nature, which makes it difficult to find out the problems of cyber security that result from unawareness on issues of security. There is a need to generate awareness among users. Cybercrimes issues and threats

should be acknowledged from the grassroots level i.e., institutes, schools, colleges, computer centres.²³

One of the core objectives of PDPB is to increase digital citizen awareness surrounding consent for data acquiring and processing. To ensure they are informed when consenting to the use of IoT, their needs must be met, to guarantee that they have sufficient information to make informed choices.

Personal data may be processed based on the consent of the data principal, given no later than at the commencement of the processing.

For the consent of the data principal to be valid, it must be:

- a) free, having regard to whether it meets the standard under section 14 of the Indian Contract Act, 1872 (9 of 1872);²⁴
- b) informed, having regard to whether the data principal has been provided with the information required under section 8.
- c) specific, having regard to whether the data principal can determine the scope of consent in respect of the purposes of the processing.
- d) clear, having regard to whether it is indicated through an affirmative action that is meaningful in each context; and
- e) capable of being withdrawn, having regard to whether the ease of such withdrawal is comparable to the ease with which consent may be given.²⁵

The contention for the consent process is that participants should be provided with sufficient information to allow him/her to make an informed decision with regards to certain activities. Through research, a trend has been observed where the Data Principal remains unaware of the subsequent data usage by IoT devices. That is, digital citizens may not be aware that they are consenting for their data to be used for data processing purposes.²⁶

²³ Ms. Anisha, 'Awareness and Strategy to Prevent Cybercrimes: An Indian Perspective' (2020) Indian Journal of Applied Research 7(4)
<https://www.researchgate.net/publication/344244881_A_Review_on_Cyber_Crimes_on_the_Internet_of_Things>accessed 14 February 2022

²⁴ Personal Data Protection Bill (2018)

²⁵ Personal Data Protection Bill (2018)

²⁶ Whitmore A, Agarwal A & Da Xu L, 'The IoT--A survey of topics and trends. Information Systems Frontiers' (2014) Springerlink < <https://link.springer.com/article/10.1007/s10796-014-9489-2>>accessed 1 February 2022

LEVELS OF CONSENT

Consent Level	Description
1. General Consent	The digital health citizen consents to give full access to his/her health data.
2. General Consent with specific conditions	The digital health citizen gives a general agreement but some restrictions in terms of the person, data and purpose are defined.
3. General Denial with specific conditions	Complements Consent Type/Level 2 but the priority is given to the restrictions.
4. General Denial	The digital health citizen does not consent to give access to his/her health data.

Image 4.1

The Bill empowers the Data Principal with certain rights. The Right to confirmation and access, right to correction.²⁷

The Bill also codifies the right to be forgotten, which restricts or prevents continuing disclosure of personal data.

The Right to be Forgotten in the Bill only provides a “right to restrict or prevent continuing disclosure of PD”²⁸, unlike GDPR which provides for a right to obtain the erasure of PD.²⁹ A data principal under the Bill cannot claim the erasure of data collected by IoT devices as a matter of right. Consequently, the data becomes vulnerable to attacks.

TRANSPARENCY

Transparency for AI systems raises challenges beyond the question of how to ensure that information is provided to the user and what information needs to be presented to users. One challenge is the complexity of stakeholders and the different expectations they have over the same concept. This point is captured, for instance, in Weller’s (2017) investigation on the roles and types of transparency in the context of human intelligibility of AI³⁰

Transparency in the context of robotics and AI

For a...	To...
Developer	Understand whether their system is working properly in order to identify and remove errors from the system or improve it
User	Provide a sense for what the system is doing and why, to enable intelligibility of future unpredicted actions circumstances and build a sense of trust in the technology Understand why one particular decision was reached Allow a check that the system worked appropriately Enable meaningful challenge (e.g. credit approval or criminal sentencing)
Society broadly	Understand and become comfortable with the strengths and limitations of the system Overcome a reasonable fear of the unknown
Expert/Regulator	Provide the ability to audit a prediction or decision trail in detail, particularly (un)intended harmful actions, e.g. a crash by an autonomous car
Deployer	Make a user feel comfortable with a prediction or decision, so that they keep using the system

Image 4.2

²⁷ Personal Data Protection Bill (2018)

²⁸ Personal Data Protection Bill (2018)

²⁹ Personal Data Protection Bill (2018)

³⁰ Adrian Weller, ‘Transparency: Motivations and Challenges’ (Cornell University 29 July 2017) <<https://arxiv.org/pdf/1708.01870.pdf>> accessed 5 February 2022

The data fiduciary shall be responsible for complying with all obligations set out in this Act in respect of any processing undertaken by it or on its behalf. The data fiduciary should be able to demonstrate that any processing undertaken by it or on its behalf is in accordance with the provisions of this Act.³¹

CONCLUSION

This paper has shown the concerns that have emerged with the advent of the linkage of devices. It deals with the implication of security, privacy, and consent in the legal framework governing IoT. The colossal amounts of unfragmented data collected by IoT devices must not infringe the fundamental right to privacy.

Cybercrime is a threat to people, so it is necessary to take steps to protect IoT from cyber-crimes for the welfare of society, culture, and countries' security aspect. The Indian government has passed an Information Technology Act, 2000 to control cybercrimes issues. However, it is not able to regulate the emerging trends of the digital world. Cybercrime is not bound to any geographical area; it passes national boundaries on the internet. It is necessary that proper action should be taken to control cyber-crimes internationally.

To foster a free and fair digital economy the Personal Data Protection Bill, 2018 was introduced. It recognized that the ability to undertake activities dealing with automation comes with certain responsibilities.

The significance of establishing a solid framework for data regulation has been emphasised. One of the primary priorities of the PDPB is to raise digital citizen understanding regarding consent for data collection and processing. It is critical to meet their requirements of transparency to ensure that they are informed when consenting to the usage of IoT. This will ensure that they have adequate information to make informed decisions.

Data security and data processing must be considered during the design stage. For this, the organizations should take into consideration security by design, and provide users with notice and choice for unexpected services. There is a need for a centralised authority that will govern data. The legislation must be built on a dynamic foundation that allows it to change as technology advances.

³¹ Personal Data Protection Bill (2018)

LEGAL REGIME OF CRIMINAL LIABILITY FOR MISAPPROPRIATION OF CONFIDENTIAL INFORMATION IN INDIA

Girish Shetty¹

INTRODUCTION

Confidential information is one of the most important types of intellectual property rights. The Confidential Information may be protected under various legal regimes: under common law, contract law, competition law, and criminal law or may be protected under various special legislations.

The United States of America has enacted criminal law to protect confidential information. The USA enacted the Economic Espionage Act of 1996 (EEA), which made theft or misappropriation of a trade secret a federal crime.² This Act is a federal law. In addition to theft or misappropriation of trade secrets, the Economic Espionage Act of 1996 also criminalizes the theft of trade secrets if committed for the benefit of a foreign entity or to confer an economic benefit to another party. The Economic Espionage Act of 1996 provides deterrent penalty provisions for the misappropriation of confidential information. This Economic Espionage Act of 1996 provides criminal liability for wrongful use, acquisition, or disclosure. The Economic Espionage Act of 1996 imposes a high penalty for misappropriation of confidential information and fifteen years of imprisonment for misappropriation of trade secrets. The Economic Espionage Act of 1996 provides a penalty of up to \$5,000,000 in case of misappropriation of trade secrets by individuals and a penalty up to \$10,000,000 or three times the value of the stolen trade secret to the organization.³ However, the EU Directive does not provide criminal liability for violation of confidential information, nor does the EU Directive prohibit from enacting criminal law. Thus, the EU member states may enact criminal law for punishing misappropriation of confidential information.⁴

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² Shreya Desai, SHHH! It's a Secret: A Comparison of the United States Defend Trade Secrets Act And European Union Trade Secrets Directive, GA. J. INT'L & COMP. L., Vol. 46:481, at 486 available at <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2421&context=gjicl>

³ Economic Espionage Act of 1996, available at <https://www.govinfo.gov/content/pkg/PLAW-104publ294/pdf/PLAW-104publ294.pdf>

⁴ Shreya Desai, supra note 1, at 502

India does not have a special criminal or special civil law to protect confidential information. This research paper focuses on criminal liability for the misappropriation of confidential information in India. Even though India does not have a special criminal law to protect confidential information, some of the Indian legislations recognise a criminal liability for misappropriation of confidential information. These legislations are the Indian Penal Code, Information Technology Act 2000, and Copyright Act of 1957.

CRIMINAL LIABILITY OF MISAPPROPRIATION OF CONFIDENTIAL INFORMATION IN INDIA UNDER INDIAN PENAL CODE

Under several sections of the Indian Penal Code, criminal action could be initiated for the protection of confidential information. Sections 378, 379, 403, 404, 405 and sections 410 to 414 of the Indian Penal Code are relevant to discuss the protection of confidential information. However, before begin discussing these sections, it is important to understand Section 22 of the Indian Penal Code. Section 22 of the Indian Penal Code defines ‘Moveable Property’ that “the words ‘Moveable property’ is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.”⁵ The corporeal properties mean tangible properties. By considering the definition of ‘Moveable Property’, those sections of the Indian Penal Code which apply to offences against ‘Moveable Property’ i.e., will apply to only corporeal moveable property. Therefore, such sections will not apply to offences against incorporeal moveable property i.e., intangible moveable property. When the section of the Indian Penal Code refers to ‘Moveable Property’ means tangible Moveable property and not intangible Moveable Property. Therefore, the offence under the Indian Penal Code which specifically requires the essential ingredient of an offence requires being Moveable Property, which means the section applies only to offences against the moveable corporeal property or moveable tangible properties. Whereas the Sections mention ‘property’, this includes all types of property including corporeal or incorporeal moveable properties.⁶

Confidential information may include moveable corporeal or moveable incorporeal properties or immovable corporeal or immovable incorporeal property. An offence under Section 378 (Theft) and Section 403 (Dishonest Misappropriation of Property) are offences against ‘Moveable Property’ Therefore, as per the above discussion about Section 22 of the Indian

⁵Universal’s Criminal Manual, Universal Publishing Company, 2013, New Delhi, at 409.

⁶ Ibid.

Penal Code, these offences are against moveable corporeal property. However, under Section 405 (Criminal Breach of Trust) and Section 411 to 414 (Stolen Property) may be of any type of property including corporeal and incorporeal properties.⁷

Section 378 of the Indian Penal Code defines an offence of 'theft'. If the moveable corporeal property (such a property may be confidential information) is taken with dishonest intention, out of the possession of the person, without that person's consent has committed the offence of theft. This section applies to the theft of confidential information as well. Section 379 of the Indian Penal Code provides punishment of imprisonment which may extend to three years, or the section prescribes fine or both imprisonment and fine.⁸

Section 403 of the Indian Penal Code deals with dishonest misappropriation of property. Any person dishonestly misappropriates or converts to his own use any moveable corporeal property, has committed an offence under this Section 403 of the Indian Penal Code. Under this section 'any moveable property' covers confidential information as well. If a receiving party of confidential information dishonestly misappropriates or converts corporeal moveable confidential information to his own use, has committed the offence under Section 403 of Indian Penal Code. Section 403 provides punishment may extend to two years or with fine or both for an offence committed under Section 403 (dishonest criminal misappropriation)⁹

Section 405 of the Indian Penal Code provides an offence of criminal breach of trust. The section provides that "any person who is entrusted with property or with any dominion over property", the meaning of 'entrust' means any responsibility is assigned. The meaning of 'dominion over property' means a position where a person could exercise his control over the property. If a person entrusted or who is having dominion over property dishonestly uses or disposes of that property in violation of any law by which trust requires to be discharged or in breach of a legal contract, a person has committed an offence of criminal breach of trust. This section applies to 'any property. Thus, this section applies to incorporeal moveable property, corporeal moveable property as well as immovable property. For instance, if an employee of the 'owner of the confidential information', is being entrusted or with dominion over the confidential information and if the employee dishonestly misappropriates or converts confidential information to his own use, the employee has committed the offence under Section 405 of Indian Penal Code. Section 406 provides punishment that may extend to three

⁷Universal's Criminal Manual, *supra* note 563.

⁸*Ibid*, at 553-554.

⁹ *Ibid*, at 557

years or with a fine or both for an offence committed under Section 405 (dishonest criminal breach of trust.)¹⁰

Section 405 requires that the person must be ‘entrusted with the property’ or ‘control over the property’ and such a person should be bound by any legal contract to discharge such trust. In *Narayan Chandra Mukherjee v State of Bihar*¹¹, an employee of ABC company accepted the employment of the former company as a CEO. When an employee is still being employed by a former company, the employee had disclosed confidential information of the prospective company, for his personal gain as well as gain of the former company. This discloser of the confidential information of the prospective company by the accused was held to be in breach of the appointment of letter of the prospective company. The court held that the employee was liable under Section 405 of the Indian Penal Code.¹²

Section 411 to 414 of the Indian Penal Code provides punishment for receiving Stolen Property, and for voluntarily assisting in concealing or disposing or making away with such Stolen Property. The sections of the Indian Penal Code about ‘Stolen Property’ apply to all the types of properties including corporeal moveable as well as incorporeal moveable property. Section 410 of the Indian Penal Code defines ‘Stolen Property’. Stolen Property means obtaining possession of the property which may be confidential information, which is obtained by an offence of theft or extortion or robbery or criminal misappropriation or criminal breach of trust. Section 410 applies to the transfer of the property by the above-said commission of offences only. If the property is obtained or received by committing any offences other than said offences under section 410, in such circumstances Sections 410 to 414 of the Indian Penal Code will not be applicable.¹³ For instance, an offence of ‘Fraud’ is not mentioned under Section 410. If the property is obtained by ‘Fraud’ and thereafter, received by a person with the knowledge that the property is dishonestly obtained, in such situation the person has not committed an offence under Section 410 to 414 of the Indian Penal Code, even though the receiving party of such property has knowledge about the nature of obtaining such property is obtained by ‘Fraud’.¹⁴

Section 410 to 414 of the Indian Penal Code apply to situations even where the offences mentioned under Section 410 i.e., theft or extortion or robbery or criminal misappropriation

¹⁰ Ibid, at 559

¹¹ [2001] 1 BLJR 680

¹² Universal’s Criminal Manual, supra note at 559.

¹³ Ibid, at 562-563.

¹⁴ Ibid.

or criminal breach of trust, are committed outside the territorial jurisdiction of India, and thereafter, the property received by a person in India with dishonest intention and with the knowledge that the property is a Stolen Property. In such a situation, Section 410 is applicable, even though these said offences are committed outside India and thereafter, the property is transferred and received by a person in India with the knowledge that the property is Stolen Property. For instance, if the confidential information is stolen or criminally misappropriated outside the territorial jurisdiction of India and thereafter, the person dishonestly receives the stolen confidential information with the knowledge, if the possession of such stolen confidential information is recovered from the person in India, the person has committed an offence under Section 411 of the Indian Penal Code for receiving the stolen confidential information.

In addition to the above sections, several other sections under the Indian Penal Code like aiding, abetting, mischief, cheating and other sections of the Indian Penal Code may be applied considering the facts and circumstances of the case.

PROTECTION OF CONFIDENTIAL INFORMATION UNDER COPYRIGHT ACT OF 1957

It is important to understand that the same subject matter involving copyright may be subject to protection under the legal regime of confidential information. Therefore, any violation or misappropriation of subject matter which may be qualified as confidential information may be protected under the legal regime of copyright. Section 63 of the Copyright Act of 1957 deals with offences of infringement of Copyright. Section 63 provides that any person who knowingly infringes or abets the infringement of the copyright in any work commits a criminal offence. Further, the Copyright (Amendment) Act, 2012, under Section 65A has provided for criminal remedies for circumvention of technological measures implemented for the protection of works in which copyright subsists; if such circumvention is made to infringe the copyright in such works. If confidential information subsists in copyrights, and technological measures are implemented for the protection of such copyright (which may include Confidential Information), mere circumventing such technological protection with the intention of infringing such a right has committed an offence and punishable with imprisonment which may extend to two years and shall also be liable to fine under Section 65A of the Copyright Act of 1957. Furthermore, under Section 65B of the same Act, there is a criminal penalty for unauthorized access and alteration of rights management information

usually maintained through online contracts regulating digital rights. Therefore, confidential information may be protected both under Section 65A and 65B of the Copyright Act of 1957, provided such confidential information should also be qualified as a subject matter of copyright.¹⁵

The limitation of protecting confidential information under the legal regime of Copyright is that the subject matter should be qualified as both copyrights as well as confidential information. Therefore, many types of confidential information will be outside the scope of protection under the legal regime of Copyright.¹⁶

PROTECTION OF CONFIDENTIAL INFORMATION UNDER INFORMATION TECHNOLOGY ACT OF 2000

The Information Technology Act of 2000 provides a penalty for the violation of certain types of confidential information pertaining to information technology. The ‘Personal Data’ or ‘Data’ could be protected as confidential information. It is pertinent to note that the Information Technology Act does not define ‘personal data’. However, the Information Technology Act defines ‘data’ as follows: “as a representation of facts, information, concepts, knowledge, which are prepared in a formalized manner, and is intended or subject to be processed in a computer network or computer system and may be in any form or stored in the memory of the computer.”¹⁷ Any misappropriation of the computer network, electronic record, information, correspondence, information system, resources and data is termed as cyber contravention and punishable under the Information Technology Act. The Information Technology Act also provides liabilities of intermediaries including network service providers for violating the provisions of the Act.

The most important section to protect confidential information is covered under Section 72 of the Information Technology Act of 2000. If a person secured access or discloses any data or information or electronic records without the consent of the concerned person has committed an offence under this section. Section 72 provides a punishment of imprisonment that may extend to two years or a fine, which may extend to Rs. 1 lakh or both.¹⁸

¹⁵ Copyright Act of 1957, Available at <https://copyright.gov.in/documents/copyrightrules1957.pdf>

¹⁶ Ibid.

¹⁷ Section 2 (o) of the Information Technology Act, 2000 available at <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>, (Accessed on 17th March 2021)

¹⁸ Section 72, of the Information Technology Act, 2000 available at <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>, (Accessed on 17th March 2021)

Section 72A of the Information Technology Act of 2000 provides that any person including the intermediary under the lawful contract while providing services, has access to any personal information about another person and dishonestly discloses that information without the consent of the concerned person, has committed an offence under this section. The section has provided punishment which may extend to three years, or with a fine which may extend to five lakh rupees, or with both.¹⁹

Section 43 of the Information Technology Act imposes liability on a person, whoever accesses computer or computer network or computer system of other person without the consent of the person or facilitates the third party to gain access to a computer, has committed an offence under this section. The person shall be liable for penalty and compensation under this section.²⁰

Section 43A of the Information Technology Act of 2000 provides the liability of the body corporate for negligence in implementing and maintaining reasonable security practices and procedures and thereby causes any wrong loss of sensitive personal information of other person, the body corporate is liable for such act or omission under this section.²¹ Section 65 of the Information Technology Act of 2000 provides for punishment for tampering with the computer source documents and Section 66 of the Act punishes offences of ‘hacking’.²²

All these offences under the Information Technology Act of 2000 are having one exception. If the person accused of the offences under this Act proves that the alleged offence is committed without the knowledge or that such a person has exercised all due diligence to prevent such an offence, will be an exception to the offences under the Information Technology Act of 2000.

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011” provides rules to protect Sensitive Personal Data. These rules have provisions for three groups- Body Incorporates, Information Providers (Data Subjects) and the Government. Rule 3 provides the list of things which will be treated as “sensitive personal data” under the legislation. It includes credit or debits card information,

¹⁹Section 72-A, of the Information Technology Act, 2000 available at <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>, (Accessed on 17th March 2021)

²⁰Section 43 of the Information Technology Act, 2000 available at <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>, (Accessed on 17th March 2021)

²¹Section 43-A, of the Information Technology Act, 2000 available at <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>, (Accessed on 17th March 2021)

²²Section 66, of the Information Technology Act, 2000 available at <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf>, (Accessed on 17th March 2021)

passwords, medical and biometric records etc. Rule 4 imposes a duty upon the Body Corporate to provide a privacy policy to protect personal information and sensitive data. Rule 5 requires that Body Corporate shall not collect sensitive personal data without obtaining consent, regarding the purpose for which the data is being collected. The Body Corporate shall not use the collected information for any other purpose and shall not be retained for a period longer than which is required.

PROTECTION OF CONFIDENTIAL INFORMATION UNDER THE SECURITIES EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

If a person has reasonably expected to have unpublished price sensitive information in respect of shares or debentures or any other securities of a company, will be considered as 'Insider'. The Act recognizes any disclosure or use of unpublished price sensitive information as an offence. 'An insider' is prohibited from using or disclosing confidential information under the Securities Exchange Board of India (Prohibition of Insider trading) Regulations, 1992. The violation will be subject to prosecution under this legislation.

CONCLUSION

In India, there is no special and comprehensive criminal legislation to cover all types of violations or misappropriation of confidential information. It is likely that in most of cases of misappropriation of confidential information, the value of misappropriated confidential information will be very high. Therefore, to restraint, any violation or misappropriation of confidential information requires deterrent punishments.

Some of the legislations like the Indian Penal Code, Copyright Act of 1957 and Information Technology Act of 2000 provide criminal liability. Indian Penal Code provides criminal liability only in generalist situations. No section of the Indian Penal Code mentions explicitly violation or misappropriation of confidential information. The relevant sections of the Indian Penal Code may be interpreted and applicable in certain misappropriation of confidential information. However, the essentials of an offence defined under the Indian Penal Code require to be satisfied, to qualify as an offence. The limitation of protecting confidential information under the Copyright Act of 1957 is that the subject matter should be qualified as both copyrights as well as confidential information. Therefore, many types of confidential information will be outside the scope of protection under the legal regime of Copyright in India.

The special enactment like the Information Technology Act of 2000 only provides certain specific situations of violations of confidential information. This Act protects confidential information related to only information technology. None of the statutes in India is comprehensive of covering all types of misappropriation of confidential information nor are these statutes stringent to tackle the violations of confidential information.

The special legislation to protect confidential information should have a specific provision to recognise a criminal liability for the violation of confidential information. The special criminal law to protect confidential information should have comprehensive coverage of all the offences against the violation of confidential information, irrespective of the nature, form, tangible, intangible and all types of confidential information.

The misappropriation of confidential information is also an economic offence. Considering the nature of the violation of confidential information, the special legislation should also consider the legal presumptions of the burden of proof on the accused, at least in certain situations or prima facie cases, where there are reasonable grounds to show that accused has likely violated the confidential information of another party. Nonetheless, enough care should be taken in the drafting of legislation that such a presumption should not be misused as a ground of harassment to the accused. Further, this special criminal legislation should provide remedies, which include forfeiture of property, fines, restitution to the victim, destruction of property and imprisonment.

A CRITICAL LEGAL ANALYSIS OF TRANSMISSION OF INVASIVE ALIEN SPECIES THROUGH BALLAST WATER

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INTRODUCTION

In international trade, marine transportation moves most cargoes. One of the four greatest risks to the world's oceans has been recognised as the introduction of invasive aquatic organisms into new environments through ships' ballast water.³ Ships can act as vectors for the movement of different varieties of species. Ballast water loaded at one port to stabilise ships for a safe voyage contains local aquatic organisms that are subsequently dumped into other ports, wherein they may become invasive and are severely detrimental to the environment at large and causes various human health and socio-economic problems. Effective conservation and preservation of the marine environment are receiving international attention. Invasive aquatic species introduced by ships is now one of the four most serious hazards to the world's seas and oceans.⁴ Global shipping carries almost 80% of the world's commodities, transporting between 3 to 5 billion tons of goods and cargoes every year. Invaders from the sea hide in the transoceanic ships' cargo hold, looking for a new home. Alien species are transferred by hull fouling, sea chests, anchors, and other means, although the population of such species are highest in ballast water because of its enormous and undisturbed quantities. Bacteria and viruses are transported through sediments, ballast water, and tank biofilms. Predation, disruption, and the spread of illnesses are some of the negative consequences of ballast water, which have an impact on the health of the population and ecology. Effects on the food chain, water quality, and the transmission of human illnesses are all examples of the harm produced by transported species.

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³ T Satir, Ships' Ballast Water and Marine Pollution, pp. 453-463, available at [https://link.springer.com/chapter/10.1007/978-1-4020-6575-](https://link.springer.com/chapter/10.1007/978-1-4020-6575-0_30#:~:text=The%20introduction%20of%20invasive%20marine,threats%20to%20the%20world's%20oceans.)

[0_30#:~:text=The%20introduction%20of%20invasive%20marine,threats%20to%20the%20world's%20oceans.](https://link.springer.com/chapter/10.1007/978-1-4020-6575-0_30#:~:text=The%20introduction%20of%20invasive%20marine,threats%20to%20the%20world's%20oceans.)
⁴ Jeremy Firestone, James J. Corbett, Coastal and Port Environments: International Legal and Policy Responses to Reduce Ballast Water Introductions of Potentially Invasive Species, Sustainable Development Law & Policy, 2006, available at

<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1207&context=sdlp>

Also, ballast water management is a difficult issue that requires a variety of scientific as well as technological approaches to be tackled internationally, regionally, and also locally. It has been discussed and debated on several national and international platforms to prevent invasive aquatic species from being carried from one geographical place to another throughout the international trade process. Although the rules and regulations are being established, the member States have shown very little adherence to them. Many countries in the developed world today, have strict regulatory structures, whereas the developing countries like India, and several underdeveloped nations have just a small level of incorporation.

Widely available ballast water control systems incorporating diverse technologies are available, but at a high price. Apart from the economics, the efficacy of these technologies and practical approaches to ensuring compliance with the tighter standards of some administrations are some of the challenges that should be addressed. For procedures, treatment, sampling, testing, and recycling, management must be extended to both shore and on-board platforms. An exemplary system is the collection of shipboard waste, where heat is being proposed as a path for thermal treatment, in connection with technologies for improved ballast water management.⁵ Ballast water management concerns have proven to be extremely difficult to solve, therefore there are no simple answers. Nonetheless, the BWM Convention or the Ballast Water Management Convention of 2004 provides a globally consistent framework for the application of ballast water management measures, and many supporting methods like risk assessments and decision support systems, have been developed to help in its effectiveness.

In the 21st century, the problem of ships' ballast water and aquatic invasive species is a potentially more serious kind of pollution that the international community has only just begun to pay attention to. Not only this, but also the technologies related to ballast water management like ballast water exchange, ballast water treatment, etc. needs to be improved and requires much attention.

⁵ Minchin D., Aquaculture, and transport in a changing environment: overlap and links in the spread of alien biota. *Marine Pollution Bulletin*, *Marine Pollution Bulletin*, available at www.sciencedirect.com/science/article/abs/pii/S0025326X06004978?via%3Dihub

UNDERSTANDING THE CONCEPT OF BALLAST WATER AND HARMFUL AQUATIC INVASIVE SPECIES

In the past, ballast was generally solid in the form of rocks, iron, sand, etc. The introduction of iron as a primary vessel-building material, replacing wood, in the mid-nineteenth century, paved the way for new ballasting methods. When compared to solid ballast, loading of water, that is, ballast water, in the holds of cargo, or ballast water tanks have shown to be faster and easier. As a result, the use of water as ballast has become a common method. Ballast tanks come in a variety of shapes and sizes, as do ballast system capacities, on a variety of vessels. Ballast water operations on ships are controlled by the type of vessel, its structure, transport services, and weather changes. The loading and unloading of cargo and ballast has a direct impact on the vessel's transversal and longitudinal stabilization, as well as its structural stability, and hence, on safe navigation and the protection of human life. As a result, all ballast-related operations must be evaluated with a focus on safety.

The number of new species in water through shipping is increasing. Although the introduction of non-indigenous organisms by ships' ballast water has been recognised for over a century, the first biological samples from ballast water were not gathered until the 1970s. More than 1,000 species, including human diseases, have been detected from ballast tanks since then. Ships transport between 3,000 and 7,000 different species every day throughout the world, and it has been determined that shipping is one of the principal methods for harmful aquatic species introduction, with each vessel having the capacity to introduce a new species.⁶ But, not all species in the new environment find a suitable habitat to survive.

Non-indigenous species are organisms that have been moved from one nation to another, including invasive species that can cause economic and environmental damages, as well as causes severe threats to human health. Such species threaten native biodiversity. This includes damage to various agricultural, commercial, aquaculture, or recreational activities dependent on these ecosystems. The problem of aquatic species invasion has a long history, and there are several examples of species introduction by ballast waters. The zebra mussel was first introduced to the United States in 1986 and is assumed to have hitched a ride in the ballast water of ships sailing from Europe to the United States. The zebra mussel caused great damage to the Great Lakes within fifteen years of its invasion, by lowering

⁶ Matej David Stephan Gollasch, *Global Maritime Transport and Ballast Water Management*, Vol.8, available at https://www.researchgate.net/publication/267335094_Global_Maritime_Transport_and_Ballast_Water_Management_-_Issues_and_Solutions

the phytoplankton levels, which forms the basis of the aquatic food chain.⁷ It also depletes the native ecosystem. Another terrible invasion is that of the comb jellyfish, a native of the North and South American coasts that arrived in the Black Sea in 1982 as a result of an unintentional release from a North American ship⁸. This discharge of comb jellyfish degraded marine biological ecology to a great extent.

Thus, all potentially dangerous non-indigenous, cryptogenic, and native aquatic organisms, including diseases, are included in harmful aquatic organisms and pathogens. Thus, most of these harmful aquatic organisms and pathogens are being transported to the seas and oceans through the discharging of ships' ballast water from one place to another. Also, one of the most important reasons that these harmful species are increasing in the marine ecosystem to such a larger extent is the various scientific technologies associated with ballast water management systems, which lacks improvement on such ballasting processes.

LEGISLATIVE FRAMEWORK OF BALLAST WATER AND AQUATIC INVASIVE ALIEN SPECIES

Article 8(h) of the Convention on Biological Diversity, 1992 (CBD) recognises the necessity to address the issue of invasive alien species as, "Each contracting party shall, as far as possible and as appropriate, prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species".⁹ Again, the **International Union for the Conservation of Nature (IUCN) Guidelines, 2000** recognises invasive alien species as the second major threat to biodiversity next to habitat loss at the global level. It defines invasive alien species as, "those species that establishes itself in natural or semi-natural ecosystems or habitats, and is a change agent that impacts the native biodiversity".¹⁰ Again, the IUCN Guidelines, 2000 defines 'biodiversity' as, "the diversity of living creatures from all sources, including terrestrial, marine, and other aquatic habitats, as well as the ecosystems to which they belong; this includes diversity within species, between species, and within

⁷ Charles R. O'Neill, The Introduction and Spread of the Zebra Mussel in North America, available at <https://www.csu.edu/cerc/documents/TheIntroductionandSpreadoftheZebraMusselinNorthAmerica.pdf>

⁸ Tony George Puthucherril, Ballast Waters and Aquatic Invasive Species: A Model for India, Colorado Journal of International Environmental Law and Policy, Vol.19 (2008)

⁹ Available at

[https://www.cbd.int/ldb/2009/about/cbd/#:~:text=Article%208\(h\)%20of%20the,ecosystems%2C%20habitats%20or%20species](https://www.cbd.int/ldb/2009/about/cbd/#:~:text=Article%208(h)%20of%20the,ecosystems%2C%20habitats%20or%20species)

¹⁰ IUCN Guidelines for the Prevention of Biodiversity Loss Caused by Alien Invasive Species, 2000, available at <https://portals.iucn.org/library/efiles/documents/Rep-2000-052.pdf>

ecosystems.”¹¹ However, neither in the CBD 1992 nor in the IUCN Guidelines 2000, the words “invasive alien species” has been uniformly and clearly defined.

Ballast Water Management (BWM) Convention, 2004

The Ballast Water Management Convention was adopted at the International Conference on Ballast Water Management for Ships, held at the **International Maritime Organization** (IMO) in London on February 13, 2004.¹² The Convention globally entered into force on 8th September 2017. The International Maritime Organization (IMO) has focused on developing global measures to decrease and eventually remove the growing ecological issues associated with the transfer of organisms in ballast water while ensuring the uninterrupted flow of maritime traffic. The BWM Convention of 2004 also aims for technology development of the ballast water management systems to reduce and eventually eliminate the adverse effects of transmission of harmful aquatic organisms. BWM Convention 2004 defines “ballast water” as, “water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship”.¹³ “Ballast Water Management” means mechanical, chemical, physical, and biological processes, either singularly or in combination, to eliminate, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediments.¹⁴ The phrase “harmful aquatic organisms and pathogens” is defined in the IMO Ballast Water Management Convention, 2004 (BWM Convention) as “any aquatic organisms or pathogens that, if introduced into the sea, including estuaries, or into fresh water courses, may pose a severe threat to the environment, human health, property, or resources, reduce biodiversity, or interfere with other legitimate purposes of such regions”.¹⁵ “Sediments” means material settled out of a ship’s ballast water.¹⁶

When dealing with a transboundary sector like shipping, the necessity of international standards and a uniform global strategy cannot be underestimated. The BWM Convention also provides for various scientific technologies like ballast water exchange, ballast water treatment, etc. for proper ballast water management systems.

¹¹ *Id.*

¹² Davor Vidas, Maja Markovic Kostelac, *Ballast Water and Alien Species: Regulating Global Transfers and Regional Consequences*, pp. 371–392, available at <https://www.fni.no/publications/ballast-water-and-alien-species-regulating-global-transfers-and-regional-consequences>

¹³ Article 1(2), CBD

¹⁴ Article 1(3), CBD

¹⁵ Article 1(8), CBD

¹⁶ Article 1(11), CBD

But the problem is that till today, these technologies are not up-to-date, and also they are very much cost-effective. In developed countries like the U.S.A., and U.K, the scientific technologies related to ballast water are much better, than the developing countries like India.

The Scientific Understanding on Ballast Water Treatment Technologies

Ballast water treatment proposed by the International Monetary Organisation (IMO) standards has several drawbacks. The existing IMO voluntary recommendations, as well as the current lack of a fully functional system for ballast water treatment, are some of the major concerns it poses. IMO members have been affected by the introduction of invasive aquatic species and countries have agreed to create a global standard that will be enforced. Several countries like Korea, Germany, Japan, South Africa, Sweden, and Norway have adopted, or are developing guidelines for ballast water treatment and discharge to address this serious environmental issue. In addition, the IMO recently adopted ballast water management standards under the Ballast Water Management Convention, 2004, to facilitate global coordination for adopting management methods easier. Most of the scientific knowledge on the introduction of non-indigenous species through ballast water is derived from studies of commercial cargo ships. The recommendations of the IMO also prescribe the following management and ballast water treatment procedures:

- 1) limiting organism uptake during ballasting by avoiding regions in ports where dangerous organisms are known to exist, as well as in shallow water and darkness, when upper and mid-water species may rise in the water column.
- 2) Cleaning ballast tanks regularly and cleaning muds and sediments that collect in these tanks and may contain hazardous organisms.
- 3) reducing the amount of ballast discharged unnecessarily, and
- 4) Exchanging ballast water at sea and substituting it with clean open ocean water are examples of ballast water control procedures. Any marine species brought on at the source port has a lower chance of surviving in the open ocean, where environmental situations differ from those in coastal and port waters.

Furthermore, the International Maritime Organization (IMO) establishes a **performance standard** under Regulation D-2 of the Ballast Water Management Convention, 2004. Under this, ships involved in ballast water management must discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension, and less than 10 viable organisms per millilitre which are less than 50 micrometres in

minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and the indicator microbe discharge must not surpass the prescribed concentrations¹⁷. The suggested size restriction can exclude both the tiniest and the largest hazardous and non-toxic dinoflagellate (as well as other microalgae) cysts from ships' ballast water discharge. However, to date, it is very uncertain if ballast-water treatment may not be able to remove enough organisms, particularly dinoflagellate cysts, to achieve the performance standard. The following are some of the future ballast water treatment technologies in development:

- 1) Mechanical methods, which includes filtration and separation of ballast water.
- 2) Physical methods include sterilization by ozone, ultra-violet light, pulsating strobe lights, heat treatment, etc.
- 3) Chemical methods like biocides (glutaraldehyde, menadione, peroxyacetic acid), as well as advanced oxidants or oxidising chemicals (like sodium hypochlorite, and other related compounds of chlorine, hydrogen peroxide), pH fluctuation, etc.
- 4) Any other combination of the above.

In ballast water exchange, currently, most vessels use ballast water as a mitigating strategy. Ballast water performance standards are achieved by performing mid-ocean exchanges in a sequence or using the flow-through approach. As a result, when a vessel pumps out the ballast water loaded in port and transports the water from mid-ocean or further away from the port, fewer species are transferred. This entire process takes place through the exchange of waters. These organisms will not survive when the ship discharges the water in the port of loading. As a result, the ballast water exchange approach attempts to minimise the risk of species introduction. As discussed above, in ballast water treatment, physical and chemical methods are the most common types of ballast water treatment technologies, however, some may also be categorised as mechanical. Although the procedures used are primarily based on well-known water treatment processes, purpose-specific ballast water treatment systems are becoming more common.

The methods being developed for the treatment of ballast water also have disadvantages, especially because thousands of tonnes of ships' ballast water must be handled in a short period, and one important aspect of possible ballast water treatment is that it must be

¹⁷ International Maritime Organization, IMO, available at [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships%27-Ballast-Water-and-Sediments-\(BWM\).aspx#:~:text=Regulation%20D%2D2%20Ballast%20Water,micrometres%20in%20minimum%20dimension%20and](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships%27-Ballast-Water-and-Sediments-(BWM).aspx#:~:text=Regulation%20D%2D2%20Ballast%20Water,micrometres%20in%20minimum%20dimension%20and)

effective against a wide variety of species or organisms. The effectiveness of these technologies is very important in treating ballast water under the range of environmental conditions experienced throughout a ship's voyage, primarily in both fresh and saltwater at temperatures varying from near 0 degrees to 30 degrees celsius¹⁸. Ballast treatment methods must undergo effective testing before being implemented at shipboard scales to evaluate their capacity to eliminate harmful aquatic invasive species from ballast.

With the recent advancement of potential treatments and remedies, the shipping sector appears to be ready to adopt safe and effective technology. However, because most of these technologies for treating ballast water are new, they must be evaluated and certified to fulfil any set of international requirements. Ballast water treatment methods must not disrupt ship operations and must consider the importance of the requirements of the ship design. The ballast treatment methods adopted will differ depending on the ship type and the requirements of the authorities but establishing techniques for a huge amount of water is a problem, that has yet to be met effectively.

The above mentioned are the various technologies and methods involved in the ship's ballast water management. However, it is observed that, although the maritime sector is willing to adopt safe and effective technology, no treatment method has been proven to be 100% biologically successful, ecologically sound, safe, cost-efficient, and practicable for the usage of onboard ships. Also, the legal adherence to such methods and techniques are not observed to a greater extent. And this is one of the most important reasons why harmful aquatic invasive species are transferred from one region to another region through the discharging of ship's ballast water, which in turn causes imbalances in the marine biodiversity, and because of this, the entire native aquatic biodiversity is at great risk. This in turn impacts the whole biodiversity at large.

THE INDIAN SCENARIO OF BALLAST WATER AND AQUATIC INVASIVE ALIEN SPECIES

India has a unique and important position in world trade, with a rising variety and quantity of ships passing through its waterways and ports¹⁹. Non-indigenous invasive species continue to be introduced into Indian seas and oceans as a result of growing trade and commerce. Despite India's participation in the Global Ballast Water Management Program, which is a joint effort

¹⁸ Alex Augusto Gonçalves, Graham A. Gagnon, Recent Technologies for Ballast Water Treatment, 2012, available at <https://www.tandfonline.com/doi/abs/10.1080/01919512.2012.663708?journalCode=bose20>

¹⁹ Tony George Puthucherril, Ballast Waters and Aquatic Invasive Species: A Model for India, Colorado Journal of International Environmental Law and Policy, Vol.19 (2008)

of the International Maritime Organization (IMO) and the United Nations Development Program (UNDP), the problem of ballast water and harmful aquatic species persists. The most important thing to be noted here is that till today, India did not even ratify the Ballast Water Management (BWM) Convention, 2004²⁰. The issue of ballast water in India also requires possible ballast water discharge regulation methods, which involves proper scientific technologies. Invasive organisms are carried by ships when they move from one port to another, while loading and unloading ballast water. When a ship takes in ballast water, thousands of marine species are pushed into its ballast tanks, and when these tanks are discharged or released, then these species also flow with the water and has deleterious impacts on the native marine biodiversity²¹.

There are various instances in India where harmful aquatic invasive alien species, both plants and animals, has destroyed the Indian marine ecosystem at large due to ships' ballast water. Some of the examples are the Common Carp, African Catfish, Guppy, Nile Tilapia, Red Piranha, Sucker mouth armoured catfish, Caribbean false mussel, Alligator weed, Water hyacinth, pink morning glory, Butterfly fern, Minute duckweed, etc. The Common Carp, for example, which is native to Asia and Europe, reduces the availability of light in water, which in turn affects the native marine ecosystem at large in various lakes and rivers of India. It also damages the native fish population as they out-compete the native fish for space and food²². The African catfish, which is native to South America, Asia, and Africa, is found in various regions of Assam and West Bengal. It introduces various diseases, and by way of genetic impact affects various native fish species²³. Water hyacinth is an invasive aquatic plant that is native to South America. It has been introduced in many parts of India like Kerala and Assam. It completely covers the wetlands and lakes, thus reducing the level of oxygen for the native fishes²⁴. Alligator weed, which is native to South America, and has been introduced in

²⁰Available at

https://www.dgshipping.gov.in/writereaddata/ShippingNotices/201609140216357209483Ballast_Water_Management2017.pdf

²¹ Sarah McGee, *Proposals for Ballast Water Regulation: Biosecurity in an Insecure World*, Colorado Journal of International Environmental Law and Policy (2002)

²² Invasion of an Exotic Fish—Common Carp, *Cyprinus Carpio* L. (Actinopterygii: Cypriniformes: Cyprinidae) in the Ganga River, India, available at https://krishi.icar.gov.in/jspui/bitstream/123456789/4980/1/Invasion_of_an_Exotic_Fish-Common_Carp_Cyprinus_Ca.pdf

²³ African catfish battle to stay in India, available at <https://thefishsite.com/articles/african-catfish-battle-to-stay-in-india#:~:text=Since%20then%20it%20has%20spread,predation%2C%20competition%20and%20environmental%20modification.>

²⁴ Water Hyacinth, available at <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/water-hyacinth#:~:text=Water%20hyacinth%20can%20completely%20cover,damage%20bridges%2C%20and%20closing%20dams.>

many parts of Bihar and West Bengal, disturbs the stability of aquatic environments, and activities like swimming and fishing are negatively affected by their dense growth²⁵. It is to be observed here that all these invasive species are found in India because of the ships' ballasting process from various parts of the globe.

One of the greatest weaknesses of the Ballast Water Management (BWM) Convention, 2004 lies with the underlying technology required to provide a long-term solution for invasive species management. Although numerous existing technologies, such as ultraviolet radiation and a variety of recognised chemicals can remove invasive species from ballast waters, the methods are either not financially feasible for the present ships, or the chemicals would contaminate the oceans when released. So, there is an immediate need to re-look into the Ballast Water Management Convention, 2004, and also it is the need of the hour, whereby India should be a signatory to the Convention of 2004. In doing so, the issue of ballast water and the spread of aquatic invasive species can be prevented, controlled, and managed.

The Precautionary Approach

India should follow in the footsteps of the Ballast Water Management Convention, 2004, and integrate the precautionary approach into any future ballast regulations²⁶. The precautionary principle states that if there is a strong suspicion that a certain action may have negative environmental effects, it is preferable to regulate that activity now rather than waiting for conclusive scientific evidence. Furthermore, by complying with the Ballast Water Management Convention, 2004, India could assure that its domestic framework does not restrict innocent passage or interfere with the WTO free trade requirements. As part of the precautionary approach, Indian legislation should broaden the Convention's narrow definition of ballast to include any sediment that constitutes a major concern due to the presence of invasive species. To provide guidelines for ships using mid-ocean exchange rather than port discharge to manage aquatic invasive species, Indian legislation should mandate that mid-ocean exchange should take place at a specific depth and distance from the shore. As because ballast water exchange may soon be overtaken by alternative procedures, like ultraviolet radiation disinfection, Indian legislation should embrace such improvements and mandate Indian ships to utilise technology when it becomes available, as well as create

²⁵ Commonly sold leafy vegetable may pose health hazard, the Hindu, available at <https://www.thehindu.com/news/cities/Hyderabad/commonly-sold-leafy-vegetable-may-pose-health-hazard/article19984288.ece>

²⁶ A.P. Pollution Control Bd. v. Prof. M.V. Nayudu I, (1999) 2 S.C.C. 718, A.P. Pollution Control Bd. v. Prof. M.V. Nayudu II, (2001) 2 S.C.C. 62

schedules for phasing out outdated systems. Indian technological institutes should also help to create these technological advances.

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

It can be concluded from the above discussions that looking into the issue of ships' ballast water technology and the effects of the harmful aquatic invasive species, firstly, all the nations must ratify to the Ballast Water Management (BWM) Convention, 2004. It is seen that only a few nations have ratified the Convention to date. All the developing countries including India must ratify the Convention at the earliest. Secondly, a Ballast Water Discharge Compliance and Policy Support Model can be proposed wherein, the main objectives will be increasing the use of technologies by vessels based on their relative danger of introducing organisms, reducing total cost (both private and public), reducing the number of viable organisms released (or, potentially, meeting a certain standard), and most importantly, highly vulnerable ecosystems must be protected. Such a model might highlight the areas where additional scientific study or policy development is needed, and generally help policymakers to re-look into the Ballast Water Management Convention, 2004 and other relevant laws, thereby making the provisions more stringent. Ballast water management today is a challenging issue that requires a variety of scientific approaches to be tackled internationally, regionally, and locally. And especially in a developing country like India, where maximum of the trade-related activities take place through the transportation of goods and cargoes in huge ships, India should ratify to the Ballast Water Management (BWM) Convention, 2004, with proper incorporation of ballast water management regulations and technologies. Only this can help in building a pillar of comprehensive maritime legislation to conserve marine biodiversity, coastal regions, and the global seas and oceans. Thus, to comply with the international Ballast Water Management regulations, India must also develop a specific programme to combat the spread of harmful invasive aquatic species.

KNOWLEDGE OF SCIENCE AND TECHNOLOGY – LAW A TOOL TO SOCIAL TRANSFORMATION

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INTRODUCTION

Law is an instrument to regulate human behaviour, the law includes a set of rules and regulations enacted by the legislature and applied equally on the society. It has various rules and principles. Law refers to statutes, rules, regulations, and orders from a legislature or a court. It also means Rules of courts and Injunctions issued by judges. Law also includes various forms of legislation, rules, regulations, and orders. Science is a branch of philosophy that studies natural phenomena. When people think of technology, they often imagine a sci-fi show where technology makes things happen.

Science is the study of natural phenomena. It is carried out through the study of various scientific procedures. When people think of technology, they usually think of things that are based on science fiction. Technology makes us think of the complex, but energy can also be simple.³

Technology refers to the use of knowledge for practical purposes. It works by helping people make use of their knowledge in various ways. Technology refers to the equipment used to perform a particular task. Technology can be used in various forms, such as the discovery of the wheel. It can also be used to enhance the productivity of various industries.

According to Webster's new collegiate dictionary, science is a branch of knowledge that studies the physical world. It builds on and interprets knowledge in the form of predictions. Technology is the process or procedure utilized for the production of goods or services. It can be related to scientific inquiries and investigations.

The rise of electronic commerce and the increasing number of people using electronic communication have changed the way businesses and individuals communicate. Science can stimulate technological development by creating new instruments that can address a scientific

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³ LYNDSEY T WILSON, DEFINITION OF SCIENCE<[HTTPS://EXPLORABLE.COM/DEFINITION-OF-SCIENCE](https://explorable.com/definition-of-science)> ACCESSED ON 8/1/2022

question or provide technical possibilities that were previously unconsidered. Through research, technological improvements can be made, and those that are related to new technology can be posed questions about the principles of how new technology works.

A server is a computer that acts as a network server. It sends and receives information from other computers on a network. According to Salmond, the law is a body of principles that the state applies to justice.⁴

John Chipman Gray also defined law as a set of rules that the courts enforce. His critics noted that his definition did not include statutes and the nature of law.⁵

EVOLUTION AND CHALLENGES OF SCIENCE AND TECHNOLOGY

Technological improvements were made in human history by accidentally, trial and error, impulsive inspiration. The primary concern should be with fundamental questions of nature when science and technology advances. The Industrial Revolution and its effects on technology have greatly impacted the development of law.

The relationship between law and the virtual world has many challenges. The first is that of managing the impacts of technology on society, while the second focuses on ethical considerations. The second section focuses on the relationship between law and science, which is often referred to as the reciprocal relationship between technology and law. The third section tackles the tensions that arise when the intersection of science and law collides. It also explores how law and science affect the practice of scientific research.

We are currently in a period of transition. More and more people are becoming aware that the computer is an extraordinary communicative device, are learning how to send and receive information via their computers, and are gaining access to computer-based telecommunication networks. As this transition continues, we will not only develop a new understanding of the novel and powerful modes of distributing information electronically, this will focus on the various implications of the new medium of communication, which includes social and legal institutions.

This new environment emerges, in part, because the movement of electronic information is governed by quite a different set of rules than existed in the print environment. Just as the automobile created an environment in which rules for transportation were novel and

⁴ Simran Sabharwal's Article on What is Law<<https://blog.ipleaders.in/what-is-law/>> accessed on 9/1/2022

⁵ Ibid

unprecedented, the electronic media seem to exist in a context or space where they do not have to play by the same rules as for print and, therefore, are not subject to the same constraints as print. This electronic space can be envisioned as an almost magical place, in the sense that various physical laws that restrict movement and limit capabilities have been lifted.

Cyberspace is a concept that I associate with a mature electronic culture. 27 Such a culture not only allows one to process and work with information in electronic form, but it also presents sophisticated electronic means for acquiring and distributing information. It relies on powerful computers to store and analyze data and links these computers together to share data and communicate with each other. Cyberspace emphasizes the network that links computers and supports communication that occurs so quickly that it removes spatial distance as a constraint in obtaining information and even in working with people. It focuses more on the network as a whole than on any particular computer that is tied to the network. It is, therefore, something that is much broader than LEXIS or WESTLAW or any other single large source of electronic information. The concept of electronic communication shows how communication can be rapidly and widely dispersed. It shows how relationships can be formed and changed. In its most controversial characterization, Cyberspace assumes that the removal of spatial barriers combined with the high level of online interaction creates a feeling among those electronically connected that even though they are separated by distance, they are in the same place.

THE ROLE OF LAW IN MANAGING THE IMPACTS OF TECHNOLOGY AND SCIENCE

Few legislation in India deals with the cyber world and cyberspace relating to transactions and offences committed by using electronic devices. All the legislations have been dealt with in detail to understand the implementation of the law as a tool for social transformation.

1. Information Technology Act, 2001 and 2008
2. Indian Penal Code, 1860
3. Indian Evidence Act, 1872

Information Technology Act, 2001 and 2008

The evolution of computers was imagined as a machine to make easy human efforts which have eventually witnessed an exponential expansion in business, research, and personal fronts. The organizations have come up with the most profitable growth in multidimensional

product markets. The electronic business has multiplied its turnover in the shortest period with the convenience and ease attached to the eCommerce framework.

The IT Act was amended in the year 2008. The only enactment deals with the offences committed through electronic devices.

Information Technology (Amendment) Act, 2008 - The IT Act, 2000 (as amended 2008) has brought within its scope several new infractions as cyber-crimes. The sections relevant in the context of Internet banking are being briefly discussed here:

- Section 43-A; Body corporate handling personal data if neglect to protect is liable to pay damages by way of compensation to such person. The handling of such personal data should be by the security practices and procedures as laid down now in Rule 8 of the IT Rules, 2011. This was missing in the Amendment Act, 2008. There are various international standards (IS/ISO/IEC 27001) that are used for defining information technology security requirements. Rule 8(2)
- Section 66-C; Identity theft – fraudulently or dishonestly using any electronic signature, password, unique identification figure of another person is punishable with imprisonment up to three years and a fine of Rs. 1 lakh.
- Section 67-C; Intermediaries should preserve and retain information in a prescribed manner the violation of which is an offence. Punishment entails imprisonment up to three years and a fine.
- Section 70; Disclosure of information by an authority having access to the personal information of a person under a contract if discloses it to another to cause wrongful loss or wrongful gain to anyone, then it will be punished with imprisonment up to three years or with fine up to Rs. 5 lack or with both.⁶

This enactment addresses the many kinds of cybercrimes. Such crimes are:

- Sec. 65, Tampering with Computer Source Documents.
- Sec. 66, Hacking Computer Systems and Data Alteration.
- Sec. 67, Publishing Obscene Information.
- Sec. 70, Unauthorized Access of Protected Systems. Attempting or securing access to computer Imprisonment for up to 10 years.
- Sec. 72, Breach of Confidentiality and Privacy. For breaking the confidentiality of the information of computer Fine up to 1 lakh and imprisonment up to 2 years

⁶ Dr. Talat Fatima, Cyber Crimes (Eastern Book Company, Lucknow 2011) 64-68

- Sec. 73, Publishing False Digital Signature Certificates. Publishing false digital signatures, false in certain particulars Fine of 1 lakh, or imprisonment of 2 years or both.
- Sec.43 Damage to Computer system etc. Compensation for Rupees 1crore. Sec.66 Hacking (with intent or knowledge) Fine of 2 lakh rupees, and imprisonment for 3 years.
- Sec.67 Publication of obscene material in e-form Fine of 1 lakh rupees, and imprisonment of 5years, and double conviction on a second offense
- Sec.68 not complying with directions of controller Fine up to 2 lakh and imprisonment of 3 years.
- Sec.74 Publication of Digital Signatures for fraudulent purpose Imprisonment for the term of 2 years and fine for 1 lakh rupees.

Information Technology (Amendment) Act, 2008

The IT Act, 2000 (as amended 2008) has brought within its scope several new infractions as cyber-crimes. The sections relevant in the context of Internet banking are being briefly discussed here:

- Section 43-A; Body corporate handling personal data if neglect to protect is liable to pay damages by way of compensation to such person. The handling of such personal data should be by the security practices and procedures as laid down now in Rule 8 of the IT Rules, 2011. This was missing in the Amendment Act, 2008. Thus, one such standard is International Standard IS/ISO/IEC 27001 on “Information Technology – Security Technology – Information Security Management System – Requirements”. Rule 8(2)
- Section 66-C; Identity theft – fraudulently or dishonestly using any electronic signature, password, unique identification figure of another person is punishable with imprisonment up to three years and a fine of Rs. 1 lakh.
- Section 67-C; Intermediaries should preserve and retain information in a prescribed manner the violation of which is an offence. Punishment entails imprisonment up to three years and a fine.
- Section 70; Disclosure of information by an authority having access to the personal information of a person under a contract if discloses it to another to cause wrongful

loss or wrongful gain to anyone, then it will be punished with imprisonment up to three years or with fine up to Rs. 5 lack or with both.⁷

Indian Penal Code 1860 - Cybercrimes under the IPC include

After the enactment of the Information Technology Act, 2000 and Amendment Act of 2008 many provisions of IPC are made applicable to Cybercrimes. Such crimes are stated below;

- Sending Threatening Messages by Email, Indian Penal Code (IPC) Sec. 503.
- Sending Defamatory Messages by Email, Indian Penal Code (IPC) Sec. 499
- Forgery of Electronic Records, Indian Penal Code (IPC) Sec. 463
- Bogus Websites & Cyber Fraud, Indian Penal Code (IPC) Sec. 420
- Email Spoofing, Indian Penal Code (IPC) Sec. 463
- Web-Jacking, Indian Penal Code (IPC) Sec. 383
- Email Abuse, Indian Penal Code (IPC) Sec. 500

EXISTING PENAL LAWS AND CHALLENGES OF THE MODERN CRIMES

Originally the law keeps pace with the technological changes in society. However, rapid technological development like the internet threatens to leave the law behind. To the technologically expert people, the internet is a global network of computers based on TCP/IP and other high-speed Communications protocols with thousands of nodes and millions of users. But for the rest of the world, the internet is an exciting new way to communicate. The internet is a mass media that enable people to communicate and share their messages and files.

In the present era, the cheap and widely available services of computers have made copying easy and perfect. Within thousands of perfect copies can be made with the help of personal computers add to this the internet provides, access to material that is worth copying.⁸

The transmission and exchange of this wide variety of information without any territorial limitation and the open and unregulated nature of the internet provide fertile ground for criminal enterprises. Since the internet's basic purpose is the facilitation of communication all the traditional crimes such as conspiracy, solicitation, securities, fraud and espionage can be committed via the internet. But the big question is, can the novelty of the internet be dealt with the help of the present laws in force e.g. our Penal Law which was adopted in

⁷ Dr. Talat Fatima, Cyber Crimes (Eastern Book Company, Lucknow 2011) 64-68

⁸ Marc. S. Freedom and Kristin Bissinger, "Infojacking, Crimes on the Information Superhighway", referred in 2006, 98 Cri LJ, Journal Section, at page 85.

1860, the Indian Evidence Act in 1872, and the Code of Criminal Procedure in 1973, and the internet is something of recent origin.

For the application of these existing laws the territorial limitations, are there, but these limitations are irrelevant in cybercrimes. This poses serious questions about jurisdictional matters that are fundamental for any criminal proceeding to take place. These fundamental aspects pose some important questions.

- i) whether the relatively new cybercrimes can be dealt with effectively by the present laws in force?
- ii) whether the irrelevance of territorial jurisdiction may be a hindrance in the way of existing implementation authorities?

It must be realized that these challenges are functional and it is essential to understand to nature of this crime only then we can move ahead. So, the basic objective is:-

- i) to understand the concept of some of the most common cybercrimes,
- ii) to examine whether the existing penal laws are sufficient,
- iii) to find out whether there is a need to have an international legal regime governing and regulating the internet.

To go further, we must make it clear that our Indian Penal Code of 1860 has no concept and definition of cybercrimes, the reason being at the time of framing the Indian Penal Code there was no concept of computers. Till the passing of the Information Technology Act, 2000, the Indian Penal Code was the only law applicable to cybercrimes. The Information Technology Act of 2002 was enacted to provide legal recognition for the use of electronic data interchange among various electronic communication methods. i.e. to boost e-commerce. Apart from this section 77 of the Information Technology Act, 2000, provides that penalties under the Information Technology Act, 2000 do not release the offender from liability under

any other law. Hence, the substantive provisions of the Indian Penal Code still do apply to such offences.⁹

Filling up of vacancies – According to Section 53 of the Information Technology Act, 2000, In the case of a Cyber Appellate Tribunal, a vacancy occurs in the office of its chairperson or member. The Central Government may appoint a new person to fill the position.

Indian Evidence Act, 1872

The Indian Evidence Act 1872 was amended following the passage of the Information Technology Act. Before the introduction of the ITA, all evidence in court was in physical form. The words “electronic records” and “digital signature” were substituted in the Act's definitions. The inclusion of electronic records as evidence has been regarded as significant. In the Act's definitions, the terms "electronic form" and "electronic record" were also substituted.

Section 65B of the Act deals regarding the Admissibility of electronic records as evidence. This is an elaborate section and a landmark piece of legislation in the area of evidence produced from a computer or electronic device. Any information that is printed on paper, stored in a computer, or copied in magnetic or optical media should be treated as a document and not a reproduction:

(a) The computer output that contained the information was typically used by the users of the computer for a certain period.

(b) The information that was derived from the computer was regularly fed into it by the users of the system.

(c) throughout the material part of the said period, the computer was operating properly and a certificate signed by a person..... Responsible..... etc.

Evidence or records that are taken from a computer or electronic storage device are valid if they are handled properly and have no scope for manipulation. These documents should also be accompanied by a certificate declaring their correctness.

However, this Section is often being misunderstood by one part of the industry to mean that computer print-outs can be taken as evidence and are valid as proper records, even

⁹Marc. S. Freedom and Kristin Bissinger, “Infojacking, Crimes on the Information Superhighway”, referred in 2006, 98 Cri LJ, Journal Section, at page 86.

if they are not signed. Many computer-generated letters come from big corporates with proper space for signature but no space for the word “Your” or “Yours faithfully”. The Act does not anywhere say that ‘computer print-outs need not be signed and can be taken as a record’.

The Law enforces rules and regulations related to scientific research and technology development. The law diversely interacts with science and technology as the new field of law, science and technology seek systematic study. Technology and law also deal with the various problems that society faces due to the rapid emergence and evolution of new technologies. To know how the process of law i.e., primarily judicial and legislative responds to the changes brought by scientific advances.

The law has struggled to keep pace with advances in the internet, computer, genomics, biotechnology, telecommunications, and nanotechnology, technology has assumed an ever-increasing role in economic and daily life.

The law's role is to manage the risks associated with the use of technology and scientific research, as well as promote ethical considerations.

Controlling the risks

The various risks posed by the new and existing technologies have been identified and are managed through law enforcers and regulators. Law, science, and technology deal with the various problems that society has to face due to the impact of new technologies. The role of law in regulating risks from science and technology and to assess risk from new and existing technologies, the use of science by law.

Before the risks are imposed the regulation and legislation seek to address and reduce risks. Proper comprehensive statutory or regulatory schemes are implemented in most of the industrialized nations which prospectively regulate potential risks from technologies.

Uncertainties in the identification and quantification of potential risks are the main reason for complexity and controversy in risk regulation. Considerable relaxation has been given in assessing risks for the preventive purpose of risk regulation. Consideration of only the most significant evidence to support a risk finding and the expansion of judicial deference to regulators' technical expertise. Legislatures are the greater disadvantage in determining risks associated with science and technology.

The legislature is not clear in implementing the rules which are directly relating to science and technology. It is common that when any legislation concerning law and technology is enacted the required skill and knowledge in the field of science and technology becomes a challenging one. The regulatory agencies may have a bit of technical expertise and familiarity with technical terms. The supremacy between the legislature and the regulatory agency is the crux of the point while deciding the science and technological issues.

A growing distrust between the regulators and the legislature can become more politically controversial. This can only be secured if the legislature has greater authority and transparency.

Right to Information Act (22 of 2005), Ss. 12, 15 – Central and State Information Commissions – Constitution of – Chief Information Commissioner and Central Information Commissioners are to be appointed by President of India and State Chief Information Commissioners and State Information Commissioners are to be appointed by Governors of States on basis of recommendations made by High Power Committees – Persons recommended would be persons of eminence in public life with wide knowledge and experience of law, science, and technology, social services, management, journalism, etc. – Recommender meets the criterion can be assumed from the fact that recommendation was made by High Powe Committee – Their appointments cannot be assailed on the ground that they are not in the opinion of petitioner or court the persons having eminence in public life with wide knowledge and experience.¹⁰

When individuals are injured by technologies, they may bring suit seeking compensation, and science plays an acute role in providing proof. Before admitting the scientific evidence, the court has to ensure the reliability of the testimony. For this major function, judges are proactive and knowledgeable in screening prospective scientific evidence. In uncertain conditions, the judicial mechanism follows presumptions, burden of proof, and standard of proof.

Promoting the benefits of technology through Law: Benefits of technology and science promoted through several legal mechanisms, by enacting new laws. Most of the laws relating to intellectual property. By which law protects the inventors and creators under various legal forms like patents, copyright, trademarks, and trade secrets. This measure is to protect

¹⁰ Janhit Manch And Ors v. Union of India, 2006 (5) AIR BOM R 830

innovation and promote science and technology as invention and creative work i.e., the intellectual properties are the primary assets of the high technology industries.

Technology always poses a new challenge to traditional laws. For example, traditional copyright enforcement procedures are not adequate to the new age challenges like digital information and copyright owner rights can be infringed by anyone by copying his work in numerous copies at almost zero cost by just uploading the material on the internet.

Ethical implications of technology – whenever there is a controversy posed by the new technology and scientific research, the law plays a very vital role in resolving the controversies. It may be any technological advance with potential ethical consequences. In the cases like surrogacy which becomes the mother of the child which does not belong to her, patenting Indian traditional knowledge by another country. When the court itself fails to consider ethically then the law is enacted to address those challenges.

The Institutions of Law and Science

The substantive, as well as procedural law's perspective, has changed due to advances in science and technology for example forensic Evidence like DNA has changed the law of crime fundamentally. The paternity can be proved more effectively, persons can be convicted who escaped from the prosecution (DNA Evidence) through science and technology. Science and technology also change the method of preparation of a Law practitioner and digital courtrooms show that they are applying the new technologies. Any person can track their suit status at their fingertips which helps more clients to get information about their cases.

Conflicts between Science and the Law

The law and the science examine the conflicts between science and the law in the matter of decision making. The conflict between these two is because the objective of both is different from each other. As law focuses on process and science focuses on progress, both are based on evidence for finding the truth. Law is concerned with justice, equity, and fairness not relying on science. Science draws probable and tentative conclusions whereas Law draws certain and rigid conclusions.

It is necessary to appoint a technical expert in the body of legislature to guide lawmakers so that they can assist in making laws relating to scientific or technological issues. Law experts and legal decision-makers are not scientifically trained persons and most of the time they fail to reach scientifically credible decisions and they have to rely on improper junk science

which may mislead. To avoid this Courts, need to act as a screening agent for the scientific testimonies. An alternative measure is to appoint an expert to determine the gravity of the scientific evidence. So that they can assist the judges to understand the technical or scientific issues in a case.

CONCLUSION

The interaction of law in diverse ways in the field of science and technology. Anything that happened in the physical world is easily traceable but whatever happens in the virtual world cannot be traced easily so technology should contribute a tool for the law by which it can be traced. The traditional Procedural laws should be updated and the relevancy of proof should be made application for the digital evidence also. The systematic separate mechanism should be constituted especially for the crimes happening in the cyber world.

Without laws, our society would be chaotic and uncivilized. Its role is to make society a place where people can live peacefully and without fear of harm. Everyone is expected to act in a way that brings the Greater Good. This guideline serves as a warning to society that failure to act properly could result in the downfall of the whole society. In a world where we have limited resources, laws were used to protect all citizens. Laws are put in place to manage these resources and to ensure that they are used properly. Despite the technological advancements, cybercrimes are still a concern that requires the proper enforcement of laws.¹¹

Science and technology have extended their tentacles into national boundaries. However, the law is still not clear on how to control cybercrimes. The Information Technology Act of 2007 aims to prevent cybercrimes within the country's territorial jurisdiction. However, since cybercrime is a global phenomenon, it has no territorial limits.

¹¹ <<http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/jurisprudence-Unit-I.pdf>> accessed on 9th January, 2022

SURGE FOR FREE FILMS AND TV SHOWS IN LOCKDOWN: AN ELEVATION IN THE ACT OF ONLINE-PIRACY Vis à Vis THREAT FOR COPYRIGHT

Paramita Choudhury¹

INTRODUCTION

In order to avoid any unnecessary dangers, people are finding new ways to amuse themselves at home. Many people have turned to puzzle games, computer games, and toys as a way to combat their boredom. Disney+, Netflix, HBO Now, and Showtime are among the OTT providers who have experienced a sharp rise in streaming usage and new subscriptions.²

Although the current closure may have emboldened hackers and made people more susceptible to their wares, the situation has been there for some years and has been compared to Hydra, the faceted water serpent demon from Greek myth. Anybody who has attempted to decapitate the Hydra has discovered as immediately as one of its heads is chopped off, two additional heads erupt from the newly opened wound. Aside from multimedia, the cinema, musical, and sporting streaming video industries are the biggest adversely impacted by copying. Illegally copied CDs used to be obtained on public streets, but today they can be found on the web and at internet cafes that provide huge resource libraries.

Live broadcast theft, video capture, and account pooling are three major themes in internet piracy. Streaming video is an operating income offering, hence the former option is extremely damaging. In India, display capturing has become a common habit for a long period of time and has affected both the television and film industries.

Unfortunately, piracy is also on the rise

Due to coronavirus concerns, many people were quarantined and have converted to online piracy, according to one study. Muso, a London-based digital piracy analysts firm, released a report on Monday that demonstrates a 40 percent increase in congestion on pirate sites in the U.S. and U.K. just after the stay-at-home directives were issued by those countries. The data explores websites that illegally stream and download films. The United States and U.K. sites have had a 41.4% and 42.5% increase in usage over the steadily for the past 7 days of March, respectively, compared to the prior 7 days of February. According to Muso, the increase in

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² Lata Jha, 'India sees big spike in film piracy post COVID-19' <<https://www.livemint.com/news/india/india-sees-big-spike-in-film-piracy-post-covid-19-11589183182123.html>> accessed on 11 January 2022

usage of illegal content sites, such as those frequented by pirates, has been noted in other European countries, such as Italy (66 percent), Spain (50.4 percent), and Germany (35.5 percent). The spike in piracy aligns with the period when each country issued the lockdown orders.³

Muso pointed out that after more countries implemented strict control measures and forced citizens to isolate themselves, the demand for illegal content via piracy had increased exponentially. Entertainment demand has led users to legal services by creating a greater need for privacy. Nearly 16 million people signed up for Netflix worldwide during the month of January. And in spite of the drop in subscribers, Disney+ is seeing a rise in subscriptions.

“Paid-for or licenced content,” asserts Andy Chatterley, CEO of Muso, “is closely linked to piracy and unlicensed consumption trends.” “Netflix has seen a dramatic increase in subscribers, and we have observed a significant increase in site visits to movie piracy sites.”⁴

In every country surveyed visits to TV piracy sites were higher than those of film piracy sites. However, TV piracy sites did not see the jump in usage that film sites did.

Due to the cancellation of sports seasons and live TV, the delay of movie releases, and the closure of theatres, demand for amusement even in the form of illegal entertainment has remained and is unlikely to dissipate as long as people are forced to stay indoors.

Despite the increase in illicit movie downloads, illegal TV piracy sites still rank first among all two. In the US, there was only an 8.7% increase in viewership as opposed to film downloads. Muso recorded over six hundred million visitors to TV pirated content throughout the final week of March, whereas cinema piracy sites saw just about a hundred and thirty-seven million hits. In the United States, they discovered almost 1 billion accesses to unlawful TV and cinema sites in March. The Muso study points out that the 2011 film “Contagion” is not exactly “the most in-demand title” but is an important one to watch nevertheless. “The number of people watching ‘Contagion’ streaming sites grew by 30,418 in

³ Rosa Escandon, ‘Film Piracy Has Been Skyrocketing As People Stay Home’ <<https://www.forbes.com/sites/rosaescandon/2020/04/27/film-piracy-has-been-skyrocketing-as-people-stay-home/?sh=707afa8e7c81>> accessed on 11 January 2022

⁴ Lata Jha, ‘India sees big spike in film piracy post COVID-19’ <<https://www.livemint.com/news/india/india-sees-big-spike-in-film-piracy-post-covid-19-11589183182123.html>> accessed on 11 January 2022

a single day, while the coronavirus was designated a global emergency, which occurred on January 30th, 2020.”⁵

Netflix’s recent quarterly report noted a remarkable 15.8 million new customers, raising the total number of viewers to almost 180 million. That is, if you count subscribers.

Soderbergh’s 2011 film “Contagion,” which details a fake worldwide epidemic, has seen an uptick in interest because of coronavirus fears. Warner Bros. reported that at the ending of December 2019, the film was No. 270 in their archive of films, but has risen to No. 2 by the beginning of January 2020.⁶

The pirates were not unaware of the demand growth. Even while only a few hundred “Contagion” pirates downloaded each day before the movie's theatrical release, they swelled to scores of thousands once the movie hit theatres. As a response to heightened demand, YTS, a prominent torrent site, released two additional high-quality Blu-ray rips of varying resolutions.

After taking such measures as the closure of schools and the easing of the requirements for families to remain home, Irdeto found a massive increase in piracy downloads. Irdeto’s daily average P2P traffic rose 11.5% from 9,600 GB downloads to 10,750 GB in the latter half of March. Nearly 50 million people have subscribed to the newest Disney+ streaming service since it was released five months ago.⁷

Since the implementation of social distance and lockout measures in March, according to statistics from internet piracy data specialist MUSO, content piracy has surged considerably, with unparalleled increases for cinema piracy. When comparing the final 7 days of March to the very last 7 days of February 2020, MUSO’s data shows that visits to film piracy websites have increased in the following ways:

- Italy + 66%
- India + 63%
- Spain + 50%
- Portugal + 47%

⁵ Film & Tv Piracy Surge During Covid-19 Lockdown <<https://www.muso.com/magazine/film-tv-piracy-surge-during-covid-19-lockdown>> accessed on 13 January 2022

⁶ Ibid

⁷ P2P downloads, Blu-ray files: India ranks high on online piracy <<https://www.thehindubusinessline.com/info-tech/p2p-downloads-blu-ray-files-india-ranks-high-on-online-piracy-says-report/article24743909.ece>> accessed on 12 January 2022

- Canada + 45%
- UK + 43%
- USA + 41%
- France + 41%
- Germany + 36%
- Russia +17%

Increasing visits to internet film piracy sites during the final week of March demonstrates that as more governments implemented lockdown and caused individuals to self-isolate, interest for content through piracy increased enormously.

TOTAL VISITS TO PIRACY SITES IN MARCH 2020⁸

- USA 1,082,933,014
- Russia 727,169,953
- India 581,207,923
- France 394,045,905
- UK 300,150,947
- Canada 284,522,464
- Germany 256,947,543
- Spain 236,747,290
- Italy 197,697,732
- Portugal 54,681,500

Today's anti-piracy legislation in India

Indian piracy refers to the unlicensed reproduction, distribution, and sale of copyrighted works. We use the term “unauthorised” to describe someone who lacks the legal authority to carry out a certain action. There is no specific rule governing “piracy” in the media business under international norms. As a means of protecting the entertainment sector against piracy, India uses “The Copyright Act, 1957.” Section 13 of the Act grants copyright protection to lyrical, theatrical, melodic, and creative works, as well as films shot on cinema and recordings made on vinyl. Two categories of rights are defined in this law:

⁸ Colin Mann, ‘Data: Lockdown drives increase in digital piracy’ (27 April 2020) <<https://advanced-television.com/2020/04/27/data-lockdown-drives-increase-in-digital-piracy/>> accessed 12 January 2022

Economic Rights- The privileges that allow the creator to profit financially are referred to as “economic rights” Since the fifteenth century, such rights have been acknowledged in one form or another. Copyright Act, 1957 Section 14 states that different rights are recognised depending on the nature of a work. The clause states that the author has the only authority to do or approve the performance of the specified acts. The freedom to reproduce, distribute, and make a work available to the public are all included in the Indian legislation that has been the subject of much legal interpretation.⁹ It is the author’s right to produce a duplicate of the film, along with a copy of an image that forms part of it, sell or provide on rent or agreement to sell the film, and transmit to the public the film. The creator of a sound recording also has these rights.

Moral Rights- Because a work of literature or art is an expression of the author's thoughts and feelings, the author is entitled to both moral and economic rights. The artist gives a valuable contribution to society through his work, which is derived from the creative drive. Moral rights give copyright law a cultural perspective by acknowledging these components of artistic life. The term “*droit moral*” or “*title to morality*” was coined in France. Bern Convention of 1886 was augmented by the Rome Act of 1928.

The two main “*moral rights*” of a creator are laid forth in Section 57 of the Act. Authors have a right to claim their work as their own and a right to prohibit others from claiming their work as their own. Having the right of authenticity gives the author the ability to prohibit his work from being altered in any way that might harm his reputation, honour, or integrity.

Not only the Copyright Act, but one could be held liable under the Information Technology Act, 2000 as well.

What is the exact mechanism by which digital piracy of films and television shows operates?

There is an unlawful industry at work in Virtual Infringement the minute an unauthorised duplicate is initially created and posted on the internet. Since the widespread availability of high-speed broadband, piracy has posed a significant threat to the enforcement of intellectual property rights. More than a third of all multimedia consumption is now based on illicit downloads or internet viewing of films and television shows. Pirated content can be hosted

⁹ Sterling J A L, *World Copyright Law* (Sweet & Maxwell 1998 page 279)

and distributed in an organised manner which includes the use of a set of peers who get paid for this unlawful behaviour in numerous manner, rendering it profitable.

MYSTERY OF THE WHEREABOUTS OF THE ILLEGAL DOWNLOADS ON THE NET

They either host it personally or market it to other users (known as uploaders) who are then entrusted with posting it online via several types of internet web host:

- ***online file storage provider for counterfeiting:*** As the most common means for illicit file sharing, users may immediately submit their stuff for everyone else to access. Elite memberships maintained on the cyberlocker portal and marketed to customers desiring privileged admission to these materials fund uploaders, who earn either each downloads or per-view selling incentives.
- ***P2P File Sharing:*** Peer-to-peer data transmission, is facilitated by Bit Torrent, a data transmission technology. The BitTorrent technique is used to store information and content on a network of computers that are all linked to each other.

Cyberlockers and P2P systems host unlawful data that is difficult to locate. In order for stolen content to access the end consumer, middlemen such as rogue networks must be involved.

The categories and referenced track descriptions of the movies and TV shows they provide are all well organised on these platforms. However, they do not host illicit video content directly, rather linking to the cyberlocker websites and/or P2P hosting computers in which the file is hosted, in order to provide internet watching or download access to it. Publicity for these sites comes from a variety of sources, including utterance, industry-standard, and social media marketing.

Relationship between isolation and the rise in OTT streaming services

Due to the outbreak of the Corona Virus Pandemic, individuals are now confined to their homes all across the world. This increased internet use has given a boost to online piracy. Being at home is a good time-waster for people because of the free and simple access to premium content that is provided by piracy.

In addition, the ban on piracy websites in the world's largest countries, such as China, India, and the United States, helped lead to widespread usage. As more and more governments enforce their internet lockdowns, it is clear that the number of active piracy website users will

soon exceed the one billion mark. Another indication of this is the increasing popularity of online film viewing, which has been seen as a response to the ban.

Since the shutdown, memberships to Netflix, Amazon Prime, and other video-streaming services have soared. Not everyone has become a movie fan overnight, but their living rooms now provide plenty of entertainment options because of these platforms. The breadth and diversity of the programming available on these sites is way better than anything on normal TV. These platforms have also created television shows and movies that are exclusively released on them.

Various studies and reports have concluded that torrent downloads have surged dramatically. But this dramatic surge in piracy is a very real problem, and it must be addressed.

It has constantly been a struggle for governments to control use of websites used for piracy. It's also going to be more difficult to rein in excessive piracy given the current level of Coronavirus epidemic. And these are the grounds why it must be stopped:

- The decline in revenue from copyright owners results.
- The prosperity of a country suffers when it happens.
- The creators of the original content are being demoralised.
- That would result in employment losses.
- Sharing is not identical to it.
- It's like stealing.

India sees big spike in film piracy post covid-19

The percentage of online movie piracy increased in India by 62% in the final week of March, compared to the final fortnight of February 2020. *Rajkumar Akella*, a honorable associate of the Telugu movie sector anti-piracy chamber has stated that “A lot of illegal material in India is spread through sites that consumers technically employ for other aspects.” Akella mentions communications and audio technologies like Telegram and networking media like Helo that they believe can be useful to filmmakers and content creators because they recognise concerns about copyright infringement but also seek to drive traffic.¹⁰

¹⁰ India sees big spike in film piracy post covid-19 <<https://www.livemint.com/news/india/india-sees-big-spike-in-film-piracy-post-covid-19-11589183182123.html>> accessed on 13 January 2022

A senior technology solutions firm executive noted that Indians as a community are exceedingly price conscious, but not security sensitive. According to the source, the private details of individuals are not secure because some of the sites they visit have spyware installed on them.

The speaker went on to say, *“yet, we appear to not mind the virus hidden on these sites can destroy our data and our personal computers.”* Some examples of sites giving free movies using torrents are Stremio, Popcorn Time, 123Movies, and Tamil Rockers.

Akella points out that smaller producers will be hurt more than their larger counterparts by video streaming piracy during this shutdown. As a result of the closure of theatres and the lack of box office systems, film producers and VoD providers are likely to either operate on a revenue-sharing basis or split earnings based on the performance of the film on the platform. The theft of their content by pirates will rob them of their revenue.

Rather than only movies, Internet originals are also pirated. Sacred Games season 2 of the crime drama from Netflix had illegal films detected circulating on the messenger app Telegram and other websites throughout the web in August 2019. Hungama Digital Media's original, *Damaged*, has been downloaded more than 169,000 times across torrent platforms since its June 2018 launch. According to Irdeto, a virtual ecosystem management and media and amusement solutions supplier, piracy takes \$2.8 billion of annual revenue from the Indian entertainment and amusement business. Among the world's five most popular P2P download countries, India has the number three spot. The Envisional Ltd. study, which provides trademark protection services, found that Indians were the biggest gang of viewers to Indian entertainment torrent sites and the biggest or similarly group of individuals who visit significant international BitTorrent sites such as Mininova, Torrentz, and The Pirate Bay. Netflix's cheapest mobile-only package, for example, costs ₹199 a month, while Amazon bundles its video, music, and shopping features for ₹129 a month or ₹999 a year. YouTube Premium costs ₹129 a month, and ZEE5 is priced at ₹99 per month. Disney+ Hotstar, with VIP and premium subscription levels (priced at ₹399 and ₹1,499 a year, respectively), offers more exclusive features. However, there are some things you might desire that you can't get on one platform and, when you've exhausted all the options and aren't willing to pay more money on subscriptions in a time when being shut down, the only option is piracy.¹¹

¹¹ Sterling J A L, *World Copyright Law* (Sweet & Maxwell, 1998, page 279)

PAID CONTENT ON OTT PLATFORMS HAS GIVEN RISE TO DIGITAL PIRACY AMID THE PANDEMIC

Due to the spread of the COVID-19 pandemic, movie theatres and multiplexes were forced to close in many parts of the country, creating an opportunity for the OTT players to become substitute forums for new movie releases. This has been a success for the digital market, the production houses, and the viewers. Though watching a new release on the big screen is more exciting than doing so in one's living room, with popcorn and other movie snacks, it is the sole substitute for those who don't want to be spoiled.

But a similar growth in digital piracy, especially because of new technology, has also occurred with the widespread OTT release of films. It is estimated that losses to OTT companies in India from piracy will reach \$3.08 billion by 2022, according to Digital TV Research.

Many more causes force producers to put their movies on the OTT platform,

1. Movies are evolving at a rapid pace. Our understanding of the world and its information is always evolving. The release of a picture should happen inside a timely manner, else the cash and work of many is wasted.
2. Many movies have already been produced, and most of the others are close to reaching the end, so producers and filmmakers were aware that their movies would have difficulty getting a spot in the theatres for a significant length of time, even after the elimination of the lockout obstacles.
3. There is doubt over the new limits to be put on theatres, such as worries about the public going to movie halls.
4. It lessens our dependence on so-called celebrities who claim they attract viewers, but instead deliver the storey, director, producer, DOP, music, dialogue writer, and so on.
5. Producers and directors wish for their movie to be the finest. One wants to keep the investment safe, while the other wants to keep as many people as possible seeing her/his film for as long as possible.

6. The producer is financing the picture, and it is ready for release. We have no choice but to confront him without the drama of a break in the action. This is a rare occurrence, not a new precedent.¹²

‘Radhe,’ starring Salman Khan, has been the largest Indian film release on OTT thus far in 2018. Although the movie had a big launch on ZEE5 & Zee Studios by becoming the fastest movie to stream on the ZEE5 platform and getting 1 million views on Zee Studios, it was also the target of piracy, as it was pirated on networks like Telegram & WhatsApp soon after its premiere on digital. After making the decision to combat piracy, the film studio filed a criminal complaint through the Mumbai Cyber Unit. Like Arshad Warsi, Salman Khan used Twitter to tell anyone involved in the illegal copying of his film not to view a pirated copy of ‘Radhe’.¹³

According to *Subhashish Gupta*, MD, Brightcove India & SAARC, “clients who are consuming more information over digital media are becoming increasingly accustomed to streaming services. Therefore, the chances of accessing data are larger. However, digital dissemination is not a primary cause of crime.” He further added, “We invest in our product’s security by implementing features like as DRM (Digital Rights Management), forensic watermarking, flow concurrency, and mid-stream rights checking. Even the Academy Awards believes in us, trusting us to keep their data private when they vote for the Oscars. It has long been known that by making it simple for customers to receive content by having global releases and price-competitive prices, customers are more likely to utilise legal services rather than illicit ones. However, it’s possible that there will forever be a small group who refuses to pay.”¹⁴

As to *Taurani*, piracy in the cinema industry is negligible since certain audience members are not going to see movies on television or mobile devices, but rather in theatres, because the cinema experience is completely different. Despite this, mobile-streaming services with no downloads are currently the biggest single threat to piracy because most people would rather

¹² Muhammed Salih, ‘COVID’19 Impact: Accepting the Co-existence of OTT with Theatrical Release in India’ <https://www.researchgate.net/publication/341879486_COVID%2719_Impact_Accepting_the_Co-existence_of_OTT_with_Theatrical_Release_in_India> accessed on 15 January 2022

¹³ Paid content on OTT platforms has given rise to digital piracy amid the pandemic <<https://www.adgully.com/paid-content-on-ott-platforms-has-given-rise-to-digital-piracy-amid-the-pandemic-105648.html>> accessed on 14 January 2022

¹⁴ Ibid

use stolen content than pay for a service that lets them watch their favourite movies on their phones. For this reason, piracy is a greater danger to OTT than it is to cinema.”¹⁵

COPYRIGHT ENFORCEMENT IN INDIA

The results of court site blocking enforcement have shown remarkable improvement in the last year. Electronic filings and virtual hearings have made it easier for rights holders to deal with obstacles previously caused by the COVID-19 pandemic. The courts have also increased its jurisdiction little by bit, and they are now preventing proxy portals that are mostly used to get around blocks on site access. The information proves that these measures are contributing to a reduction in the number of visitors to sites like those dealing in pirated content.

Despite the lack of adequate enforcement of the problem, however, the scale of online piracy is still too big to ignore the problems officers face examining and managing digital forensic evidence, as well as the advanced nature of the criminal organisations behind the various infamous piracy sites and services. With anonymizing software, piracy operations can be hidden from the authorities. A further challenge to enforcement of IP rights is the lack of a central body to oversee such matters and the poor inter-agency coordination within the country and between the states and the nine Union Territories. On the other hand, both cybercrime and its associated legal procedures fall under state jurisdiction, not federal. To be successful in combatting criminal pirate syndicates, India needs to increase its enforcement framework coordination.¹⁶

Blockchain to the rescue

Studies have demonstrated that blockchain technology may help reduce internet piracy by restricting and controlling misuse. Let’s check this out:

Digital Watermarking Technology

South African firm Custos Tech has created a fully-functioning digital watermarking solution using the Bitcoin network. It’s possible to hide a watermark in content with this technology, making it impossible to eradicate it. Where the ‘CustosTech’ engineering team would be enabled to examine the watermark if a file was pirated. Afterward, they can try to determine the file’s lawful owner.

¹⁵ India sees big spike in film piracy post covid-19 <<https://www.livemint.com/news/india/india-sees-big-spike-in-film-piracy-post-covid-19-11589183182123.html>> accessed on 13 January 2022

¹⁶ International Intellectual Property Alliance 2021 Special 301 Report on Copyright Protection and Enforcement <<https://www.iipa.org/files/uploads/2021/01/2021SPEC301REPORT.pdf>> accessed on 15 January 2022

Blockchain Streaming Service

Vevue is a new video streaming service based on blockchain technology, which uses media monitoring by tracking and recording content information. A person using a system with the Vevue software would be tracked down if they duplicated the content via any method.

Reward Tokens

It's not just the movie and TV industry that has been greatly damaged by piracy, but the gaming sector as well. Rawg, a startup that seeks to inspire consumers to interact with its own gaming content and merchandise, plans to make usage of a blockchain technology.

Players are rewarded with cryptocurrency tokens using this approach. You can get this by reaching a certain level or accomplishing something within the game. On the other hand, gamers will be able to exchange their wins for token rewards only on official platforms and only with non-pirated games.

In addition to those already utilising blockchain technology to fight piracy (such as Hashcash, Basic Attention Token platform, Singular DTV, Dot Blockchain Media, & many others), there are many additional companies experimenting with it. It will take time to put in place, but everyone will be better off in the long run.¹⁷

CONCLUSION

Because there will be a jump once things is back to normal, movie theatres have nothing to worry about. The Film Exhibition has been challenged over the past several years by the emergence of innovative dissemination platforms like OTT, thus it's time for the Theatrical owners to begin planning in new ways to counteract the rise of OTT platforms. The international release windows for games are changing for a limited time. Since cinema theatres have no purpose other than to show movies on a big screen, they do not exist.

The business is also increasingly using new technologies, such as Brightcove, to help stamp out piracy. AVIA analyses and tracks the activities of governments and businesses in the region. AVIA thinks that anti-piracy measures depend on three elements: the willingness of governments to support private enterprise, the strength of the financial position of rights holders, and the capability of copyright enforcers.

- Technology: to provide strong safeguards against unauthorised access.

¹⁷ Rajeev Sharma, 'Blockchain to Prevent & Control the Massive Boost in Piracy Activity' (14 April 2020) <<https://businessblockchainhq.com/business-blockchain-news/blockchain-to-prevent-control-the-massive-boost-in-online-piracy-activity/>> accessed on 21 January 2022

- Law: to provide updated, meaningful penalties to deter infringement of copyright and of broadcasting control laws.
- Enforcement: to ensure that laws are carried out and that a vicious circle of piracy does not undermine the industry's contribution to Asian development.”

IMPACT OF COMPULSORY LICENSING ON RESEARCH AND DEVELOPMENT WITH SPECIAL REFERENCE TO PHARMACEUTICAL INDUSTRIES

S. Uma Maheshwari¹

INTRODUCTION

Societal development is always associated with novel technology and innovations. However, innovation does not happen in isolation. Only a creative mind, as well as opportunities and requirements, can spark innovation. In other words, “necessity is the mother of all inventions”. To this day, we have enjoyed simple inventions to complex ones, to satisfy our requirements and lead life magnificently. Life has been simplified only because of innovations.² Governments wanted the innovators to be honoured for their contribution considering such innovation to be one's property that is intellectual property. The honour was in the form of granting exclusive rights to innovators concerning their innovations. But granting exclusive rights came with an unexpected devil that is a monopoly. Exclusive rights led to monopoly, and this stood as a huge barrier in accessing the technological innovations by the public and new researchers. Hence Governments had to draft laws to control monopolies and at the same time pave the way for people access innovative technologies. This control over exclusive rights discouraged the innovators and their level of interest in innovations. Hence to instigate innovation and to regulate monopoly international community joined hands and produced many conventions and agreements to protect intellectual property and its related rights. The laws relating to intellectual property rights not only provide exclusive rights to innovators but on the other hand, it gives those exceptional circumstances, when for the benefit of the public, exclusive rights could be compromised.³

This paper would speak of one such exception and that is compulsory licensing. To have a better understanding of compulsory licensing we must have an in-depth study of what is intellectual property and Research and development. The paper will be limited to the scope of pharmaceutical innovation and compulsory licensing to have a better understanding of our research on the impact of compulsory licensing on research and development. This paper would discuss intellectual property rights, research and development, compulsory licensing,

¹ Assistant Professor, Government Law College, Chengalpattu.

². “Necessity: The Mother of Invention” [2008] Psycextra Dataset

³. Bostyn S And Petit N, “Patent=Monopoly: A Legal Fiction” [2013] Ssrn Electronic Journal

and the impact of compulsory licensing on research and development with special reference to the pharmaceutical sector. The outcome of this paper would be that compulsory licensing is very essential in protecting the interest of the public and it does not have any major negative impact on research and development compared to the one without compulsory licensing.

INTELLECTUAL PROPERTY RIGHTS

Though intellectual property seems to sound like something new it is not, because from dawn to dusk any human being is surrounded by intellectual property. There are varieties of Intellectual property falling under one categoric roof emanating from human creation. Though some or all aspects of human life relate to intellectual property, we hear most people view them simply as business or legal concerns with insignificant effects on their own lives. This little or no understanding of intellectual property by the public is because of a lack of understanding by the public and due to a lack of awareness in respect for creativity, innovation, and intellectual property. With this regard, it is very essential to understand how intellectual property touches all aspects of our lives. Hence to have a better understanding it is very much essential for us to discuss and understand what intellectual property rights are and justify the same using theoretical perspectives of intellectual property.⁴

Property in any form is subject to theft, hence requiring protection. But when a person is not aware of various kinds of property it is difficult. Property can be categorized as tangible and intangible. Tangible means that can be physically perceived and intangible just the opposite that cannot be perceived by senses. Intellectual property is a form of intangible property. People are overly concerned about the tangible property but give truly little importance to Intellectual Property Rights.⁵ Only a few centuries back the significance of intellectual property was recognized and the need for its protection was considered. It is important to understand that intellectual property is recognizing and respecting the creator and appreciating the creative potential of future creators, inventors, and innovators. However, it is very essential to ensure a better and more prosperous future for humankind. It is important to increase awareness of scientific knowledge as well as the creative power of children.

⁴. Nacka M And Others, "Ipr Knowledge, Awareness and Students' Behavior - Empirical Analysis and Policy Recommendations," *Inted Proceedings* (Iated 2017) <[Http://Dx.Doi.Org/10.21125/Inted.2017.1695](http://Dx.Doi.Org/10.21125/Inted.2017.1695)> Accessed February 11, 2022

⁵. Frankel S, "Tangible Meets the Intangible: International Trade in Intellectual Property" *Intellectual Property and Access to Im/Material Goods* 204

Theories justify the importance of intellectual property laws. A natural theory propounds that property in the common pool is to be enjoyed by all and when it is applied in Intellectual property right it refers to ideas that are in the common pool and no one can claim any right over it. Labour theory propounded by John Locke articulates that any person who put on his labour and develops property, then the labour exerted should be rewarded and applying the same in an intellectual property we can see that IPR protects the creator's novel innovations.⁶ In the case of the Utilitarian theory of Jeremy Bentham Greatest happiness of the maximum number of people has to be valued and when it is seen in terms of IPR then framers of IPR would like to emphasize the prominence to the public interest.⁷ Hegelian and Kantian concepts of personality theory highlight that intellectual property is to be identified with one personality and the property thus developed imbibes the author's identity. Hence it emphasizes the availability of the right to paternity and integrity for the intellectual property owner.⁸ Incentive theory emphasizes the importance of giving incentives as an encouragement for the creation and it is being the main concept of framing intellectual property laws.⁹ Similarly, reward theory emphasizes the importance of giving royalty to the creator for using his creations. Hence theories of philosophers bring intellectual creations to be protected by law, entrusted with rights to enjoy, and exploit the same.¹⁰

In today's competitive world of business, a better understanding of the intellectual property system in general and patents is especially important. The earlier business relied on a tangible form of property especially the raw materials but nowadays it relates to the ideas to create. In the present day, the most powerful tool is not money but intellectual property and ideas to create them. Hence it is important to understand the knowledge-based economy to draft robust policies to protect Intellectual Property laws and thereby pave the way for human development.¹¹ Intellectual property is like any other property that can be sold, licensed, or otherwise disposed of by the right holder. Protection of intellectual property is given both on the national and international levels. Intellectual Property Rights are guaranteed under the

⁶. India Legal S, "John Locke's Labour Theory: A Justification of Iprs" <<http://www.legalservicesindia.com/article/2536/John-Locke%E2%80%99s-Labour-Theory:-A-Justification-Of-Iprs.html>> Accessed February 11, 2022

⁷. Bentham J And Mill Js, *Utilitarianism and Other Essays* (Penguin Uk 2004)

⁸. Eckl A, "Kant and Hegel on Property," *Handbook of The Philosophical Foundations of Business Ethics* (Springer Netherlands 2013) <http://dx.doi.org/10.1007/978-94-007-1494-6_34> Accessed February 11, 2022

⁹. Maurer Sm, *Intellectual Property Incentives* (Oxford University Press 2017) <<http://dx.doi.org/10.1093/Oxfordhb/9780198758457.013.30>> Accessed February 11, 2022

¹⁰. Shavell S And Van Ypersele T, "Rewards Versus Intellectual Property Rights" (National Bureau of Economic Research 1999) <<http://dx.doi.org/10.3386/W6956>> Accessed February 11, 2022

¹¹. Cowan R And Harison E, *Intellectual Property Rights in A Knowledge-Based Economy* (2001)

national laws of each country or region. Apart from the protection given in national laws, there are various international agreements on intellectual property rights created to harmonize law and procedures or allow intellectual property rights to be registered at the same time in several countries. However, the protection can be given to intellectual property through a system of intellectual property rights thereby ensuring ownership of it and benefit commercially to its producer or creator. There are several types of intellectual creations that are protected in separate ways.

Scientific and technological inventions which are novel, non-obvious, that has an inventive step and capable of industrial application are considered to be intellectual property and subject to protection under patent laws.¹² Literary works, dramatic works, artistic work, music, cinematographic film even photography are intellectual property rights and they are categorized as a subject matter of copyright and are protected by copyright laws.¹³ The marks or symbol or logo used during trade and capable of distinguishing one good and services from another are the subject matter of intellectual property and they are termed to be “trademarks” and protected under Trademark rights. Anaesthetic appearance that is judged solely by the eyes and not by its mechanical functionality is protected under design laws. Geographical indications and Trade secrets are some of the forms of intellectual property.¹⁴ Apart from the above, some form of Intellectual Property gets their protection by some specialized varieties of intellectual property rights which are known as sui generis intellectual property rights that protect the layout design of integrated circuits and new varieties of plants or databases. The basic criteria for protecting any intellectual property are when there is a danger of commercialization in national or international markets by a third party without the owner's authorization. Therefore, companies need to develop effective mechanisms for intellectual property licensing and technology transfer to survive the competitive market.

After the First World War, there was a great economic depression. War devastated the economy and poverty was undermining the growth of world states. The international community realized that the only way to survive was to work for peaceful co-existence. Therefore, world states brought in the League of Nations to keep the tensions between the world states away that would result in War. The Second World War proved the failure of the

¹². “Patent Laws and Standards” Patents and Industry Standards

¹³. Netanel Nw, “Why Have Copyright Law?” *Copyright* (Oxford University Press 2018)
<[Http://Dx.Doi.Org/10.1093/Wentk/9780199941148.003.0004](http://Dx.Doi.Org/10.1093/Wentk/9780199941148.003.0004)> Accessed February 11, 2022

¹⁴. Peguera M, “Trademark Functions and Trademark Rights” [2014] Ssrn Electronic Journal

League of Nations.¹⁵ The failure of the League of Nations resulted in the formation of the United Nations. One of the most important agendas was to regularize trade. The result of regularizing trade resulted in the GATT Agreement (General Agreement on Trade and Tariff). Many world states have become members of the GATT agreement. But GATT was not enough, however, the international community realized the need for an organization to regulate the trade. Therefore, the World Trade Organization was set up in 1995.¹⁶ Similarly, different conventions protected different varieties of intellectual property, like the Paris convention for protecting industrial property, Berne Convention for protecting copyrightable subject matter, Madrid protocol for Trademark and Lisbon agreement for the protection of appellations of origin and many other conventions dealt with the protection of different varieties of intellectual property. Therefore, to protect Intellectual Property Laws below one roof a new agreement called TRIPs (Trade-Related Aspect of Intellectual Property) evolved. TRIPs as an agreement were monitored by (WIPO) World Intellectual Property Organization. WIPO ensures the rights of the creators and owners of intellectual property are protected worldwide and that inventors and authors are thus, recognized and rewarded for their ingenuity. International protection instigates human creativity and goes beyond boundaries resulting in scientific and technological development and enriching the world of literature and arts. The main activities of WIPO are to establish international norms and standards in the field of intellectual property, especially through international treaties. Therefore, this part has extensively discussed intellectual property, is theories justifying intellectual property, kinds of intellectual property and organization ensuring intellectual property protection.¹⁷ As this paper concentrates on the impact of compulsory licensing on research and development with special reference to public health it would be important to discuss research and development. The following part would extensively discuss research and development and laws protecting the same in detail.

RESEARCH AND DEVELOPMENT

Knowledge is money; Knowledge is evolved in the process of research and development. Research and development depend on investment. Thus, an investor in research and development always expects incentives and protection of their creativity. Creativity is to be

¹⁵. "League Of Nations" Brill's Digital Library of World War I

¹⁶. Irwin Da, "The Gatt's Contribution to Economic Recovery in Post-War Western Europe," *Europe's Post-War Recovery* (Cambridge University Press) <[Http://Dx.Doi.Org/10.1017/Cbo9780511759314.006](http://dx.doi.org/10.1017/Cbo9780511759314.006)> Accessed February 11, 2022

¹⁷. "Wto" (*Intellectual Property - Overview of Trips Agreement*)
[Https://Www.Wto.Org/English/Tratop_E/Trips_E/Intel2_E.Htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)> Accessed February 11, 2022

rewarded; any creativity without commercialization will not boost future creators to invest in research and development. Technological development comes with its shortcomings. On one side Technological development makes life easier; however, on the other side technological advancement brings new ways to duplicate, reverse engineering causes a spillover of new products or processes invented in the market of commercialization. However, this discourages the investors from investing in new projects that would enhance development. Hence there is a linkage between technology, industrialization, and economic advancement. Apart from the discourse of development and investment, there is a colonial discourse that makes extensively developed northern countries investing in research and development and developing southern countries depend on the transfer of such technology created by the North. Intellectual property rights stand as a transmitter of technologies from developed countries to developing countries. However, with the development and transmission of technology the legislators of the international community strive hard to balance the interests of researchers and the public, respectively. Research though conducted for development; however, it should not only fill the vacuum based on the quantity of necessity. As necessity is the mother of invention, necessity cannot be determined by the quantity of necessity. Since in some exceptional cases of disease when it occurs in rarest of rare circumstances there is a necessity to research and develop medicine. Hence many factors determine the necessity of research.¹⁸ Development associated with health produces two different business models. One business model developed by pharmaceutical industries to address the market opportunity as distinct from the process of innovation includes the associated monopolies of supplementary protection certificates and data and marketing exclusivity and are incorporated into this model of compensation for the costs in developing new medicines. However, the other model is of generic industries that develop within domestic industries to allow people to access the medicines at a low cost. Nowadays to overcome the loss created by generic medicine the pharmaceutical giants have absorbed the generic industries and tried controlling the market. As companies begin to develop both research-based and generic activities within one firm, the traditional separation between pharmaceutical multinationals and generics has become less meaningful.¹⁹

The research agenda is being defined by calculating every aspect of investment and risk that institute and regulate the monopolies. Thus, not only the direct financial investment but also

¹⁸. Nain B, “Impact of Trips Agreement on Developing Countries” [2006] Ssrn Electronic Journal

¹⁹. Tempest B, “Journal of Generic Medicine – Editorial June 2021” (2021) 17 Journal of Generic Medicines: The Business Journal for The Generic Medicines Sector 47

the indirect costs and value of time are incorporated within this expanded market, leading to protection directed specifically towards the coercive institutional force of pharmaceutical science. Therefore, in addition to expenditure in research and development that leads to the patented invention, the associated monopolies of supplementary protection certificates and data and marketing exclusivity are incorporated into this model of compensation for the associated 'costs' to that patent involved in bringing that invention to market, quantified by time. That is, delays experienced during the regulatory process not only shorten the effective period of patent monopoly in the marketplace but also represent an additional investment over time. Supplementary protection certificates provide an extension to the patent monopoly itself to account for delays in regulatory procedures.²⁰ Similarly, protection for clinical and testing data provides an additional period of data exclusivity before generics competitors can start examining the test data of pharmaceuticals. This protection is designed to compensate for these additional costs in bringing original products to market. However, legislation designed to incentivize research and development has at times is in loose ends to address the public necessity. However, the Paris Convention and TRIPs agreement is enshrined with a public welfare provision called compulsory licensing. The following part will discuss compulsory licensing and its impact on research and development.

COMPULSORY LICENSING AND ITS IMPACT ON RESEARCH AND DEVELOPMENT

The hardcore protection given to intellectual property has led to over-exploitation of the same by the intellectual property owner. Hence to overcome the demanding situations created by Intellectual property rights the provisions of compulsory licensing has been enshrined. The Paris Convention was to discuss the discourse of compulsory licensing. Later TRIPs discussed the conditions on which compulsory licensing can be issued. However, there were many drawbacks in provisions of compulsory licensing enshrined in TRIPs. Article 31 (f) of TRIPs restricted the usage of compulsory licensing for domestic purposes. Article 31 (h) of Trips provision mandated to remunerate sufficiently to the patentee. These two provisions of TRIPs led many developing and least developed countries to be deprived of their life saving essential drugs. Hence TRIPs were deemed insufficient in addressing public health issues in both developing and developed countries. The issue of public health, however, was placed alongside many other issues discussed with the Doha Declaration. Paragraph 6 of the Doha

²⁰. Zeng J, Zhang J And Fung Mk-Y, "Patent Length and Price Regulation in an R&D Growth Model with Monopolistic Competition" (2013) 18 Macroeconomic Dynamics 1

Declaration proposed an amendment to the TRIPs agreement to include Article 31 bis. Article 31 bis allow issuing compulsory licensing for pharmaceutical products to be exported to other countries where the country can prove a lack of infrastructure to produce medicine or insufficiency in producing the drugs.²¹

To start with it is very essential to understand the concept of compulsory licensing. In case of non-working of the patent beyond three years of patenting, any third party could apply for voluntary licensing to the patentee. On rejection to issue voluntary licensing by patentee; the third party may apply for compulsory licensing to the government seeking to issue compulsory licensing on citing certain exceptional circumstances. The exceptional circumstances would be of non-affordability due to high price or non-accessibility of products due to insufficient production to meet the public requirements. The patent controller would examine the application for compulsory licensing, and the patentee and applicant would be given a fair and reasonable opportunity to be heard and prove their claims. In case the patentee proves that production is sufficient and affordable to access by the public; in which case, compulsory licensing will not be issued. However, on contrary, the applicant proves insufficiency and non- affordability to access the patented product compulsory licensing will be issued. In the case of more than one applicant, the person who can best work the invention to satisfy the public interest will be provided with compulsory licensing. Governments can issue compulsory licensing for the person who can best work the invention to satisfy the public interest in certain exceptional circumstances, such as a national emergency, extreme urgency, or for public non-commercial use, such as exporting medicines to least developed countries. TRIPs have widely discussed the circumstances of issuance of compulsory licensing. Therefore, members of TRIPs have decorated their national legislation with the provisions of compulsory licensing.²² For instance, our Indian patent law also has incorporated compulsory licensing provisions under section 84-92-A. Although countries have incorporated compulsory licensing provisions in their national legislation the usage of the same is very negligible and at times countries use it as a tool of threat towards the Pharmacy industry whose medications are non-affordable and non-accessible. The following cases will show the usage of compulsory licensing by various countries.

²¹. Organization for World Trade, *Wto Analytical Index: Guide to Wto Law and Practice* (Cambridge University Press 2012)

²². Raju Kd, "Compulsory V Voluntary Licensing: A Legitimate Way to Enhance Access to Essential Medicines in Developing Countries" (2017) 22 *Journal of Intellectual Property Rights* 23

Between 2006 to 2010, there were many episodes of compulsory licensing. Thailand was one of the countries that issued most of the compulsory licenses. Thailand's health ministers were tired of negotiating for cheaper drugs with the pharmaceutical industry. At the same time, Thailand had to face many challenges due to poverty. Hence, Thailand to fulfil the election agenda of pro-poor policy and mission on universal health care coverage had to take some bold moves by issuing compulsory licensing. People of Thailand also forced the government to issue compulsory licensing by stressing that "It's useless to negotiate with them (pharmaceutical companies) unless you start to announce that you want compulsory licensing." Thailand's issuance of compulsory licensing had created a threat for pharmaceutical companies to establish a business in Thailand.²³

Incorporating product patents in Indian Patent Act in 2005 brought multiple issues. The first issue was the impact on the generic pharmaceutical industry. India was exporting generic ARV drugs to South African countries, which was produced by a different process of non-affordable medicines. After product patenting, producing the same drug in a different process would be an infringement. This affected the crowd that depended on cheaper medicines. Novartis' case of Glivec would be a suitable case to explain the scenario. Novartis applied for a process patent for its drug Glivec in India and acquired the same. After the TRIPS agreement India brought in mailbox provision and Novartis applied for a product patent. Novartis was confident that it would get a product patent but on the other hand, it was rejected by the controller of the patent. The ground for rejection was that there was only a slight alteration of a known substance; hence it did not satisfy the patentability criteria under section 2(j), and it was within the scope of the non-patentable invention. Meanwhile, Novartis went for an appeal. However, the Madras High Court upheld the decision of the Controller of the patent. This explicitly highlighted that India was harsh towards incremental innovations.²⁴ Subsequently in the Natco Vs Bayer case, India issued compulsory licensing on the ground that Bayer's drug was so expensive that it would not be affordable to the public due to its high price.²⁵ These cases displayed that India is trying to abide by the standards of WTO at the same time trying to protect its generic drug industry. Apart from India and Thailand, many

²³. Wibulpolprasert S And Others, "Government Use Licenses in Thailand: The Power of Evidence, Civil Movement and Political Leadership" (2011) 7 Globalization and Health.

²⁴. Padma Tv, "Indian Court Rejects Novartis Patent" [2013] Nature

²⁵. Mathur C, "Compulsory Licensing: A Study with Reference to India's First Pharmaceutical Compulsory License Case of Natco Vs. Bayer" [2012] Ssrn Electronic Journal

countries have tried implementing compulsory licensing. This is how compulsory licensing is used by developing nations against the pharmaceutical giants to satisfy the requirements of the public.

CONCLUSION

The issue with compulsory licensing is that it would have a direct impact on the pharmaceutical industries, which thrive by investing time and money in developing novel medicines to treat disease. They would aim to earn back the money spent on developing new medicines. But when it comes to balancing public interest and creators' interest; legislation and governments do value the interest of the public in certain exceptional circumstances. This would discourage the pharmaceutical companies from investing in research and development, establishing any business ventures in developing and developed nations. Therefore, compulsory licenses should be used as a tool to address the issue of the public in need of the hour; however, it should not be used as a threat to discourage research and development. Anyway, the strict procedure to obtain compulsory licensing does not impose any negative impact on research on development. Hence the grant of compulsory licensing does not make any difference compared to a scenario without compulsory licensing. However, the usage of compulsory licensing is critical in protecting the public's interests and has no significant negative impact on research and development when compared to a scenario without compulsory licensing.

ASSISTED REPRODUCTION: CRITICAL ANALYSIS OF THE SURROGACY (REGULATION) ACT 2021 AND THE ASSISTED REPRODUCTIVE TECHNOLOGY (REGULATION) ACT 2021

Shagufta Anjum¹

INTRODUCTION

Procreation is one of the primary objects of any marriage which strengthens the marital bond apart from growing families. Many couples aspiring to be a parent struggle to get this bundle of joy due to their inability to conceive naturally or traditionally.

The concept of infertility in Indian society is more gender-specific (female). Infertility is a married woman is linked with her religious, moral, social, physical characteristics and bad karmas/ sins which she has done in her previous life (theory of rebirth²). It is mostly judged as a taboo rather than a medical indication that needs technical intervention/ attention.

In India as per the 2021 survey conducted by the All-India Institute of Medical Science (AIIMS) nearly 25 to 30 % of the population falling under the reproductive age suffer from primary infertility due to hectic lifestyle, stress, the effect of Endocrine Disrupting Chemicals (EDCs)³. Infertility can be traced in a couple as single defects – multiple defects – non-traceable defects. Infertility⁴, as per the World Health Organization⁵ (WHO) is a clinical disability rather than a disease. It can be in the form of primary or secondary infertility which needs medical attention and intervention. Infertility or inability to conceive a child within the initial years of marriage weakens the marital relationship creating distance between the spouses. This gradually affects the quality of married life leading further to domestic

¹Principal (In-Charge), IFIM Law School

²Jyotsna. A, *Rebirth in Hinduism – Punar Janma*, TEMPLE PUROHIT, 19th June 2020, (last visited on 16th Feb 2022 at 2.14 PM), <https://www.templepurohit.com/rebirth-hinduism-punar-janma/>

³Pooja Biraia Jaiswal, *India's Infertility War: Exposure to Chemicals lowers sperm count, egg quality*, THE WEEK MAGAZINE, 23rd May 2021, (last visited on 7th Feb 2022) <https://www.theweek.in/theweek/cover/2021/05/13/india-infertility-war-exposure-to-chemicals-lowers-sperm-count-egg-quality.html>

⁴SEXUAL AND REPRODUCTIVE HEALTH – Glossary of definitions for infertility and fertility care as developed in 2009 by World Health Organization (WHO) in partnership with International Committee for Monitoring Assisted Reproductive Technologies (ICMASSISTED REPRODUCTIVE TECHNOLOGY). <https://www.who.int/reproductivehealth/topics/infertility/definitions/en/> (visited on 5th Jan 2020 at 1.18 PM)

⁵World Health Organization is an international organization established in 1948 by the United Nations to work worldwide to promote health, keep the world safe, and serve the vulnerable. <https://www.who.int/about> (last visited on 23rd Jan 2022 at 1.17 PM)

violence⁶, extra-marital affair⁷, clinical depression⁸, suicide⁹, sexual violence¹⁰, and divorce^{11,12}.

CAUSES FOR INFERTILITY

Female- Ovulatory dysfunction¹³ due to reproductive ageing, polycystic ovarian disease, abnormalities in hypothalamic-pituitary axis, premature ovarian insufficiency, luteal phase defect, hyperprolactinemia, thyroid disorders.

Tubal and Pelvic Pathology issues¹⁴ result in genital tuberculosis, pelvic inflammatory disease, endometriosis, uterine myomas, Asherman's syndrome, cervical factors.

Male- Pretesticular due to hyperprolactinemia¹⁵, Kallmann syndrome¹⁶, Klinefelter's syndrome¹⁷, illicit drugs.

⁶According to Section 3 of The Protection of Women from Domestic Violence Act, 2005, domestic violence is a form of physical abuse or mental abuse or sexual abuse or verbal and emotional abuse or economic abuse by a person on another person in a domestic relationship.

https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf (last visited on 23rd Jan 2022 at 1.27 PM)

⁷Also referred to as Adultery in India is a physical/sexual relationship existing between a man and a woman (wife of other person) outside the wedlock. This adulterous act was covered under section 497 of Indian Penal Code and was punishable till 26th Sept 2018. Due to the Judgment laid in Joseph Shine v Union of India on 27th Sept 2018, Constitution bench of the Hon'ble Supreme Court struck down section 497 making adultery as a non-criminal offence. However, it remains as one of the grounds for seeking divorce under marriage and divorce laws.

⁸According to National Institute of Mental Health (NIMH) clinical depression or major depressive disorder is a state of mental ill health which is caused by a combination of genetic, biological, environmental, and psychological factors. The symptoms range from mild to severe and last from few days to few years. Severe form of depression provokes suicidal tendency amongst the sufferers. <https://www.nimh.nih.gov/health/topics/depression> (last visited on 23rd Jan 2022 at 1.34 PM)

⁹ According to Section 309 of the Indian Penal Code, Suicide is termed as self-killing. The person who indulges in such act and the one who facilitates/provokes another to commit suicide shall be punished with simple imprisonment up to 1 year or fine or both. This section is in contrary to the Mental Healthcare Act 2017 which treats suicide as a form of severe mental illness and advocates rehabilitation rather than punishment.

¹⁰sexual violence falls under the category of intimate partner violence (IPV) where the female partner has been harassed or tortured by the male partner in the form of marital rape. In India marital rape is not defined under any criminal laws and hence do not attract criminal liability. 98% of women in marital relationship in India face marital rape or intimate partner violence in their relationships.

¹¹Divorce is a mode of dissolving a valid marriage. It is a legal dissolution of the marital union between a man and a woman. In India concept of divorce comes under personal laws such as The Hindu Marriage Act, 1955 (applicable to 'Hindus'), The Indian Divorce Act 1869 (applicable to Christians), The Dissolution of Muslim Marriage Act 1939 (applicable to Muslims), The Parsi Marriage and Divorce Act 1936 (Applicable to Parsis), The Special Marriage Act 1956 (applicable to inter-caste marriages).

¹²Hirsch AM, Hirsch SM. *The Effect of infertility on Marriage and Self-Concept*. J OBSTET GYNECOL NEONATAL NURS. (1989 Jan-Feb)

¹³Ovulation Disorders are defined as disturbances in the production of an egg (also known as oocyte or ovum) caused by problems with the regulation of reproductive hormones during a woman's menstrual cycle. <https://www.templehealth.org/services/conditions/ovulation-disorders> (last visited on 30th Jan 2022 at 1.49 PM)

¹⁴Tubal and Pelvic Pathology issues are problems associated with fallopian tubes and abnormalities in the pelvic region of the female reproductive tract which hinders natural conception causing female infertility <https://www.msdmanuals.com/en-in/home/women-s-health-issues/infertility/problems-with-the-fallopian-tubes-and-abnormalities-in-the-pelvis> (last visited on 23rd Jan 2022 at 9.03 PM)

Testicular due to Varicocele, Cryptorchidism, Genetic Azoospermia/Oligospermia¹⁸, testicular injury (direct injury/ infection/ inflammation), anti-sperm antibodies, Ionizing radiation and chemotherapy.

Post-testicular due to congenital absence of vas deferens, vasectomy, ejaculatory duct obstruction, seminal vesicle dysfunction, nerve injury affecting ejaculation, young syndrome¹⁹, resection of the prostate, coital difficulties, antipsychotic medications.

Unexplained infertility –

Female, it may be abnormalities of gametes, abnormalities of implantation, psychological factors, lifestyle, stress, and other related factors beyond medical screening.

Male, it may be abnormalities of sperm, decreasing age, psychological factors, low-level leukocytospermia²⁰, mitochondrial DNA²¹ polymerase gene polymorphism lifestyle, stress, and other related factors beyond medical screening.

Other reasons such as malfunctioning, non-existence, partial existence of uterus, defective uterus not being able to carry the pregnancy to full term, repeated miscarriages, defective reproductive organs, defective ovaries, or any other chronic health condition which makes conception an impossible task.

¹⁵The presence of an abnormally high concentration of Prolactin in the blood which could be physiological, pathological, or idiopathic in origin resulting in female infertility or irregular menstrual cycles. <https://www.merriam-webster.com/medical/hyperprolactinemia> (last visited on 23rd Jan 2022 at 9.08 PM)

¹⁶It is a hereditary condition marked by hypogonadism caused by a deficiency of gonadotropins and anosmia caused by failure of the olfactory lobes to develop. It is a form of condition characterized by delayed or absence puberty and an impaired sense of smell causing male/female infertility. <https://www.merriam-webster.com/medical/Kallmann%20syndrome> (last visited on 23rd Jan 2022 at 9.13 PM)

¹⁷It is a genetic condition in which a boy is born with an extra 'X' chromosome (XXY) instead of typical chromosome (XY). This is also called as XXY syndrome. Men with this syndrome have difficulty in having a baby. <https://www.webmd.com/men/klinefeltersyndrome#:~:text=Klinefelter%20syndrome%20is%20a%20genetic,trying%20to%20have%20a%20child> (last visited on 23rd Jan 2022 at 9.25 PM).

¹⁸It is deficiency of sperm in the semen resulting in male infertility. <https://www.merriam-webster.com/medical/oligospermia> (last visited on 23rd Jan 2022 at 9.28 PM)

¹⁹It is a condition characterized by male infertility, damaged airways in the lungs (bronchiectasis) and inflammation of the sinuses (sinusitis) [https://rarediseases.info.nih.gov/diseases/341/young-syndrome#:~:text=Young%20syndrome%20is%20a%20condition,of%20the%20sinuses%20\(sinusitis\)](https://rarediseases.info.nih.gov/diseases/341/young-syndrome#:~:text=Young%20syndrome%20is%20a%20condition,of%20the%20sinuses%20(sinusitis)) (last visited on 23rd Jan 2022 at 9.34 PM)

²⁰ Also called as Pyospermia is a condition in which an unusually high number of White Blood Cells are in the semen-more than 1 million White Blood Cells per 1 milliliter of semen. [https://my.clevelandclinic.org/health/diseases/15220pyospermia#:~:text=Pyospermia%20\(also%20referred%20to%20as,can%20damage%20its%20genetic%20material](https://my.clevelandclinic.org/health/diseases/15220pyospermia#:~:text=Pyospermia%20(also%20referred%20to%20as,can%20damage%20its%20genetic%20material) (last visited on 23rd Jan 2022 at 11.03 PM)

²¹Is an extranuclear double-stranded DNA found exclusively in mitochondria that is most eukaryotes is a circular molecule and is maternally inherited. <https://www.merriam-webster.com/dictionary/mitochondrial%20DNA> (last visited on 23rd Jan 2020 at 11.10 PM)

Apart from these above medical conditions, the rate of infertility can be found at a high level in women with an increasing level of education, in rural areas where villagers deal with toxic chemicals such as fertilizers and pesticides, in people who work under constant stress, radiation (occupational hazards) which cause damage to their reproductive organs.

Hence, infertility cannot be labelled as an exclusive feminine issue; it can be found in males or both males and females. In some cases, infertility cannot be identified by medical science and hence remains a mystery without a proper cure.

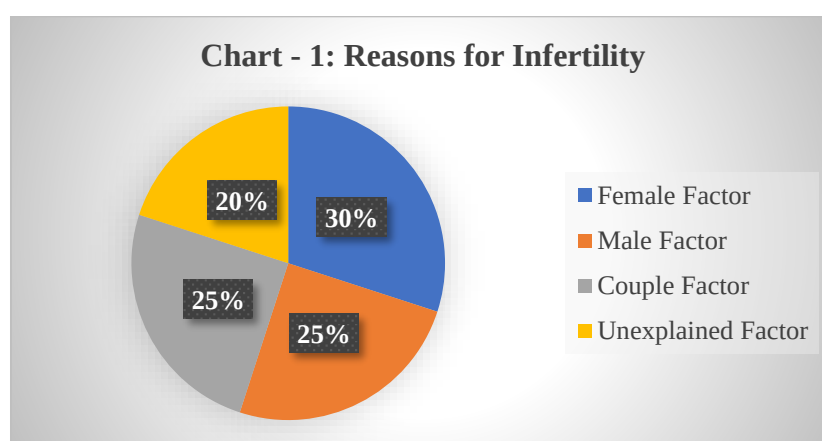


Fig. No. 1²²

Infertility is assessed on the standard parameter of inability to conceive even after 12 months of coitus without any contraceptives.

Advancement in medical science has brought the solution to this problem by providing support in the form of assisted reproductive techniques (ART). Reproductive technology backed by Artificial intelligence (AI) has changed the face of maternal health care encouraging intending parents to shift their focus from adoption to genetic tie. The right to have a child and form a family is no longer a mere formality but a matter of choice, which the intending parents wish to exercise prudently. Medical experts offer a wide range of fertility treatments to overcome this disability ranging from Intrauterine Insemination, Intrafallopian Transfer, Intracytoplasmic sperm injection, In Vitro Fertilization, Surrogacy.

Surrogacy is an alternate arrangement to natural conception devoid from physical intercourse or physical union carried through a scientific process with the help of third-party assistance.

²²Dr. Sandeep Mane, Surrogacy dreams come true, chapter 1: Infertility-A stigma in India-A Curse-Why? Notion press publication, 2017, ISBN 978-1-946983-33-6

----- Absent uterus Hypoplastic uterus Hysterectomy (uterus removal)	Uterine problems
----- Heart disease, kidney failure, severe hypertension Connective tissue disorders, etc.	Medical conditions (Making pregnancy risky)
----- Recurrent miscarriages Recurrent IVF failures Advanced maternal age	Other reasons

Table No. II: Indications for Surrogacy²³

DEFINITION OF SURROGACY

As per Black's Law Dictionary, Surrogacy is defined as the process of carrying and delivering a child for another person²⁴. As per Warnock Report (1984), Surrogacy is a process as a woman who carries a child to term for another person or couple, whether she contributes to the genetics of the child or not, and who usually receives some payment²⁵.

To understand the complex topic of surrogacy, it is very important to understand the terms used in this entire process. Below is the conceptual development of the terms often used in the medical and legal field relating to Assisted Reproductive Technology and Surrogacy.

²³1st ed. DR. SANDEEP MANE, SURROGACY DREAMS COME TRUE, Chapter 3: Surrogacy – A treatment option (Notion press publication, 2017)

²⁴ Black's Law Dictionary, definition of Surrogacy, pg. 1610
file:///C:/Users/admin/Downloads/epdf.pub_blacks-law-dictionary.pdf (visited on 14th March 2020 at 9.50 PM)

²⁵Warnock Report 1984, chapter 8- definition of Surrogacy, The Embryo Project Encyclopedia, The Report of the Committee Inquiry into Human Fertilization and Embryology (1984) by Mary Warnock and the Committee of Inquiry into Human Fertilization and Embryology reproduced by LaTourelle, Jonathon J.
<https://embryo.asu.edu/pages/report-committee-inquiry-human-fertilisation-and-embryology-1984-mary-warnock-and-committee> (visited on 14th March 2020 at 10.45 PM)

Surrogacy²⁶. It means a practise whereby one woman bears and gives birth to a child for an intending couple to hand over such child to the intending couple after the birth.

Surrogacy can be defined as a woman who carried an infant, after a successful herbal or artificial insemination, or after an in vitro fertilization through the implementation of an embryo²⁷ for an infertile couple, based totally on a pre-pregnancy settlement, to hand the child to the commissioning couple who acquire parental rights and duties²⁸.

Surrogacy is a form of medically assisted procreation (MAP) in which a woman “lends” her uterus to carry out a pregnancy on behalf of a third party²⁹

Surrogacy, as defined in the Warnock report, is ‘the practise whereby one woman carries a child for another with the intention that the child should be handed over after birth’³⁰

The couple³¹ - It means the legally married Indian man and woman above the age of 21 years and 18 years, respectively.

Intending Couple³² - It means a couple who has been a medical indication necessitating gestational surrogacy and who intend to become parents through Surrogacy.

Intending Woman³³ - It means an Indian woman who is a widow or divorcee between the age of 35 years and 45 years and who intends to avail the surrogacy.

Infertility³⁴ - It means the inability to conceive after one year of unprotected coitus and other proven medical condition preventing a couple from conception. In the Bill 2019, 5 years waiting period was mentioned to prove infertility which was later reduced to 1 year as per World Health Organization standards.

Surrogate Mother³⁵ - It means a woman who agrees to bear a child (who is genetically related to the intending couple or intending woman) through surrogacy from the implantation of an

²⁶The Surrogacy (Regulation) Act, 2021, § 2(zd)

²⁷Edited by COOK, R., DAY, S.S., & KAGANAS. F, SURROGATE MOTHERHOOD: INTERNATIONAL PERSPECTIVE, 308, (HART Publishing: Oxford and Portland, Oregon, 2003).

²⁸Abdullah, F.M. *Legal and Ethical Aspects beyond Commercial Surrogacy: Modern Form of Human Trafficking*, JOURNAL OF LEGAL, ETHICAL AND REGULATORY ISSUES, 1-7 (2019).

²⁹Piersanti, V.; Consalvo, F.; Signore, F.; Del Rio, A.; Zaami, S. *Surrogacy and “Procreative Tourism”*. *What Does the Future Hold from the Ethical and Legal Perspectives?* MEDICINA, 47-57 (2021)

³⁰Warnock (1984: para.8.1)

³¹The Surrogacy (Regulation) Act, 2021, § 2(h)

³²The Surrogacy (Regulation) Act, 2021, § 2(r)

³³The Surrogacy (Regulation) Act, 2021, § 2(s)

³⁴The Surrogacy (Regulation) Bill 2019, § 2(p) omitted in The Surrogacy (Regulation) Act, 2021 and WHO standard of 1 year is taken to assess infertility.

³⁵The Surrogacy (Regulation) Act, 2021, § 2(zg)

embryo in her womb and fulfils the conditions as provided in sub-clause (b) of clause (iii) of Section 4;

Sub-clause (b) of clause (iii) of section 4 deals with the eligibility of a woman to be hired as a surrogate

Surrogacy Clinic³⁶ - It means surrogacy clinic or centre or laboratory, conducting assisted reproductive technology services, in-vitro fertilization services, genetic counselling centre, genetic laboratory, assisted reproductive technology banks conducting surrogacy procedure or any clinical establishment, by whatsoever name called conducting surrogacy procedures in any form.

Altruistic Surrogacy³⁷ - It means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentives of whatever nature, except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate or her dependents or her representative.

Insurance as per section 2(q)³⁸ means an arrangement to provide a guarantee of compensation for medical expenses, health issues, specified loss, damage, illness or death of a surrogate mother and such other prescribed expenses incurred on such surrogate mother during the process of surrogacy.

Commercial Surrogacy³⁹ - It means the commercialization of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses and such other prescribed expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother.

³⁶The Surrogacy (Regulation) Act, 2021, § 2(ze)

³⁷The Surrogacy (Regulation) Act, 2021, § 2(b)

³⁸The Surrogacy (Regulation) Act, 2021, § 2(q)

³⁹. The Surrogacy (Regulation) Act, 2021, § 2(g)

An arrangement between the biological parents and the gestational mother, who is paid to carry the foreman's child is referred to as commercial surrogacy⁴⁰.

Abandoned Child⁴¹ - It means a child born out of surrogacy procedure who has been deserted by his intending parents or guardians and declared as abandoned by the appropriate authority after due enquiry.

Appropriate authority as defined in section 2(c)⁴² is an authority appointed under section 33 of the said Act.

Surrogacy Procedures⁴³ - It means all gynaecological or obstetrical or medical procedures, techniques, tests, practices, or services involving the handling of human gametes and the human embryo in surrogacy.

DISPARITY IN ASSISTED REPRODUCTIVE TECHNOLOGY (REGULATION) ACT 2021 AND THE SURROGACY (REGULATION) ACT 2021

The Acts (Surrogacy Act and Assisted Reproductive Act) are framed keeping in mind the choice-based approach and not the 'need-based' approach.

1st Group • Eligible infertile couples: Indian married couples unable to conceive even after 5 years of unprotected coitus declared as 'infertile' by the Authority. • Can choose Surrogacy if they can find a 'close relative' who can act as surrogate for their child. • Enjoy genetic child	2nd Group • Non-eligible infertile couples: Indian married couples unable to conceive even after 5 years of unprotected coitus declared as 'infertile' by the Authority. • Cannot choose Surrogacy if they are unable to find a 'close relative' who can act as surrogate for their child.
3rd Group • Non-eligible couples: Overseas Indians, foreigners, unmarried couples, single parents, live-in partners, and gay couples are declared incompetent to parent their genetic child. Right to form a family is deprived to them at the outset. • Cannot choose Surrogacy. • Deprived of genetic child	4th Group • Non-eligible couples: Indian married couples having normal living child (first child) • Cannot reproduce second child due to medical complications • Deprived of choosing Surrogacy for second child • Deprived of having a balanced family.

⁴⁰ . Aswathy Raveendran, *Invoking the political in socio scientific issues: A study of Indian students' discussions on Commercial Surrogacy*, SCIENCE STUDIES AND SCIENCE EDUCATION, Vol.105 – Issue 1, 62-98 (2021)

⁴¹. The Surrogacy (Regulation) Act, 2021, § 2 (a)

⁴². The Surrogacy (Regulation) Act, 2021, § 2 (c)

⁴³. The Surrogacy (Regulation) Act, 2021, § z (f)

As per the Surrogacy Act 2021, the intending couple needs to prove themselves before they opt for surrogacy. They need to obtain a letter of recommendation, certificate of essentiality and certificate of medical indication necessitating gestational surrogacy from the Board. This is pathetic keeping in mind the amount of harassment or humiliation to be faced by the intending couple before the public authorities. To beget their child intending couple need to be at the mercy of authorities and not almighty. Such a gross violation of human rights and privacy rights can happen only in India.

The term 'close relative' has been removed from the Surrogacy Act 2021 whereas it is still retained in the ART Act 2021.

According to Sec 2(zg) of the Surrogacy Act 2021, surrogate needs to be genetically related to the intending couple. If the term close relative is removed and any willing woman can be a surrogate, then why genetically related is mentioned in the Surrogacy Act 2021. *Who falls under a genetically related category to act as a surrogate (proximity of relationship)?*

The Surrogacy Act 2021 fails to justify its stand in allowing surrogacy by a woman minus consideration (altruistic) and on the other hand prohibiting surrogacy with monetary benefits (paid). In both cases, it is the woman's body that undergoes the entire cycle of embryo implantation/ bearing the child/ deprivation of her personal life/ loss of livelihood/ risks associated with pregnancy/ pre-delivery and post-delivery complications/ fear of losing a life., etc.

By allowing altruistic surrogacy and criminalizing commercial surrogacy, the Surrogacy Act 2021 has shifted dowry-related harassment to childbearing harassment. It has placed the body of a married woman in grave danger trying to satisfy the progeny needs of her husband's family behind closed doors. This act of bearing a child to a known person in the family or stranger family may give rise to ethical questions on her character damaging her marital relationship and institution of marriage in the long run. History has been a witness to such type of instances where women have been outcasted as a 'concubine' soliciting men.

The Surrogacy Act 2021 fails to lay down the fair and due procedure to ascertain the free consent of the woman willing to exercise her reproductive autonomy to act as a surrogate for altruistic or commercial purposes. In the case of forced consent, Surrogacy Act 2021 fails to lay down remedial measures for the helpless soul.

‘Infertility’ is defined as 1 year of unprotected coitus not resulting in pregnancy as per the Assisted Reproductive Technology Act 2021 whereas in the Surrogacy Act 2021, this has been omitted and the ‘medical indication’ term has been replaced.

Infertility resulting from occupational hazards affecting Reproductive Health has not been addressed in the Acts and no exception is provided to this category. People working in the Chemical’s Manufacturing Industry, Firecracker’s manufacturing and packaging industry, Fertilisers and/or pesticides Industry, Aviation Industry, Radiation Dept or any other Industry which engages in activities of hazardous nature are silently exposed to toxic materials through Breathing (Inhaling), Skin contact, Swallowing (Ingestion)]. This makes them prone to potential health risks such as cancer, reproductive system defects including male or female infertility, miscarriage, birth defects and developmental disorders in children to be born⁴⁴ There are not made aware of the possible risk attached to their occupation in the long run as mandated by the International Labour Organization (ILO).

The Surrogacy Act 2021 has failed to define the ‘medical indication’ term for more clarity.

In both the legislations, there is a different approach in availing services. As per Sec 2(u) of the ART Act 2021, the woman above 21 years can approach ART clinics for services but as per Sec 4 (iii), (b) of the Surrogacy Act 2021, the surrogate mother should be between 25 years to 35 years and Sec 4 (iii) (c) of the Surrogacy Act 2021, intending couple (female between 23 years to 50 years and male between 26 years to 55 years).

Regarding the validity of the Certificate of Registration, there seems to be confusion. As per Sec 16 (6) of the ART Act 2021, the certificate of registration of ART clinics is valid for a period of 5 years whereas Sec 12 (3) of the Surrogacy Act 2021 states that the registration is valid for 3 years. Which one is applicable?

Storage of personal information of surrogate and the child so born both the laws state a period of 25 years from the date of surrogacy process to be followed. Since India doesn’t have a Data Protection law in place (as of now), privacy and breach of data in the hands of private clinics are under constant threat.

⁴⁴The National Institute for Occupational Safety and Health (NIOSH), *The Effects of Workplace hazards on Male Reproductive Health*, CENTRE FOR DISEASE CONTROL AND PREVENTION, (96-132) 1996, (last visited on 20th Feb 2022 at 9.19 PM) <https://www.cdc.gov/niosh/docs/96-132/default.html#:~:text=What%20Are%20Reproductive%20Hazards%3F,are%20examples%20of%20reproductive%20hazards>

Sec 21 (f) of the ART Act 2021 mentions Grievance Cell but Surrogacy Act 2021 is silent on this aspect.

ART Act 2021 permits the collection and storage of Gametes posthumously with the prior consent of the intending couple to be used in future in case of any untoward incident or death of either of the spouse. Whether surrogacy can be performed using this stored gamete posthumously. Law is silent on this.

All these loopholes make altruistic surrogacy susceptible to misuse and woman performing the act of surrogacy without any monetary consideration/ dignity of labour get prone to violence behind closed doors. In the current situation, keeping in mind the alarming rise in infertility, nuclear family structure, late marriages, delayed pregnancy, career preference over family, economic disparity, occupational hazards the lawmakers must think logically to answer the nuances of this medico-legal issue.

The law should come as an aid to boost female participation in the work of her choice, strive for her empowerment in the economic sense, mental well-being give her the right to bodily autonomy and create a support system for her to explore the greatest opportunities with dignity.

ARTICLE 21 OF THE CONSTITUTION OF INDIA: REPRODUCTIVE AUTONOMY AND RIGHT TO LIVELIHOOD

Man is a rational animal who has been given the power to ‘think and make choices in life. Autonomy for an individual’s well-being is very important as a human being irrespective of its gender and an individual cannot live a life that is restricted or controlled by others. Autonomy is not only limited to physical, mental, or spiritual, but it surpasses the human body in its biological nature.

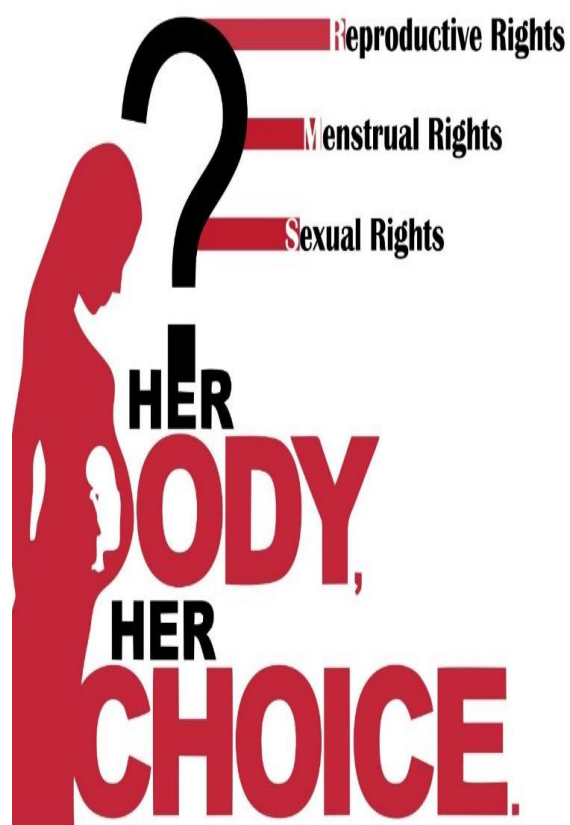


Fig No. 1⁴⁵

Bodily Autonomy is the right or the freedom exercisable by every girl/woman in matters relating to her body such as menstruation, sexual and reproductive areas.

Instances like marital rape, forced abortion, forced pregnancies, sexual abuse, menstrual stigma, restriction on using contraceptives, denying primary consent in case of family planning violate bodily autonomy.

As per the UNFPA press release dated 14th April 2021, nearly half of all women are denied their bodily autonomy according to the data from 57 countries.

The 2021 State of World Population Report prepared by the United Nations marks the beginning of power and agency of individuals to make choices about their bodies without fear, violence, or coercion.

Women's rights and bodily autonomy as laid down in the International Conference on Reproductive Health, Mumbai 1998⁴⁶ is a personal autonomy concerning their sexual and reproductive health within their social, economic, and political context.

As per the International Conference on Population and Development (referred to as ICPD for brief), 1994 - reproductive health is defined in Paragraph 7.2 of the Programme of Action as 'a state of complete physical, mental and social well-being in all matters related to the reproductive system which implies that people can have a satisfying and safe sex life and that they can reproduce and the freedom to decide if, when and how often to do so'. Further, the

⁴⁵Image courtesy <https://womenite.com/bodily-autonomy-right-tharoor-bill/>
<https://womenite.com/author/admin/> based on the State of World Population Report, 2021 titled 'My Body is my Own'. <https://india.unfpa.org/en/news/unfpa-launches-state-world-population-report-2021-my-body-my-own#:~:text=News-UNFPA%20Launches%20the%20State%20Of%20World%20Population%20Report%2C%202021,My%20Body%20Is%20My%20Own&text=Nearly%20half%20of%20all%20women,Wednesday%2C%20April%2014%2C%202021> (last visited on 4th Feb 2022 at 10.47 AM)

⁴⁶Retrieved from the research paper titled 'Right to Sexual and Reproductive Health – the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by Dr. Carmel Shalev, member, CEDAW at the International Conference on Reproductive Health, Mumbai (India), 15-19 March 1998, jointly organized by the Indian Society for the Study of Reproduction and Fertility and the UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction <https://www.un.org/womenwatch/daw/csw/shalev.htm>

said document reaffirms reproductive rights as ‘the basic rights of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health’.⁴⁷

Courts in India and globally have always upheld women’s right to bodily autonomy and integrity in several cases.

CONCLUSION

The disparities in the Assisted Reproduction Act 2021 and The Surrogacy Regulation Act 2021 highlighted in this paper needs to be addressed as soon as possible before society starts misinterpreting the ambiguity for its selfish means. The lawmakers should also widen the scope of these enactments to LGBTQs, single males, live-in partners, couples with healthy children so that they can enjoy the fruits of scientific development. Steps to reduce occupational hazards affecting reproductive health must be taken up by the employer/owner. Awareness drive/ training modules as laid down by the International Labour Organisation (ILO) must be inserted in the laws as mandatory compliance to be duly complied by the Organisations⁴⁸. Infertility is a ground reality and this needs to be handled through deep research on the various causes of infertility. The medical indication is a narrow term to be used to define infertility as there may be cases of untraced infertility (reason unknown even after detailed medical examination). Such situations should also be covered under the above-said laws. Science is yet to unveil the hidden mysteries of nature and law framers are yet to weave these grey areas in the text.

⁴⁷Convention on Elimination of all forms of Discrimination Against Women, 1979, art. 16(1)

⁴⁸International Labour Office, *Your health and safety at work: A Collection of Modules*, Male and Female Reproductive Hazards in the Workplace, International Labour Organization (ILO), (last visited on 20th Feb 2022 at 11.38PM)[https://training.ilo.org/actrav_cdrom2/en/osh/rep/prod.htm#:~:text=Exposure%20to%20certain%20hazardous%20substances,foetus%20\(also%20written%20fetus\)](https://training.ilo.org/actrav_cdrom2/en/osh/rep/prod.htm#:~:text=Exposure%20to%20certain%20hazardous%20substances,foetus%20(also%20written%20fetus))

CONCEPT OF PRODUCT LIABILITY IN INDIA- ITS COMPARISON WITH THE REST OF THE WORLD

Sivarama Krishna Prakash¹

INTRODUCTION

The word “Product Liability” is heard of in most advanced countries. Product Liability Law is a law that provides consumers with legal recourse for any injuries caused to them by using a defective product. Many people across the globe are directly/indirectly affected due to the usage of defective products. These finally end up in suits, where manufacturers pay up huge sums of money against damages. Any product that a consumer uses is reasonably expected to cater to consumer needs. Manufacturers and sellers are responsible for product safety and quality. *Caveat Emptor* was a popular consumer law theory in the eighteenth century and this theory was popular till the twentieth century. The meaning of *caveat emptor* was that the buyer must be cautious and aware of risks and dangers. Consumers reached out directly to manufacturers for a defective product and no court of law was involved. Post 20th century beginning the production style changed, the supply chain evolved, international trade grew, e-commerce started, and all these led to the development of product liability laws² to protect the consumers from unethical and fraudulent practices.

Product Liability for self-driving AVs is an evolving area as product and technology is still under development and hence cannot be compared with other existing off the shelf products including a conventional driver has driven automobiles. As and when self-driving AVs become more prominent across the world, other global concerns like terrorist attacks, cyber-attacks³ etc will be a cause of concern and product liability can also hinge on algorithms or GPS data, apart from other elements that go into the self-driving AV.

Most of the advertising in India to create consumer awareness use the slogan ‘**Jago Grahak Jago**’. These advertisements try to educate the consumers to be aware of product defects, product expiry dates etc. Any consumer in India who receives a defective product message the same to his contacts and finally due to the manufacturer’s fault, the shopkeeper suffers. Honestly “**Jago Grahak Jago**” must be replaced by “**Jago Vikreta Jago**”. It is the

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² (Mayer, *BASICS OF PRODUCT LIABILITY, SALES AND CONTRACTS* 2012)

³ Kahl M, “Autonomous Vehicles: Driving Regulatory and Liability Challenges” (*Automotive World* April 7, 2020)<<https://www.automotiveworld.com/articles/autonomous-vehicles-driving-regulatory-and-liability-challenges>> accessed September 1, 2021

manufacturer who must be aware of defective products and the reputational risks associated with their sale.

CONSUMER PROTECTION ACT IN INDIA

The earlier Consumer Protection Act 1986 of India was recently replaced by the Consumer Protection Act 2019 (CPA 2019) which does have the concept of product liability in line with global product liability laws. Before CPA 2019 since there was no specific product liability clause in any Indian statute, the product liability was mainly governed by contracts and under relevant provisions in the Consumer Protection Act, 1986, the Sales of Goods Act, 1930, the Indian Penal Code, 1860 and certain specific statutes about specific goods and standardization⁴. The CPA 2019 lists out specific responsibilities for product manufacturer/service provider/seller specifically concerning compensating consumers for harm by a defective product. The word “Consumer” is defined in section 2(7) which includes online consumers and “Product” has been defined in section 2(33) of CPA 2019.

As per CPA 2019 product is wide enough to not only cover goods, but can also include raw materials or intermediate products, but excludes human body parts. A person using a product for commerce is not a consumer⁵. As discussed earlier the manufacturer/seller is liable to compensate a consumer for any harm caused by the usage of a defective product. This is what is defined as Product Liability under CPA 2019.

Common law concept for product liability was based on the seller assuming the risk for any issues faced by the buyer and it was called *caveat venditor*. Product Liability could be under a contract covered by warranty or under Tort covered by Strict Liability and Negligence. A warranty is akin to a guarantee and can be either express or implied. But one must clearly understand that trade talk is no warranty. They are only flowery language to induce the buyer without any promise. The doctrine of warranty must always be covered under the privity of contract. Since the protection offered by existing contract laws concerning product liability has been inadequate, this has led to the move towards tort law principles of strict liability and negligence to protect consumer interests. Negligence in simple terms means a lack of

⁴Ghosh A, “Product Liability Law in India: An Evolution - Consumer Protection - India” (*Welcome to Mondaq* August 7, 2020) <<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution>> accessed September 1, 2021

⁵RG and others, “Product Liability and Consumer Protection” (*iPleaders* July 10, 2021) <<https://blog.ipleaders.in/product-liability-and-consumer-protection>> accessed September 1, 2021

reasonable and due care. This can manifest through defective designs, faulty construction etc. There were many occasions in the past where the pleas of warranty and negligence failed. These failures saw courts adopting strict liability principles and making sellers liable for defective and dangerous products.

Chapter VI of the CPA 2019 covers Product Liability from Section 82 to 87. As per Section 82, Chapter VI shall apply to every compensation claim for product liability on account of defective product manufactured, sold or serviced by the seller. Section 83 enables any person, who is a complainant to bring about a product liability case for a defective product against a manufacturer, product service provider or product seller. As per Section 84 of CPA 2019, a product manufacturer shall be liable in a product liability action only if the product has a manufacturing defect or design defect or deviation from manufacturing specifications; or the product is in non-conformity with an express warranty or has inadequate instructions concerning its usage. Being non-negligent in making an express warranty of the product is no defence for a manufacturer.

Section 2(24) of the CPA 2019 defines a manufacturer as a person who makes/assembles any goods or parts thereof or puts or causes to be put his mark on any goods made by any other person.

As per Section 85 of CPA 2019, product service providers shall be liable if the service provided was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise. A product service provider shall also be liable for any act of omission or commission or negligence or conscious withholding of any information which resulted in the harm or for not issuing adequate warnings/instructions to prevent any harm and also for failure to conform to the agreed warranty conditions.

As per Section 86 of CPA 2019, a product seller, who otherwise is not a product manufacturer can be made liable in a product liability case if such product seller has exercised substantial control over the designing, testing, manufacturing, packaging, or labelling of a product which has caused the harm. A product seller can also be liable if he has altered or modified the product and such alteration or modification was mainly responsible to cause them harm. A product seller can also be liable for making an express warranty of a product independent of any express warranty made by the manufacturer and such product failed to conform to the express warranty made by the product seller resulting in harm. A

product seller can also be liable for product liability if he has sold a product whose product manufacturer identity is not known or if the manufacturer is not able to honour the service or warranty of such product or the manufacturer is not subject to Indian laws and hence no orders can be passed on the manufacturer. A product service provider is also responsible for product liability if such service provider fails to exercise reasonable care in assembling, inspecting, or maintaining the product or the service provider did not pass on warnings concerning product usage as indicated by the manufacturer and such failure was the proximate cause of the harm.

Section 87 lays down the exceptions for actions against the product seller and manufacturer for product liability. As per section 87, if at the time of harm, the product was misused, altered, or modified the product seller shall not be liable⁶. As per subsection (2) of section 87 in cases of product liability based on lack of adequate warning, the product manufacturer shall not be liable if:

- a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer.
- b) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by the use of the end product in which such component or material was used.
- c) the product was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for the usage of such product to such expert or class of experts; or
- d) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

As per subsection (3) of Section 87 CPA 2019, “product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or

⁶ Sidharth Sethi BJ, “Product Liability under the Consumer Protection Act, 2019: Let the Manufacturer/Seller Beware!” (Bar and Bench - Indian Legal news) <<https://www.barandbench.com/columns/product-liability-under-the-consumer-protection-act-2019-let-the-manufacturer-seller-beware>> accessed September 1, 2021

consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product”.

PRODUCT LIABILITY CASE LAWS

a. Winterbottom v. Wright (1842)

Negligence and strict liability in tort evolved as an outcome of the famous English case of *Winterbottom v. Wright (1842)* which upheld the privity requirement. In this case, there was a contract between a coach company and the postmaster general. The contract was that the coach company will provide coaches to the postmaster general for delivering mails. The contract also specified that the coach company will be responsible for the maintenance of the supplied coaches. As a result of poor maintenance, one of the coaches collapsed causing injuries to the plaintiff hired by the postmaster general, who then sued the coach company. Since the driver who sued was not a party to the contract for maintenance, the final court order specified that the driver had no right to claim damages from the coach company.

b. MacPherson v. Buick Motor Co (1916)

The second most important case is that of *MacPherson v. Buick Motor Co (1916)*. This case had removed the requirement of privity of contract for negligence. The background of this case is that the plaintiff, Donald C. MacPherson, got injured because of the collapse of a wooden wheel of his 1909 "Buick Runabout". Buick Motor Company was the defendant in this case as they were the manufacturers of the vehicle. However, the wheel was not manufactured by them and was made by a third party. Nevertheless, the third party manufactured wheel was installed by the defendant and the evidence in the case suggested that the defect in the wheel could have been detected through reasonable inspection which was never carried out by the defendant. However, the defendant pleaded in court that they were not liable as the plaintiff had not purchased the vehicle from the defendant, but instead the purchase was made from a dealer. Judge Cardozo of the New York Court of Appeals in his ruling mentioned that since the company was negligent, they were liable and hence cannot take the defence of lack of privity of contract with the plaintiff. This was the first time a court had discarded the concept of "privity of contract". As per legal luminaries, this was a victory of tort over the contract.

c. Escola v. Coca Cola Bottling Co. (1944)

In the olden days for proving that the defendant was negligent, a plaintiff had to prove that the defendant did not apply the required standard of care. This practice is very tough to prove

and hence the 20th-century courts started moving in a different direction as they thought that it was unfair to force sufferers to prove negligence claims against manufacturers. While deciding the case of *Escola v. Coca Cola Bottling Co.* (1944), Justice Traynor expressed his views stating once a manufacturer has placed a product in the market without an inspection, knowing fully well that it is to be used and the product is proved to have a defect which causes human injury, then the manufacturer incurs an absolute liability.

d. Greenman v. Yuba Power Products, Inc and Henningsen v. Bloomfield Motors, Inc.

The courts in earlier days in every product issue case always checked back to see if the manufacturer was liable on account of warranty commitments. The doctrine of *res ipsa loquitur* i.e., the thing speaks for itself, was also in those days expanded by courts to reduce the burden of proving the fact by the plaintiff. The two famous cases of those days were the *Greenman v. Yuba Power Products, Inc.* pertaining to strict liability, and the case of *Henningsen v. Bloomfield Motors, Inc* on implied warranty.

The **Greenman v. Yuba Power Products Inc** is a 1963 case where Greenman the plaintiff has purchased a gadget called Shopsmith. This gadget was a multi-mode tool that could work as a saw, drill, and wood lathe. The plaintiff purchases Shopsmith after reading a brochure on the product and seeing a demonstration by the retailer. He also procured requisite attachments to use Shopsmith as a lathe. The plaintiff had used the lathe successfully many times before it threw a wood piece and injured him seriously in his head. The plaintiff then sued the manufacturer and the retailer. The higher court upheld the decision of the lower court and said that the plaintiff as a consumer had the right to sue the manufacturer on grounds of warranty breach, so long as the plaintiff was able to prove that he used the product in the right way and that the injury was due to manufacturing design defect, which the plaintiff was not aware and that this design defect had made the product unsafe.

The **Henningsen v. Bloomfield Motors, Inc** is a 1960 case wherein ten days after the plaintiff brought the car from a dealership owned by the defendant, the car's steering malfunctioned resulting in an accident when the wife of the plaintiff was driving. As a result, the plaintiff filed a case against the manufacturer. The dealer defended his position by stating that the warranty clause executed by the plaintiff had released the defendant from any liability due to personal injuries. A careful reading of the warranty clause indicates that the warranty only covered the replacement of defective parts for a period of 90 days or 4000

miles. Nevertheless, the court awarded damages in this case to Henningsen. The court order mentioned that every sale carries with it an implied warranty for safety and this warranty extended to anyone who uses the product irrespective of the fact that the person was the owner or not.

e. A.S. Mittal v. State of U.P. (1989)

Most cases on product liability in India have generally been decided by courts on principles of negligence and strict liability. Historically the Indian statutes have been silent on provisions of liability of manufacturer or seller on account of defective/faulty products or services till the enactment of CPA 2019. The case of A.S. Mittal vs the State of U.P was a case where mass eye surgery went wrong and caused irreparable damage to the eye to many who underwent the surgery. The doctors in their statements mentioned that they took all precautions and still the infection happened. The saline, which was used to irrigate the eyes, purchased from a reputed manufacturer, was probably the cause or source of contamination. The court held that since the product was to be used in a mass surgery, there were two questions to be answered i.e. whether pre-test for safety and purity was necessary and whether failure to do so would incur liability. The court held that answers to these two questions must be adduced through evidence and the decision of the court would be based on facts and evidence presented in the case⁷.

f. Airbus Industrie v. Laura Howell Linton (1994)

This is the case of an aircraft accident that occurred on 14 February 1990 wherein a scheduled commercial flight IC 605, with registration, no VT-EPN, flying from Mumbai to Bangalore touched the ground 2300 feet short of the scheduled touchdown point in the runway. 92 passengers and four crew members died and the remaining 54 survivors had severe injuries. The respondents 4 to 9 on 12-2-1992, filed a suit in the Mumbai High Court against Indian Airlines (IA) and Hindustan Aeronautics Ltd (HAL) claiming compensation of Rs. 5,95,24,989-56 ps in the equivalent of Pound Sterling. All the plaintiffs in the suit were British Nationals of Indian origin. The case mentioned in the suit is that the accident was caused because of insufficient and improper training of the pilots and their wrong understanding of aircraft systems. The respondents also mentioned that they doubted if the aircraft was airworthy or not. HAL was alleged to have not provided immediate and timely firefighting and rescue services. Since product liability law did not exist in India at that time,

⁷ “A.S. Mittal & Ors vs State of U.P. & Ors on 12 May, 1989” <<https://indiankanoon.org/doc/338680/>> accessed September 1, 2021

respondents simultaneously filed a compensation suit in Texas courts in the USA. On 6th November 1992, the appellant i.e. Airbus Industrie filed a suit in Mumbai City Civil Court against respondents 4 to 9 and respondents 10 and 11 seeking a declaration that the respondents cannot proceed in any Court other than the Court in India. The respondents made a valid point in support of their claim to have the case heard by a Texas court, mentioning the absence of product liability laws in India. The Karnataka High Court rejected this claim. The Karnataka High Court mentioned that the absence of strict product liability laws does not mean that parties will go without remedy in such cases. The court referred to the case of Charan Lal Sahu v. Union of India (Bhopal Gas Disaster) wherein damages were awarded and also added that obsolete laws need to be amended, or new laws are enacted to help such cases⁸.

PRE CPA 2019 PRODUCT LIABILITY CASE LAWS IN INDIA WITH VALID DEFENCE.

a. EID (Parry) India Ltd. v. Baby Benjamin Tushara.

This was a case where a consumer brought a claim of a manufacturing defect in a toilet commode after thirty years of using that product. The court held that unless the consumer could prove some inherent defect in the product, normal wear and tear will not make the consumer entitled to compensation⁹.

b. A. K. Roy & Another vs Voltas Limited.

This was a case where the consumer had purchased Voltas's air conditioner. The air conditioner developed a loud noise and the consumer complained to the company, post which they replaced the air conditioner, and the replaced air conditioner was working fine. When the consumer claimed further damages, the court held that since the air conditioner was replaced with another one that was working fine, the consumer cannot claim any further remedy¹⁰.

c. M/s. Solidaire India Ltd. v/s D.A. Mohan Kumar.

This was a case where the consumer Mr Mohan Kumar filed a case for free replacement of a defective picture tube in his Solidaire television set. The television set had a warranty for one

⁸ "Airbus Industrie vs Laura Howell Linton on 9 February, 1994" <<https://indiankanoon.org/doc/24097/>> accessed September 1, 2021

⁹ "E.I.D. Parry (India) Ltd. vs Baby ... - Indiankanoon.org" <<https://indiankanoon.org/doc/1239460/>> accessed September 1, 2021

¹⁰ A.K.Roy, Etc vs Union of India and Indiankanoon.org <<https://indiankanoon.org/docfragment/875590/?formInput=national%20security>> accessed September 1, 2021

year and the picture tube failed after three years of usage. The District Consumer Forum's view was even if a warranty of one year was given it does not mean the quality of the picture tube must be good only for one year. The District Consumer Court had decided that the picture tube had manufacturing defect without having it technically examined and this was overturned in appeal. Nevertheless, a small relief in terms of the discounted price for the replacement of the picture tube was given to the consumer by the Kerala State Consumer Disputes Redressal Commission Thiruvananthapuram¹¹.

d. Atul Anant Rane & Ors. Vs. Lourdes Gas Service & Ors.

This was a case filed with Maharashtra State Consumer Disputes Redressal Commission, Mumbai, by the children of Anant Subhash Rane and Sunita Anant Rane for their death due to gas leakage on 21 December 1991. The consumer forum held that the death was caused due to wrong handling of the gas knob and hence no relief was admissible¹².

GAPS TO BE PLUGGED UNDER PRODUCT LIABILITY LAWS IN INDIA TO PERMIT AUTONOMOUS VEHICLES TO BE TESTED/PLIED ON PUBLIC ROADS IN INDIA

While product liability laws are existent in many countries of the world where self-driving cars are plying/being tested, these laws are not causing any concern to the owners/ drivers of these AVs. The lure of reduced crashes and connected lower insurance costs are luring drivers and owners to adopt AV technologies. Propounders of AV technology for self-driving cars feel that later the adoption of AV technology, the liability of manufacturers would increase manifold. For any AV crash, one can have two kinds of litigation, no-fault insurance claim or product liability claim. The shift in responsibility from the driver to the manufacturer in the case of AVs has made no-fault insurance more attractive than a product liability suit which is more expensive and time-consuming. No-fault liability traditionally provides quick resolution and relief in case of accidents as they are not dependent upon identifying who is at fault¹³. Globally product liability law is generally a hybrid of contract and tort law making the manufacturer liable for their products. The manufacturers are

¹¹ "M/s. Solidaire India Ltd. v D.A. Mohan Kumar on 29 June 1991 - Judgement - Lawyterservices" (*The Tech Solution*)<<https://www.lawyterservices.in/Ms-Solidaire-India-Ltd-Versus-DA-Mohan-Kumar-1991-06-29>> accessed September 1, 2021

¹² "1998(4) All Mr (Journal) 20, Atul Anant Rane & Ors. vs. Lourdes Gas Service & Ors." (*NearLaw.com*) <[https://nearlaw.com/PDF/MumbaiHC/1998/1998\(4\)-ALL-MR-\(JOURNAL\)-20.html](https://nearlaw.com/PDF/MumbaiHC/1998/1998(4)-ALL-MR-(JOURNAL)-20.html)> accessed September 1, 2021

¹³"Chapter Seven Liability Implications of Autonomous ... - JS" <<https://www.jstor.org/stable/10.7249/j.ctt5hhwgz.14>> accessed September 1, 2021

expected to have back-to-back liability clauses with all their vendors and in the case of AVs also same will be applicable. When it comes to product liability the courts will try to look for a single neck to choke viz the manufacturer, unless the AV software and other elements are sold separately by non-vehicle manufacturers, in which case they would be liable for their products. Wherever we talk of “Strict Product Liability”, it would mean that there is no need to prove negligence¹⁴. In the earlier days, product liability case laws and doctrines did not distinguish among kinds of defects. However, over a period there was an evolution of three kinds of defects viz manufacturing defect, design defect and warning defects (failure to warn)¹⁵. All three are self-explanatory words and carry the same meaning that they imply.

In the Indian context CPA, 2019 would govern the aspect of Product Liability. As discussed earlier criminal liability and damages associated with criminal liability and product liability are two different areas. Product liability would be something which the seller/manufacturer is liable to pay up and in case they have multiple vendors to manufacture a product then they must have back-to-back liability contracts with these vendors to take care of any eventuality wherein they have to pay up damages on account of product liability. In the case of AVs, the manufacturer needs to have such back-to-back arrangements with all vendors including but not limited to vendors for various vehicle parts, sensor vendors and software vendors. Criminal liability would be governed by individual culpability and therein a case could be filed separately against the manufacturer, sensor manufacturer, radar manufacturer, software vendors etc in case of an AV.

As of date product liability laws are only in one category and there are no distinct subcategories to take care of self-driving AVs. Under the current legal provisions claims involving manufacturing defects would require that the proof of failure or manufacturing defect be proved, and a correlation established between the defect and cause of accident of the self-driving system. When dealing with product liability issues of self-driving AVs one must fully understand various components like radar sensors, laser rangefinders, video cameras, global positioning, or digital mapping, in an AV and how they interface with each other¹⁶. If it finally comes out that the error is only a software error then technically under the

¹⁴Villasenor J, “Products Liability and Driverless Cars: Issues and Guiding Principles for Legislation” (BrookingsMay 9, 2018) <<https://www.brookings.edu/research/products-liability-and-driverless-cars-issues-and-guiding-principles-for-legislation>> accessed September 1, 2021

¹⁵ Anderson JM, Autonomous Vehicle Technology: A Guide for Policymakers (RAND 2016)

¹⁶ “Cohen IADC Product Liability May 2015 - Pbnlaw.com” <<https://pbnlaw.com/media/540169/Cohen-IADC-Product-Liability-May-2015.pdf>> accessed September 1, 2021

present interpretation, the software may not come under a manufactured product in most product liability laws and hence product liability cannot be claimed in most countries.

In view of the foregoing, CPA 2019 is as on date adequate when it comes to handling product liability cases that might arise due to the usage of self-driving AVs. To handle criminal liability concerning AV accidents, there are tweaks required to be made to the MV Act.

ENVIRONMENTAL POLICIES AND POLLUTION CAUSED BY LOGISTICS ACTIVITIES AT DRY PORTS /CFS OF INDIA-SPECIAL REFERENCE TO BANGALORE

Shobha K V¹

INTRODUCTION

What is a dry port? A dry port is a junction and acts as an intermodal terminal which is connected by road or rail to a seaport, it plays a role from transshipment of Inland destination for Sea Cargo.

Inland container Depo/(ICD / CFS also called Logistics Hub as it connects the cargo to Inland to Seaport while managing the temporary storage, inspection and Customs clearance for cargo for Export and Import shipments (international freight In India).²

ICD plays a major role in the world for connecting to seaports for valuable cargo movements without more risk and safety movements.

As per the CBIC (Central Board of Indirect tax and Customs) in India there are 80 ICDs are active out of 129 ICDs are listed with them. The said data is available with DOC (Department of Commerce)

Following are the few Major Inland container Depot and Container Freight Station in India

INLAND CONTAINER DEPOTS IN INDIA			
Sl No	State (Province)	Name of the ICD	Location
1	Andhra Pradesh	Sanathnagar(SNF)	Hyderabad
2		Anarpati	East Godavari(AP)
3		Guntur	Guntur
4		Chirala	Dist Guntur(AP)
5	Assam	Amingaon	Guwahati
6	Gujarat	Sabarmati	Ahmedabad
7	Haryana	Tughlakabad(TKD)	New Delhi
8		Riwari	Haryana
9		Dadri(Greater Noida)	Delhi

¹ Ph. D. Scholar, Alliance School of Law, Alliance University

² Vrishti Beniwal, "Dry ports to boost India trades", Business standard, [2013]

10	Karnataka	Whitefield	Bangalore
11	Madhya Pradesh	Raipur	Khapa
12	Maharashtra	Nagpur	Nagpur
13		New Mulund(E)	Mumbai
14		Daulatabad	Aurangabad
15		Miraje	Miraje
16		Bhusawal	Bhusawal
17	Orissa	Balasore	Balasore
18	Punjab	Dhandarikalan	Ludhiana
19	Rajasthan	Jodhpur	Jodhpur
20		Kanakpura	Jaipur
21	Tamil Nadu	Coimbatore	Coimbatore
22		Tondiarpet	Chennai
23		Madurai	Madurai
24		Tirupur	Tirupur
25	Uttar pradesh	Agra	Belanganj
26		Moradabad	Moradabad
27		Kanpur	Kanpur
28	West Bengal	Cossipore	Kolkata
Road ICDs with CFS			
29	Haryana	Babarpur	Panipat
30	Madhya Pradesh	Pithampur	Indore
31	Madhya Pradesh	Malanpur	Gwailior
32	Maharashtra	Mulund(W)	Mumbai
33	Tamil Nadu	Tuticorin	Milavittan
34	Tamil Nadu	Pondicherry	Pondicherry
ICD without CFS			
35	Gujarat	Vadodara	Vadorara
36	Jharkhand	Jamshedpur	Tatanagar
37	Kerala	kochi	Kochi
38	Maharashtra	Chincwad	Pune
39	Maharashtra	Wadi Bunder	Mumbai

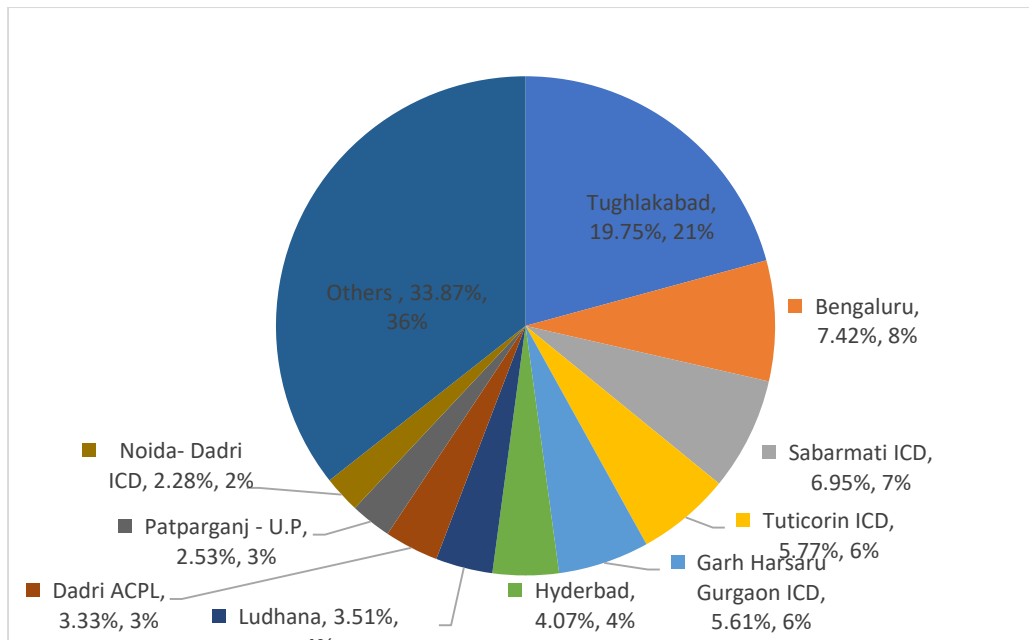
40	Maharashtra	D'Node	Navi Mumbai
Port Side Container Terminal			
41	Andhra Pradesh	Vizag(Visakhapatnam)	Vizag(Visakapatnam)
42	Gujarat	Kandla	Kandla
43	Tamil Nadu	Harbour of Madras	Chennai
44	West Bengal	Haldia	Kolkata
45	West Bengal	Shalimar	Kolkata
Empty Park (Rail Linked)			
46	Ballabgarh	Uttar Pradesh	Uttar Pradesh' ³

The below ports ICDs/ CFS are having a major chunk of EXIM (EXPORT AND IMPORT) from and to India.⁴

SL NO	ICD /CFS	PERCENTAGE
1	Tughlakabad	19.75%
2	Bengaluru	7.42%
3	Sabarmati ICD	6.95%
4	Tuticorin ICD	5.77%
5	Garh Harsaru Gurgaon ICD	5.61%
6	Hyderabad	4.07%
7	Ludhiana	3.51%
8	Dadri ACPL	3.33%
9	Patparganj - U. P	2.53%
10	Noida- Dadri ICD	2.28%
11	Others	33.87%

³ <<https://www.translog.in/icsindia.html>>

⁴ Chapter - 1 (cedar.gov.in)



Benefits and Functions of ICDs/ CFS

To start ICD /CFS customs will approve Under section 8 of the customs act 1962 the establishment of dry ports helps exporter and importers to business and also to undertake console box and de-stuff the cargo services near to their factories or Industrial units which help them to decrease the charges and danger of transportation by road and also speedy permission. The government is encouraging EXIM activities by developing SEZ and EOU units throughout India which gives job opportunities (Employment problems solves) and encourage our Exporters, this benefits the growth of our economy.

Bangalore ICD/CFS Ports

In Bangalore four ICD/CFS are there 1) ICD white field 2) CWC (Central warehousing corporation) 3. Marie gold logistics and 4)HAL Cargo complex

1. Bangalore ICD which is located at Whitefield and handled by the Container Corporation of India(CONCOR), which is the part of Indian Railways cargo division, The operations of Bangalore ICD started in 1989 which is holding the second-largest dry port in India.

Bangalore ICD spread across 128 acres and has 12 warehouses built up with 40,000 square meters, Bangalore ICD is equipped with modern materials handling equipment's to handle containers, The container yard is approachable to railways lines which helps for speedy stuffing and de-stuffing for railway wagons, it is equipped with separate container staking facilitates to provide the best service to the customers, Empty container yard is located near

to exist gate which will be helpful to customers for easily move the empty container to load their cargo into the containers or move out to their factory for stuffing the cargo, Export container yard is near to railway line to load the containers into the wagon easily and import container yard is near to warehouse to de-stuff the cargo from the containers and do the inspection and gate out to customers place.⁵

Facilities at ICD Bangalore

ICD have four Lane Railway lines, three trains per day exports movement to Chennai each train have 45 wagons capacity that is 90 TEUs (Twenty-foot Equivalent Unit) per trip.

2. Two trains per week to Krishnapatnam port
3. 10 days once one train to Cochin port these are the main connecting seaports from and to ICD Whitefield Bangalore.

The primary functions of the ICD

1. Loading and unloading of the cargo
2. Connecting to seaports from ICD To and FRO
3. Customs Activities
4. Handling full containers and LCL cargo stuffing and de-stuffing of Imports
5. Facilities the containers storage and Bonded warehouse facilities
6. Equipment maintenance
7. Insurance and Survey facilities
8. Domestic movements of cargo

11 CWC (Central warehousing corporation) at Whitefield Bangalore

CWC is a logistics LCL (Less than Container load) hub it is Public sector that provides activities For movement of cargos and storage inspection from customs to connect seaports from Bangalore to various seaports like Chennai, Tuticorin, Krishnapatnam and cochin seaports for International movements, CWC at present have only road movement facility.

CWC handles Hazardous cargo movements as per HWM rules 2016 having different warehousing facilities like Export and Import Warehouse and Bonding warehouse facilities.

⁵ <<https://www.thedollarbusiness.com/magazine/icd-whitefield-evolution-at-whitefield/45786>>

As per the below comparison, the CWC movements are hiked by 15 per cent compared to 2019 to 2021

Total volume for the year 2019 -2020

Exports:9350 TEU's Imports: 4250 TEU's – Twenty-foot equivalent unit

Volume for the year 2020-2021

Exports:11000 TEU's Imports: 5000 TEU's Twenty-foot equivalent unit

111 Marigold Logistics Pvt ltd at Bangalore and Malur road

Marigold Logistics is Private CFS it is situated at outskirts of Bangalore which is connecting from the ring road to avoid the traffic of the city and to easily connect to railways line to reduce the transit time, the main concern of all business costs the CFS is providing the same by reduction of cost to reach the nearest seaports which meet the customers' requirements by speedy clearance and delivering to the customers.

The following are the infrastructure and facilities available at the CFS:

“Marigold Logistics island out 15 acres of land and which 8 acres of land for Bonded warehouse facilities where customers can store their cargo and take out the part by part cargo as per their requirement, this facility give the customer to save their cost and also pay the duty part as per their requirement portion of cargo is taken from Bonded warehouse, and CFS has 230 meters high tower lights which help the workers and customers to do the functions at darker times also.

The main gate is having a security room to monitor the gate in and gate process of vehicles and also the visitors for safety purposes, all necessary safety measures are taken care of like Firefighting, power backups, weighbridges/ Repair workshops and well-secured compound with proper height. Separate warehouse for exports and imports for easy identifications of goods, The CFS is situated outside of the city so to ensure the good facilities for their employees and industries (Exporters and Importers they have provided with good hygiene canteen for good food which is important for all working staff

Approximately volume comparison from as per the sources of Marigold logistics 2019 to 2021 it is found the hike to earlier years by 8.4percent

Total volume for the year 2019 -2020

Exports: 11000 TEU's Imports: 10000 TEU's Twenty-foot equivalent unit

Total volume for the year 2020 -2021

Exports: 12000 TEU's Imports: 11000 TEU's Twenty-foot equivalent unit

IV HAL – Hindustan Aeronautics Ltd Cargo complex

It is small compared to other CFS in Bangalore CFS with all facilities for the movement of Mainly LCL cargo by road to Chennai no rail facility compared to above all CFS /ICDs it moves very less volume.

ENVIRONMENTAL IMPACT

Polices and issues related to dry ports of international importance

Dry Ports are part of a hinterland distribution link for seaports gates, which leads to low traffic and congestion at seaports and also reductions in emissions by 32 to 45% in seaports road congestion, accidents will be reduced. However dry ports should follow rules and regulations and should be favourable to stakeholders for smoother operations

In India, more dry ports are being developed, with public/private participation. These dry ports are more focused on earning profits but are less focused on reducing emissions.⁶

They many times completely ignore Co2 emission impacts by moving a large volume of cargo by road or rail. The Co2 released at ICD's, many land-based activities are performed at ICDs like empty container pick, loaded container dropping and gate out of Import materials is handled by trucks which causes an increase of Co2 emission into the environment

Following are the Rules and regulations to handle the cargo at ICD's/ CFS General cargo and Hazardous cargo

To handle Hazardous cargo certain rules and regulations has to be followed as per Handling of cargo in customs Area regulation 2009, this regulation has provided a complete structure for movements of shipments in the Customs area and it has made a set of rules and regulations (Terms and conditions) for all DG (Dangerous Goods)cargo services for Export and Imports. ICD CFS SEAPORTS LAND BASED CUSTOMS AND AIRPORTS of handling agents have to undergo training of DGR(Dangerous Goods Regulations) and also manufacture should declare and sign the DGR form before customs clearance and movement

⁶ Alena Khaslavskaya, Violeta Roso1, Dry ports: research outcomes, trends, and future implications Maritime Economics & Logistics (2020)

of DG cargo for export movement, packing of DG goods should be as per UN classifications and same has to be checked by handling agent before accepting or moving the cargo, CFS should have the proper infrastructure to store and handle the DG cargo all regulation should be fulfilled as per the Public Accounts Committee (2005-2006) Government must formulate provision in this regard.⁷

The Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

“Wastewater and exhaust gases as covered under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) and the rules made thereunder and as amended from time to time.

Radio-active wastes as covered under the provisions of the Atomic Energy Act, 1962 (33 of 1962) and the rules made thereunder and as amended from time to time.

Bio-medical wastes covered under the Bio-Medical Wastes (Management and Handling) Rules, 1998 made under the Act and as amended from time to time; and wastes covered under the Municipal Solid Wastes (Management and Handling) Rules, 2000 made under the Act and as amended from time to time.”⁸

ICD/CFS follow strict rules as per the customs act 1962 for handling all exports and imports cargo clearance, customs made easy facilities to customers by providing digital filing of documents through EDI systems (Electronic Data Interchange) paperless and eco-friendly and also for the swift process of documents in Customs.

Policy issues relating to dry port of International Importance

ESCAP The Economic and Social Commission for Asia and Pacific is providing a uniform definition of dry ports of international importance, the main objective of developing a regional dry port network is to expand trade opportunities moving cargo from one dry port to another country dry ports. 150 existing and 86 Potential dry ports were nominated by member countries and included in annex1 to the agreement, ASEAN (Association of South-East Asian

⁷ Home Page of Central Board of Indirect Taxes and Customs (cbic.gov.in)

⁸ Ministry of Forest, [PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

Nations) members are Republic of Korea, Thailand, Australia, China, India, have achieved some measures of success in the established operation of dry ports network to provide better operational services by adopting best practices.

Scope for improvement and Conclusion

ICD /CFS, suggest using Electric powered vehicles, Cranes, Forklifts instead of fuel, 100% onsite solar generation for self-sufficient, adequate daylight in building and warehouse, need to convert the existing containers to eco-friendly containers.

Especially related to truck the exhaust pipe to be direct towards upward rather than the current downward position by doing so we can stop the dust raising from roads into the Environment

ICD's /CFS should not allow truck which is older than 15 years for their operations as per Motor Vehicles (Amendment) Act, 2019

CONCLUSION

Export and Import is very important for countries economic growth for the livelihood of its pollution we need move towards more eco-friendly setup without harming the economy so ICD's/CFS should play a major role in changing over to eco-friendly operations. All ICD /CFS should be set up their units far away from the centre of the city and also it should protect and grow forest area's All ICD/CFS's should have proper waste management facilities like wet & dry wastages to separate and it should be disposed of as per Hazardous Waste Management rules 2016. Due to Globalization, the international logistics activities are becoming more important in trade and also movements of personal effects are increasing keep all types of movements of cargo special care have to be taken by all CFS/ICD about Dangerous good movement and all the handling agents should ensure to giving awareness and training to staff and adhere for Dangerous Goods Regulations.

THE CONTEMPORARY CHALLENGES IN NFT OWNERSHIP

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Vishal V. Naregal²

INTRODUCTION

Art is considered to be an expression of the human emotion and imagination in a tangible and visual form. However, owing to technological advancements, this physical representation has outgrown human reality to, now, exist on the virtual plane. This has been made possible through NFTs or Non-Fungible Tokens. They are being regarded as the future of the art market by art collectors and investors.

Non-Fungible Tokens are a form of virtual asset that cannot be reproduced or replicated. It is data that exists and is stored on the block chain. They are cryptographic tokens representing the ownership of digitally scarce goods such as art, collectables, or even real estate³.

The meteoric rise and growth of NFTs is still holding strong since the initial start in the beginning of January of 2021. As a result of factors such as the creation of block chain technology, emergence of crypto currencies and the COVID-19 pandemic, NFT systems materialised in almost all creative industries. The most far-reaching impact of these systems was observed when the advent of NFTs disrupted the art market on a global scale. NFTs are fast-becoming the preferred tool for artists and creators to monetise their creative works, especially digital art.

The digital art market is valued at more than 41 billion USD as of December, 2021, almost exclusively consisting of NFT sales⁴. Despite an overall drop in global art sales due to the looming pandemic crisis, the digital art market roughly doubled in its value compared to the previous year. This growth was largely due to the explosion of NFTs in the market place.

Digital art NFTs are being embraced by museums, galleries and art collectors as the new frontier for developing their collections⁵. It is impossible for them to ignore this revolution in the art market, as it would also mean neglecting a significant revenue stream at a time when they are already struggling with low revenue levels.

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³‘NFT, Non Fungible Token – Definition, Why NFTs are Valuable, Uses & Features of NFTs’ (Cleartax, 3 February 2022) <<https://cleartax.in/s/nft-non-fungible-token>> accessed 8 February 2022

⁴ Clare McAndrew, ‘The Ahttps://blog.chainalysis.com/reports/nft-market-report-preview-2021/

⁵FoteiniValeonti and others, Crypto Collectibles, Museum Funding and OpenGLAM: Challenges, Opportunities and the Potential of Non-Fungible Tokens (NFTs) Crypto_Collectibles_Museum_Funding_and_O.pdf

In the initial stages of the NFT movement, these transactions mostly took place on websites such as OpenSea, Rarible, Enjin and Nifty Gateway. These websites allow users to buy and sell their digital art NFTs, including facilitating the minting of NFTs from the Ethereum block chain. However, it was one significant event which brought NFTs into the mainstream and created the crypto-giant that we now view as a virtual asset.

On the 11th of March, 2021, Christie's⁶ held an online auction for a piece of digital art NFT, 'Everyday: The First 5000 Days' by the artist Mike Winkelmann, aka Beeple. The art sold for a massive sum of 69 million USD and was even purchased using the crypto currency, Ether.⁷ Other auction houses, including Sotheby's and Philips, followed suit and announced their own NFT/digital art auctions soon after.⁸

Although it is still unclear whether NFTs are here for good or if they are a passing fad, it is pertinent to understand the background and origin of NFTs.

IMPORTANT DEFINITIONS

Non-fungible Tokens

NFTs are distinct cryptographic tokens which can be publicly authenticated and verified through block chain technology. They are considered to be similar to crypto currencies but possess a key differentiating factor that sets them apart from cryptos, such as Bitcoin or Dogecoin. It is the non-fungibility of NFTs that acts as the key characteristic that provides value to it.

In simple terms, 'Fungibility' refers to the exchangeability or interchangeability of a thing. In this case, cryptocurrencies such as Bitcoin, Ethereum and money in general, are considered fungible. This means that they can be exchanged with other similar currencies of same value easily. One Ethereum will hold the same value as any other single unit of Ethereum.

On the other hand, NFTs are non-fungible. This means that every Non-Fungible Token is unique, irreplicable and non-reproducible. It becomes possible to distinguish every NFT ever minted or mined from each other as a distinct cryptographic asset by virtue of its unique identification codes and metadata. Hence, NFTs are fast-becoming the preferred mode to prove ownership of digital assets, which is especially relevant for digital art.

⁶ Christie's is a British Auction House founded in 1766 by James Christie. <https://www.christies.com/en>

⁷ 'Beeple's opus' (christies) <<https://www.christies.com/features/monumental-collage-by-beeple-is-first-purely-digital-artwork-nft-to-come-to-auction-11510-7.aspx>> accessed on 8 February 2022

⁸ James Tarmy 'Money isn't the only reason auction houses are jumping on NFTs' (Bloomberg 6 April 2021) <<https://www.bloomberg.com/news/articles/2021-04-06/money-isn-t-the-only-reason-auction-houses-are-jumping-on-nfts>> accessed on 9 February 2022

Blockchain Technology

IBM defines Block chain technology as *“a shared and immutable ledger that facilitates the process of recording transactions and tracking assets in a business network.”*⁹

Block chain is based on Decentralised Ledger Technology which allows the establishment of a peer-to-peer network that facilitates transaction data to be stored, shared and synchronised on a distributed or shared ledger.

Block chain constitutes a complex technology which allows individuals accessing it, to review and confirm transactions in a decentralised manner. It is commonly used as the digital framework for undertaking transactions of trade, buying and selling of crypto currencies.

The technology has the potential to promote transparency while eliminating the need for a centralised verification structure. It also facilitates economic coordination, cooperation and integration on an international level.

NFTs are traded using the crypto currency, Ethereum, which is mined from the Ethereum block chain. In fact, most NFTs themselves are mined /minted from the Ethereum block chain. As a result, majority of NFT transactions are also stored on the Ethereum block chain itself, although other block chains also support these transactions.

Smart Contracts

Smart contracts and block chain technology are the two pillars of infrastructure that uphold the NFT marketplace. The transactions of sale and purchase of Non-Fungible Tokens take place exclusively on a digital platform. Therefore, the transaction cannot be governed by a traditional contract. In this case, the parties make use of a smart contract.

A smart contract is a digital and self-executing agreement containing the terms of sale between the buyer and seller¹⁰ The contract is digital, in the sense that it is written into lines of code that exists on the block chain itself.

The self-executor nature of smart contracts allows for the encoded contract to be executed automatically once the predetermined conditions of the contract are satisfied. It eliminates the need for an external agency while simultaneously tracking the transaction in a permanent manner.

⁹‘What is blockchain technology’ (IBM) <<https://www.ibm.com/in-en/topics/what-is-blockchain>> accessed on 10 february 2022

¹⁰Jake Frankenfield ‘Smart Contracts’ (investopedia 26 May 2021) <Smart Contracts Definition (investopedia.com)> accessed on 10 february 2022

The necessity for a smart contract arises because of the fundamental problem with virtual transactions. The identity of the two parties is usually unknown and anonymous. In fact, even the true identity of the creator of bitcoin is unknown and he is only referred to by his pseudonym, Satoshi Nakamoto¹¹.

While it is not a disputed fact that NFTs are the new frontier in digital asset technology, it also cannot be denied that this novel technology brings with it a peculiar set of unforeseen problems. The root cause of these issues boils down to one thing – they operate in a legal vacuum. The problems with NFTs are significant since they have important legal implications that can impact the creator and purchaser.

These issues range from copyright-related complications to conflicts of ownership interest, complications in the monetisation of NFTs to the usage of NFTs for illegal means, all of which will be discussed in the paper as follows.

DISTINCTION BETWEEN COPYRIGHT OWNERSHIP AND NFT OWNERSHIP

As mentioned hereinbefore, NFT is being regarded as the future of digital ownership due to its distinct characteristics. However, an NFT cannot exist without an underlying digital asset¹². The NFT is not equivalent to the digital art itself. In this case, digital art, it is, at this juncture, that a fundamental problem with NFTs is revealed. Thus, first, it becomes pertinent to understand what constitutes copyright ownership. It is then necessary to examine whether the Copyright Act, 1957 is applicable, in this context, to digital art.

Applicability Of Copyright Act, 1957 To Digital Art

Digital art is any form of virtual representation of a drawing, illustration or painting that has been created on a digital interface and is transmitted digitally. It can be copyrighted in the same manner as traditional art.

A copyright is a distinct kind of intellectual property right which an individual may acquire on the product of their intellectual labour. The acquisition of Copyright allows the holder of such right to have exclusive control over their intellectual work. Such protection is granted on the basis of originality of the work. It provides a safeguard to the owner of the copyright to restrict unauthorized appropriation of their work by third parties.

¹¹‘Who is mysterious bitcoin creator satoshinakamoto? Elon Musk says he has the answer’ (CNBC TV18) <<https://www.cnbc.tv/18.com/cryptocurrency/who-is-mysterious-bitcoin-creator-satoshi-nakamoto-elon-musk-says-he-has-the-answer-11979682.htm>> accessed on 12 February 2022

¹²Hilary McDonnell ‘ The Unknown Legal future of the Art Markets New favourite medium : Non-Fungible Tokens (“NFTs”) (Hughes Hubbard & Reed) <<https://www.hhrartlaw.com/2021/04/the-unknown-legal-future-of-the-art-markets-new-favorite-medium-non-fungible-tokens-nfts/>> accessed on 12 February 2022

The Indian Copyright Act, 1957¹³ grants protection of copyright to all creative works under Section 13 of the act, including

- (a) Original literary, dramatic, musical and artistic works;
- (b) Cinematograph films; and
- (c) Sound recording.

Hence, since even digital art is a form of artistic work, it would be subject to copyright protection under the Act. The Copyright also allows the owner to have exclusive control over who can publish it, change it, or even reproduce or replicate it. Copyright also acts as proof of ownership of the created work. It protects the artist from entering into expensive legal disputes from claims of ownership from others.

Copyright laws become relevant in the domain of digital art owing to the easy replicability of virtual art. Images of digital art are readily available on the internet and can be easily downloaded by users. In such a scenario, copyright protection is, practically, the only safeguard available to artists to prevent the unauthorised monetisation of their work.

Ownership of NFTs

As mentioned hereinbefore, NFT ownership is separate and distinct from ownership of copyright. Despite this, the two are coextensive. The NFT token exists along with the digital art that it is attached to. The digital asset constitutes the artistic work, while the NFT serves as a virtual record of ownership or as a certificate of ownership. In any case, NFT does not constitute the art itself, and as such, it is not subject safeguards under copyright.

Hence, when a buyer purchases the NFT, they are only acquiring the certificate to prove authenticity of the digital art and as a record of ownership. Ownership of the non-fungible token attached to the digital art does not constitute ownership of the art itself, i.e., the copyright of the art.

The buyer is effectively purchasing proof of ownership which denotes that they own the original copy of the art created by an artist. Hence, even though others may own copies of the digital art, they cannot claim it to be the original work since they lack ownership of the accompanying NFT token.

¹³The Copyright Act 1957 act no14 of 1957.

Comparison of Copyright Ownership and NFT Ownership

This section of the paper will attempt to clearly separate and distinguish between the two kinds of ownership mentioned above by comparing the characteristics between them.

- a) Purchase of the Non-fungible token does not constitute purchase of ownership of the copyright of the underlying digital asset. It is merely the purchase of the ownership certificate to that asset, i.e., the piece of digital art. The ownership of the copyright remains with the original creator, in whose name it is registered.
- b) Transfer of ownership of the NFT from the creator of the digital art, i.e., the seller, to the buyer, will not constitute or include automatic transfer of ownership of copyright.
- c) The owner of the copyright can still place restrictions on the NFT purchaser's usage of the underlying digital art as they still hold and control the original copyright. Thus, it limits their opportunities for monetisation of the asset.
- d) The smart contract governing the transaction, usually, contains inbuilt clauses for the automatic payment of royalties to the copyright holder every time the piece is sold.
- e) Ownership of the NFT empowers its owner to prove authenticity of the digital art underlying the NFT. On the other hand, ownership of the copyright empowers the holder to restrict/control the terms and conditions for the replication, reproduction, display and other aspects of the copyrighted artwork.

CHALLENGES IN MONETISATION OF DIGITAL ART NFTs

As discussed in the previous submissions, NFT ownership is not equivalent to owning the copyright of the underlying digital asset. Therefore, the purchaser of the NFT will be required to navigate through various different challenges in order to generate a return on their investment.

Monetisation is Impossible Without Copyright Owner's Permission

NFTs are a boon to artists and creators as they are able to sell their work through NFT market places. Additionally, the smart contracts which govern these transactions will, typically, contain a royalty clause which allows the original artist to, automatically; get a fixed percentage of royalty amounts every time their art work is resold.

Thus, it is noteworthy to observe that there is limited or restricted scope for the purchaser of the NFT with regards to the monetisation of the NFT, as compared to the seller. While the royalty clause is standard in a smart contract, terms regarding licensing and franchising are

not. It mandates that the purchaser of the NFT undertake separate and comprehensive negotiations with the copyright holder for obtaining permission to commercially utilise the digital asset.

Hence, the smart contract itself becomes a roadblock to the NFT owner. For instance, an example clause as follows:

“Only limited personal non-commercial use and resale rights in the NFT are granted and you have no right to license, commercially exploit, reproduce, distribute, prepare derivative works, publicly perform, or publicly display the NFT or the music or the artwork therein. All copyright and other rights are reserved and not granted¹.”

Hence, in the above clause the term ‘*limited non-commercial use*’, becomes a matter of concern for the buyer as it clearly prohibits him from commercially monetising the digital art NFT. It gives only a limited scope for use of his ownership rights, which is to the extent of reselling of the NFT owned by the buyer.

Thus, in the absence of Copyright owner’s permission, the NFT owner can gain a return on his investment only by reselling his asset. However, even that is a speculative event, since it is subject to market volatility in NFT prices and the demand for that digital art, arising out of scarce supply.

As NFTs are still in an embryonic stage in their development, so is the utility part of it. Ultimately, it is the smart contracts which will dictate and govern the utility and commercial viability of NFTs.

Copyright Violations in NFT Commercialisation

A significant issue that arises from the differentiation between Copyright ownership and NFT ownership is the problem of copyright violations. While a conflict is inevitable between the seller and purchaser of the digital art NFT, there may also arise an issue on who can sell the NFT, as illustrated in the case law below.

In the case of *MIRAMAX V QUENTIN TARANTINO*¹⁴ the film company Miramax (the film studio behind the movie, Pulp Fiction) is suing Quentin Tarantino (the director of the film) for planning to sell seven NFTs of previously unseen clips/scenes from the film, Pulp Fiction. These NFTs would include excerpts from the original hand-written script and exclusive commentary from the writer/director, Quentin Tarantino.

¹⁴*Miramax LLC v. Tarantino et al*, C.D. Cal., No. 2:21-cv-08979, [11/16/21]

The issue arose with the above proposition by Quentin Tarantino, when Miramax made a claim that it owns “the majority of the rights to the film”. Equally vague, Miramax submits that Tarantino assigned “nearly all of his rights to Pulp Fiction” to Miramax in 1993. Hence, the sale of NFTs by Tarantino would violate the copyright held by Miramax.

In this case, the director, Tarantino, continued to hold certain reserved rights. However, NFTs as a technological entity were non-existent in the 90s. Therefore, the contractual terms did not specifically relate to or govern NFTs. As a result, the question arises on which party has the rights to mint and sell the copyright work.

Miramax, further, argues that “left unchecked, Tarantino’s conduct could mislead others into believing Miramax is involved in his venture.” Miramax contends that the sale of NFTs by Tarantino will devalue the NFT rights of Pulp Fiction, which Miramax intends to gain maximise revenue from through a strategic, comprehensive approach¹⁵.

In this case, the director, Tarantino, continued to hold certain reserved rights. However, NFTs as a technological entity were non-existent in the 90s. Therefore, the contractual terms did not specifically relate to or govern NFTs. As a result, the question arises on which party has the rights to mint and sell the copyright work¹⁶.

This case is under dispute and is still undecided by the courts. Though it cannot be predicted with certainty, in whose favour the verdict will be delivered, it is clear that the decision will be a landmark judgement in NFTs.

Licensing and Merchandising of NFTs

NFTs are diversifying in a greater magnitude in terms of their utility. The digital art NFTs can be monetised through 2 main channels – Licensing and Merchandising. There are exciting projects which are emerging on various sectors of the entertainment industry on the basis of digital art NFTs. The gaming industry was the first to make use of this opportunity.

Licensing, in simple terms, refers to when a copyright-holder of the art authorizes certain rights to the party who is interested in commercial utilisation of such art. In a licensing

¹⁵Gaelyn Scott, ‘NFTs: Fair use, or the work of Inglorious Basterds?’ (Lexology, 2 February 2022) <<https://www.lexology.com/library/detail.aspx?g=a43b922f-8074-4ef8-bfd0-615232322fcf>> accessed 7 February 2022

¹⁶Ingram YuzekGainen Carroll & Bertolotti, LLP, ‘Miramax Sues Quentin Tarantino Over “Pulp Fiction” NFT Auction’ (JDSupra, 19 November 2019) <<https://www.jdsupra.com/legalnews/miramax-sues-quentin-tarantino-over-4948923/>> accessed 7 February 2022

agreement, the copyright-holder is called the licensor and the party to whom the right is assigned for commercial utilisation, is known as licensee¹⁷.

Since, smart contracts do not typically contain terms and clauses regarding licensing of the NFTs, there are again separate negotiations between the purchaser and the creator. However, NFT market places are now including limited licensing rights in the smart contracts of sale. In India, Section 30 of the Copyright Act, 1957 covers the provision related to licensing of copyright use.

There are different marketplaces where varying procedures of licensing are followed. Currently, these marketplaces grant a non-exclusive and non-transferable license to use, copy and display the creative works underlying the NFT for personal use. For instance, the SuperRare marketplace provides that, by minting NFTs on the platform, the artist grants to the purchaser of the NFT a limited license to display the underlying work. This right is limited to the promoting of the purchaser's own status and wealth through promoting discussion of the art work, displaying the art on third-party marketplaces for selling or trading the digital art NFT, or even displaying the work within decentralized virtual environments.

In the instance where the marketplaces' terms of use are silent on licensing rights, the NFT purchaser would not have any intellectual property rights over the creative work. They would, likely, only have an implied license to display the work for personal use. Any right to commercialize the digital art NFT must be expressly carved out and agreed upon.

Similar to Licensing, Merchandising of NFTs is a trend which is catching on in the entertainment industry. It is being used as a tool to counter the adverse impact that the COVID-19 pandemic had on its revenue stream. Through merchandising of NFTs, the film and music industries have created alternate sources of revenue. In one instance, Lotte Cinema gifted NFTs to the first 10,000 people who reserved tickets for the movie, "The Pirates: The Last Royal Treasure." The winners were given "secret codes" that could be exchanged for the NFTs on the W. Craft website¹⁸.

In the above scenario, the merchandising rights are inherent only to the cinema operators. On the other hand, the purchasers gain ownership of the NFTs, but not to the underlying piece of

¹⁷ Andrew Bloomenthal, 'Licensing Agreement' (Investopedia, 2 March 2021)

<<https://www.investopedia.com/terms/l/licensing-agreement.asp>> accessed 8 February 2022

¹⁸ Kwak Yeon-soo, 'Will film NFTs revolutionize movie merchandising?' (The Korea Times, 2 March, 2022)

<https://www.koreatimes.co.kr/www/art/2022/02/689_323272.html#:~:text=NFTs%20are%20units%20of%20data,ownership%20of%20unique%20digital%20assets.&text=Another%20major%20cinema%20chain%2C%20CGV,them%20after%20purchasing%20movie%20tickets.> accessed 10 February 2022

art, which is the exclusive intellectual property of the film makers. Hence, it is merely just a collectible to the owner of the NFT.

Devaluation of NFTs due to Multiplicity of Copies

In traditional auctions, the artwork is unique and tangible. But, in the case of digital art NFTs, the uniqueness is possessed by the NFT token attached to the digital art, and not the underlying digital art itself. The art can be made into multiple copies, by virtue of its nature. Subsequently, each copy can be sold as an individual NFT. While this may allow the artists to maximise their income, it is a serious cause for concern to NFT purchasers.

It is clear that despite being sold as a digital art NFT, the creator still retains the copyright over the digital art. As such, this empowers them to reproduce and replicate their art work without any restrictions or limitations.

There is an ongoing lawsuit in England, *AMIR SOLEYMANI V. NIFTY GATEWAY*. In this case Mr. Soleymani, a renowned art collector participated in an auction hosted by Nifty Gateway. It was a ranked auction, wherein 100 copies of the art named ‘Abundance’ by Beeple, were listed in the form of digital art NFTs.

It was alleged by Mr. Soleymani that the hosts, Nifty Gateway did not duly inform him about the terms or procedure of a ranked auction. He assumed that he was the highest bidder and thus, would acquire the original artwork rather than the third edition of the piece. As the result Mr. Soleymani refused to buy the NFT won by him. Mr. Soleymani asserts that “this method of a ranked auction maximises revenue for the platforms and artists but is damaging to collectors.”¹⁹

The multiplicity of copies, other than the original, although similar to the original, will have significantly lower market value, i.e., resale value. Although the NFT tokens may be unique and non-fungible, the underlying asset that they are attached to is the same.

As a digital commodity of Snob Appeal, it is the scarcity and exclusivity of the asset which is one of the major drivers behind the market growth of NFTs. If this USP is taken away through practices such as a ranked auction, it would ultimately prove counterproductive to artists and auction platforms.

¹⁹ Baker McKenzie, ‘NFTs: Contractual and consumer risks come to the fore as Art Collector brings legal action against NFT Marketplace’ (Lexology, 22 December 2021) <<https://www.lexology.com/library/detail.aspx?g=4837eb87-6604-482d-b389-423a88ca1e08>> accessed 11 February 2022

MISUSE OF NFTs TO ACHIEVE ILLEGAL AIMS

Block chain technology and NFTs are still new concepts which are emerging in the digital landscape. As such, there are several loopholes and red flags that are appearing. The apparent lack of legislations and decentralised nature of block chain renders it a difficult task for governments to regulate NFT markets. It is only inevitable that these loopholes are misused and exploited by certain individuals to commit crimes and cause losses.

Misuse of NFTs to Commit Fraud

Anonymity in operations is one of the key factors of the block chain-backed NFT markets. While it is one among the reasons for the exponential growth rate in NFTs, it is also the cause for certain unforeseen problems. This anonymity is being misused to commit offences such as fraud against innocent and unsuspecting victims. They utilise tools such as VPN to prevent tracking of their IP addresses or geographical locations while defrauding their victims.

Offenders commit fraud when they sell NFTs despite not having any prior rights, including copyrights, which authorize such sale. They may even falsely misrepresent themselves as the rightful owners/creators of the underlying digital art with the intent of defrauding users. Subsequently, if the actual intellectual property rights holder becomes aware of the fact that their work is being used by another to gain monetary benefit, without their authorization, then they may initiate legal proceedings against the offender, the purchaser and even the platform which facilitated the transaction.

In this scenario, NFT marketplaces are divided into three categories – Open marketplaces, Curated marketplaces and Proprietary marketplaces.

Open marketplaces, such as OpenSea, allow anyone to mint and sell NFTs. There is little to no regulation, oversight or criteria for listing any art work as digital art. Hence, virtually no verification or due diligence is undertaken by the platform itself, thereby, shifting the entire burden onto the buyers of NFTs. However, the purchaser has limited resources to conduct a thorough inspection and scrutiny of the digital art they wish to purchase.

Curated marketplaces, such as Foundation, are highly selective of the NFTs that they allow to be minted and sold on their platforms. They aim to increase exclusivity of the content available on their platforms by implementing a strict and rigorous selection process. NFT creators must apply and gain approval prior to being permitted to list and sell their NFT creations.

Proprietary marketplaces, such as Vee Friends, exclusively offer digital art NFTs that are created by their platform operators. Hence, they are able to avoid problems of copyright, as the platform itself holds it.

As such, the burden on the NFT marketplace/platform and the purchaser to conduct comprehensive due diligence prior to listing or purchasing an NFT is now higher than ever. However, the burden to conduct due diligence at the first instance will fall on the marketplace that allows artists to mint and list digital art NFTs.

Misuse of NFTs to Commit Money Laundering

On one hand NFTs are creating profitable opportunities for creators and investors. On the other hand, they are being used to facilitate illegal activities such as money laundering. Money laundering is the illegal process of making large amounts of money generated by a criminal activity, such as drug trafficking or terrorist funding, appear to have come from a legitimate source. The money from the criminal activity is considered dirty, and the process “launders” it to make it look clean²⁰. It is a serious white-collar offence.

Since the decentralised institution of block chain technology has little to no requirement of KYC, it is not difficult to launder money through the block chain as there is no regulation by the governmental agencies. Reports claim that Over Rs 4,000 crore of illegal transactions via crypto currency exchanges were unearthed by the Enforcement Directorate (ED) in India in the last one year, reports claimed in November last year²¹. It means that money laundering has found a new tool where its activities cannot be enforced by the law, Therefore NFTs can be used as a major tool for evading taxes and funding from the illegal activities which is not regulated by any prevailing authority

NFTs, as a form of digital art, can be bought and sold while preserving the pseudo-anonymity provided by block chain technology. Transactions are largely made in a trust-less environment where parties to a transaction cannot identify one another. There is also no verification of source of funds. More importantly, there is no external appraisal of the value assigned for a specific digital artwork as being legitimate or justifiable¹. The transactions are not traceable geographically due to the use of VPN. More importantly, there is no external

²⁰James Chen, ‘Money Laundering’ (Investopedia, 30 November 2021)

<<https://www.investopedia.com/terms/m/moneylaundering.asp#:~:text=Money%20laundering%20is%20the%20illegal,to%20make%20it%20look%20clean.>> accessed 13 February 2022

²¹ Business Insider ‘Money laundering through NFTs a growing sector: Chainalysis report’ (Business Insider India, 3 February, 2022) <<https://www.businessinsider.in/cryptocurrency/news/money-laundering-through-nfts-a-growing-sector-chainalysis-report/articleshow/89315123.cms>>accessed 12 February 2022

appraisal of the value assigned for a specific digital artwork as being legitimate or justifiable¹.

In theory, laundering money through NFT transactions is not a complicated process. Parties who want to launder money with the help of NFT follow a few simple and straightforward steps. Therefore, it becomes a matter of urgency for government agencies to step in and close the loopholes in the crypto currency and NFT markets by regulating and controlling the block chain on which they exist.

CONCLUSION

It is still very unclear whether NFTs are here to stay or if they are just a passing trend. However, it is extremely apparent that creators and investors are eager and willing to derive the maximum profits they possible can from them while the hype lasts.

Though it is a mindless task to impede technological innovation, to allow it to grow without any regulation is equally dangerous. Non-Fungible Tokens are recognized as an ‘asset’, but its erratic and volatile nature is a matter of concern. There is a limited scope for the buyer, as compared to the creator for monetization of NFT. It is evident that NFTs are far more complicated and riskier as an investment, than previously known. As the transactions of NFTs increase in number and value, so are the problems and issues. It is evident that in the absence of clear and definite regulations or laws created specifically for these assets, investors and creators are, virtually, operating in no man’s land.

NFT transactions, in India, are governed by other existing legal enforcements such as, the Copyright Act, 1957, the Indian Contract Act, 1872, the Digital Millennium Copyright Act, 1998 and in certain case, the Indian Penal Code, 1860. Hence, even the remedies available to the aggrieved parties are restricted to the scope of applicability of these legislations to NFTs.

In the absence of legislations, it is customary to look to judicial precedents for the legal principles that must be applied. However, the rate at which NFTs are growing, demands that the legislatures of countries take active initiative in developing a common comprehensive legal structure for this purpose. It cannot be the burden of the courts to lay down these legal principles in the form of judicial pronouncements as and when issues arise.

Owing to recent developments, Dapper Labs, the company behind the early-stage Crypto Kitties NFTs and NBA Top Shots, has put forth a proposal to create an NFT license, called ‘NFT License 2.0’, which would allow a purchaser of an NFT to commercially utilise the underlying asset of an NFT up to 100,000 USD. This innovation allows the NFT License to

be inbuilt in the smart contract, similar to a royalty clause. It eliminates the need to undertake separate negotiations and also provides investors with an incentive to purchase NFTs.

The first step to bringing about regulations in the market is recognition. India, like the governments of most other countries, does not recognize crypto currencies as legal. On the other hand, a complete ban on all crypto currency is also not useful. It is more suitable to build on facilitative measures to block chain transactions, including KYC more stringent KYC formalities for cryptographic asset investors.

The root cause of the issues that have originated in the NFT market is the lack of rules and regulations to govern these transactions. In the absence of legislations, it is customary to look to judicial precedents for the legal principles that must be applied. However, the rate at which NFTs are growing, demands that the legislatures of countries take active initiative in developing a common comprehensive legal structure for this purpose. It cannot be the burden of the courts to lay down these legal principles in the form of judicial pronouncements as and when issues arise.

CHAPTER 4

International Organization as the Sustainable Development Indicators; Issues Relating to Migrant Workers During the Pandemic; and Role of UNO During the Pandemic

CHALLENGES FACED BY THE MIGRANT WORKERS DURING LOCKDOWN

Arthita Halder¹

INTRODUCTION

SARS-CoV-2 is thought to have originated in bats, according to experts. Middle East respiratory syndrome (MERS) and severe acute respiratory syndrome (SARS) are both caused by corona viruses. The World Health Organization declared Corona virus Disease 2019 (COVID-19) a pandemic on March 11th, 2020, due to the virus's rapid and widespread spread. Prior to that, it began as an outbreak on mainland China, with the first case being recorded on February 26th in Wuhan, Hubei Province. ²According to the World Economic Forum, there are an estimated 139 million migrants in India. ³

According to the International Labour Organization (ILO), around 400 million employees would be displaced as a result of the epidemic and the lock-down. Both informal labour and informal businesses are exposed and sensitive to economic shocks because of the precarious conditions in which they operate. COVID-19 and the subsequent lock-down came as a complete surprise. The shock's global scope and magnitude left economies reeling, with national income growth rates dropping to negative levels. The economic implications of COVID-19 on migratory workers and government actions are dynamic and vary by nation and area. Overall labour demand for migrant workers is declining in some areas while rising in others, such as health care and seasonal agriculture, as economic prospects shrink. In accordance with national workers, a number of nations and local governments have begun to implement more comprehensive measures to assist migrant workers who suffer considerable wage losses due to the epidemic. ⁴For example, in response to the COVID-19 situation, Brazil launched an assistance programme for the jobless, which includes migrants, refugees, and informal labourer. Chile has launched a programme for vulnerable families called the COVID-19 Emergency Stipend (Bonode Emergencia COVID-19), which targets migrants in

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² *India has 139 million internal migrants. They must not be forgotten.* World Economic Forum. <https://www.weforum.org/agenda/2017/10/india-has-139-million-internal-migrants-we-must-not-forget-them/> [Retrieved on 01.02.22]

³ *A Policy Framework for India's Covid-19 Migration.* BloombergQuint.

<https://www.bloombergquint.com/coronavirus-outbreak/a-policy-framework-for-indias-covid-19-migration> [Retrieved on 01.02.22]

⁴ *Previous financial support schemes.* Employment New Zealand. (n.d.). Retrieved February 2, 2022, from <https://www.employment.govt.nz/leave-and-holidays/other-types-of-leave/coronavirus-workplace/previous-financial-support-schemes/>

regular status in the nation. The Wage Subsidy Scheme in New Zealand is open to migrants from Tunisia and other nations.⁵ A new fund in California, with a potential budget of USD125 million, is being formed to give economic support to migrant workers regardless of their immigration status. The government has made a step in this direction by announcing the Garib Kalyan Rojgar Abhiyan scheme, which would invest Rs. 50,000 crores in 25 different projects across 116 districts in six states, creating job possibilities for migrant workers.⁶

In the article ‘COVID-19 lock-down: the neglected migrant workers in India’, by Virendra Balaji Shahare, I have analyzed the physiological and socio-economic problems which are faced by the Indian migrant workers.⁷ Also, through this article the role of government towards the migrant workers during the pandemic has been examined. The importance of migrant workers has been neglected by the Government in the beginning of the lock-down has been explain which has been referred in this research paper. In the paper ‘COVID-19: Emergence, spread and its impact on the Indian economy and migrant workers’, by Ashok Gulati, Shyma Jose and B.B. Singh, the various government schemes and policies have given briefly which is referred in this paper also through the migrant retune statistical representation the researcher has understood the number of migrant workers who were success able to return to their native place.⁸ ‘India failed its migrant workers yet again during the second wave of Covid-19’, by Shubham Kaushal and Vikas Kumar.⁹ Through this article the researcher has understood the problems faced by the migrant workers in various states. Also, the statistical representation has been referred in this research paper to make the readers understand on what grounds the migrant workers did suffer e.g., decree in wages, no jobs and scarcity of food etc. ‘Migration in India and the impact of the lock down on migrants’ by Madhunika Iyer, in this article the different types of migrant works in a country have been

⁵ California, S. of. (2021, April 26). *Governor Newsom announces new initiatives to support California workers impacted by COVID-19*. California Governor. Retrieved February 2, 2022, from <https://www.gov.ca.gov/2020/04/15/governor-newsom-announces-new-initiatives-to-support-california-workers-impacted-by-covid-19/>

⁶ 25 govt schemes to be pooled together to give jobs to migrant workers: FM. Business Standard. Retrieved February 13, 2022, from https://www.business-standard.com/article/economic-revival/25-govt-schemes-to-be-pooled-together-to-give-jobs-to-migrant-workers-fm-120061801140_1.html

⁷ authors, A., & Shahare, V. B. (n.d.). *Covid-19 lockdown: The neglected migrant workers in India*. Taylor & Francis. Retrieved February 15, 2022, from <https://www.tandfonline.com/doi/full/10.1080/02185385.2021.1875335>

⁸ *Covid-19: Emergence, spread and its impact on the Indian economy and migrant workers*. SSRN. Retrieved February 4, 2022, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3834328

⁹ *India failed its migrant workers yet again during the second wave of covid-19*. Scroll.in. Retrieved February 4, 2022, from <https://scroll.in/article/998278/india-failed-its-migrant-workers-again-during-the-second-wave-of-covid-19>

discussed also the issues which are faced by the migrant workers before Covid-19.¹⁰ Through this article the researcher has understood about the difference in the conditions of the migrant workers before and after the Covid-19 which has been referred in this paper.

The focus of this paper is to study the impact of the pandemic on the migrant workers and due to which they faced problems on various grounds. The government policies are also provided for them which is also examined that how much they are benefited from that. The research aims with the objectives to make the reads understand the issues and problems which are faced by the migrant workers during Covid-19, policies and schemes which were introduced by the government for the migrant workers during Covid-19 and its effectiveness, also where the Government failed to put the policies into effect and fulfil the expectations of the migrant workers. Therefore, the main questions which are raised by the researcher are that whether Government have successfully able to implement the schemes for migrant workers during Covid-19? and whether migrant works overcome their issues due to lock-down with the help of the Government policies? So, the paper focuses on the effectiveness of Government policies and schemes which were introduced for the benefit of the migrant workers.

RESEACH PROBLEM

The lock-down was declared when COVID-19 cases in India began to rise, in order to flatten the curve of this illness and minimize the spread of this infectious disease by cutting crucial transmission links. Migrant workers have suffered immense mental, financial, and emotional hardship in metropolitan centers and industrial belts, and they are returning in large numbers to their original villages. Therefore, the problem which the researcher has found that, the schemes which were introduced by the Government were lacking on various field such as the schemes were introduced too late and proper strategy was not applied, awareness of the schemes were not made within the migrant workers etc. which has caused mobility, economic and various other problems to the migrant workers

METHODOLOGY

The study covers all the problems faced by migrant workers also the drawbacks of the schemes introduced by the Government. To validate and substantiate the findings from the

¹⁰ *Migration in India and the impact of the lockdown on migrants*. Retrieved February 4, 2022, from <https://prsindia.org/theprsblog/migration-in-india-and-the-impact-of-the-lockdown-on-migrants>

literature review, secondary data collection was conducted. Various types of secondary data including studies, reports and data collected by government and non-governmental organizations are used for the study. Also, various related websites, articles, journals, books, and blogs were looked into.

VARIOUS TYPES OF CHALLENGES FACED BY THE MIGRANT WORKERS DURING LOCKDOWN

With the closure of all stores, the collapse of enterprises, and the closure of production and manufacturing units during the lock-down, it was clear to forecast the catastrophic impact on the nation's and world's economies, resulting in terrible consequences for the ordinary man such as wage cutbacks. The most fundamental problem during the crisis was that the majority of migrant workers are daily wage labourer's who were left with nowhere to go when they were suddenly laid off, especially without any government-mandated social assistance mechanisms.

Challenges in the economy- The working class, particularly low-income migrant labourers, has been the worst hit by the COVID-19-induced lock-down. They were retrenched in substantial numbers, left unemployed in the destination states, and their wages were not paid, forcing them to return to their home countries. After the shutdown, a few internal migrants informed they were hired by the same employer/contractor, but that they were not paid their salary throughout the shutdown. They were compelled to return to their communities owing to unpaid salaries, a lack of a place to reside with basic amenities given by the contractor/employer, such as power and water, and a lack of timely governmental protection.

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Socio challenges- The social obstacles that migrants confronted after the outbreak of the pandemic has been discussed in this part. Such communities tend to return to their homes when a communicable virus outbreak occurs or when social distancing measures are implemented, as in the case of the COVID-19 Pandemic. In such a circumstance, migrant workers may become susceptible to COVID-19 infection because of congregating in bus stations or at state borders. Furthermore, such exposed folks may become infected and spread the disease to far-flung rural areas. In the destination city/state, throughout their travel back

¹¹ *The plight of migrants during COVID-19 and the impact of circular migration in India: A systematic review.* Nature News. Retrieved February 10, 2022, from <https://www.nature.com/articles/s41599-021-00915-6>

home, in quarantine facilities, and in their communities, the migrants interviewed described incidents of prejudice and being seen as virus spreaders.¹²

Mobility issues for migrant labour- Despite requests from various stakeholders such as state governments, civic society, and trade unions, the federal government was initially hesitant to rescue trapped migrants both within and beyond the country. Despite the government's tight mobility limitations, distraught internal migrants continued to migrate on foot or in filthy vans or trucks back to their home countries owing to their inability to survive in the pricey urban districts. They encountered a variety of issues when trying to cross state boundaries, including police violence, serious injuries, and even death due to exhaustion and dehydration. Because of a lack of cooperation between the federal and state administrations, conflicting positions were taken while dealing with mass migration. Employers retrenched migrant workers at the same time since their companies were closed due to the shutdown. Thousands of people were stranded on interstate borders such as Karnataka-Maharashtra and Delhi-Uttar Pradesh because of this. Workers were slammed by the latest crisis at a time when many were still reeling from last year's economic shocks, which decimated their savings and drove up their indebtedness. According to a report released on May 21 by the Stranded Workers Action Network, a migrant resource group, 58 percent of migrant families were on the verge of becoming hungry. Since last year's shut down, home-based women employees who rely on outsourced value-added services like thread-cutting and collar and button sewing have not received any large orders.¹³

GOVERNMENT POLICIES AND THEIR EFFECTIVENESS

Since the 1990s, the expansion of the Indian economy has resulted in a larger division between marginalized groups and the higher classes. During the COVID-19 Pandemic, the poor and marginalized are disproportionately affected. As a result, the government is trying to ensure inclusion throughout economic expansion by implementing redistributive social programs.¹⁴ The National Food Security Act (NFSA) (2013), the Mahatma Gandhi National

¹² *Implication of repatriating migrant workers on COVID-19 spread and transportation requirements.* Transportation Research Interdisciplinary Perspectives. Retrieved February 10, 2022, from <https://www.sciencedirect.com/science/article/pii/S2590198220300981#:~:text=3.3.&text=Hence%2C%20COVID%2D19%20infection%20increases,bus%20station%2C%20and%20catering%20service>

¹³ *Critical issues for lockdown-hit migrant workers.* Infogram. (n.d.). Retrieved February 10, 2022, from <https://infogram.com/critical-issues-for-lockdown-hit-migrant-workers-1hdw2jp0prpp2l>

¹⁴ *Union government has taken unprecedented measures for Labour Welfare and employment generation across India during covid-19 pandemic : Shri Gangwar.* Press Information Bureau. (n.d.). Retrieved February 13, 2022, from

Rural Employment Guarantee Act (MGNREGA) (Mahatma Gandhi National Rural Employment Guarantee Act, 2005), the Unorganized Workers Social Security Act (UWSSA), the BOCW Act (Regulation of Employment and Conditions of Service) (2008), and Ayushman Bharat, PMJAY, National Health Authority (2017), which includes Health and Wellness Centers (HWCs) and Pradhan Mantri Jan Arogya, these are some of the schemes which were already proved to the migrant workers before the pandemic.

AFTER THE PANDEMIC FEW MORE SCHEMES WERE INTRODUCED BY THE INDIAN GOVERNMENT

A Universalized Food Distribution System: As we know that distributing resources to the targeted population is challenging due to the lack of a record of the number of internal migrant employees and the fact that not every migrant worker has a valid identity evidence or is registered under a specific scheme. There is no plan in place to allow ration cards to be transferred across states. In this case, the central government can offer food to individuals who are still trapped in cities, such as food grains, pulses, and other important commodities, until the lock-down is lifted and employees can resume their employment. Regardless of their domicile-based identity, the programme can be accessed by self-attestation and self-identification.¹⁵

Garib Kalyan Rozgar Abhiyaan (launched by PM Narendra Modi)- the main motive of this scheme was 125-day expedition in 116 districts in six states Bihar, Madhya Pradesh, Uttar Pradesh, Rajasthan, Jharkhand, and Odisha that received the most migrant labour. It would aid in the implementation of 25 public infrastructure projects as well as projects aimed at increasing livelihood prospects. The scheme's vast range of jobs will ensure that each migrant worker may find work that matches his skills in the next 125 days, it said, adding that the programme would also prepare for long-term expansion and development of lives.¹⁶

Stranded Workers Action Network (SWAN)- The Pradhan Mantri Jan Dhan Yojana allows people who are still stuck in the city and have bank accounts to receive the minimum income for the next three months. It would help the personnel in achieving their goals (SWAN,

<https://pib.gov.in/PressReleasePage.aspx?PRID=1654819#:~:text=%E2%9E%A2%20In%20order%20to%20facilitate,migrant%20workers%20and%20about%20Rs.>

¹⁵ 'Universalise food distribution so no one goes hungry during pandemic'. Indiaspend. Retrieved February 13, 2022, from <https://www.indiaspend.com/indiaspend-interviews/pandemic-food-hunger-ration-scheme-cash-transfer-food-distribution-757450>

¹⁶ 25 govt schemes to be pooled together to give jobs to migrant workers: FM. Business Standard. Retrieved February 13, 2022, from https://www.business-standard.com/article/economic-revival/25-govt-schemes-to-be-pooled-together-to-give-jobs-to-migrant-workers-fm-120061801140_1.html

2020). Also, under the Mahatma Gandhi National Rural Employment Guarantee Act, people who have returned to their homes and are not working might be paid their salary. Workers' shelters in cities that give prepared meals and a roof over their heads should not be closed quickly because, due to a lack of jobs and money, they are unable to live in leased rooms. As a result, cooking will not be an option for them (SWAN, 2020).¹⁷

DRAWBACKS OF THE LOCK-DOWN AND POLICIES IMPOSED BY GOVERNMENT

Through the study the researcher has come up with few drawbacks of lock-down and policy making of the Government-

- The Indian government-imposed lock-down with only four hours' warning. It's a fascinating and surprising democratic phenomenon. All of this was accomplished without alarming the general populace.
- The government's second blunder during the shutdown was leaving trapped migrant workers in a condition of despair without providing any meaningful assistance. In India, migration is mostly motivated by a desire to survive, and poverty is a primary motivator. As a result, the migrant labourers ran out of resources after a few days of the lock down's implementation, as planned. During the lock down, the federal government and state governments issued recommendations to all employers, advising them to pay their employees their full wages and salaries.
- Furthermore, when enforcing lock down, the government did not come up with any rent-resolution strategy, nor did it establish any meaningful rent-waiver policy, leaving residents at the mercy of their landlords. Because the majority of migrant workers live on rent, they have been disproportionately affected, and many have experienced harassment by their landlords.
- Migrants are facing hunger, loss of income and uncertainty of paid work at their home villages. In the past, mass exoduses due to famines, droughts, floods, epidemics, environmental factors and regional conflicts led to people leaving rural areas. The schemes were introduced too late during the time the workers already suffered. But the schemes were effective after its implication and the Government has tried its maximum to safeguard the workers.

¹⁷ 21 days and counting: Covid-19 lockdown, migrant workers, and the inadequacy of welfare measures in India. People's Archive of Rural India. (n.d.). Retrieved February 13, 2022, from <https://ruralindiaonline.org/en/library/resource/21-days-and-counting-covid-19-lockdown-migrant-workers-and-the-inadequacy-of-welfare-measures-in-india/>

- The state and central governments should emphasize on communicating these relief measures clearly and widely amongst the population and facilitation of easy access should be done.
- The migrant workers were also in a highly vulnerable state and did not know where to go and who to ask for assistance, most of them were not aware about the policies. Also, there were mismanagement.
- Regarding migrant workers being permitted to work outside the containment zones, he stated that in April and May, they allowed migrants to work within the states. However, this was done in order to resurrect the troops. The majority of the workers, on the other hand, had already returned to their homes. Many of them were unaware of the safeguards in place and proceeded on their way to their villages or towns. Others were unable to return to work because public transportation was unavailable.

EXPECTATIONS OF THE MIGRANT WORKERS

Workers' expectations and requirements for a wide range of assistance activities are revealed in the study. Workers, for example, said they needed help paying rent (38%), school fees (34%), and medical bills (39%). They also requested a 34% reduction in power rates, as we already mentioned. “Recently the CM has exempted tax for restaurants, malls, hotels and 4-5 others for one year. Why not for us? Workers are facing more problems,” Anil Kumar added, pointing to a one-year property tax exemption for hotels, restaurants, malls, and water parks in Gujarat that was recently announced. In addition, up to 51% of respondents urged that jobs be created in the city. Civil society has often called for an urban job guarantee like the MGNREGA programme in rural regions. Within a month of the national lockdown being imposed, the Odisha government launched an Urban Wage Employment Initiative for the urban poor, which was quickly followed by Jharkhand's Mukhyamantri Shramik Yojana. Urban employment plans were not included in this year's budget, despite widespread anticipation.¹⁸

SUGGESTIONS AND CONCLUSION

The crisis of COVID-19 has, for the first time, brought ‘invisible’ migrants and the phenomenon of migration to the center stage of policy concern around social protection. Migrant worker tragedy unfolding in the wake of the COVID-19 pandemic lock-down is

¹⁸ *Expected relief & support from Govt.* Infogram. (n.d.). Retrieved February 14, 2022, from <https://infogram.com/expected-relief-and-support-from-govt-1h7j4dv0vpgw94n>

reinforcing the necessity of consolidating the social policy efforts of the past decades. Migrant workers occupy a special position in the debates around development and social protection. They have driven the engine of globalization, though not reaped great benefits from the process. In the wake of COVID-19, the very factors that made them desirable as a workforce are turning against them.

The present migrant catastrophe obscures a larger store: enormous unemployment and precarious, unsafe work that has characterized labour in recent years. Based on the current regulatory framework, companies must provide improved protection and decent work standards for informal employees post-COVID 19. The government must also understand that rural employment, which continues to support millions of people, is in jeopardy. Schemes for rural social protection, such as public works under the MGNREGA. As a result, it is clear that there are gaps in India's pandemic and emergency replication policies that must be addressed immediately. The approach, which aims to improve the social integration of all members of the internal migrant population, particularly children and women, should be more humanitarian. It is also advised that before proposing any law that may have an influence on the lives of the general public, the people be given confidence. It is critical to avoid making rash policy decisions that will have a significant impact on the lives of large groups of people. It is also necessary to raise awareness of the need of prioritizing domestic migration in policymaking. There is also a need to change the negative view of internal migrants in Indian society.

“SUSTAINABILITY OR DEVELOPMENT? ”- ANALYZING THE DUAL CHALLENGE IN COASTAL ZONES OF INDIA

Asha J.¹

INTRODUCTION

Coasts and coastal resources are primary natural resources. They govern human civilisation, and they are basic human need and valuable national assets too. So, forecasting and developing of coasts and coastal resources should be governed by Sustainable perspectives and should abide by the principles of management and conservation of coastal quality and sustainable development of coasts. Coastal development is fundamental to the inclusive process of economic development in India because it epitomizes the relationship and inter dependence that exist between people and natural resources. So, adaptation of coastal environment has significant social and commercial consequences, that influence our nation itself. Coastal challenges and changes are not only the product of natural hazards or events but also of the application of wrong developmental models such as policies, laws, practices, and lifestyle.

Coastal environment and its easy access and resourcefulness have always captivated human activities but the intricacy in understanding the coastal issues has led to misuse and abuse. So, it became obligatory to get urgent attention for better management in coastal zones. Polluting Coastal environment can impact on human life, health, and property of individual human being rather than on circumstances of environment in general. Natural resources and eco systems in the India at present are contaminated because of meager supervision of environment. Dredging for minerals and dumping of industrial waste at sea is another important challenge faced by our coasts and the result is coastal erosion and sea level rise. Coastlines of our country faces high risks of damages from certain types of natural disasters. A major concern is death and property loss and flooding by cyclones. States like Kerala are in a way towards disaster and in every monsoon, face floods and landslides². More than this many densely populated coastlines, risks of natural disasters are being increased by population growth and unmanaged development projects including residential urban development. Therefore, this paper is analyzing the need of sustainable coastal policies in India. The frequent amendments in CRZ Notification from 1991- 2019 and the uncertainties of legislation and administration are primarily misleading in the field of coastal management

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² K. A. Shaji, 'Deadly landslides are becoming Kerala's new reality in every monsoon', [11 Aug. 2020] MONGBAY, india.mongbay.com. (Last visited 25 March 2021).

and enable a sharper view of the adversarial and administrative equations between the State and the Judiciary. The existing subordinate legislative framework can no longer support the complexities of current issues such as biological diversity and environmental impact assessment. Laws granting vague and sweeping authority to the Central government and State governments have also contributed to coastal failures³. Indian environmental jurisprudence and the division of powers in between centre and state in identifying coastal issues and powers of coastal authorities are discussed by judiciary in various cases. But the principles formulated by judiciary including Polluter pay principle, precautionary principle, and concept of sustainable development etc are not identified even while formulating the CRZ Notification in 2019. Judiciary have interfered in avoiding the degradation of Indian coastal environment and still trying to introspect and refine them. The contribution of the higher judiciary, especially to constitutional rights of individuals, as well as in the implementation of its rulings, has completely changed the nature and understanding of the law in this field⁴. Post 1980s India had shown a tremendous unjudicial activity along with administrative and legislative activism. But this renovation has been a tough fight. Prior to 1980s, only the aggrieved party could individually knock the doors of justice and seek remedy for his grievance and any other person who was not personally influenced could not do so as a proxy for the victim or the aggrieved party. But around 1980s, the Indian legal system, particularly the field of environmental law, underwent a transformation in terms of vacating its declining approach and instead, charting out new horizons of social justice. Protection of the coast hurls up a multitude of problems for a developing nation like India. Administrative and legislative strategies of harmonization of environmental values with developmental values are a must and to be formulate in the crucible of prevalent socio-economic situations. Several times Indian judiciary discussed the need of adopting a uniform administrative and legislative scheme as well as the need of environmental law principles which is suitable for our coastal zones. It is also true that, adoption of environmental laws will be helpful in ensuring the rights and obligations for coastal inhabitants and public at large will have a clear and increasingly comprehensive content which is eventually enforceable in courts.

³ Amitha Singh, 'Coastal Ballads and Conservation Ironic Understanding Implementation Slippages of the CRZ Law', [2016] 7 (1) Economic and Political Weekly 70-75

⁴Sahil Kaushal, Dr. Deepti Monga, 'Judicial Contribution Towards Protecting Environment,' [2020] 4 (7) Journal of Critical Reviews, 4022

PRESENT COASTAL LAW IN INDIA

The Ministry of Environment, Forest and Climate Change (MoEF) made amendment of coastal law in 2019 that regulate land use along India's coastline. Coastal Regulation Zone Notification (herein after called as CRZ Notification) is the general law which governs the development and management of 7500 kms coastal zones of India. CRZ Notification, 2019⁵ is the result of the review of Shailesh Naik committee⁶ which analysed the coastal issues of India since 2014. The Shailesh Naik Committee put forth several changes for new regulations like reduction in 'No Development Zone', mining of sand for rare minerals present in coastal sand, promotion of eco-tourism and permission for construction of temporary construction for tourism development and various developmental projects etc. The changes in Coastal Regulation Zone Notification, 2019 provided opportunities to improve construction in coastlines and future easing of building restrictions in coastal cities and the development of airports in the "Waste lands" of coastal villages. The CRZ notification 2019 is intended to enhance the activities in the coastal regions thereby promoting economic growth while also respecting the conservation principles of coastal regions. The primary objective of CRZ Notification, 2019 is to give more space to development while keeping the concept of sustainable coastal management. It will not only result in employment generation but also a better life and generate economy of India. But environmentalists like Prita Dev says that the notification favours limited interests⁷. By opening up 7500 kilometres (km) of mainland coastline for more commercial activities, it has put at risk the ecology and communities vulnerable to extreme weather events and sea level rise⁸.

Regularising population and commercial pressure on the active play zone of the sea waves was at the heart of the notification, when it was first issued in 1991 under the Environmental Protection Act, 1986⁹. But it is criticised that over the period, CRZ has been more violated than protected and it is the reason for frequent amendments of coastal law in India. Coastal Management in India is aimed to conserve resources of the coastal region by a Sustainable life system, maintaining the ongoing ecological processes, Protecting the tropical or other genetic diversity and preserve the coastal system. It is intended to ensure the sustainable

⁵ Coastal Zone Regulation Notification, 2019, Notification No. G.S.R 37 (E) of 18.1.2019

⁶ Shailesh Naik Committee, 2014 appointed by MoEF, Report of the committee to Review the issues relating to the Coastal Regulation Zone Notification, 2011 available at www.indianenvironmentportal.org.in.

⁷ Prita Dev, The Coastal Regulation Zone (Crz), 2019 & Island Protection Zone, 2019, (1 edn., Snow white Publications, 2021).

⁸ *ibid*

⁹ Mahesh Pandey, 'New coastal management zone Notification: Fair or Forces' ILSL.R [2009] 1-5

development and continued use of the region by preserving and providing and deriving social and economic benefits.

CONCEPT OF SUSTAINABLE DEVELOPMENT OF COASTAL ZONES IN INDIA

Every human being has a right to live in healthy and clean environment. The Supreme Court has justifiably observed that Hygienic environment is an integral facet of right to healthy life, and it would be impossible to live with human dignity without a humane and healthy environment. Prior to 1980 there were lack of legislations about control of pollution, and this made environmental protection and pollution control a non-priority item. In many numbers of cases, the performance of most enforcement agencies - whether it be the pollution control boards, forest bureaucracies or the local town planning authorities has been dismal. Very few bureaucrats have effectively exercised their authority without obligated to do so. Fortunately, by the judicial supervision and by successful development of certain initiatives, courts made the environmental law problems the most significant problems. Two major initiatives generated by the courts relate to

1. Fundamental right to wholesome environment.
2. Right to sustainable development.

Although in the year 1972, at the Stockholm Conference, it was asserted that in the name of development, degradation of environment need not be tolerated. In 1981, for the very first time the definition of 'sustainable development' was published by the International Union for Conservation of Nature and Natural Resources (IUCN), the World Wildlife Fund (WWF) and United Nations Environment Programme (UNEP), in the document entitled 'World Conservation Strategy, Living Resource Conservation for sustainable development. According to the definition, "for development to be sustainable it must take account of social and ecological factors as well as economic ones; of the living and non-living resources base; and of the long-term as well as the short-term advantages and disadvantages of alternative actions. In the year 1987, World Commission on Environment and Development published its Report title 'Our Common Future' which included the first official definition of the concept of sustainable development. According to the Report "sustainable development is development that meet their own needs."¹⁰ .The definition contains within it contains two key concepts.

¹⁰ . Starke Linda, 'A Study on the Law Relating to Industrial Pollution under Environmental Law', SIGNS OF HOPES, New York, Oxford University Press, [1990] 8-9

(a) the concept of 'needs' in particular, the essential needs of world's poor, to which overriding priority should be given and

(b) the idea of limitations imposed by the state of technology and social origination on the environment's ability to meet the needs of present and future generation.

The most remarkable contribution of Supreme Court has been the adoption of right to sustainable development as one of the hard-core principles of environmental jurisprudence in India.¹¹ The principle of sustainable development is a prominent principle underlying environmental governance. It states that resources need to be sustainably used so as to meet the needs of current generation without compromising the needs of future generation. In *M. C. Mehta v. Kamal Nath*¹² decided by Supreme Court and in *Fomento Resorts and Hotels v. Minguel Martins*¹³ and *Ramdas Kohli v. State of Maharashtra*¹⁴ court strictly applied the concept of sustainable development and polluter pay principle.

India is a participant to the historic Earth Summit on United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992 and supports on the recommendations emanating from it on Integrated Coastal Zone Management (ICZM) for sustainable development. Subsequently, ICZM has been recognized as the elements of strategic planning by means of regulation zoning so as to facilitate decision-making. Many developed nations in the world have implemented ICZM refining its methodology and approach. In the Indian context, although there is no operational definition of the term sustainable development in the CRZ notification, but the ministry has realized the importance of sustainable management. The successful implementation of ICZM by maritime nations (viz. USA, EU countries, and few developed island nations) to enhance the sustainable use of coastal resources have brought attention of authorities to integrate the same in India's CZM planning. ICZM is being implemented in the first phase in three coastal states such as Odisha, West Bengal and Gujarat on a pilot basis with financial support from World Bank through MoEF¹⁵

¹¹ 'Towards sustainable Development', Science Age, 30-38, (August 1989).

² Shyam Diwan, Armin Rosencranz, Environmental Law and Policy in India, 40 (2nd Ed., Oxford University Press, 2002), p. 40

¹² (1997) 1 SCC 388

¹³ Supra .17

¹⁴ MANU/GT/0056/2015, 27.2.2015

¹⁵ www.iczmpodisha.org

Nowadays, the question of conservation has become important for all even in a local, regional, and international level. Organization for Economic Co-Operation and Development states that coastal zone management is not purely a local/regional or purely national concern. There are many facets of coastal zone management, which are of international nature. The damage of coastal resources and sea, the decrease of fisheries production, pollution and climate change has occurred and provide significant impact in many coastal areas throughout the world. However, with the increasing population growth and rapid development activities in coastal areas, for various utilizations (residential, fishing, ports, tourism and others), the ecological pressure on the ecosystem and coastal and marine resources are increasing. The increasing pressure of will be able to threaten the existence and sustainability of ecosystems and coastal resources, marine and small islands that are around. One thing that is more troubled is that the trend of environmental degradation and the coastal ocean due to the paradigm of development and practices which have not yet applied in accordance with the principles of sustainable development. The tendency to be subjugated extractives and economic interests take precedence over national economy of the local coastal dwellers. There should be more participatory, transparent, accountable, effective and efficient equity to support the rule of law. While at the implementation level there is still found of low awareness of law and regulation enforcement, and the ecological damage to coastal in a serious condition. Therefore, a policy on coastal conservation is required. Issue on coastal conservation is a basic to realize the management of coastal area in an integrated way, as known as the integrated coastal zone management concept. It more specialized in sustainable ecology of coastal areas, which states that coastal management should be integrated across sectors. The approach in India should be focused on a need to understand the ways in which the natural environment and human activities are interconnected to form a system. ICZM and its aim are to develop sustainable development of the coastal zone and its resource. So, it is important to get an insight coastal conservation.

Sustainable coastal management requires us to consciously integrate social, cultural, ecological and economically productive dimensions of the coast. This approach emphasises the opportunity to develop ways of living on the coast that are synergistic and constructive, rather than destructive. Therefore, while an understanding of the ecological model is clearly fundamental to the task of managing coasts sustainably, it is equally important to understand people and their unique cultures and economies that are connected to coasts because management depends ultimately on the behaviours of people who use and have an impact on

the coast. Human activities and aspirations are now primary drivers of coastal ecosystems, and we have therefore to accept and manage humans as part of the ecosystem, not as a superior or even separate sphere of moral concern.

In India, the courts are extremely cognizant and cautious about the special nature of environmental rights, considering the loss of natural resources¹⁶. But the gap which is created due to state failure in acting as a custodian of “environmental resources” has placed the judiciary in a powerful position and given it colossal freedom while interpreting the coastal zone regulations. This has weakened the spirit of law and reduced the scope and effectiveness of regular administrative agencies expected to implement the law and conservation requirements. This chapter finds answers to this question and demonstrates that the state’s failure in acting as a custodian of “environmental resources” has placed the judiciary in a powerful position and given it colossal freedom in interpreting the coastal zone regulations. The lawmakers themselves often have been party to the distortions in various cases. Whenever these contestations are pulled into the courtroom, there are claims and counterclaims on the nature of ecosystems, state responsibility and rights of local people. There is enormous disparity in legal claims presented before the judges in interpreting both the “resource” as well as “public welfare” on different occasions.

Even though there are so many instances of judicial pro activeness in coastal management, some criticisms against some decisions are also there. Inconsistent judicial interpretations also are there which can be established to swirl around mainly through three aspects. It includes the CRZ land use restrictions, public trust doctrine and the irresponsible and unaccountable governance institutions. In the CRZ land use restrictions judges have sought various definitions for coasts and land use diversions. At times, courts have diverted the responsibility of decision-making to the coastal authorities¹⁷ and in some cases have allowed CRZ violations¹⁸. Another example on the issue of land reclamation, the Kerala High Court did not find any serious impairment to aquatic resources, ecology and environment in the land reclamation demanded by the Goshree Project¹⁹ and even declared that the land proposed does not come under the CRZ area. The judiciary has even interpreted land reclamation in different ways and sometimes provided over importance to development than

¹⁶ Smrithi Kumar and Akhil Dixit, ‘Environmental Constitutionalism in India’, [2020]3(6) International. Journal. Of Law, Management and Humanities, 284- 291

¹⁷ P A Fazal Gafoor v State of Kerala Special Leave to Appeal (Civil) no. 5038/ 2002.

¹⁸ Goa Foundation v Diksha Holdings Pvt Ltd AIR 2001 SC184

¹⁹ Jacob Vadakkancherry and, etc v The State of Kerala and Ors AIR1998 Ker. 114.

environmental protection. Obviously, each case is different and having different inclinations and values. Judiciary have to consider the quantum of public benefit and it differs from one development project to another. So, Indian judiciary, governments and enforcement authorities should insist a strict construction of coastal conservation policies. So, it should be understood that the society's interaction with nature should be wide-ranging and all the state agencies including should maintain a proper approach to balance the relevant considerations in between development and conservation of environment and should understand the need for implementing environmental democracy in coastal protection.

The liberalisation of coastal zone regulations in India objects to lead to improved activities/opportunities in the coastal regions thereby promoting economic growth and also regarding the conservation principles of coastal regions. Environment activists argues that the CRZ Notification, 2019 dilutes India's safeguard approach for the delicate ecology and made accessible for large-scale development projects. Since India's coastline is extremely vulnerable to climate change impacts such as erosion, cyclones, and floods, allowing for infrastructure development and construction along the shoreline will further heighten the vulnerability²⁰. By opening up 6,068 km of mainland coastline for more commercial activities, India's own regulation now threatening the sensitive ecology and infrastructure that are already vulnerable to extreme weather events and sea level rise.²¹

Since 2004 tsunami impacts, the primary purpose of India's coastal zone regulation (CRZ) has been to regularise population and commercial pressure near the High Tide Line (HTL) by drawing classification depending on land use or sensitivity in order to save the region from significant loss and damage²². In reality, the CRZ has been more violated than earlier period. The coastal ecosystem is developing enormously hazardous, with shifting coastline due to climate change impacts. In such a milieu, permitting heavier constructions and structures nearer to the HTL would endanger infrastructure to increased risk of the anticipated extreme meteorological conditions events, thereby intensifying the susceptibility of the coastal populations. It is also criticised that the current approach to the management of coastal resources is not capable of sustainable development of coastal environment. The natural resources in coastal areas are rapidly degraded and eroded in India. Human interference is increasing with the mangrove ecosystem where land is being reclaimed. Activities permitted

²⁰ Aparna Roy, 'Making India's coastal infrastructure climate resilient: challenges and opportunities', [2019] ORF, Occasional paper no.207.

²¹ *ibid*

²² *ibid*

near coastal zones for the Purpose of Blue Flag Certification²³ exempts even clearance under CRZ Notification and Island Zone Notification, 2019. For improving the facilities and infrastructure the new Notification ignored the conservation of coastal ecology and coastal resources. Mangroves are often considered as ecologically important habitats. In India, approximately 60% of the commercially important coastal fish species are directly associated with mangrove habitat. Apart from fisheries, they also play an important role as a protector against floods and hurricanes, reduction of shoreline and riverbank erosion, maintenance of biodiversity etc.²⁴ But all these aspects are not given any special weightage under CRZ, 2019 instead of some general recommendations.

Developmental policy in India has long cherished the importance of environment – poverty linkages in determining the outcome of development. The mainstream of the coastal people in India are rural people and particularly dependent on natural / coastal resources for their livelihoods. We should understand that they are often live-in areas of high ecological vulnerability and relatively low levels of resource productivity and have limited and insecure rights over productive natural resources. These collective influences are significant forces contributing towards the vulnerability of rural livelihood strategies. Much of the debate over development strategies in the last decade has therefore turned around the question of how poverty, vulnerability and access to coastal resources are linked, and which are these policies that can contribute towards sustainable coastal livelihood. So, while analysing the coastal law, it should be in the background of actual experience and diversity of geographic and climatic factors, better co-ordination rather than centralization is required of the system. Many of the coastal environmental complications are local specific ones distressing the local community and enquiring for appropriate rejoinder by the local environmental activists and local administration towards solving the problem. The possibility of using modern communication technology to have rapport between the Centre and the local community cannot be overstated but it can be used to improve the situation. Mobilising community support and enthusiasm will be toothless without a strong legal and policy framework. So, coastal law in India should include all these aspects such as Care for the environment, sustainable developmental activities, pollution control and prevention through collaborative and participatory decision making, rather than the prevailing adversarial strategy.

²³ Blue Flag certification is a globally recognised eco-label accorded on the basis of 33 stringent criteria in four major heads which are environmental education and information, bathing water quality, environmental management, and conservation and safety and services in the beaches.

²⁴ Amol Ramdas Handore et al, 'Assessing ecological and socio-economic significance of mangroves on the livelihood of coastal communities' [2019] 9(1) International. Journal. of Environmental Ecology, 13-26.

Nevertheless, there is nothing more obvious than the universal nature of the right to an adequate environment. So, it can be concluded that Pro developmental inclinations of law should not defeat the underlying objectives of the coastal protection.

CONCLUSION

The paper emphasises on a proposed shift to a new mode of coastal zone governance and its reversal as a result of concerted environmentalist and coastal dwellers opposition. The attempt to place the regulatory approach contained in the 2019 CRZ Notification with the management approach of the earlier CRZ Notifications in 1991 and 2011 Notification with its greater reliance on 'scientific knowledge' was aimed at deploying new technologies, values, actors and institutions in the attempt to reconcile intensive, high-impact development of the coastal zone with publicly affirmed values of conservation and subsistence rights of rural communities. In particular, a 'straddling' or 'interface' layer of NGOs and technical 'experts,' was shown to be instrumental in being able to attach, to oppositional ends, the new information technologies and technologies of governance to challenge the hierarchies of expertise and scale involved in the politics of coastal protection. By signifying the magnitudes of stakeholders to slow down the process of development by challenging its unsustainable activities. Now it is suggested that India need new modes of ecological governance and it may not divert from the sustainable coastal policies suggested by environmentalists such as Dr. Swaminathan. In doing so, it reiterates the need for careful analyses of the hybrid and tentative ways in which new modes of ecological governance unfold in coastal zones.

COVID 19 AND ITS IMPACT ON MIGRANT WORKERS IN INDIA

Mahantesh B Madiwalar¹

Prof. (Dr.) B.S. Reddy²

INTRODUCTION

Large number of inequalities in job and income opportunities between urban and rural India have to movement of labour force across India. as developing economy, India faces the classical problem of equitable distribution of employment opportunities. In the last few decades, the economy has not been able to create enough employment in the formal sector and the welfare of workers has not received due attention. 92 percent of India's work force is employed in informal sector. There is also a mismatch in growth of labour force and employment opportunities, leading to rise in migration rates. In India the states of Bihar, Odisha, Uttar Pradesh, West Bengal, and Rajasthan are key suppliers of work force to other parts of the country. At the other side Gujarat, Maharashtra, Delhi, Punjab, Haryana, Tamil Nadu, Karnataka, and Kerala states are attracting large number of workers. There is, however, no mechanism for formal recruitment and support of labour force in India.

India has a predominant share of internal migration and is also the top origin country of international migrants. The Indian Census 2011 data calculated the total number of internal migrants accounting for inter and intra state movement to be 450 million. Migration gives an optimistic livelihood strategy for migrant workers and their families, contributes to the economic growth of the destination state/country, while the origin state/country benefits from the remittances and the skills acquired during their migration.

On 24th March 2020, to constrain the virus, a strict nationwide lock-down was imposed by India with immediate sealing of the interstate and international borders within four hours of its announcement. This shocked the unprepared migrant workers, both internal and those working abroad. This created workers being stranded without food, livelihood, safe place to stay and being desperate to return to India. The development of the Indian economy since 1990s had resulted in a greater divide between the marginalized communities and the upper classes. During the COVID-19 Pandemic, the underprivileged and marginalized communities are hit hardest. The basic needs of and human rights were not addressed the COVID-19

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further widens the severe social divide. Loss of jobs, low wages, and lack of basic amenities of education, health care, food and safe water became the harsh reality for the marginalized migrant worker population. They are more exposed to the greatest risk during the COVID-19 lock-down in India with total unpreparedness of the government systems.³

EVOLUTION OF LABOUR MOVEMENT AND LABOUR LAWS

The history of labour exploitation in India can be recognized back to the colonial period and recalled from well-known events that unfolded during Gandhiji's Satyagraha movement in Champaran district, Kheda and in form of Ahmadabad Mill strike in the pre independent era. The labour movement in India started taking an uproar only after the Royal Commission on Labour came about in 1931 further triggering publication and research on labour history. The establishment of International Labour Organization which came because of the World War I led to widespread demands pertaining to labour problems such as reforms in wages, social security, general welfare, and social justice for the working class across borders.⁴

MIGRATION MEANING

Internal migrant flows can be classified based on origin and destination. One kind of classification is 1. Rural to Rural, 2. Rural urban, 3. Urban rural, and 4. Urban to urban. And another way of classification of migration is 1. Intra State and 2. Interstate. Migration is the movement of people away from their usual place of residence, across either internal (within country) or international (across countries) borders. The latest government data on migration comes from the 2011 Census. As per the Census, India had 45.6 crore migrants in 2011 (38% of the population) compared to 31.5 crore migrants in 2001 (31% of the population). Between 2001 and 2011, while population grew by 18%, the number of migrants increased by 45%. In 2011, 99% of total migration was internal and immigrants (international migrants) comprised 1%.

CONSTITUTIONAL PROVISIONS OF WELFARE STATE AND ITS APPLICATION TO MIGRANT WORKERS

The term socialist was added to the preamble through the 42nd Constitutional Amendment in 1976 to categorize India as a welfare state where the government protects and promotes the economic and social well-being of its citizens, and this concept is reflected in the Directive

³ Virendra Balaji Shahare, "COVID-19 lockdown: the neglected migrant workers in India", Asia Pacific Journal of Social Work and Development, pp-2-4 Published Jan 2021.

⁴ Tusharika Vig, "India's migrant issue during Covid-19 A crisis a crisis" International journal of law and social sciences vol-I 2021, pp.2

Principles of State Policy which act as guidelines to the state in policy making. To ensure these rights the Constitution has made the Central government responsible for interstate migration while both the Centre and States are tasked with welfare of labour, employment, social security, industrial disputes, and workmen's compensation.

In 1977, the Government of India constituted a committee to discuss the need for labour reforms in the country especially about migrant workmen. The committee felt that the contract labour (Regulation and Abolition) Act, 1970 existent at that time was insufficient to deal with problems of labours. In 1979 when emergency was lifted, the interstate workmen (Regulation of Employment and Conditions of Service bill was introduced in parliament by the Janata Party later it came force on June 11, 1979, to regulate the employment of interstate migrant workmen and provide for adequate and approved conditions of service.⁵

SOCIAL CHALLENGES DURING PANDEMIC

Article 19(1) (e) of the Constitution, guarantees all Indian citizens the right to reside and settle in any part of the territory of India, subject to reasonable restrictions in the interest of the public or protection any scheduled tribe. During the back journey many migrants faced caste-based discrimination at the quarantine centre. The people belonging to higher castes people with all the facilities and lower castes were kept on the other floor without facilities. Especially the international migrant workers like Kuwait migrants were stripped of their accommodation and were forced to resort to cramped shelters and unhygienic living spaces, getting limited support from a voluntary organization of one meal per day.

Many of international migrants had to incur their own travel fare during their repatriation, most of them had limited financial resources which were insufficient to bear the cost of accommodation, food and return tickets. And these types of migrants are low literacy level and have little to no bargaining power with their employers who retrenched them abruptly and alienated them in a foreign country.

MOBILITY CHALLENGES

Initially, the central government was not arranged any return facilities to stranded migrants both within and abroad, later several appeals from different state governments and stakeholders, civil society, and trade unions, finally strict mobility restrictions imposed by the

⁵ Rachel Thomas "an analysis of the migrant crisis in India in light of the covid 19 pandemic< ILI Law Review 202. Pp.30-32

government, large number of migrants are moved barefoot or in unsanitary lorries or trucks towards their origin states due to inability to sustain in the expensive urban areas. The migrants were faced numerous problems while attempting to cross state borders such as police brutality, grievous injuries and even death due to exhaustion and dehydration. And there was lack of coordination among the central and state governments, and employers were retrenched the workers due to lock-down. This result thousands being stranded on various interstate borders such as Karnataka, Maharashtra and Delhi and Utter Pradesh.

WOMEN'S EMPLOYMENT

The recent report of Azim Premji University in India shows that during the first lock-down in 2020, only 7 percent of men lost their jobs, compared to 47 percent of women who lost their jobs and did not return to work by the end of the year. Especially the 80 percent of informal sector women lost their jobs.

VIOLENCE AGAINST WOMEN IN INDIA

The pandemic creates trapped women at home. Domestic violence rates spiked throughout the world. In India, reports of domestic violence, child marriage, cyber violence and trafficking of women and girls increased within the first few months of the pandemic. According to the national commission of the women data, India recorded 2.5 times increase in domestic violence between February and May 2020.⁶

CHILD MARRIAGES

Covid-19 has made an already difficult situation for millions of girls even worse. Shuttered schools, isolation from friends and support networks, and rising poverty have added fuel to a fire the world was already struggling to put out. Worldwide it has been estimated that 650 million girls and women alive today were married in childhood, half of the those occurring in Bangladesh, Brazil, Ethiopia, India, and Nigeria.

AGRICULTURE AND RURAL ACTIVITIES

The lock-down and associated disruptions will affect agricultural activities and the necessary supply chains through several channels input distribution, harvesting, procurement, transport hurdles, marketing, and processing. Restrictions of movement and labour scarcity may

⁶ Prashanth Vishwanathan, "Your questions answered: Women and COVID-19 in India", UN Women, 27 July 2021, <https://www.unwomen.org>, site visited on 14-2-2022.

impede farming and food processing. March and April are the peak season for the sale of the rabi produce but harvesting will get hampered due to the departure of thousands of migrant workers. Shortages of fertilizers, veterinary medicines and other inputs could also affect agricultural production. Closure of restaurants, transport bottlenecks can diminish demand for fresh produce, poultry, and fisheries products, affecting producers and suppliers.

INFORMAL Sectors

According to the 2017-18 reports more 465 million workers are in informal sector. The worst affected sector is this sector. In the informal sector workers were facing problems of low wages. the lock-down has led to large scale losses of jobs and incomes for these workers. There are 40 to 50 million seasonal migrant workers in India. They help in the construction of urban buildings, roads, factory production and participate in several service activities.

MICRO, SMALL AND MEDIUM ENTERPRISES (MSMEs)

The micro, small and medium enterprises as a whole form a major chunk of manufacturing in India and play an important role in providing large scale employment and in the country's exports. Most of the MSMEs are badly hit by reduce cash flows caused by the nationwide lock-down. Their supply chain would be disrupted, and they would be affected by the exodus of migrant workers, restrictions in the availability of raw material, by the disruption to exports and imports and by the widespread travel bans, closure of malls, hotels, theatres, and educational institutions etc. this, in turn, would massively hamper the MSME business. Hence many employees end up with jobs and salary losses.⁷

TOURISM, HOSPITALITY AND MEDICAL VALUE TRAVEL

Large number of travellers have cancelled the travel plans by both foreign and domestic tourists, in has been impact on inbound and outbound tourism. About 67% to reduced it 52% all the segment of hospitality sector the meetings, incentives, conferences, and Exhibition has completely affected. The major international business been cancelled this causes nearly 8,500 crore loss due to travel restrictions.

⁷ Pradeep Kumar & Dr. Tushar Kant, "The economic impact of covid-19 with special reference to India", http://164.100.47.193/Refinput/New_Reference_Notes/English/06072020_125312_1021205239.pdf.

INTERNATIONAL MIGRATION AND COVID-19

The pandemic causes 3 million deaths as well as lock-down and closure of market and industries worldwide. And prompted unprecedented global restrictions on international mobility and migration that could have long term consequences. Every single country had imposed restrictions, this creates complete international tourism was declined. Several country governments have seized their borders and limit immigration and bolster nationalist agendas. The leaders of countries like United States, Italy, Hungary, Greece, and Lebanon, the public health crisis drove the implementation of historic limits on refugee resettlement, pushback of asylum seekers at the border, curfews in refugee camps the advance of border anti migrant rhetoric. Houthi rebels in Yemen allegedly expelled thousands of Ethiopian migrants and sent them to the Saudi border, where they were fired upon. Malaysian authorities raided migrant camps and arrested hundreds. Even while not official policy, the corona virus outbreak bolstered anti-immigrant narratives in places such as China, while racism against East Asian migrants and their children has been on the rise in the United Kingdom, the United States.⁸

COVID-19 PANDEMIC PUT PRESSURE ON HOST AND TRANSIT COUNTRIES

The pandemic had stranded 3 million migrants who were outside their countries of residence and wanted to return home but were unable to do so due to pandemic related mobility restrictions, according to the International Organization for Migration. Large numbers of migrants around the world were in transit when borders closed in the early days of the outbreak, trapped in places they only intended to pass through. Approximately 2000 people from Haiti and were caught in the Panamanian jungle when their path north was blocked. Guatemala, which had previously largely ignored migrant caravans heading towards Mexico and the United States, halted thousands of people in October virus concerns.

CONCLUSION

According to the 2030s Agenda for Sustainable Development recognizes contribution of migration to sustainable development. And including through the implementation of the planned and well managed migration policies. Other targets directly related to migration mention trafficking, remittances, international student mobility and more. For this in the international level in 1951 the international organization of migration been established it

⁸ <https://www.migrationpolicy.org>, visited on 16-2-2022

ensures the human management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems, to provide humanitarian assistance to migrants in need, and to promote diversity, inclusion of migrants in society, IOM has developed the platform 'I am a migrant'.

A CRITICAL ANALYSIS ON IMPACT OF INTERNATIONAL LABOUR LAW IN INDIA DURING THE COVID CRISIS

Nayana Bhushan¹

INTRODUCTION

Labour law emerged because of the demands of labourers for better conditions, the right to organize, and the concurrent demands of employers to limit the forces of labourers in numerous associations and to keep work costs low. Employers' expenses can increment because of labourers coordinating to win higher wages, or by laws forcing exorbitant necessities, for example, worker's organizations, can likewise rise above modern questions, and increase political force - which a few managers may restrict. The condition of work law at any one time is hence both the result of, and a segment of, battles between various interests in the public eye.

International Labour Organization (ILO) was one of the principal associations to manage work issues. The ILO was set up as an organization of the League of Nations following the Treaty of Versailles, which ended World War I. The main impetuses for the ILO's creation emerged from security, humanitarian, political and economic considerations. The founders of the ILO recognized the significance of social equity in making sure about harmony, against a foundation of the exploitation of labourers in the industrializing countries of that time. There was likewise expanding comprehension of the world's economic interdependence and the requirement for cooperation to obtain similarity of working conditions in countries competing for markets.²

The relevance of the dignity of human Labour and the requirement for ensuring and defending the interest of work as people has been cherished in Chapter-III (Articles 16, 19, 23 and 24) and 7 Chapter IV (Articles 39, 41, 42, 43, 43A and 54) of the Constitution of India keeping in accordance with Fundamental Rights and Directive Principles of State Policy. Labour is a concurrent subject in the Constitution of India inferring that both the Union and the state governments are capable to enact on Labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.

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² Deshpande, L., Sharma, A., Sarkar, S., & Karan A. (2004). *Liberalization and Labour: Labour flexibility in Indian manufacturing*. Institute for Human Development. New Delhi.

HISTORY OF LABOUR LAWS

The law relating to labour and employment is otherwise called Industrial law in India. The history of labour legislation in India is related to British expansionism. The industrial/Labour legislature enacted by the British were fundamentally planned to ensure the interests of the British managers. Contemplations of British political economy was normally central in forming a portion of these early laws. In this manner came the Factories Act. It is notable that Indian textile merchandise exports offered hardened rivalry to British textiles in the cost market and consequently to make India work costlier the Factories Act was first presented in 1883 on account of the weight welcomed on the British parliament by the textile magnates of Manchester and Lancashire. Hence India got the main specification of eight hours of work, the abolishment of child Labour, and the limitation of women in night business, and the introduction of additional time compensation for work past eight hours. While the effect of this measure was obviously welfarist the genuine inspiration was without a doubt protectionist.

The Indian rule to manage the connection among employer and his labourers was the Trade Dispute Act, 1929 (Act 7 of 1929). Arrangements were made in this Act for controlling the privileges of strike and lock out, yet no apparatus was given to deal with questions. The original colonial legislature went through significant adjustments in the post-colonial time since independent India required an unmistakable organization among work and capital. The substance of this partnership was consistently approved in tripartite conference in December 1947 in which it was concurred that work would be given a reasonable pay and reasonable working conditions and consequently capital would get the fullest co-operation of work for continuous creation and higher profitability as a component of the technique for public monetary turn of events and that all concerned would notice a détente time of three years liberated from strikes and lockouts. At last, the Industrial Disputes Act (the Act) brought into power on 01.04.1947 revoking the Trade Disputes Act 1929 has since stayed on rule book.

INTERNATIONAL LABOUR ORGANIZATION AND ITS GUIDELINES

International Labour organization has been active in being compatible with the changing society. Its guidelines have been seen as a standard for the nations in compacting the socio-economic aspect of the crisis regarding the Labour force. While the world is focusing on the health emergency that was not prepared for, in these circumstances the social condition of labourers has been subjugated over the other problems that has to be

immediately addressed. The term Labour has been used in the sense to address the marginalized working class because most of the Labour laws address their issues over the well doing workers in the society whose work is stabilized and secured. So here researcher not only dealing with such marginalized workers but the working Labour force.

ILO has been standing good in establishing laws that would fit even in this covid crisis. The researcher has here tried to establish link between the following rules to the situation of India. International Labour standards offer comprehensive guidance relevant to addressing the impacts of the pandemic. In this context, it is important to engage in processes and mechanisms to ensure efficient tripartite consultations as envisaged under numerous ILS to identify and reach consensus on effective solutions. In this regard “The Employment and Decent Work for Peace and Resilience Recommendation”,³ 2017 plays a vital role in giving a way for discussion forums to consult for ILS. As of now, cannot find any such international forums being taken up by India during the crisis. when lock-down was announced there were labourers who were not able to reach their hometowns, in this regard Centre had directed the states to arrange for their stay at the respective states? In many places they were not given adequate facilities and basic needs. Government lacked to give them adequate facilities.

Stabilizing livelihoods and income of labourers as well as safeguarding business continuity is to include selective measures to stabilize economies and address employment problems, including fiscal and monetary stimulus measures. Employment Policy Convention, 1964⁴ aimed at promotion of full, productive, and freely chosen employment. During crisis there was a huge issue of unemployment and underemployment. The business community who created huge employment went into losses as their market were down. As imports and exports dropped, huge business community depended on them must cut down their expenses to withstand the losses. This created unemployment where many labourers with secured and unsecured jobs were removed. Workers whose employment is terminated due to the economic impact of COVID-19 or for health and safety reasons should be entitled to a severance allowance or other separation benefits, unemployment insurance benefits or assistance to compensate for the loss of earnings incurred because of the termination, in accordance with the Termination of Employment Convention, 1982. But such provisions are not yet being allotted.

³ Ahsan, A., & Pagés C. (2009). *Are all Labour regulations equal? evidence from Indian manufacturing*. Journal of Comparative Economics. 37(1), 62-75.

⁴ Almeida, R., & Poole, J. (2013). *Trade and Labour reallocation with heterogeneous enforcement of Labour regulations*. Institute of Labour Study (IZA). Discussion Paper 7358.

In this respect, the Termination of Employment Recommendation, 1982⁵ highlights that all parties concerned should seek to avert or minimize as far as termination of employment for reasons of an economic, structural, or similar nature. It also provides that, where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated. When a Labour is terminated from job during the crisis, there are two cases either there are no salaries given or it's given to the much less which cannot support their families. In either of the cases, it's not maintaining the minimize standards. Despite being terminated, the competent authorities are not in the concern of their laborers.

Further, the Social Security (Minimum Standards) Convention, 1952 makes provision for unemployment benefits that worker whose earnings are suspended due to inability to obtain suitable employment should be entitled to, under certain conditions. Government of India though has been trying to help section of population with their basic livelihood yet giving promise for their employment is yet impractical in this emergency. In addition, the Employment Promotion and Promotion Against Unemployment Convention, 1988⁶ further calls on States to promote full, productive, and freely chosen employment, and provides that workers who have lost their jobs should have access to employment promotion measures, including employment placement and related services, including vocational training and guidance, with a view to their reintegration into the Labour market. It also calls for benefits to: (1) workers whose earnings have been reduced due to a temporary reduction in their working hours (i.e. partial unemployment); and (2) workers who incur a suspension or a reduction of earnings due to a temporary suspension of work, without any break in the employment relationship for reasons of, in particular, an economic, technological, structural or similar nature. The reduction of salaries is being common in every private and the government offices. It's difficult to see this provision in practical sense during economic crisis India is going through.

The Protection of Wages Convention, 1949⁷ provides that wages shall be paid regularly. Upon the termination of a contract of employment, a final settlement of all wages due shall be effected as prescribed, or if not specified, within a reasonable period of time. this

⁵ Chatterjee, P. (1998). *A possible India: essays in political criticism*. Oxford University Press. New Delhi.

⁶ Dougherty, S. (2009). *Labour regulation and employment dynamics at the state level in India*. OECD Economics Department. Working Papers, No. 624.

⁷ Ibid

provision talks about the labourers who has a secured job. The address to the daily wage workers has not been included here is what researcher feel as in India there is no such formal agreements between both the parties for the employment for daily wages.

Employers have the overall responsibility of ensuring that all practicable preventive and protective measures are taken to minimize occupational risks (Occupational Safety and Health Convention, 1981 which put responsibility on Employers to provide, where necessary and so far, as is reasonably practicable, adequate protective clothing and protective equipment, at no cost to the worker. As far as seen now the health workers in India has been working for the public health in the time of emergency of covid nineteen crisis by putting themselves into the risk of transmission of virus as it is a transmittal disease. As enough doctors are not available to treat the huge population, even medical students have been supporting the high professionals in this regard. In most of the hospitals, the safety equipment is not being provided to the employers [health workers] who are in direct contact with the patients. In the other cases the other staff health workers are not given much attention regarding their safety.

Under ILO standards notably the Forced Labour Convention, 1930⁸ the definition of compulsory Labour does not include work or service in cases of emergency, including in the event of an epidemic that would endanger the existence or the well-being of the whole or part of the population. Labour laws says workers have the right to remove themselves from a work situation that they have reasonable justification to believe presents an imminent and serious danger to their life or health. When a staff member exercises this right, he or she shall be protected from any undue consequences. In this regard many health workers have rights to quit their jobs for their own reasons. This is yet giving more emphasis on the part of workers and not the society. In the emergency if the health workers quit their employment for their safety them the society would have loses. Yet the option is not given by the government in India.

With respect to front-line workers, the Violence and Harassment Recommendation, 2019⁹ calls, specifically, for the adoption of appropriate measures for sectors or occupations and work arrangements in which exposure to violence and harassment may be more likely,

⁸ Fallon, P., & Lucas R. (1991). *The impact of changes in job security regulations in India and Zimbabwe*. World Bank Economic Review. 5(1), 33-58.

⁹ Hasan, R., Mitra, D., & Ramaswami K., V. (2007). *Trade reforms, Labour regulations and Labour demand elasticities: empirical evidence from India*. Review of Economics & Statistics. 89(3),466-479.

including health, hospitality, social services, and emergency services. Harassment on health workers have been seen in India in various instances. During the covid crisis the mob of Muslim community has hit doctors who went to test their health in Hyderabad. There are even instances where health workers were harassed by the public in the hospitals. Yet government is silent on the issues as its concentration is on the health safety so in that priority everything is seeming less.

INTERNATIONAL LABOUR LAWS AND ITS RESPONSE BY STATES IN THE CURRENT SITUATION

Covid crisis be a health emergency within the world. It's been common problem that's probably the first pandemic that has reported within the decade that's for all the state states. The solutions are being the aim of across. during these circumstances of each nation fighting against the identical enemy, the role of international actors becomes important. The covid cases and the lock-down wasn't uniform within the world. China was the first nation to declare lock-down and subsequently other national with the cases increasing declared nationwide lock-down to forestall the spread of virus.

In India, the outbreak of the COVID-19 pandemic, a sudden proclamation of the national lock-down (24 March to 31 May), the primary phase for 21 days, extended for 19 days, further extended for 15 days, and extended again for 15 days starting May 18, to interrupt the chain of transmission of the corona virus. There have been many sections of individuals who were laid low with this but visiting specialize in the effect of lock-down on labourers. It caused panic among scores of migrant workers in India's big cities. because the announcement of lock-down with a notice of but 4 hours spread, migrant workers were rendered instantly without work. Panic-stricken workers found bus stops and highways in large crowds hoping to succeed in their distant rural homes. the purpose of the lock-down measure was to initiate 'social distancing' to stop the spread of infection. But there was no way that the migrant workers could fulfil those conditions in their temporary, cramped urban homes without work, income, or social protection. In these instances many countries made their own laws to manage the problems of the migrant labourers who were stuck down in an exceedingly place of their work without able to reach their natives.

The International Labour Organization (ILO), responding to the sweeping changes in Labour laws proposed by state governments, has asked the authorities to confirm that each one such

relaxations adhere to global standards and are effected after proper consultation. It protects the well-being of both employers and workers and drawn up collective efforts and solidarity between the govt., employers, and workers. They (Labour laws) are an important means to advance social justice and promote decent work for all. The ILO had in April estimated that around four hundred million workers were at a risk of slipping into poverty due to a “stringent” nationwide lock-down implemented to manage the spread of corona virus. Subsequently, some states announced relaxing or doing away with major Labour laws to draw in investment.

The Uttar Pradesh government has proposed an Ordinance exempting firms from most Labour laws for the following three years. The Gujarat government has announced that it'll follow in UP's footsteps and permit new companies putting in shops. The Madhya Pradesh government has notified changes in Labour laws to try and do away with the requirement to avail multiple licenses for hiring contract workers and putting in place factories. it's exempted firms from various welfare provisions under the Factories Act, 1948, together with replacing inspections with third-party certification and giving exemptions from industrial relations laws.¹⁰

The laws made by the states weren't incompatible with the norms of ILO. India is one in all the founding members of the ILO, which came into existence in 1919. The Indian parliament has ratified forty-seven conventions of the ILO, a number of which relate to working hours, Labour inspections, equal remuneration, and compensation just case of injuries, among others. In reaction to the current the Central trade unions in India had termed states' changes an “inhuman crime”, which they said was in “gross violation” of the ILO's conventions, including that on holding tripartite dialogues. The unions said that they were “seriously” considering lodging a complaint with the ILO. trades union leaders have said the ILO has the facility to impose sanctions on rustic for violation of its conventions.

In response to the current ILO has made an announcement that states “COVID-19 has jeopardized the health and safety of innumerable people across India, and put immense pressure on businesses, jobs, and livelihoods. The country is making efforts to flatten the upward curve of infection. National and state-level measures to produce income and social insurance support to workers, and to revitalize businesses and the economy is advanced on

¹⁰ International Labour Organisation. (2012). *World of Work Report: Better Jobs for a Better Economy*. Geneva: ILO.

priority,” so the states don't seem to be adhered to the international standards and the center is silent on these issues.

CONCLUSION AND SUGGESTIONS

The research paper started with trying to take readers to the knowledge of the foundation of International Labour organization. It has seen how this organization helped development of labourers. The paper was much related to the position of labourers in the covid crisis that had deep impact on socio-economic position of labourer's section of the society in respect of their jobs, transportation, and so on. Though it has been seen that in detail as to how the laws were not implemented but still the other aspect could be the position of India. As its going through its economic instability with the proclamation of lockdowns to prevent the spread of virus its expenses override its income, in such instances it's difficult for such nations to concentrate from the labourer's point of view. Even in such circumstances the Centre has given direction to the state government for their protection and ensuring basic needed for the survival.

Research found that, the International Labour Organization acts as a guideline for the nation states to address the issues of Labour yet many countries who are members of ILO don't see this as a binding force. Nations ignore the very reason for such guidelines that has been prevailing and prioritize other issues in front. In this regard, it just acts as a guiding principle and not as a binding force.

When it comes to the point of weather it gets uniform standard within nations, states have passed laws in according to their own circumstances and central trade union though said it was against the basic principles, but no action is taken by the central government regarding the same.

SUGGESTIONS

- There is a need for the government to strictly follow the guidelines of the ILO.
- The enforcement part of the legislations regarding the Labour laws are to be monitored.
- International Labour organization need to have a strict monitor to their signatories.
- The new laws has to be enacted in regard to the Labour laws to compliance with the covid situations.

ISSUES RELATED TO MIGRANT WORKERS DURING THE PANDEMIC: MIGRANT VOICES AND HELPERS' PERSPECTIVE

Dr. Priya Rajkumar¹

Sulekha V.K.²

INTRODUCTION

India has a large base of migrant workers which according to some estimates make up almost 80% of India's informal workers' sector.³ Most of them are involved in short term work in cities or even seasonal work in the fields. According to the Economic Survey (2016-17), this interstate migrant population reaches up to 60 million. The needs of internal migrants are not well recognized by the Government. They alternate between various destinations in search for employment. Living conditions are often poor and there is a lack of adequate resources. Because of the lack of formal registration, they are often unable to avail benefits of housing, civic amenities, health care services and education for their children.

Almost 30% of the Indian population consists of migrants.⁴ Most of them are short term migrants who go back and forth between a source and destination. These short-term migrants are usually from vulnerable and backward groups with limited education, assets, and resources. Sixty percent of urban female migrants come from villages to urban areas after marriage.⁵ They usually belong to socio-economically deprived groups. On the other hand, 56 percent of male migrants give employment as the main reason.

Migration for employment-related reasons is given as the prominent reason for male migration in both rural and urban areas. In the absence of adequate data, 15 million child migrants have been reported in India. The major states from which migrants come from are - Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Andhra Pradesh Chhattisgarh, Jharkhand, Orissa, Uttarakhand, and Tamil Nadu. They are involved in sectors such as domestic work, construction areas, garment production, transport, and agriculture. Often their contribution to the economy and daily functioning in urban areas is not recognized.⁶

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³ Human Rights Watch, March 27, 2020 5:35 PM, <https://www.hrw.org/news/2020/03/27/india-COVID-19-lockdown-puts-poor-risk>

⁴ Interstate Migrant workmen (Regulation of Employment and conditions of service) Act, 1979

⁵ Census of India, 2011

⁶ NSSO 2007-2008

Starting from March 2020, the Indian Government initiated a nationwide lock-down with 958316 active cases and 77,472 deaths. The lock-down followed with strict rules against any form of transportation and mobility.⁷ During this crisis, large groups of internal migrants were forced to leave the cities and return to their villages. The crises reflected how the state did not protect human rights and employers/ contractors refrained from extending minimum support to the workers. What followed was a heart wrenching saga of a steady flow of migrants with families travelling in difficult circumstances back to their villages.

The Interstate Migrant workmen (regulation of employment and conditions of service) Act, 1979 was constituted to streamline issues related to the employment of interstate migrant workmen and women and lay down guidelines for their welfare and conditions of services. It clearly states the provision of displacement allowance to be paid to workmen which is nonrefundable and in addition to wages or another amount payable to him.²

The Act also mentions a journey allowance which is to be paid by the contractor in addition to wages. According to the Act this sum is not less than the fare from place of residence to place of work in the other State. Both outward and return journeys are to be paid to the workman as if he were on duty. However limited access to transport, poor finances and poor backup support from employers forced migrant workers and their families to return to their villages.

METHODOLOGY

Reviews of documents related to internal migrants were made and issues related to the pandemic from the perspective of migrants and other authorities were analysed. In depth interviews with social workers, volunteers, journalists, and organization leaders involved in extending support to migrant workers were conducted. The perspectives of the migrants and the helpers taken together provides an overview of the major psychosocial, economic, legal, health and other issues borne by internal migrant families during the pandemic.

THE PERSPECTIVE OF MIGRANTS

The migrants' stories documented by various non-profit organizations and news stories indicate that one of the most important reasons for choosing to leave the cities was unemployment. Other reasons given by the migrants included lack of access to amenities (food, health services) and even forced eviction by landlords or construction supervisors.

⁷ Ministry of Health and Family Welfare 2020. COVID-19: India. <https://www.mohfw.gov.in/>.

Construction workers often live in shanties and free accommodation provided by the employers. Migrant workers often live in shared spaces close to construction sites. There is limited access to toilets and sanitation is poor. Routine washing of hands with soap and clean water would also be quite challenging. Precautions for prevention of COVID 19 would not be possible. They were forced to leave, and many families were given 48 hours to collect their belonging and take their families with them.⁸

The fears of contracting COVID -19 were another major reason for migrants to leave the city. Considering the fact that majority of the migrants lived in crowded spaces, shared toilets and less open space, there was higher risk of infection. The lack of adequate resources would make hospitalization and medical expenses too much to bear. Some also expressed the fear of dying alone among strangers in the city and longed for the familiarity of their villages and relatives. These unexpressed but disturbing possibilities influenced the migrants to leave and begin the long journey home.

There were mixed responses from migrants who reached their villages. Some of them felt lonely and isolated when they were quarantined on arrival. Others enjoyed the company of the other fellow villagers and after 14 days were allowed to return to their families. Some of the migrants said that they would not return to the cities especially since the possibilities of finding work were less. Others were apprehensive that the lockdowns would continue after return and the situation would repeat itself.

News stories⁹ and books documented by non-profit organizations of their experiences working with migrant workers have brought out horrific cases of neglect, fatigue, rape and abuse of women migrants, travails of pregnant women and children and death.¹⁰

⁸ IHRB, "Migrant Voices: Stories of India's Internal Migrant Workers during the COVID-19 Pandemic" (November 2020), at: <https://www.ihrb.org/focus-areas/migrant-workers/india-internal-migrant-workerscovid-19>

⁹ Abhay Kumar, 2020. Migrant woman in Bihar coronavirus isolation ward sexually abused, dies. Deccan Herald. <https://www.deccanherald.com/national/north-and-central/migrant-woman-in-bihar-coronavirus-isolation-ward-sexually-abused-dies-822914.html>.

Madaik, Devyani. 2020. Odisha: woman migrant worker found dead near COVID-19 quarantine centre, 19th such death in state. The Logical Indian. <https://thelogicalindian.com/news/woman-migrant-worker-dies-of-suicide-21770>

¹⁰ Lockdown: Migrant workers and nomadic tribes, Dinanath Waghmare, Sangarsh Vahini, Nagpur

ANALYSIS OF HELPERS' IN-DEPTH INTERVIEWS (n=10)

In depth interviews were conducted with social workers (n=6), journalist (n=1), medical doctor (n=1) and organizational leaders (n=2) of NGOs who facilitated programs for internal migrants.

The approximate number of migrant workers helped by the respondents ranged from 2000 to 1, 30,000.

(i) Number of migrants helped

<i>Number of migrant workers helped</i>	<i>Number of respondents</i>
More than 2000	1 person
7000	1 person
50,000	3 persons
80,000 to 85,000	3 persons
90,000	1 person
1,30,000	1 person

(ii) Location in which Help was provided

The location at which the migrant was helped were in areas within Nagpur and on the national highways which led outside Nagpur to southern states. The areas mentioned by the respondents were - Nagpur Jamtha Wardha road (2 respondents), within Nagpur area (2 respondents), Mure Memorial Hospital, Hyderabad Road, National Highway 49, Maharashtra telangana border. The geographic location of Nagpur is such that many internal migrants from the Northern states of UP, Rajasthan and even metropolitan cities like Mumbai and Pune passed through Nagpur in their journey to the Southern states such as Hyderabad, Kerala, and Tamil Nadu.

(iii) Type of Support Extended

The type of support extended by the helpers, included caring for immediate physical needs of the migrants, psychosocial needs, logistic, financial, and messaging services. Majority of the responses were in relation to immediate physical needs of the migrants.

<i>Type of support</i>	<i>Responses</i>
Physical needs (11)	Served food, packed lunch (5 responses), provided first aid, medicines (4 responses), clothes, conducted medical camps, provided sandals (3 responses), provided sanitary napkins for women (1 response)
Psychosocial (6)	Counselling (3 responses), gave them courage in distress, prayed for welfare, provided emotional support
Logistics (4)	Organized transport with the help of government agencies for short distances (3), arranged place to bathe, wash, toilet facilities and place to rest
Financial (1)	Gave money for onward journey
Messaging services (1)	Sent messages to family/friends, mobile charging station

“Physically there were very weak due to dehydration. Many of them collapsed due to exhaustion.” Medical doctor.

(iv) Duration of services provided to migrants

According to the respondents, they worked continuously for 40 days or approximately two months. After the lock-down lifted, work for migrants continued in breaks throughout the year.

(v) Difficulties faced by the internal migrants

a. Responses related to difficulties faced in travel:

“They had to pay heavy charges for transportation, mostly couldn't find transportation too”. “Due to not getting transportation many migrants’ workers walked long way with their family without any travel support”. “Many were crying and seeking God’s help, it was painful time”. “Transport service was stopped by the Government; the migrant workers were helpless and worried and were not getting any help for travel and other needs.” “They were dehydrated and had bruises on legs”. “Those who helped them for travel, charged them exorbitantly.”. “It was painful travel in the hot sun”. “Workers carried heavy load on their heads with children walking alongside for many days.” “This was the worst situation I saw in my life after

partition of India and Pakistan”. “I saw small children walking without sandals in hot weather of April and May.”

b. Responses related to shortage of food:

“There was no food or drinking water.” “Many migrants and their children were hungry for nearly 3 days.” “Some people had with them stale bread.”. “Due to shut down of all shops and hotels it was difficult to get water, food.” “Children were crying without food and their parents were helpless.”

c. Responses related to physical health and death

“People were stressed, tired. Their legs were swollen, and they were dehydrated.” “Some people had fever and were exhausted.” “Some had bruises, sores and boils.” “Pregnant women were walking without any medical help. One family buried their dead child on the way.”. “Pregnant women were travelling in hot weather and small children were crying due to pain after walking long hours.” “Issues of health was most dangerous for workers. They did not get proper treatment in various areas, only few centres for health services were there.”

d. Observed behaviour and psychological issues among internal migrants

“Psychologically they were broken and, in this condition, either they commit suicide or hurt someone.” “Mostly headache, physical pain, moving sickness, minor scratches, feeling weak due to hunger and lack of sleep. Some of them were terribly tired and exhausted.” “Fear and hurts that left them shaken. Fear of being rejected and despised.”

e. Responses related to loss of finances/ assets / financial exploitation

“They were left with minimum finances to manage; mostly the owner of their workplace cheated them by paying less or no pay.” “They lost their employment and had no money with them.” “Their savings had finished, and some were paid very less money by their employer.” “They did not take any loan from the bank however loan was taken from the contractor and were unable to repay.” “Lot of exploitation took place by the employers” “The workers did not get their wages paid.” “Some people sold their cycle, television and other household things at a very nominal price, buyers took advantage of their situation.” “Some people helped them.” “They were considered like untouchable.” “They were left without any support, many employers cheated them, and uncertainty led them to walk to their villages. They left their belongings and unable to pay their rent.”

f. Risk of exploitation/safety of migrants during travel:

“It was pathetic and dangerous to see labourers stuffing themselves in transport vehicles, risking their health in whatever transportation they got.” “Many trucks and buses charged double amount of ticket” “Many people cheated them, and lorry drivers exploited them by charging excessive amount and not dropping them at their destination.” “Many workers were put in trucks like animals, with no space to sit and sleep properly. Many people travelled while sitting on top of trucks.”

g. Concerns about the future of migrants:

They feared the same situation may happen again. “They were not cared for when it was needed by people, no jobs, concern of health and security”. “Each state may provide jobs for workers.” “Many left with dreams and future shattered and suffered high financial loss.”

h. Concerns of migrants being accepted back home

“Many people were afraid that they may not be accepted back home due to Covid and other personal reasons.” “Almost all migrants were concerned that they would not be accepted in their villages due to fear of Pandemic.”

i. Other special concerns expressed by migrants during contact with helpers

“Hurts and distress of people, treating them inhumanly.” “Some pregnant women had to travel due to lock down” “They were hurt by Government” “People treated them inhumanly” “Survival of their family in future.” “Concerns of finance and health.” “Fear of acceptance, future and children’s education.”

(vi)Difficulties faced by Helpers while helping internal migrants

“Was painful to see people with so much of distress, restlessness and health issues” “Overcrowding and difficult to keep them in queue”. “There was a 24-hour constant flow of migrants, the volunteers were very tired.” “The numbers were overwhelming. There was risk of getting infected due to less safety equipment. The lock-down made procuring relief items difficult.” “There was initial fear among the medical staff for conducting outreach camps. Proper places were not available to conduct medical camps.”

(vii) Helpers' responses regarding help provided by local authorities and the role they played to address the pandemic

"The local authorities provided supplies and transportation and physical help." "Local people did not help." "Sanitation, hospitalization and onward travel support were given." "They did not intervene negatively when we were helping migrants" "Some people came with food and vegetables to serve them" "They did not pay much attention to the migrants, we (NGO) helped the migrants for travel, food and medicine." "They helped in arranging further travel of migrants until the state border. Gram panchayat helped in sanitization of the camp and disposal of garbage. Authorities gave permission and passes for travel for relief." "In general, there was good support from the Government authorities."

(viii) Helpers' perspective of how decision makers should have addressed the pandemic situation appropriately

"Thinking of the situation, any decision they make could have been communicated well with taking extra measures of provision." "Sudden lock-down was not appropriate, many people died." "They should have given 15 days' notice with transportation and food arrangement." "They should have arranged transportation, food and water for migrant workers." "They should have shown sensitivity, had mechanism of coordination between state and local authorities, giving time to people to reach safe zones and home." "Government should have given 1 month notice for this foolish decision." "They could have provided medical, transport help." "They should have had a proper plan to execute it". "Appropriate time period for travel should be given before announcement of lock down and necessary travel arrangements should be done for such migrant workers." "They must think about poor workers they have built many hospitals and homes we should respect them." "Do not go for sudden lockdown without taking people into confidence. Give time and make arrangement that people do not suffer. Have clear coordination between state and local authorities for good handling of the situation. Build confidence by giving right information."

ANALYSIS AND DISCUSSION

Migrant voices

The narratives of migrant workers were documented extensively by news agencies, social activities, and social organizations. People from all walks of life came forward to donate needed articles such as clothing, food, footwear, and other resources for migrant families. It seems that government agencies, health care workers and other local authorities worked to

reach out to the internal migrants. However, these efforts were not adequate and could not sufficiently address the critical issues which emerged as consequences of the COVID 19 pandemic.

THE MAJOR ISSUES WHICH WERE HIGHLIGHTED IN THE NARRATIVES OF MIGRANTS WERE AS FOLLOWS:

- a. Lack of work, food, forced eviction and lack of access to amenities were the major reasons why migrant families returned to their villages
- b. Overcrowded living facilities increased the risk of contracting COVID -19 which was rampant during this period
- c. Fear of dying alone amongst strangers due to COVID -19
- d. Women and children were most affected due to long hours of travel in difficult circumstances
- e. Psychosocial issues faced included rejection from family, insecurity about the future, anxiety, depression, and suicidality.
- f. Oppression and exploitation from employers.
- g. After reaching their villages, most migrant families were quarantined for 14 days before joining their families.
- h. Sustained economic losses, loss of assets, depletion of savings and uncertain possibilities of re - employment.

HELPER'S PERSPECTIVE

This paper analysed the perspectives of migrant helpers' who worked closely with them during the peak of the COVID 19 pandemic. The helpers' included social workers, journalist, doctor, and organizational leaders. The purpose was to examine the helpers' perspectives and gain insight from their experiences in order to inform future policies in relation to internal migrants.

The helpers said that they had reached out to between 2000 to 1, 30,000 migrants and their families, through their organizations. They worked for continuously for 2 months and with breaks through the year. Most of their work was in and around Nagpur city, on selected highways through which migrants entered and left the city. The major support they provided was in response to physical needs (11 responses), psychosocial needs (6 responses), logistic support (4 responses) and other miscellaneous needs (2 responses).

The helpers' responded in relation to the difficulties faced by the migrants. Their responses were based on their close interaction with the migrants and sharing their concerns. These difficulties are prioritized based on content analysis of the responses in decreasing order of importance.

- a. Lack of finances, assets and exploitation seemed to be major concern of migrants (10 responses) with mentions related to loss of money, cheating by contractors and unable to repay loans
- b. The strain of travel resulted in mental and physical exhaustion (9 responses) of migrants. Helpers particularly mentioned the fate of pregnant women and children. One family had buried a child on the way to the village. Migrants with physical disabilities, elderly, young children had to be carried.
- c. Physical exhaustion and death due to travel (8 responses) were frequently mentioned. Bruises, cracked feet, sores and physical pain were observed.
- d. Risks of exploitation from transporters and other antisocial elements, fears for safety (5 responses)
- e. Behavioural symptoms including rejection, fear of future, suicidal feelings. (4 responses)

Helpers' Perspective of the future concerns of migrants.

Migrants' fears centres around future insecurity, fear of the pandemic repeating itself, non-acceptance at home, memories of inhumane treatment.

Helpers expressed feelings of being overwhelmed by the constant flow of migrant families. They reported working overtime (at times 24 hours) with lack of rest.

There were mixed opinions about the helpfulness of the local authorities. In some cases, the local authorities helped in provision of relief items and in organizing transport and health care services for the migrants.

Helpers' suggestions for future crises include adequate planning and coordination of efforts, information about available services to be given to migrants and sufficient time for people to travel home with adequate transport facilities prior to the lock-down.

CONCLUSIONS

The perspectives of helpers' and migrants as well as review of secondary sources of information point out to the poor implementation of laws and welfare measures related to

internal migrants. It also serves to highlight the issues surrounding unemployment, gender issues, illiteracy and exploitation which surround internal migrant groups. Single women, children, physically disabled and other vulnerable groups are often not reached through the legal system and the benefits of government schemes do not reach them due to problems in the registration system. Migrant families often lose government scheme benefits when they move to other locations. Poor housing and lack of amenities, poor education facilities, exploitation and other issues are challenging for migrant families. The COVID 19 pandemic served to highlight many of the vulnerabilities of the unorganized sector and how they bore the brunt of poor welfare provisions, flaws in planning and execution of COVID 19 measures. The government organized Shramik special trains between May 1 to June 3, 2020, to permit transport of ¹¹ 58 lakh migrants to their homes. Relief camps were set up to provide accommodation with the help of the State Disaster Response Fund. Through the Aatma Nirbhar Bharat Abhiyaan the finance minister announced free food grains to migrant families. Through the Jawaharlal Nehru National Urban Housing Mission (JnNURM) programs for affordable housing was also planned. Some state governments also announced maintenance allowance for retuning migrants in the villages.

Despite these measures, the hardships of travel, loss of finances, psychosocial issues, exploitation, and death affected a vast majority of migrant families and have long lasting impact on their lives as well as the society at large. The government and non-profit organizations as well as civil society organizations need to reflect on these experiences in order to plan relevant and useful policies and programs to minimize the impact of the COVID 19 and institute sustainable plans for the welfare and development of internal migrant workers and their families. Special strategies also need to plan, keeping in mind the unique needs of the vulnerable groups and individuals among the migrants such as single females, children, adolescents, elderly and the physically disabled.

¹¹ [3] Order No. 40-3/2020-DM-I (A), Ministry of Home Affairs, April 29, 2020, https://prsindia.org/files/covid19/notifications/4233.IND_Movement_of_Persons_April_29.pdf.

ROLE OF UNO DURING THE PANDEMIC BEYOND RECOVERY

THE UNITED NATIONS MULTILATERAL RESPONSE TO PANDEMIC

Puja Sharma¹

INTRODUCTION

The rapid proliferation of Covid-19 virus and the way it is affecting the human race is a clear indication of its harshness. By June 2020, it had affected more than 400 thousand people worldwide. It has stalled the economies around the world. Millions of people have lost their jobs. Food scarcity is already felt. People are forced to extreme poverty and hunger. Survival is the most obvious challenge to the Governments and world bodies right now. Today's decisions have the potential to reshape our society and our planet for the better, if they are made wisely. Much more is at stake than only people's health when it comes to the COVID-19 epidemic. Global poverty and inequality are expected to rise as a result of the pandemic, which makes achieving the Sustainable Development Goals all the more imperative. Global suffering will worsen unless immediate socioeconomic measures are taken, putting people's lives and livelihoods at risk for years to come. This situation necessitates immediate development actions with an eye toward the future. The decisions that nations make today and the assistance that they get will impact long-term development trajectories. Following the Secretary-assessment General's on the socio-economic repercussions of the COVID-19 crisis, this framework offers the plan and roadmap for the immediate socio-economic response. At the national level, the emphasis is on the present. It will be implemented by UN Country Teams within 12 to 18 months as an urgent development offer, and it will support humanitarian efforts in nations where appropriate, as well as the WHO-sponsored Global Strategic Preparedness and Response Plan.

There is a high possibility that the pandemic and consequential lockdown will throw huge number of people to extreme hunger and poverty while million tons of food will be wasted due to the lack of supply chain facilities. Some regions of the world where people are already living in fragility, conflict, and violence is the worst affected due to pandemic. Even before the virus spread, it had the potential to revolutionize the lives of individuals who were not in school, not working, or otherwise not connected to the internet. The Secretary General of the

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United Nations has urged all member countries to stop hostilities and conflict in this trying time. On the other hand, the UNDP has indicated seven “tipping moments starting from reinvigorated pursuit of peace to substantial steps to combat exclusion and bigotry.” As a whole, they pave the way to development that will be substantial and sustainable. By 2030, the human race will get a historical transformation that could help the human race to save themselves from the mode of self-destruction and unbalanced economic progress that the world visualizing right now².



²Analytics show a potential 30% increase in domestic violence, repeating a pattern familiar from Ebola and other crises.

UNITEDNATIONS SYSTEM COMPREHENSIVE RESPONSE TO COVID-19

A microscopic enemy has dragged us to our knees and showed us we are nothing to nature. It is a world war-like situation today. The world is already witnessing the biggest global recession forcing millions of people to lose their jobs or spend days without food or water.

It's currently unclear how COVID-19 is transmitted, but a recently identified coronavirus is believed to be the culprit. The epidemic has spread to every nation and killed more than 900,000 people with 27 million instances as of September 11th. Many individuals show no symptoms at all or very minor ones, while others get gravely sick or die as a result. In terms of long-term health effects, we don't know enough yet. To combat the virus, countries throughout the globe have imposed travel and economic restrictions³.

More than a health catastrophe, the pandemic poses an existential threat to humanity. It's a human issue that's uncovered deep, structural inequities in society. No one is spared. There has been no exception for any one person, group, or aspect of society. No economy has been spared. As a result of the disaster, some of the most vulnerable groups have been adversely affected. All of us, as well as future generations, will be affected by our reaction. Unity and compassion must be the driving force behind a comprehensive strategy that encompasses society, government, and the planet. As the globe is more linked, it is not only morally important but also a practical requirement that we all work together to ensure that no one is left behind.

A three-pronged approach to the crisis has been taken, concentrating on health, protecting lives and livelihoods, and tackling the root causes of the problem to emerge from the pandemic with a more resilient and sustainable world in mind. Before launching a worldwide comprehensive health restructuring and response plan, the World Health Organization (WHO) and the Strategic Preparedness and Response Plan (SPRP) warned the world, especially the developed nations about the long-lasting effects of the pandemic on human lives and how the severity of the pandemic in one continent or region will affect the rest of the world. They asked everyone to be collaborative, compassionate, and open. Controlling the pandemic is the foremost target of the world right now; otherwise, each passing day the

³After receiving NGO, the GBV victims in Jinzhou reported threefold increase in domestic violence in February 2020 compared to the same month in 2019, while at the same time shelters for GBV survivors in some villages were purposed for other needs during the COVID-19 outbreak, and in some countries GBV hotlines and judicial processes are offering reduced services. Sixth Tone (2020) Domestic Violence Cases Surge During COVID-19 Epidemic (available at <https://www.sixthtone.com/news/1005253/domestic-violence-cases-surge-during-covid19-epidemic>).

severity of the disease will crumble more and more communities and countries in different ways. More testing, better medical facilities, and awareness of the disease are the need of the hour. We should also learn from this lesson and get prepared for the next pandemic or similar situations⁴.

Second, intensive efforts have been made to protect the lives and livelihoods of common people. The devastating effects of the pandemic have already shown its devastating effects on the economy and consequential effects on human lives. Keeping people going, maintaining the households, keeping the supply chains functioning, meeting at least the modern necessities, and going with the public welfare works are at the forefront of the agenda. The UN has asked the developing nations to come forward with all possible aids to combat this crisis and let the world face the severity of Covid-19. There is an urgent need for global support to the poorest of the poor nations. The UN has estimated that 10% of the Global GDP and timely support of the developed countries in terms of debt stoppage, debt restructuring is imperative right now. At the same time, support from international financial institutions is highly expected. Concerted support by several countries has been started to help the worst affected weaker nations to develop their respective national response strategies to fight against the pandemic and its consequences. The support from the UN or its member countries has taken different routes to provide both money and means to the poor countries facing food and water problems, seeking medical facilities, and willing to continue their education systems through distance learning⁵.

The UN is providing aids to ensure proper supply of medicines and testing kits to the medical facilities. Moreover, the UN urges the member countries to come together to face the situation together and help the countries that need support and infrastructure to survive. As the economy improves, we have a chance to address other pressing issues, such as climate change, inequity of all types, and a lack of adequate social safety nets. As opposed to going back to the old ways of doing things, we need to make the switch to renewable energy, green employment and infrastructure, and sustainable food systems. We also need to make the switch to more social inclusion, gender equality, and greater social safety nets. Health systems and long-term readiness need to learn from COVID-19's mistakes and successes. We

⁴Less than two-thirds of all countries have a social insurance and/or social assistance scheme in place providing sickness benefits.<https://www.social-protection.org/gimi/WSPDB.action?id=40>

⁵Such as travel, trade, culture, tourism, labor intensive manufacturing and construction sectors.

want a worldwide framework for international cooperation capable of meeting the issues and challenges of the twenty-first century.

THE UN'S THREE-POINT COMPREHENSIVE RESPONSE

The health response

The UN has been aiming to contain the virus, streamline the medical facilities, provide all supply chain support to the health facilities, promote the development of facilities for research on new vaccines for the virus, and enhance the readiness of the countries in accordance with the World Health Organization and the Strategic Preparedness and Response Plan. Health is the most fundamental and most needed public good, the UN health response effort has been geared to addressing the need of the whole world through demonstrating solidarity to the global community paying maximum attention to the most vulnerable countries.

Protection of lives and livelihoods

The pandemic has already shown catastrophic effects on life and livelihoods. The UN has urged for comprehensive plans and strategies to face the situation. According to the current estimate, at least 10% of the Global GDP with a massive drive for basic support to the poor nations can save the world from further deterioration of the current situation.

A better post-covid-19 world

The UN has some plans in the pipeline once the current pandemic situation is over. The international body wants to create protection for future pandemic situations and environmental crises. They have also included global support to mitigate the economic disparity and support for the poor nations to become self-reliant in their Sustainable Development Agenda. THE UN AND UNDP'S EVOLVING RESPONSE

To date, the whole UN system, including the economic and social resources of more than 40 UN Development System organizations, has been brought to bear. The UNDP serves as a critical part of the UN's effort to save lives on the earth. The WHO has been promoting its processes while supporting the UN's health response effort to support the global communities in this matter. Today, 131 specialized teams formed by the UN's member countries have been operating in 162 countries under the planning and supervision of the UN Resident Coordinators. There were three primary objectives for a COVID preparedness response in March: health systems assistance, multi-sectorial crisis management, and socioeconomic impact assessment and reaction.

A rapid Response Facility (RRF) has been formed that has already streamlined \$170 million new funding and more than \$150 million that was already programmed is now re-programmed in 130 country offices in five different regions. RRF aims to support the Governments for rapid response to the current pandemic situation⁶.

- Through UNDP, almost \$12.6 million was allocated to more than 45 countries to help the corresponding Governments to respond quickly to any kinds of crises situations jeopardizing common lives.
- Through UNDP has been supporting 13 countries mobilizing \$10 million global funds through re-allocating the funds from various existing grants.
- The UNDP has been collaborating with the UN teams assisting 88 countries through the funds raised by International Financial Institutions.

40 percent of the projects financed by the RRF have a female emphasis, 26 percent improve the health system, 32 percent integrate the SDGs, and 44 percent promote governance. Of the 130 nations sponsored, 79% are LDCs, 78% are fragile, and 64% are Small Island Developing States (SIDS). LDCs account for 79% of all countries supported (SIDS).

These activities have many other aspects and nations across the world can expect support in many forms. The second phase of the UNDP's program is directed at response building, quick recovery for the poor economies. The UNDP will also work with the local communities for micro-level socio-economic development. It is aimed to assist decision-makers in making decisions and coping with uncertainty in four interconnected areas. The UNDP mapped the planning and implementation partners that are working in the front. The four priorities that emerged as the most important ones are social protection, Governance, Green economy, and digital disruption⁷.

⁶ Business linkages between large enterprises, such as transnational corporations (TNCs) and local suppliers can be a channel for the transfer of technology, knowledge and skills to host economies. <https://unctad.org/en/Pages/DIAE/Enterprise%20Development/Business-Linkage-Programme.asp>

⁷ Sustaining Competitive and Responsible Enterprises (SCORE) is an ILO global programme that improves productivity and working conditions in small and medium enterprises (SMEs).



GOVERNANCE – BUILDING A NEW SOCIAL CONTRACT

The fields like digitalized welfare services, digitalized supply services, free access to information, and ethical governance are emerging as the increasing priorities of governments across the world. These fields are more critical and obvious than ever. Governance getting important in the conflict-affected regions of the world where freedom of people are at risk, life is getting worse with time and human right are violated almost every day.

To set a strong future for the sake of humanity and the survival of the human race, the UN has planned several programs through their partner communities and global groups. The aim is to develop social, awareness, social capital, inclusivity, adoption of human rights laws, and good governance⁸.

UNDP's governance and agency focus include the following major aspects⁹:

- Working with prominent financial and community development institutions such as the Human Rights Commission, The UN Office of Drugs and Crimes, and the International Monetary Fund.
- Working with the local level government bodies and institutions to make them easy with e-governance and providing them with knowledge support.
- Working with the United Nations Women (UN Women) to expel outdated role concepts and gender biasedness.

⁸ITC SheTrade initiative and website could be leveraged <http://www.intracen.org/itc/women-and-trade/SheTrades>

⁹The UNDS guidelines and tools, such as the Empretec skills development workshop and the Farming-as-a-Business training, can be rede-signed into online tools and deployed quickly in a new country.

- Working with the World Bank and UN Peace Building for bringing peace and stability in the conflicting areas.
- Working with the International Organization for Migration (IOM) and the United Nations High Commissions for Refugees (UNHCR) with the local governments helping the refugees to resettle, helping refugees to obtain required support, economic recovery strategies for migrants, and refugees, and engaging with civil society.

SOCIAL PROTECTION – UPROOTING INEQUALITIES

Prior to Covid-19 and now, social protection in the form of health and wellness, access to the basic services, knowledge, skill development, employment, and financial inclusivity are imperative to mitigate the economic disparities in the countries with extreme poverty and now covid-stricken. Women's movement for gender equality is spearheading a trend of change that must be stimulated to fight against entrenched societal resolutions, such as the redeployment of unpaid care labor and leadership, as well as the digital world.

Investing in these sectors needs sufficient budgetary room for the governments of the concerned countries. The appeal of the Secretary-General of the UN to look into this matter and debt freeze for the vulnerable nations will be helpful for these nations to focus on social development that in turn help in sustainable social protection reforms.

The social protection reforms of the UNDP include the following

- Looking into the opportunities of alternative financial inclusion such as temporary and universal basic incomes for all.
- Working with the UN Capital Development Fund (UNCDF).
- Reaching to informal and domestic workers, people with disabilities, and women.
- Working with the UN Women, IMF, World Bank, FAO, Red Cross, and WHO.
- Working with UNICEF, UNEP, ILO, and other such international partners.

GREEN ECONOMY – REBALANCING NATURE, CLIMATE, ECONOMY

A novel social protection and social safety net need to be adopted. This necessitates nature-based solutions such as ecotourism and green transportation, which are designed and de-risked to reduce the risks involved. This new social safety net must also encourage public-private partnerships, such as ecotourism and green transportation, and must also transform agriculture from a carbon contributor to a carbon sink.

A study conducted by IRENA makes it clear that the expenses for the efforts of decarbonizing the world would be eight times less than the value it would generate. Moreover, the study shows that more than US\$98 trillion additional global GDP would be created from now till 2050 through the measures of renewable energy employment. During the same period, the sector will generate 42 million employments.

Governments have a choice to make when it comes to investing tax-payers money: they may support fossil fuel businesses and other vestiges of the past, or they can invest in an inclusive green economy¹⁰.

UNDP's green economy focus includes

- Supporting the countries in developing and materializing urban planning, social planning, agricultural reforms, and green economy.
- Working with UN Habitat, UNEP, FAO, and other international level partners.
- Promoting initiatives that would include local communities.
- Working with ILO to expand the green revolution concept and motivate the local authorities for the same.

DIGITAL DISTRUPTION AND INNOVATION – FOR SPEED AND SCALE

Surveys show that in the countries where human development is less than expected, more than 85% of the children have left the primary education half in the way. In the developed countries with a higher development index, the same figure is around 20%. This means the time is returning to a period when the education system in the poor countries was under-nourished or unavailable.

The human development regression may be halved if the internet connection gap could be closed, allowing youngsters to return to school – although virtually. There has been a dramatic increase in the use of tele-education and telework as a result of the COVID-19 issue, but this is only the beginning. Our colleagues in UNICEF and other international organizations realize this. With digital transformation investments, pandemic response and acceleration beyond recovery are both being driven concurrently.

¹⁰ [https://www.uncdf.org/how-digital-payments-improve-lives-lead-to-inclusive-growth-migration./](https://www.uncdf.org/how-digital-payments-improve-lives-lead-to-inclusive-growth-migration/)

UNDP's digital focus includes

- To help governments and institutions keep their doors "open," we are helping them to operate remotely using digital platforms while preparing for a larger digital transformation strategy.
- Taking assistance from the International Organization of Migration, the World Bank, and the UN Capital Development Fund, a target has been set to expand digital inclusivity and empower people with digital banking.

In the second phase of planning to combat the pandemic, our focus will remain on delivering the four interconnected genres. It will strengthen our ground for mass development through the comprehensive and homogenous distribution of resources. As you adapt to the pandemic environment and learn lessons from the current situations, we will be able to develop a resilient strategy for the future. The UNDP has developed a set of policies and programmes to fit the grassroots level requirements.

REGIONAL CHALLENGES AND SPECIFICITIES

Different areas and sub-regions were targeted by UN policy papers for the unique issues they encountered because of the epidemic.

AFRICA

Some time is needed to fully understand the Covid-19 situation in Africa. It is primarily believed that the steps taken by the Governments for arresting Ebola and HIV/AIDS have to some extent slowed down the spread of Covid-19. However, the pandemic is slowly taking its toll in different countries and regions of Africa. The danger lies in a low rate of testing, poor sanitation condition, lack of awareness, and poor medical infrastructure in most of the African countries. Pandemic has direct effects on the economies which are reflected in increasing unemployment, loss of income, food shortage, financial crisis, political crisis, and threats to national security.

On 30th May 2020, a new policy was briefed by the World Economic Forum to provide strong support to the health systems of Africa. It includes drastic economic measures to protect the livelihoods of common people, sustain the business processes, maintain agricultural functioning and outputs, and maintain national peace and security. The active involvement of women and respect for human rights of every citizen are critical in this realm. There is an urgent need for a global package of at least 10% of World GDP for helping

the poor economies of Africa. Most of these economies are debt-ridden. Right now, \$200 Billion is needed for the groundwork in Africa and providing them the necessary infrastructure to combat the pandemic and related crises. African nations have put in place 245 social and economic measures. Some of which are income protection measures, agricultural activities measures, protection for travel and tourism, and gender-protection policies. There are also economic needs like tax relief at individual and organizational levels, improved access to medical facilities and essential services, easy access to banking and insurance facilities, and advanced food and water program.

The pandemic action plan for Africa started in August 2020. The first target was the unhindered delivery of personal protective equipment (PPE) for the health workers in 24 African nations for at least one year. For this purpose, the effort is given at the international level for raising a fund of \$100 million¹¹.

In the policy brief, the coordinated global effort has been emphasized. The Economic Commission of Africa (ECA) has decided to establish the UN knowledge hub for the pandemic in different African nations. During the lockdown period, the assistance from the UN for the African nations included different important and timely initiatives such as increasing testing capacity, supply of oxygen and essential medicines, supply of food and water, and implementation of different plans to create jobs. Apart from that focus is given on education, agriculture, and border security. Food donation camps, distance education through radio, and mobile monetary help have also gotten high attention from international bodies.

ARAB STATES

Many of the region's fundamental problems have been brought to light by COVID-19, and the consequences are expected to be far-reaching and long-lasting. As oil prices fall, the economy might decline by almost 5%, putting a quarter of the Arab world's people at risk of poverty and further destabilizing an already unstable and uneven area. All nations, no matter how affluent or poor, confront problems in adapting to climate change. Individuals whose lives are threatened by war have unique difficulties. To that aim, four sets of goals are recommended in this policy brief as a means of resolving long-standing tensions and structural problems. First and foremost, prevent the spread of illness, put a halt to hostilities, and care for those most in need. It's also important to deal with social inequities and gaps in

¹¹Aid for Trade is bilateral official development assistance provided to developing countries to address trade and sup.

protection as part of the rehabilitation process from COVID. In addition, the region's economic model should be reimagined in favor of more diverse, productive, green, and creative economies, as well as investments in human capital and infrastructure. Take use of this chance to emphasize human rights and improve public institutions that will boost confidence in government and reinforce the social compact, which is essential to combating the epidemic. If the Arab region is to recover from this catastrophe, it is imperative that the international community continues its assistance.

The policy brief's recommendations have been enthusiastically adopted. Several nations have implemented the proposed actions, such as creating jobs, helping small companies, and compensating families. Socio-Economic Response Plans that concentrate on human rights and vulnerable populations have been established by UN Country Teams in the area (or are in the final stages of development).

The UN has increased its aid and assistance in different forms for refugees and migrants. These aids and support include health care services, sanitation, financial assistance, education, reproductive health care, and essential medicines. The pandemic has affected several Arabian countries such as Iraq, Yemen, Libya, and Somalia. The health systems of these countries are not capable enough to combat the deadly virus. In Yemen alone, one-third of the confirmed Covid-19 affected patients have died. Pandemic and lockdown have increased poverty and food crisis in these nations¹².

SOUTH-EAST ASIA

There have been much fewer verified COVID-19 cases and fatalities in South-East Asia than in most other places of the world. Response to the epidemic has been quick and effective thanks to strong regional collaboration across a wide range of industries. It's no secret that COVID-19 has had a devastating effect on the most vulnerable people on the globe, revealing enormous inequities of income and wealth, as well as essential services and social protection. More than half of the non-agricultural labour force in the nations that make up the subregion—218 million people—is in danger of being driven back into poverty and unemployment.

An inclusive, resilient, and sustainable future can be achieved by following the recommendations in the policy brief. As a first step, addressing inequity must be at the heart

¹² IMF, 2020, Global Economic Outlook, April 14, 2020 <https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020>

of any policy reforms aimed at protecting the interests of those most at risk. This ensures that communities or any individual don't leave behind in this digital age. Communication through digital media is easy and fast. As a part of the pandemic response, South-East Asian countries need to adopt long-term strategies for economic sustainability and implausibility. Fourth, the route to a brighter future is paved by a commitment to fundamental human rights and the preservation of public space via sound governance. As the UN has appealed for a worldwide ceasefire, understanding the seriousness of the situation, the countries have responded positively to this appeal.

Even if public support for and compliance with public health measures remain strong, daily instances of COVID 19 across Asia and the Pacific area have grown since the brief was released on July 30, 2014. Discussions in the area, such as the Virtual High-Level Dialogue on ASEAN Post-Pandemic Recovery, have benefited from the policy brief.

The Covid-19 recovery framework for the ASEAN member nations will be presented to the representatives of the member countries. Support from the UN is also needed for sustainable strategies. This will help to plan long-term growth in the region and nullify the pandemic-related economic and social issues. There is a need for openness in the plans along with gender equality and opportunity for all¹³.

SUGGESTION

In addition to a health crisis, the pandemic is an economic crisis, a humanitarian catastrophe, a security issue, and a human rights crisis. It has impacted us as people, families, and society. Frailties inside and across countries have been brought to light as a result of the crisis. When it comes to dealing with this crisis, it is not exaggerated to say that our reaction will need a fundamental shift in society and international cooperation. An all-of-society, government, and globe effort to end this problem will need compassion and unity. We must work together to address concerns about national digital readiness so that local firms may participate successfully in the emerging economy and avoid falling further behind rivals from countries where these possibilities are more properly handled.

More rapid digitization of small and medium-sized enterprises (MSMEs), greater focus on digital entrepreneurship (including the need for new skills), better access to data and platform capabilities, and more robust regulatory frameworks are all necessary for developing countries' businesses to be competitive in the digital economy. International actors, including

¹³IMF,<https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression>.

development partners, United Nations agencies and Regional Commissions, regional economic communities, organizations concerned with digital development and cyber security, need to work together with governments and the private sector to leverage opportunities and minimise the risk of countries falling by the wayside.

CONCLUSION

Current global health has been affected severely by Covid-19 pandemic. This has opened up the inherent vulnerabilities of the world. People in vulnerable communities and nations have been hit disproportionately hard, which has brought to light social and economic inequality and the consequent holes in social safety nets. As a result of this inequity and exclusion, many people have been left with feelings of resentment and social instability. Inequality, marginalization, holes in social safety nets, the ecological disaster, and several other revealed insecurities and injustices may all be addressed when the economy recovers. There's no use in going back to the old ways; instead, we need a global system that can provide good employment, clean energy, healthy food, equality for men and women, robust social safety nets, and affordable health care for everyone.

This is the high time that we understand the core issues that the human race has been facing for centuries and the inherent risk factors that keep the human race in the face of challenge in different forms. Economic disparity, social imbalance, lack of knowledge, lack of human rights, or lack of education form inequality in some form or the other. That must be taken care of. Health emergency should be given due importance. The 21st century public services should come out of age-old trends. The world must realize the basic necessities and how can the human race save itself from vulnerabilities. This and future crises can only be avoided if we take strong action to address the conditions that put everyone at risk.

In order to maintain public confidence in government institutions, it is imperative that public monies be handled ethically and responsibly. Future generations' rights must be protected by boosting climate action and safeguarding biodiversity as part of the recovery process. Decarbonization should be accelerated by spending to stimulate the economy and the development of green employment should be prioritized.

Women must be given all rights like any other human if a nation wants to develop. In this matter, The UN has taken several remarkable steps. Gender equality and women rights drive have not gotten any pace since the outbreak of pandemic. But crucially, the success of female leadership is now more evident and clearer than ever before. We are all harmed by exclusion.

With the use of tangible measures gender quotas and special grants for women, it is possible to establish more unbiased leadership and decision-making.

To guarantee that the global economy and the people we serve are better off, the United Nations and its worldwide network of regional and national offices will engage with all governments. United Nations Country Teams are responding to COVID-19's immediate socio-economic requirements and mitigating its most urgent socio-economic repercussions in accordance with a global UN framework. It is in this context that UNCTs work with governments to implement policies and institutions that will help nations reshape their societies to be future-ready—to exploit new possibilities and manage rising risks—in the medium and long term. With the 2030 Agenda for Sustainable Development and the Paris Climate Agreement, as well as the Sendai Framework for Disaster Risk Reduction, we have a plan on how to proceed. Let's maintain our word for both people and the environment. The UN has developed socioeconomic response plans whereby they are assessing socioeconomic impacts of various plans. Several UN member countries have teamed up for social reforms and socioeconomic planning for underdeveloped countries.

The COVID-19 data portal will employ a global indicator framework with 18 indicators (and 71 sub-indicators) to monitor the success of the United Nations in their response to climate change. By breaking down data by kind of programme, region (rural/urban), sexuality, age range, and at-risk groups, we can guarantee that the United Nations is identifying and reaching people who have been overlooked. Reporting by UN Country Teams is still in its infancy. As part of the UN's efforts to increase coherence, openness, and accountability to better serve Member States' needs and goals, the reporting will take place via UN INFO. The UN Country Team's Cooperation Frameworks and Joint Workplans are digitised in an online planning, monitoring, and reporting platform. When it comes to programmes, collaborations, financial resources, as well as outcomes, this report gives UN officials and external partners a comprehensive picture. Nation-specific statistics from additional internal and external sources, including progress toward the SDGs, are accessible on dedicated country pages in the newly launched COVID-19 data site.

TIME TO RETHINK, REANALYZE AND REWORK - UN ON HUMAN MOBILITY ON THE LIFE CHANGING COVID-19 PANDEMIC

Ramanya Gayathri M¹

Sathiya C A²

INTRODUCTION

Covid – 19 is creating nationwide alarm in various sectors of the society. It has created in shutting down of all social, economic, and political development in the society. The only means and method used to control the spread of virus used is physical distancing measures as well as lock down steps. During the period of April 2020 more than 5 billion people have been asked to stay at home and restricted the human mobility. India was at risk and was taking steps in the area of health and economic outcomes. It can be seen that in developing nations around the world majority of the population affected is the informal economy. As of 2020, more than hundred million workers are affected by Covid-19 and its physical distancing measures. The workers in the informal economy were devoid of any income replacement jobs and means of livelihood. Due to crisis wholesale, retail, street vendors, traders, small crafts, men, car mechanics, domestic dressers, agriculturists, and personal service workers were affected in more numbers. The informal economy must fight against unemployment, insecurity and under employment. It is instrumental to preserve the informal economy as many young generations is representing this economy for the fullest benefit. The health, economic and social emergency has to be overcome from present and long-term negative consequences. UN is considered as the agency for development, the United Nations Development Programme works in eradicating poverty, inequality, develop policies, partnerships and build resilience to achieve the Sustainable Development Goals.³ The main purpose behind the UNDP is to maintain international peace and security, develop friendly relations, equal rights and to achieve international cooperation. It is being working hard to achieve the SDGs and provide maximum benefits to the people who suffer from Covid-19. The Sustainable Development Goals or Global Goals adopted by UN is considered as a Universal call to end poverty, protection of the planet and to check that by 2030 all people enjoy peace and prosperity. These Goals have been used to think and analyse the better measure to tackle the problems caused during COvid-19. This article tries to point out the

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³ <https://www.undp.org/about-us>

various Sustainable Development Goals and the measures taken by UNDP to face the challenges in this Covid-19. It is surmised in this Article that how UN played an important role in economic and social development of a Country. The authors have provided suggestions for better implementation of SDGs by various Countries and have given specific recommendations for betterment of Informal, vulnerable, migrant and Internally Displaced persons.

IMPACT ON INFORMAL ECONOMY

Informal economy workers consist of men and women; they are at deficit descent work atmosphere. There is always an insufficient, unpredictable, and irregular income base for the informal economy. Till now there is no proper law in India for the benefit of Informal sector. The absence of social security coverage, income replacement protection measures, failure to access health care benefits and no proper employer-employee relationship are the main drawback of Informal economy. Informal economy plays a major role in vocational training and represents many young generations to acquire skills and work to build a strong environment. During the pandemic usual measures to support income and economic benefits were not available to these categories of workers.

Migration workers, Internally Displaced people have to be recognized based on essential and nonessential systems as they form part of major informal economy. The contribution put by these categories is enomourous and it has led to largest economic benefits to the society.

The Covid-19 pandemic affected the human rights and created a dramatic implication on the mass number of people across globe⁴. The various strategies taken by Government on border closures, lock downs and travel restrictions has made the living impossible for migrant workers, Internally Displaced people. Keeping the human rights intact is one of the best considerations to ensure better outcome⁵.

It is very evident that all have to work together to streamline the issue and bring a viable solution. The retort should complement effectively to reach informal economy where both men and women are at stake. Various Organizations have come forward to identify the nature

⁴ Policy Brief on the COVID-19 and Human Rights:

https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf

⁵ Zolberg Institute on Migration and Mobility (2020), Human mobility and human rights in the COVID-19 pandemic: Principles of protection for migrants, refugees, and other displaced persons signed by 1,000 academics from around the world, <https://zolberginstitute.org/covid-19/>

and extend of the effect brought by Covid-19 on this part of human population, Steps were taken to identify the sectors which is most affected by the crisis. As during the pandemic many countries were affected like India, China, Europe etc and they have formulated usual measures to stimulate economic activity, provision for small enterprises and income protection measures. But there is a drastic shortcoming seen because of lack of legal recognition, social protection and uninformed benefits ranging from employment, subsidiary schemes.

At this juncture it is pertinent to note that all the social security measures are necessary to prevent the informal economy from poverty and affecting the survival of the people. The main aim is to identify the group of workers in the informal economy, this informality has to be rectified at the first instance. The predefined groups identified has to be focused for better social measures.

ILO has always a step head in identifying gender sensitive and non- discrimination issues which crop up during the pandemic scenario. ILO tried to carry out a rapid impact assessment on the informal economy organizations.

Due to increase in spreading of virus in the society the health conditions of both formal and informal economy is at stake. The Informal workers play a vital role in the economic development of every country. The 17 Sustainable Development Goals are integrated, and it recognizes that action in one area will affect outcomes in others. This development will balance all other areas like social, economic, and environmental sustainability. The sustainable Development Goals will help in ending hunger, poverty, diseases, discrimination, unemployment, and scarcity of resources.

ROLE OF UN AND SUSTAINABLE GOALS

UN has identified that Covid- 19 is devastating lives and livelihood of people and mostly affecting the vulnerable groups. Refugees, Internally Displaced persons, and Migrant workers are forced to move leading to increase in covid-19 risk. The main crisis is health related issue, socio-economic and social security protection.

The other problems identified by UN is gender-based violence, abuse and exploitation which has resulted in increase in crime rate in this unorganized sector. The core reasons which guide UN for taking steps are

- Health related concerns
- Lack of Social Protection

- Protection issues relating to gender-based violence, abuse, and exploitation.

UN puts out four main tenants for safe and security of mobile human population which will be helpful for any kind of such pandemic. UN is trying to address the issue of human mobility by focusing the migrants, internally displaced persons, refugees by forecasting an agenda 2030. Globally UN tried to resolve the issues caused to these categories of people by keeping the International Human rights intact. Firstly, UN tries to provide an inclusive public health to suppress the spreading of virus. It created a base line strategy to follow traditional methods from spreading of virus to resume economic activities and to achieve Sustainable Development Goals⁶.

Secondly implementation of travel restrictions and cross border control plans which work hand in hand by respecting human rights and protection principles for migrants and refugees.

Thirdly proper health care facilities should be accessible to all including vaccines, diagnostics and treatment.

Finally, regularization of pathways without any unnecessary restriction to the migrants and refugees is one great step at this instance. Many countries have accepted this challenge even though they were facing social, economic and health related encounters.

The brief description of these above-mentioned tenets can be suggested to fulfill a) a proper guidelines formulation which can be followed in a long run. b) a balancing solution by giving importance to human mobility and Covid-19 crisis. c) working together to reach the goal and d) mobile human population to take self precautionary measures.

UN with its functioning with International Human Rights, International Health Regulations 2005 and International Travel Norms have tried to make it by removing overburdened and constraining formalities. UN stressed on working together by creating common standards for border management and travel by giving importance to privacy, data protection and human rights.

UNs Sustainable Development Goals (SDGs) was earmarking on the better improvement of the economy. It focused on protection of planet from poverty, unemployment, and insecurity and to bring peace and prosperity. The SDGs recognized the development in social,

⁶ OHCHR (2014), The Economic, Social and Cultural Rights of Migrants in an Irregular Situation, available at: https://www.ohchr.org/ Documents/Publications/HR-PUB-14-1_en.pdf

economic, environmental sustainability. UN achieved the Sustainable Development Goals by creativity, knowhow, financial resources, and technology. It is necessary that all respective governments, medial, NGOs, institutions, volunteers should work together to accomplish the Goals⁷.

Sustainable Development Goals of UN

The 17 SDGs will help in creating a safer and secured life for informal economy who have suffered during the Covid -19 pandemic.

1. Ending of poverty – Sustainable Development Goals mainly aimed at eradication of poverty, as it is one of the main challenges faced by the humanity. Too many people in human mobility faced the basic human need. The basic need for clean drinking water and sanitation has been satisfied in countries like China and India. Women suffer from poverty more as they are paid less, education and suffer a lot. Climate change and food insecurity are leading the life miserable to the human mobile population. As per the UN report more than 736 million people are under extreme poverty. UN by the SDGs has been determined to reduce the poverty to all age groups. It focused on implementation of appropriate social protection as well as equal rights to economic resources.
2. Ending of hunger, improving food security and nutrition. – Under nourishment and famine are affecting the life and livelihood of many during the pandemic. It is also affecting the development of many countries. The SDGs aim to all kinds of malnutrition and hunger by 2030. The UN worked in promoting sustainable agriculture by supporting small scale farmers, access to land, technology, and markets. The steps also involve international cooperation in providing technology and infrastructure to improve the quality of agriculture. It is determined that by 2030 the investment, infrastructure, research, and livestock gene banks are enhanced. Doha Development Round guidelines must be undertaken for export related subsidies and measures.
3. Health and wellbeing of all – Death and Diseases had increased during this pandemic, but UN has worked in the Life expectancy to a great extent. Good health gives ways for sustainable development and 2030 Agenda. Universal Health Coverage is appropriate for reducing global mortality rates. Even epidemics of AIDs, Tuberculosis and other diseases will be reduced by 2030. Achieving universal health coverage, financial risk protection and quality health care, affordable medicines and vaccines are considered as mandatory

⁷ OCHA (2020), Global Humanitarian Response Plan Covid-19, available at:
https://www.unocha.org/sites/unocha/files/GHRP-COVID19_May_Update.pdf

goals for the United Nations. Doha Declaration along with the TRIPS Agreement the public Health is protected.

4. Promoting quality education and lifelong learning opportunities. – UN has been working in achieving the target of Universal education since 2000. There is a remarkable success in increasing the literacy rate during these years. Children go out from schools due to poverty and other issues. The main goal was to achieve quality education for all for sustainable development. It mainly aims that free primary and secondary education should be given to all boys and girls by 2030. It also accompanies with affordable vocational training and high-quality higher education.
5. Gender Equality and empowerment of women- A step ahead the UN worked on ending the disparities against women and girls is necessary for sustainable future. Elimination of violence against women, harmful practices against women are the main criteria taken by the UN. The recognition given to unpaid care and domestic work through public services enhanced the value of women in society. Participation of women at all levels, reproductive rights, equal rights, and use of technology to empower women are the various goals of UN.
6. Water and Sanitation for all - Water scarcity has affected more than 90 percent of the population. By 2030 universal and equitable access to safe and drinking water to all. Improving water quality from hazardous chemicals and sustainable use of water.
7. Sustainable Energy to all – The Sustainable Development Goals helps the economy for sustainable and cheap energy for better economic development. International Cooperation to access clean energy and technology is the target behind the UN Goals.
8. Economic growth, employment, and decent work – Global recession has affected almost all classes of people. The Sustainable Development helped in increasing productive and technological innovation.
9. Sustainable infrastructure and industrialization – Technological progress in very much necessary for all kinds of development. Economic and Environmental challenges can be worked out for the sustainable development.
10. Reduction of inequality among countries – Inequality in developing countries is increasing by 11% every year. Lower income earners and imbalanced informal economy are lacking in sound social security policies. As UN is working on the sound policies of income inequalities, regulations are required to improve and monitor financial markets

and institutions. Migration and mobility are considered as the key tasks in achieving the sustainable development goals.

11. Safe, resilient, and sustainable human settlement – Sustainable human settlement mainly aims at creating career and business opportunities available as well as sustainable to all the people.
12. Sustainable consumption and production pattern - Achieving economic growth and sustainable development helps in efficient management of natural resources. It also encouraging industries and people to recycle and reduce waste. It also mandates in sustainable energy resources.
13. Action for Climate change – Global warming is causing a drastic problem and created irreversible consequences. Measures are taken in national level through policies, strategies and planning for climate control.
14. Sustainable use of oceans, seas, and marine resources – The habitat of marine ecosystem and coastal biodiversity has also been part of SDGs. Enhancing conservation and sustainable use are important for the betterment of biodiversity.
15. Protect, restore, and promote sustainable use of territorial ecosystems – environmental concern was considered as part of SDGs as mentioned by UN
16. Access to justice to all – Human mobility will always result in violence and insecurity which affects the country's development and affecting economic growth. Crime, exploitation, sexual violence, and torture will affect the peace and security of a country. The SDG mainly leads to rule of law and human rights for the betterment of the Country.
17. Global partnership for sustainable development – World is connected from all the sides, whether it is knowledge, data, technology, or development. Coordination policies will help in creating a more accurate and uniform laws for the betterment of the society at large. Universal rule-based measures will create a fair and beneficial system for many.

All these Development Goals provide for a strategic approach and protection of mobile population of the Country. The main SDGs, whose goals create a better impact on human mobility are a) Ending of poverty b) Ending of hunger, improving food security and nutrition c) Health and wellbeing of all d) Promoting quality education and lifelong learning opportunities e) Gender Equality and empowerment of women e) Water and Sanitation for all - Water scarcity f) Sustainable Energy to all g) Economic growth, employment and decent work h) Sustainable infrastructure and industrialization i) Safe, resilient and sustainable human settlement j) Sustainable consumption and production pattern. Informal economy will

get benefited only by providing benefits according to their needs. The UNs SDGs have to be implemented in national level for a better result. UN SDGs helped in framing of various national level policies and guidelines for the human mobile population. Other than these essential steps, the SDG of UN does not satisfy the major requirements of vulnerable moving population.

SUGGESTIONS AND RECOMMENDATIONS

These suggestions and recommendations help in analyzing the needs of a group whose problems makes the economic problem of the society.

1. It is suggested that the rules framed for this section of population must be effectively implemented so that the informal economy are benefited.
2. For every law to be enforced or implemented one of the best practices is monitoring and accountability. It is suggested that proper monitoring will ensure that Governments, NGOs, and other law enforcement authorities are living up to the responsibility for sustainability. The agenda of accountability help in making the authorities to work for the motto. So, it is very much necessary that proper monitoring autonomous bodies are necessary as well as the Government accountability should be made irrespective to the level of work. This Good Practice can be taken from the steps taken by Denmark by creating The National Statistical Bureau. This authority has been given mandate to monitor the appropriate implementation of Sustainable Goals. This initiative task can be applied in many countries like India for better outcomes.
3. Creation of awareness among people of different arena. In Informal economy wide range of people are affected in many ways. Few are unaware of their benefits which is available to them through various schemes of the Government. It is mandatory that even from the grass root level the people should made be given awareness of all benefits.
4. Building of new partnership for achieving the common goal, even though nations work together for achieving the common goal, it is important that between the states also there should be partnership agreements for the benefit and upliftment of migrant, internally displaced workers. An example for the same will be to provide housing settlement with food, sanitation, and medicine so that they are not affected drastically.
5. A committee must be formed to take need-based decisions for the workers during the time of pandemic or other important times.
6. Private – Public partnership for analyzing various human rights issues and creating a pragmatic decision. This network can be increased by involving various civil society

organisations, unions, foundations, private sector, students from higher secondary and Universities can also part of creating awareness and providing help to these mobilized people.

7. It is necessary this should be part of parliamentary debate as well as a matter of concern taken by MPs in their discussions. Various research and policy decisions can be undertaken only by encouraging the same in all parliamentary sessions, so that a common solution can be enhanced.

Taking the example of India these suggestions and recommendations carry out a drastic solution during the pandemic scenario. Even though we have Inter- state Migrant Workers) Regulation of Employment and Conditions of Service) Act 1979, due to non-implementation of the Act in various states many suffered during the lockdown period. No data was available about the number of people working as Migrant workers. Information about the benefits available to them were not reached to them in proper time to necessaire the same. The major drawback can be seen that there is no law for Internally displaced persons. Finally about Unorganized workers, The Unorganized Workers Social Security Act, 2008 has not been properly implemented to get the benefit out of it. Still there are thousands of people who are still unaware of the schemes and policies which are available to them.

CONCLUSION

Many countries followed different ways in protecting the people from Covid-19 impact. The step taken by Portuguese Government in granting permanent residential status to migrants and asylum seekers from June 2020. This has granted the migrants with full access to various social security schemes like health care, old age care. Various countries like Ecuador, Ireland, Chile has extended the stay permit automatically. The European Commission and the reports from UNHCR several states have adapted guidelines for asylum and procedures relating to it. As it can be seen that during this pandemic, it is the group of mobilized population is affected at large. For the benefit of these communities a common solution is to reimagine the guidelines for the benefit of this mass group of population. It can be highlighted that many of people in this category is working in the unorganized sector and their social security protection should be framed based on the suggestions mentioned above. UNs 2030 Agenda has been advancing central commitment to the mass. 2030 Agenda for sustainable development leads to Transforming our world, the goals and targets stimulate the humanity and the planet. Technology, knowhow, and financial resources is necessary to achieve the Sustainable Development Goals. The Sustainable Development Goals help to focus on

framing national policies and rules for workers in the Informal economy. Thus, the development of Country can be achieved only by proper cooperation and coordination of countries to achieve the Goals.

RIGHTS OF MIGRANT WORKERS AND ITS VIOLATION DURING PANDEMIC IN NORTH BENGAL

Roma Pradhan¹

BACKGROUND OF MIGRANT WORKERS: GLIMPS OF PAST TO PRESENT

According to International Organization for Migration (IOM) “Migrant Labours” are those who move for the purpose of employment. The ILO said that migrant worker are the persons who migrates from one place to another with a view to being employed other than on his own account and includes any person regularly admitted as a migrant for employment. Migration has been a feature of human existence for centuries. Humans have always migrated in groups and as individuals to seek freedom from war and conflict, to escape hunger and poverty, to find new economic opportunities and employment, to flee religious intolerance or political repression, or even to trade.² Due to migration the Europe able to establish the dominion over large part of the world. European settlers often brought new diseases to indigenous communities in the colonized regions, which decimated indigenous populations. The slave trade was one of the largest mass migrations of Labours in human history to meet the need of intensive field Labours in plantations owned by white settlers. The phase of international migration is linked to the rise of United States of America as an industrial power. Migrants sought to escape poverty and the political repressive regimes in their home countries and motivated by the prospect of economic opportunity settled in the Americas and the former colonies in the new world.³ The industrial revolution in Europe bought a new class of factory workers in world economy where capital and Labours were main factors of production in process of production in industrial revolution.⁴

The trends and implication of migrants from India varied from time to time. The tradition of out migration of Indians could be traced back to 268 to 231 B.C when emperor Ashoka sent messengers across the world to spread the message of peace given by Lord Buddha. However, systematic migration flows from Indian to various parts of the world were noted during the last two centuries and the origin of modern-day emigration was started in 18th century under the British rule during colonial period, the process of international migration

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² ‘Labour And Migration in India’ <WWW.aajeevika.org/labour-and-migration.php> accessed 10 March 2021

³ ‘Striking Women’ <WWW.srtiking –women.org/module/migration/history-migration> accessed 10 March 2021

⁴ W.N. Salve, ‘Labour Rights and Labour Standards for Migrants in India’ <www.ilo.org/legacy/english/protection/travail/pdf/rdwpaper22a.pdf > accessed 19 April 2021

from India had entered a new phase. The British's after abolishing slavery system in colonies substituted black slave Labour with Indian Labour to work on plantations and in mines. The first batch of unskilled Indian Labours was transported to Mauritius for sugar plantation. Afterwards, more such Labour force was recruited on contract to work on tea, rubber, and sugarcane and palm plantation and in mines. The countries where Indian Labours migrated were West Indian colonies, Fiji, South Africa, Mauritius, Malaysia, Singapore, Ceylon (Sri Lanka) and Burma. Apart from Labour migration to British colonies, a big number of Indians was also migrated to the advanced industrial countries like United Kingdom in Europe. In the early 19th century and to North America in 20th century. These emigrants were male dominated and temporary in nature but with advent of 20th century women were also stated migrating in a considerable number therefore, it became more of a permanent character. After independence there were two noticeable migration streams. Mostly it was forced in nature, a result of the partition of the countries in 1947 because of which about millions of people migrated involuntarily between India and Pakistan. The second movement was voluntary and was driven by the rapid growth of industries in port cities of a country. Small and medium industrial centers became dependent on unskilled Labourers coming from the surrounding countryside. For instance, most of the workers in the jute industry came from Bihar, Uttar Pradesh, Orissa, and Andhra Pradesh. The economic crisis due to lack of growth in the manufacturing sector impacted all types of migration streams. With the beginning of liberalization of the Indian economy in 1991. Policy makers, supporters of liberalization and its critics expected an increase to internal migration. The economic began to recover after post liberalization, there was a moderate increase in the rural urban migration between the states and the Rural to urban migration maintained a growth trend.⁵

Labour is an asset to the growth of national economy and socio-economic development of the country if properly organized and legally safeguarded. According to the Second National Commission on Labour 2002 in India only about 7 to 8 percent workforce in the organized sector is protected, while 92 to 93 percent is unprotected, unorganized and vulnerable. The migrant Labour is one of the different forms of unorganized Labour force.⁶

Migration is natural phenomenon. The human beings like other living creatures are forced to migrate when their survival is at stake. The human beings like other living creatures are

⁵ 'Migration Pattern in India' 4 INFLIBNET
<epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000453PO/P00
1844/M029725/ET/1525154057Module-3PS_MU_3.pdf> accessed 20 April 2021

⁶ V. G. GOSWAMI, *LABOUR AND INDUSTRIAL LAWS* (first published 1980, 9th edn, 2011) 846

forced to migrate when their survival is at stake. In exercise of welfare functions the Democratic Republic of India has codified various labour laws to protect labour from exploitation. Migrant is someone who moves from one place of abode to another whether forced or voluntarily. It includes persons who migrate from rural to urban areas, from underdeveloped to developed areas. Similarly, it includes persons who move from one state to another for better job avenues and consequent employment. Migrant labour force may be described as the force which moves from one place to another in the same state or in different states for survival or employment or search for better job avenues either with or without the help of sponsoring contractors. Millions of people worldwide have left the home in search of better employment but constrained by poverty and insecurity they are looking for any work whatsoever.

Migrant workers are increasingly in demand not only for high skilled and professional job but also for many low paid, less skilled job in the agriculture, brick field, cleaning and maintenance, construction work, domestic services, and health care. Most of migrant workers tend to be involved in unorganized sector employment such as agriculture and related activities domestic work such as cooking, cleaning utensils, washing clothes, sweeping, care of children and old ones. The migrant's women worker is generally engaged in these activities as they feel comfortable to undertake these activities as part of their traditional gender roles within their own families.

Inter-state migrant workmen are generally employed in agricultural activities, brick fields, crushing of stones, building construction, rice mills, dal mills, home based industries like handloom weaving, rural artisans, Zari and chikan works, agarbatti, papad making, tailoring and domestic services.

Migrant labours are generally unskilled, unorganized, uneducated and have low bargaining power, rather no bargaining power, they are poor ignorant or in a socially or economically disadvantaged position belonging to the lowest strata of society. The poor households participate extensively in migration in India. When a male worker migrates with his family is more prone to exploitation- economic, social, and otherwise. His children form part of child labour and sometimes even bonded labour without any sympathetic look towards their tender age and development. These unfortunate members of the society remain so unguarded that

they become victims of crushing accidents, killings, and terrorist violence.⁷ Indian migrant worker during nationwide lock-down due to pandemic have faced various hardships. With factories and workplaces short down millions of migrant workers had to deal with the loss of income, food shortages and uncertainty about their future. Thousands of them then began to walk back home with no means of transport due to lock-down. Many migrants died due to road accidents.

CAUSES OF MIGRATION OF LABOUR

Generally, migration happens from the states of Bihar, Orissa, Jharkhand, and west Bengal. The situations of surplus labour arising from scarcity of agricultural land, inequitable land distribution, low agricultural productivity, high population density and the concentration of rural economy almost exclusively on agriculture frequently lead to an increase in out migration. This combination of factors creates a push that is encountered more often in fragile environments. Such as natural calamities like drought, floods, water logging, riverbank erosion etc.

Another important factor is downsizing of public sector jobs and overall stagnation in job creation strategy in India and inadequate planning. Population explosion, rapid growth of labour forces, high rate of unemployment, uneven growth and development, religious backwardness, poverty, socio-economic and educational backwardness, illiteracy, and acute scarcity of livelihood resources are few more factors responsible for migration. In case of voluntary migration of unorganized work force is mostly on account of wage variations.

- Better employment opportunities and higher wages in economically developed regions and non-availability of employment opportunities and consequent hardship in the under-developed regions.
- The economic necessity, inter-regional disparity in economic growth due to uneven development and disparity between socio-economic classes is the most important reason in view of National Commission on Rural Labour.
- Freedom of movement in any part of the territory of India and freedom to pursue any avocation of choice as guaranteed by Article 19 of the Constitution of India legally permit people to migrate for better job avenues and on account of these constitutional provision's migration cannot be prohibited, although the migrant workers are hardly aware of these provisions.

⁷ *Id.* at 848.

- Despite hardship and exploitation, the income of migrant labour may be generally higher than what they would have been able to earn without migration.⁸

LEGAL FRAMEWORK RELATING TO MIGRANT WORKERS: INTERNATIONAL AND NATIONAL INSTRUMENTS

The protection of the rights of workers employed outside their countries of origin has been the subject of increasing concern throughout the UN system. A large array of international instruments exists to provide parameters for the regulation of international migration and standards for human and labour rights. There are three types of legal instruments set rules aimed at protecting the rights of migrants, such as International Human Right laws, International Labour Standards set by the International Labour Organization (ILO) and Conventions, such as the United Nation International Convention on Protection of Rights of All Migrant Workers and Members of Their Families (ICMRW).⁹ The rights and freedoms stipulated in the Universal Declaration of Human Rights apply equally to migrants as to any other individual. The protection of the human rights of men and women migrant workers and the promotion of their equal opportunity and treatment is also embedded in the Preamble to the Constitution of International Labour Organization (ILO) of 1919, and in the Declaration of Philadelphia of 1944. Special attention is devoted to the migrant workers in ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). Concerns for migrant workers has been expressed through the insertion of specific provisions targeting migrants in the respective Declarations, Plans and Programs of Action of UN World Conferences held over the past decade and the appointment of a UN Special Rapporteur on the human rights of migrants in 1997.

a. International Human Rights Laws

International human rights law is found in the International Bill of Rights, which contains the non-binding Universal Declaration of Human Rights and two general human rights treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These instruments protect all human beings regardless of their nationality and legal status. While the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) 1990 is the only UN instrument of direct relevance to migrant workers. It is important to keep in mind several basic or fundamental rights, which are frequently violated in respect of migrant workers. All migrant workers and their families regardless of

⁸ Goswami (n 5) 847-848.

⁹ United Nation Social Division, *Situation Report: International Migration in South and South-West Asia*.

their legal status are also entitled to the right to be free from arbitrary arrest and detention, which is protected by international human rights standards against deprivation of liberty, such as those in ICCPR Article 9. Particularly important human rights for migrant workers are the freedom of movement within the country and the right to leave.¹⁰ Right of equal access with nationals to the court so that migrant worker can seek redress for abuses in the country of employment.

b. ILO and UN Conventions Relating to Migrant Workers:

The first international instruments providing for more comprehensive solutions to the problems facing migrant workers include the Migration for Employment Convention, 1949 (No.97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) as well as their accompanying Recommendations.

c. The UN Migrant Workers Convention (ICRMW):

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention, ICRMW) was adopted in December 1990. While the long-term objective of the UN Convention is to discourage and eliminate irregular migration, at the same time it furthers the rights and protections of persons migrating for employment. At the heart of the protection of the rights of migrants' workers lie in their potential vulnerability to discrimination, exploitation, and abuse, especially in marginal, low status and inadequately regulated sectors of employment. Countries should ensure some minimum standards of protection, including the basic human rights, for all migrant workers. ICRMW and ILO Convention No. 143 contain provisions to ensure that all migrant workers enjoy a basic level of protection even when they immigrated or are employed illegally, and their situation cannot be regularized.¹¹

MIGRANT WORKERS LEGISLATION IN INDIA

The welfare state in exercise of welfare function has codified various labour enactments in India to deal with the problems in connection with labour rights. Labour being on the concurrent list the parliament as well as states have made laws dealing with various aspects of labour problem in India. One of the most important labour rights is the right to decent working conditions and social security.

¹⁰ International Covenant on Civil and Political Rights, art 12(1) & (2)

¹¹ 'International Legal Framework for The Protection of Migrant Workers' (OSCE) <www.osce.org/files/f/documents/b/a/19246.pdf> accessed 13 April 2020

The Preamble of constitution of India prescribes and promotes social justice for workers. Article 14 of the constitution uphold right to equality. Courts in India have rules equal pay for equal work is not just based on gender parity but even for casual workers as held in case of *Daily wage Laborer v. formal employee*.¹² The provision of Constitution envisages to provide social security for every citizen of the country under various articles. Article 23 and Article 24 of the Constitution provides right against exploitation. The article protects individuals against private citizens and not only against state. The ignorance of these Constitutional safeguard by the courts and silence of government has strengthened the narrative of indifference.¹³ The Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. The legislature and the executive are directed to design the legislations and policies for attaining the socio-economic democracy. These principles also serve as a guiding tool to unveil the scope of the fundamental rights.

In *Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore*¹⁴, the Supreme Court has validated the law on minimum wages invoking the provision on ‘living wage’ under the directives and justified the limitations on the right to carry on trade under Article 19(1)(g). The Directives are being petitioned to unveil the scope and ambit of the Fundamental Rights. Mere glance of the provision on the ‘workers’ clearly spells out the absence of domicile as criteria to enjoy the fundamental rights. A set of provisions on welfare of the workers is included in the Directive Principles. ‘Workers’ are used in three directives. Article 39(e) binds the State to formulate the non-abusive policy on health and strength of women and men workers. Article 43 provides for legislative measures for guaranteeing living wages to all the workers, industrial or agriculture. A directive added in 1976, Article 43-A, suggests for the participation of workers in the management of any industry.

These directives have not made any distinction between the workers of the migrated States from the migrant States. It is pertinent to mention that what these provisions promise cannot have a conditional scheme of implementation, least based on the regional affiliation/domicile of the workers. Reading of these directives with the right to social security enshrined under Article 41, it opens a new charter of life to the exploited and underprivileged with the commitment to attain not only socio-economic democracy but also economic democracy. The

¹² *Daily wage Labourer v. formal employee*, [1987] AIR 2342

¹³ M. Swapna, ‘Protection of Migrant Workers in India: A Practical Way Forward’ LSI <WWW.legalserviceindia.com/legal/article-3102-protection-of-migrant-workers-in-india-a-practical-way-forward.html> accessed 25 April 2020

¹⁴ *Chandra Bhavan Boarding & Lodging, Bangalore v. State of Mysore*, [1969] 3 SCC 84

scheme of Part IV does not suggest the entitlement based upon the place of domicile of the workers.¹⁵

THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITION OF SERVICE) ACT, 1979

This legislation has been recommended by the Compact Committee, which was constituted in February 1977, therefore recommended the enactment of a separate Central legislation to regulate the employment of Inter-State migrant workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, even after necessary amendments would not adequately take care of the variety of malpractices indulged in by the contractors etc. The primary purpose of this legislation is spread over seven chapters. The legislation encompasses registration of establishments employing inter-state migrant workmen, licensing of contractors, duties and obligations of contractors, welfare facilities etc. that needs to be provided to the workers.

SOME OF THE FEATURES OF THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICES) ACT, 1979

- a) This legislation will apply to every establishment in which five or more inter-state migrant workmen are employed or were employed on any day of the preceding twelve months. It will also apply to every contractor who employs or employed five or more inter-state migrant workmen on any day of the preceding twelve months.
- b) The establishment proposing to employ inter-state migrant workmen will be required to register with registering officers appointed under the Central Government or the State Governments, as the case may be, depending on whether the establishment falls under the central sphere or state sphere. Likewise, every contractor who proposes to recruit or employ inter-state migrant workmen will be required to obtain a license from the specified authority both state to which the workman belongs (home state) and the state in which he is proposed to be employed (host state).
- c) The contractor will be required to furnish particulars regarding the workmen in the form to be prescribed by rules to the specified authority of both the home state and the host state.

¹⁵ Devika Sharma, 'Migrant Workers Right' (The Scc Online Blog, May 28, 2020) <www.sconline.com/blog/post/2620/05/28/does-the-constitution-approves-the-labelling-of-migrant-workers/amp/> accessed 17 May 2021

The contractor will also be required to issue to every workman employed by him, a passbook containing the details of the employment.

d) Specific guidelines have been indicated regarding the wages payable to inter-state migrant workman and he is required to be paid wages from the date of his recruitment.

e) The inter-state migrant workman will be entitled to a displacement allowance and a journey allowance in addition to his wages.

f) The amenities that are required to be provided to the workmen would include provision of suitable residential accommodation, adequate medical facilities, protective clothing to suit varying climatic conditions and suitable conditions of work considering that they have migrated from another state.

g) Inspector will be appointed by the appropriate Government to see that the provisions of the legislation are being complied with. In addition, power has been given to the state Government of the home state to appoint, after consultation with the Government of the host state, inspectors for visiting the establishments wherein workmen from the former state are employed to see whether the provisions of the legislation are being complied with in the case of such workmen.

h) Deterrent punishments have been proposed for the contravention of the provision of the legislation.¹⁶

GOVERNMENT MEASURES FOR PROTECTION OF MIGRANT WORKERS RIGHT DURING LOCKDOWN

Union Government has taken unprecedented measures for labour welfare and employment generation across India during Pandemic. Some are laid below-

a) In line with Union Governments Advisory, fund released from building and other construction workers cess fund to construction workers, the sector which is estimated to employ maximum migrant workers.

b) Through interventions of dedicated 20 Control Rooms set up by Union Labour Ministry, stuck wages released to about 2 lakh workers.

c) Under Pradhan Mantri Garib Kalyan Yojana launched to help poor, needy, and unorganized sector workers of the country. Under this food grains provided free of cost to beneficiaries. So that no one is without food during pandemic and challenging time.

d) Per day wages under MGNAREGA enhanced from Rs. 182 to Rs. 202.

¹⁶ Goswami (n 5) 850.

- e) To facilitate employment of migrant workers who have gone back to their home state, Pradhan Mantri Garib Kalyan Rojgar Abhiyan has been initiated in 116 districts in mission mode.
- f) Financial package under Aatma Nirbhar Bharat has been launched to create employment opportunities for migrant workers.
- g) To facilitate migrant workers who are returning to the destination state for work, Ministry of Labour and Employment has issued Advisory Guidelines for all the State Governments/UTs on July 27th, 2020. Under these guidelines states are directed to nominate a State Level Nodal Officer to coordinate the implementation of various measures for the welfare of migrant workers who are coming back for employment.¹⁷

IMPACT OF LOCKDOWN ON MIGRANT WORKERS: THE FIELD EXPERIENCE IN DARJEELING DISTRICT OF NORTH BENGAL

The followings are the few cases study of migrant workers who returned to native places during lock-down

• CASE STUDY 1

Muskaan saha, went to Jaipur in the year 2019 with her mother Mrs. Kusum saha who is there since more than four years, to work and earn livelihood. She used to work in a house as a housekeep where she earns 10,000 as a monthly salary. But during lock-down she faced health issues due to non-availability of proper medical facilities and returned to home on 10 January 2021. She said that she continued her work during lock-down period the employer paid the train fare from Jaipur to NJP. When she returned there was less restriction on transportation so did not face much restriction. During lock-down she did not allow to meet with her mother who was in the same city. Presently she remains unemployed.

• CASE STUDY 2

Noor Alam, who used to work in MNC which is in Raiganj faced several hardships during lock-down. When company remains shut due to lock-down, she could not get salary so he with some of his friends form Simulbari Tea Garden stayed one month in Raiganj. Gradually they left with no money in their pocket, so they decided to return to home. He expressed that they did not get any help from government and the employer company during lock-down. So, they return home by walking and cycling. It took nearly 24 hours to back home. They did not have money to eat so they only had muri and water on their journey. They were 4 members in

¹⁷ Ministry Of Labour & Employment, *Measure of Government for Migrant Workers During Pandemic* (2020).

group who returned together. After reaching home all four were tested and three were allowed to go for home quarantine but only Noor Alam was not allowed for home quarantine by police authority due to the pressure of local people. He believed that it was due to his religion that he faced such discrimination. The school building where he was asked to stay for quarantine does not have electricity facilities, he said that he spent his day and night by sleeping on floor. Food and other essential things are provided to him by his family members. Now he is employed as civic police volunteer under Garidhura Police Station of Kurseong Block.

• CASE STUDY 3

Rajib Dorji, he was employed in Bengaluru as a Domestic worker in house of a Political Leader. He worked during lockdown but did not get regular salary and he is in constant fear that the lockdown might be extended, and he will be stuck in the place forever and might not get any chance to meet his family members. He returned in month of June by train but during his entire journey he did not get any food to eat. He only had water which he filled from random stations where train stops. Anyhow he reached home, now he is employed in Tea Garden as a field worker and do part time job in a temple.

• CASE STUDY 4

Sumir Darjee was also migrated to Bengaluru, where he used to work in a restaurant. Lockdown leads to the closure of restaurants and the employer could not pay the salary to workers of a restaurants, so his family used to send money for necessary expenses. When their savings got vanished, they asked him to return. So, he came back home during month of June 2020. Now he is working in Tea Garden as a factory labour, and he don't want to migrate again.

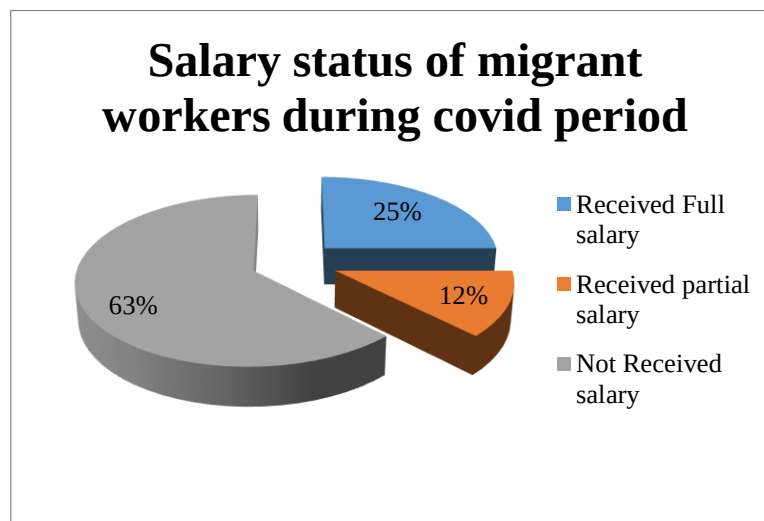
A SURVEY REPORT

S. No.	Name of migrant workers	Age	Place of migration	Occupation
1	Muskan Saha	19	Rajasthan	House Keeping
2	Rajib Dorjee	23	Bengaluru	House Keeping
3	Sumir Dorjee	25	Bengaluru	Restaurant
4	Bibek Mahato	20	Bengaluru	Restaurant
5	Bharat Oraon	26	Raiganj	MNC
6	Milan Oraon	22	Bengaluru	Restaurant
7	Laitu Asur	23	Bengaluru	Restaurant

8	Nur Allaham	26	Raiganj	MNC
9	Arvind Tamang	27	Bengaluru	Hotel (Chef)
10	Suraj Mahato	20	Bengaluru	Restaurant
11	Bikram Chhetri	48	Bengaluru	Hotel Manager
12	Suren Dorjee	29	Delhi	Construction
13	Bikash Mahato	35	Bengaluru	Entrepreneur
14	Kusum Saha	36	Rajasthan	House Keeping
15	Sourav Oraon	22	Raiganj	MNC
16	Raju Oraon	23	Raiganj	MNC

1. Salary status of migrant workers in covid lockdown period:

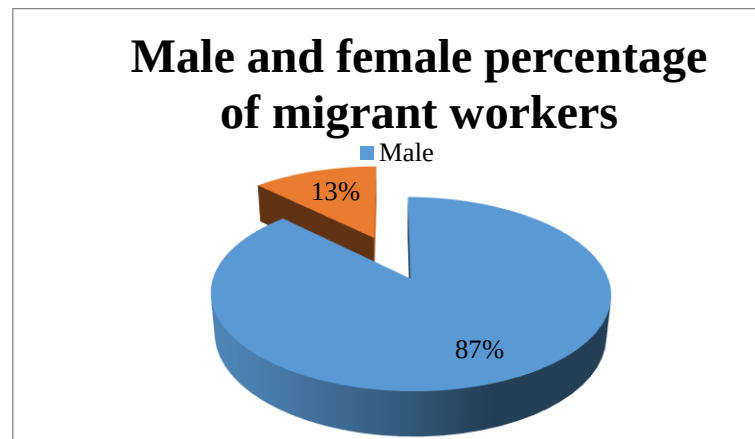
Workers who got unemployed and salary not received	10
Workers received full salary	4
Workers receiving partial salary	2



The above data shows salary status of migrants during the lock-down period. It is surprising to see that nearly 63% migrants did not get any salary or support from the private players where these people worked. If non-payment and partial payment is combined it reaches to 75% which created nightmares for these migrant labours.

2. Migrant workers gender Ratio and percentage:

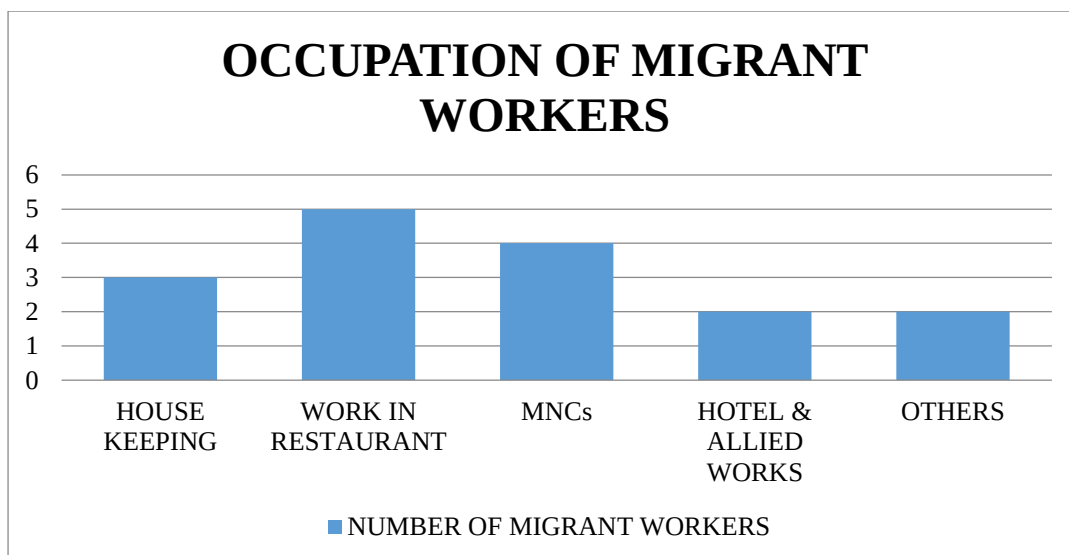
- Male: 14
- Female: 2
- Male/Female ratio of migrant worker: 7:1



The gender percentage of migrant labours shows a significant low percentage of female migrants which is 13%. It is evident that more than 90% migrant labours from Simulbari tea garden are males. Most number of people working in tea gardens is majorly females, this could be the reason of this gender disparity.

3. Migrant workers occupation or job:

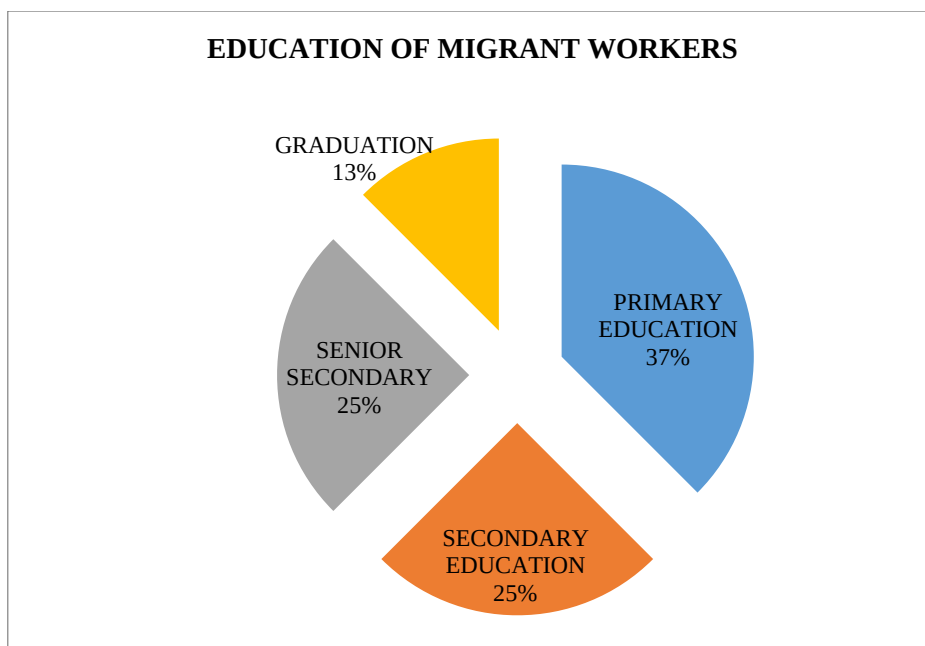
Occupation of migrant workers	Number of migrant workers
House keeping	3
Work in restaurant	5
MNCs	4
Hotel & allied works	2
Others	2



The above chart and tabulations show the occupation of all the migrant workers surveyed. The most number of migrant workers are working in restaurants, hotels, and allied services. Service sectors mostly food, hotels and tourism sector were worst hit during lock-down period, which directly impacted the migrant workers.

4. Qualification of Migrant worker:

Education	Number of migrant workers
Primary education	6
Secondary education	4
Senior secondary	4
Graduation	2



The above data shows the education level of migrant workers surveyed. It is clear that most of the migrant workers has primary education qualification and they migrate outside their native places for better job opportunities as tea garden lack opportunity for present youth. It also shows the development level of the region wherein least percentage of people have graduation degree or even a senior secondary certificate.

Reason for migrating	Number of migrants
Lack of job opportunity	9
Low payment in tea garden	5
Other reasons	2

5. Place of migration of workers:

Place of migration	Number of migrants
Rajasthan	2
Raiganj	4
Bangalore	9
UAE	1

It shows the preferences of place for migration by people who have migrated from North Bengal region of Darjeeling district. Mostly people migrate to Bangalore for better job opportunities. The least number of people from the region has migrated to other country.

6. Reason for migration to other places:

The main two reason of migrants are lack of good or no job opportunities available in the region and low salary provided in the tea garden. The major reason of migrant labour for migrating is lack of good opportunity, this shows that the region is underdeveloped and has huge scope of improvement in case of employment.

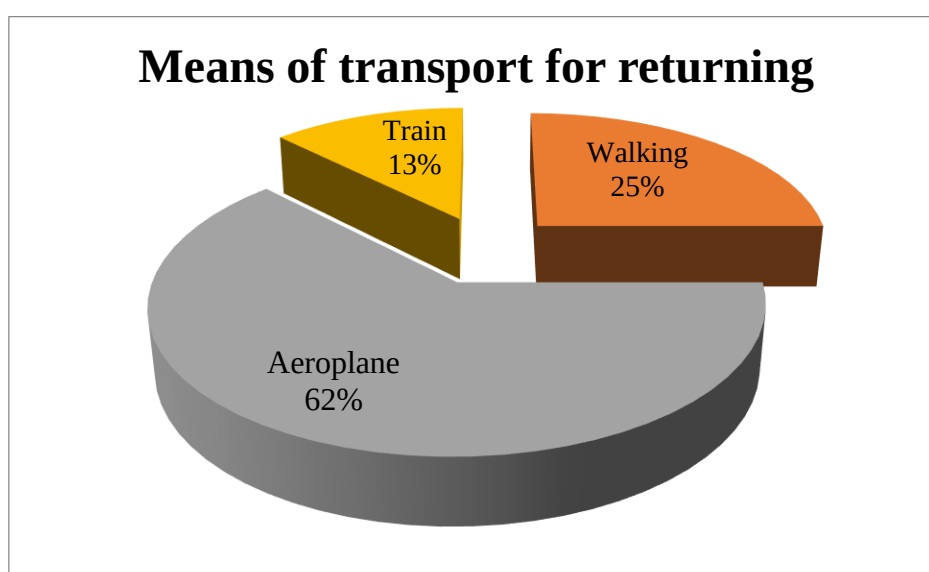
7. Reason for returning to native places during COVID period:

Reason for returning	Number of migrants
Non-availability of food & Non-payment of salary	10
Fear of getting infected by COVID-19	2
Health Issues	1
Other reasons	3

The above chart shows the main reasons for returning during lockdown. The major reason being non-availability of food and non-payment of salary by the employers of these migrant labours.

8. Means of transport used for returning to the native places during lockdown:

- Walking-4,
- Aeroplane-10,
- Train-2



The surveyed data shows that most migrants used airways to travel back to their homes which have been funded by their employer. But it is saddening to see 25% of the migrant workers took walking to return to their home.

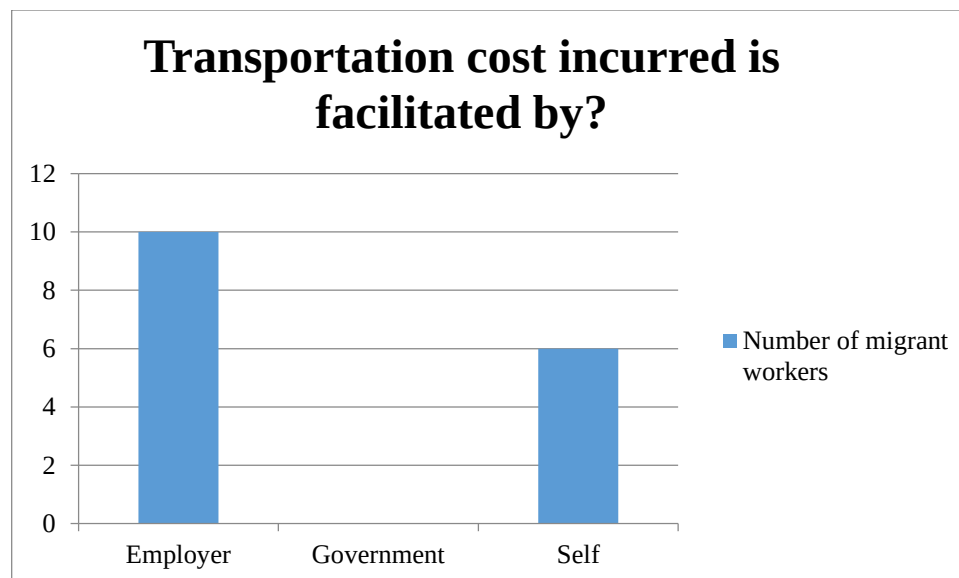
9. Payment given by employer for return of migrant workers during lockdown:

Paid by employer for travelling back during lockdown	10
Not paid by employer during lockdown	6

The above data shows that most of the employer incurred transportation cost for migrant workers to return home.

10. Transportation cost for returning back is incurred by whom?

Transportation cost incurred by	Number of migrant workers
Employer	10
Government	0
Self	6



It is evident from this data that government's help in relocating people from their workplace to their native place is next to none which is surprising yet confirmative as in the case of surveyed people.

11. Fooding facility provided in quarantine center by:

Fooding facility provided by	Number of migrants
Government	0
Tea garden management	4
Family member of migrant	12

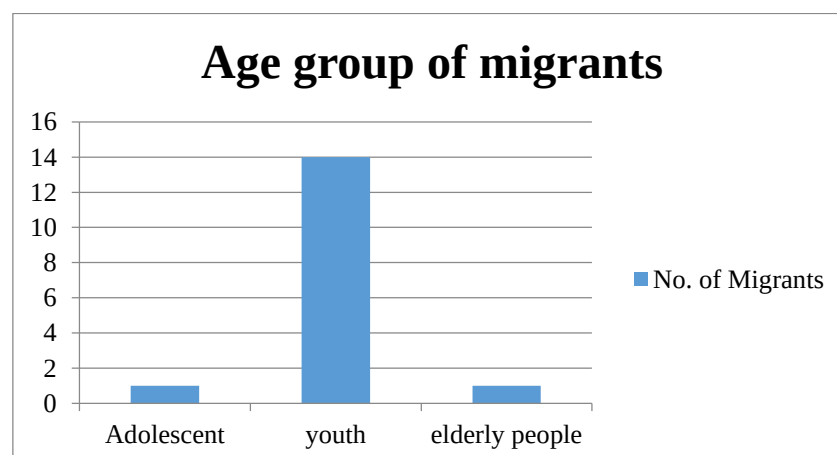
Though government did not help these migrant workers stuck in different places to reach home, it is more eye-opening data that no food facilities was provided by the government in the quarantine Centre provided by government. Tea management helped these migrants to some extent by providing food to some percentage of these migrants.

12. Challenges faced after and during reaching home:

Challenges faced	By number of people
Discrimination on the basis of religion	1
Discrimination on the basis of economy	2
Did not face any challenge	13

The above chart shows some of the challenges migrants faced during and after reaching their home location. Few migrants have faced discrimination on the basis of religion and economy, but most of these migrants did not face any challenge.

13. Which age group migrated the most:



The data is evident from above that majorly the youth has migrated to other places from North Bengal region of Darjeeling district in search of better employment.

14. Migrants employed after reaching home:

Employment after reaching home	No. of Migrants
In Tea gardens	5
Under MGNREGA	0
Civic Volunteer	1
Unemployed	6
Others	4

The above tabulation shows the employment status of these migrants who had returned home. It is evident that most of the migrants did not get any job opportunity in the aftermath of lock-down period. More than 30% returned to tea garden jobs which at least can support their living. The government measure to employ the migrants under MGNREGA has not been implemented.

CONCLUSION AND RECOMMENDATIONS

The survey conducted by the Author shows that the migrant labours who were out migrated for better job opportunity were suffered during lock-down period in host state or where they migrated for work. The employer and the government failed to protect the basic rights of migrant workers. However, the migrant did not get the free rations during lock-down in host state or place where they struck because of lock-down. The also faced police brutality when they tried to return home. Some of migrant workers gets travel expenses but some did not get it and had to return home during such hard times by walking.

During the time of pandemic lock-down all the rights of migrants were disrespected. But the role of highest judiciary in the country has been praiseworthy by its leading decisions during lock-down to ensure the migrant rights. The very success of the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the role of chief Labour Commissioner puts into question. The legislation is not so effective because of onerous requirement sent out in the law that would make their employment significantly

more expensive than intra-state workmen. The weak implementation is the absence of government preparedness for implementing such well-meaning impractical law. In order to implement this law alone, government inspector need not only have to maintain records of inter-state workmen, but also verify whether all other requirements regarding wages, allowances, accommodation, and healthcare are complied with is certainly not done.

These migrant workers should also be provided with the benefits of public Distributive System Card as other local workers to avoid buying food grain at higher price. Further, social protection architecture should be developed that allows for probability of services like PDS, health insurance, education to ensure easy and equal access to migrants. The state government should generate employment relating to tea tourism in tea garden area so that youth of tea villagers can find employment opportunity at their own place.

A STUDY ON THE IMPACT OF COVID-19 PANDEMIC ON CROSS BORDER MOBILITY AND GLOBAL TRADE

Sri Bhavanisha K S¹

INTRODUCTION

There has always been reliance of international trade and investment on the smooth mobility of individuals across the borders. The restrictions imposed due to the Covid-19 pandemic has placed unreasonable set back in the international trade and investment scenario. As a matter of policy, the World Trade Organisation in earlier circumstances has advised against placing any form of restrictions on the mobility of individuals during any kind of public health emergencies. The reasons cited by the World Trade Organisation pointed towards the actual effectiveness of these restrictions in practicality and the toll these restrictions will have on the economic conditions in the countries so affected.

But it has to be noted that in the case of the Covid-19 pandemic, the World Health Organisation had advised earlier on in 2020 to keep in place the cross border mobility restrictions owing to the fear of the outbreak of the disease. The World Health Organisation also stated that these restrictions were indeed necessary in order to help the nation states prepare for the negative consequence of the pandemic by providing them with ample time.² The World Health Organisation also advised that these restrictions are premised upon careful risk assessment techniques and therefore have to be implemented in accordance with the proportion of the risk involved in public health.³ Additionally, in the restriction placed must be for a short defined period of time and there should be regular and periodic revision and reconsideration of the restrictions based on the condition precedent at that point in time. Therefore, there cannot be a blanket restriction placed on mobility across borders for an indefinite period of time because ultimately it will cause great havoc to the economic conditions of the country.

Apart from all the health risks involved, it is undeniable that these limitations on cross border mobility has caused adverse effect on trade internationally. This is especially true in case of the sector of trade in services.

¹ LLM Student, Christ University, Bengaluru.

² Meghan Benton, Jeanne Batalova, Samuel Davidoff-Gore, Timo Schmit, 'Covid-19 and the State of Global Mobility in 2020', (2021) MIGRATION POLICY INSTITUTE, <https://reliefweb.int/sites/reliefweb.int/files/resources/mpi-covid19-impact-global-mobility_final.pdf> accessed 3 Jan 2022.

³ Juan-Manuel, Fracisco Lara, Juan Agullo, Hilda Garcia, 'Covid-19 and Cross-Border Mobility' (2020) TRANSBORDER POLICY LAB.

One of the most important aspects underlying successful and harmonious international trade and increased investment is that of cross border mobility of persons from one particular nation state to another. But as a result of the Covid-19 pandemic, there were numerous restrictions on cross border mobility owing to the health risks involved. As a result of these restrictions the international trade and investment have been negatively impacted. Especially in the trade relating to services, cross border mobility acts as a key aspect in order to help reach consumers in different parts of the world. This negative impact can be clearly noticed in some of the service sectors such as the tourism and the educational services sector. Additionally, this negative impact also spills over to the trade in goods. Therefore, there is a need at present to devise mechanisms that can allow for safe cross border movement without giving rise to health concerns and thereby providing a ground for improving the hindered trade and investments.

This study has been undertaken with the objectives to understand the significance of cross border mobility in relation to trade in services and trade in goods; to analyse the impact of the Covid-19 pandemic on the cross border mobility and investment; and in order to propose alternatives that ensures improvement in cross border mobility without giving raise to health related concerns. This research paper is limited to the analysis of the negative impact of Covid-19 pandemic on international trade. It is not the intention of this research paper to cover the impact in specific to any particular country.

TRADE IMPACT ON MOBILITY-RELATED MEASURES

In order to protect public health and promote efficient health care systems, the nation states took to implement various restrictions and limitations on trans-border mobility of the individuals in order to keep in check and control the further spread of the Covid-19 pandemic. The measures as advised by the World Health Organisation.

These measures taken as an effort in order to curb the Covid-19 pandemic have been implemented in the form of temporary restrictions on cross-border mobility related aspects. These restrictions have been seen to be implemented by the nation states in different forms, some in the form of entry bans, while some nations in form of exit guidelines, whereas others in the form of travel restrictions and quarantine requirements depending on the intensity of spread of the Covid-19 disease within their territory.⁴

⁴ Travelcentre, <<https://www.iatatravelcentre.com/world.php>> accessed 9 January 2022.

IMPACT OF MOBILITY RELATED MEASURES ON TRADE IN SERVICES

The impact of closing down of the economy by means of restrictions imposed on the cross-border mobility of individuals had the most drastic impact on the trade relating to services. The General Agreement on Trade in Services (GATS) recognises 4 different modes of flow of services. The four being, cross-border supply (mode 1), consumption abroad (mode 2), commercial presence (mode 3) and presence of natural persons (mode 4). In the above given 4 modes of supplying services, mode 2 and mode 4 were the most affected as a result of mode 2 restrictions placed on cross-border mobility.⁵

Under, the phrase ‘consumption abroad’ refers to the movement of an individual from one member country to another in order to obtain and enjoy the service offered in that country (i.e. tourists/patients). Additionally, mode 4 which is dependent upon the movement of natural persons from one member state to another in order to supply a particular service is also negatively affected. Therefore, because of the higher dependence of these two modes on the physical closeness or proximity to provide for a successful supply of services, these two modes face the most serious effect as a result of the restriction on cross-border mobility.⁶

Impact on services trade through ‘consumption abroad’ (GATS mode 2)

As discussed above the GATS mode 2 service trade to a huge extent focuses on the physical closes of the parties to the service trade.⁷ A glaring example of this service mode is that of tourism. In this case, the travellers either for business or pleasure travel abroad in order to seek or provide a service.⁸ As per the statistics collected, tourism accounted for about one-fourth of net employment creation over the last five years and an estimated 10% of economic production globally.⁹ This becomes important because in the last few years, tourism amounted for a crucial source of growth of GDP in some of the developing nations.¹⁰ But unfortunately the COVID-19 outbreak has caused an unprecedented catastrophe in the industry. In terms of both traveller numbers and income, foreign tourism is anticipated to

⁵ The General Agreement on Trade in Services, 1995.

⁶ P.V.Sharma, New Trade Policy (2004-2009) & WTO Regime (Kanishka Publishers, 2005).

⁷ Patrick F.J.Macrory Et Al, The World Trade Organization: Legal, Economic and Political Analysis (Springer-Verlag, 2005).

⁸ Mitsuo Matsushita, The World Trade Organization (WTO), Law Practice, & Policy (Oxford University Press, 2003).

⁹ World Travel and Tourism Council, <<https://wtcc.org/Research/Economic-Impact>> accessed 9 January 2022.

¹⁰ Vibha Mathur, WTO and India – Development Agenda for the 21st Century (New Century Publications, 2005).

have its worst year since 1950 in 2020.¹¹ In an effort to recuperate money lost owing to a drop in foreign visitors, several WTO members are attempting to enhance domestic tourism, followed by a revival of regional tourism.¹² But however this means that the regions that to a large extent and solely depend on the foreign tourists would be the most affected.

Another very important area of impact is the educational services sector. Tuition costs make up the majority of most institutions' earnings, with over 5 million overseas students already paying greater tuition than their local counterparts.¹³ Border restrictions and travel prohibitions caused by COVID-19, along with local lockdown measures, have forced several higher education institutions to close campuses and transition to online teaching and virtual assessment techniques. Many university systems that have invested in luring an increasing number of international students are especially vulnerable¹⁴ to the crisis, with some schools prepared for a decline in international student enrolment of 50 to 75 percent.¹⁵ But it cannot be denied that despite all this, new export markets and pathways may arise as a result of the health catastrophe. Online distance learning is certain to grow in popularity as a way to retain students whose in-person attendance is limited and to attract new students who could not previously afford international education through reduced costs and more flexible arrangements.¹⁶

Apart from the educational service sector, medical tourism sector has also taken a huge hit¹⁷ due to the restrictions placed by the Covid-19 pandemic.¹⁸

¹¹ According to data from the UN World Tourism Organisation (UNWTO), the number of foreign visitors globally fell by 57 per cent in March 2020 compared to the same period in 2019, implying 67 million fewer tourists.

¹² Valentina Romei, 'Tourism deals lingering blow to global economy', Financial Times (14 June 2020), <<https://www.ft.com/content/b406133d-5859-4f68-8163-b179f50f6a22>>

¹³ Governments are able to impose such higher fees under the GATS, which, although discriminatory toward international students, have the consequence of placing local higher education providers at a competitive disadvantage in comparison to their overseas counterparts.

¹⁴ Andrew Jack, 'Coronavirus: universities face a harsh lesson' Financial Times (21 April 2020), <<https://www.ft.com/content/0ae1c300-7fee-11ea-82f6-150830b3b99a>>

¹⁵ Anemona Hartocollis and Dan Levin, 'As Students Put off College, Anxious Universities Tap Wait Lists' New York Times (1 May 2020), <<https://www.nytimes.com/2020/05/01/us/coronavirus-college-enrollment.html#:~:text=Uncertain%20that%20campuses%20will%20reopen,lost%20revenue%20could%20be%20devastating>>

¹⁶ Jo Johnson, 'Competition for overseas students is going to be fierce' Financial Times (12 April 2020) <<https://www.ft.com/content/4912f032-74da-11ea-90ce-5fb6c07a27f2>>

¹⁷ World Trade Organization, 'World Trade Report 2019 – The Future of Services Trade' 2019.

¹⁸ Gillson, I. and Souza Muramatsu, K., 'Health services trade and the COVID-19 pandemic' WORLD BANK TRADE AND COVID-19 GUIDANCE NOTE, (4 May 2020).

Impact on services trade through ‘the movement of natural persons’ (GATS mode 4)

Travel restrictions have a disastrous impact on services trade that relies on cross-border mobility of persons (mode 4).¹⁹ With the exception of those working in "vital" areas, all such trade has practically ceased. Mode 4 commerce is predicted to have accounted for only 2.9 percent of overall services trade in 2017, or US\$ 0.4 trillion.²⁰

But still, the exports in Information technology services had accounted for a huge amount of revenue. Anecdotal evidence suggests that COVID-19 has resulted in a collapse of in-person visits.²¹ The decrease in foreign travel coincided with a significant growth in the utilisation of virtual conferencing equipment, however at such a particular point in time, it is difficult to predict the degree of a longer-term substitution of mode 4 commerce with online supply.²²

Thus, these are some of the most notable impacts of the Covid-19 pandemic on the trade in services.

IMPACT OF MOBILITY RELATED MEASURES ON TRADE IN GOODS

Mobility restrictions have a substantial influence on goods commerce by affecting transportation services as well as information and transaction costs.²³ Due to these cross-border limitations, certain Least Developed Countries reported difficulty bringing goods/commodities other than medical supplies into the market through importation, notably groceries, and also in exporting goods to neighbouring nations.

Certain communities due to the difficulties faced in circumstances such as virus-testing the truck drivers have adopted to electronic measures to monitor. In order to assist prevent disruptions to the region's domestic, global supply chain networks efforts have been made by nation states in order to put in place electronic tracking devices for truck drivers that cross borders in the course of trade.²⁴ Travel restrictions have also had an indirect impact on the transportation industry as a whole, with the grounding of numerous passenger aircraft resulting in a significant loss in air freight capacity.²⁵

¹⁹ The GATS definition of mode 4 restricts its use to non-permanent (i.e. transitory) movements.

²⁰ World Trade Organization, ‘World Trade Report 2019 – The Future of Services Trade’ 2019.

²¹ Gould, L., ‘Business travel halts across the globe’ Business Traveler (31 March 2020), <<https://www.businesstravelerusa.com/business-traveler-usa-story/business-travel-halts-across-the-globe/>>

²² Jane L. Levere, ‘Business Travel Has Stopped. No One Knows When It Will Come Back’ New York Times (20 April 2020) <<https://www.nytimes.com/2020/04/20/business/business-travel-coronavirus.html>>

²³ Bhagirah Lal Das, the World Trade Organisation – A Guide to the Framework for International Trade (Zed Books, 2007).

²⁴ Karuhanga, J., ‘Covid-19: How new EAC electronic truck drivers tracking system will work’ The New Times, (2 June 2020) <<https://www.newtimes.co.rw/news/covid-19-how-new-eac-electronic-truck-drivers-tracking-system-will-work>>

²⁵ WTO Information Note, ‘Trade in Services in the Context of COVID-19’ (28 May 2020).

In a study conducted the importance of face-to-face contact in reducing search and contract enforcement costs, and calculates that a lack of business travel reduced Nigerian welfare by about 23% because it reduced the variety of goods available to consumers and made those that were available less up-to-date and more expensive.²⁶

CONCLUSION AND WAY FORWARD

As time goes by some economies are relaxing border controls for international mobility that is not considered to be 'essential'. Some of the examples are that of business travellers, international students, and foreign tourists. This is motivated by a desire to continue the commerce and economic activities that these movements have facilitated.

It is also becoming clear that resuming individual international movement would be far more difficult than stopping it. The resumption of overseas travel is unlikely to happen in a straight line. Measures impacting transnational mobility have evident cross-border spill-over effects, implying that local action should be supplemented by international cooperation efforts. International cooperation can help re-erect the frequency and liberty of mobility across international borders.

The Covid-19 pandemic has caused havoc on the economic stability and trade relations of and between the nation states. It has been a year since the onset of the pandemic and the countries are still looking at unilateral strategies of border closure and control in order to deal with the situation. As new variants keep emerging, access to free trade and mobility seems like a distant dream. In this light, it is essential and most important that new responses and strategies to deal with the pandemic are devised at a carminative effort. Moving forward, international cooperative effort is the most essential instrument restore cross border mobility and global trade.

²⁶ Startz, M., 'The value of face-to-face: Search and contracting problems in Nigerian trade' Voxdev, (31 July 2017), <https://www.wto.org/english/news_e/news17_e/startz_stud_14sep17_e.pdf>

CHAPTER 5

Reforms in the Justice Delivery System; Role of Local Self- Government Institutions and NGOs in Social Transformation; and Law, Economics, and Management

RADICAL CHANGES REQUIRED IN THE JUSTICE DELIVERY SYSTEM

**Dhruva K¹
Shreya Gupta²**

INTRODUCTION

When analysed on a geographic basis, India is ranked 7th, and when analysed on a population basis, India is ranked 2nd. India is a population of about 130 million people. As a country with such a large number of people, India is said to have a promising judicial system that not only secures law and order, but also guarantees a standard of living that promises safety to the Indian people. India consists of 29 states and 8 Union Territories, of which India has 672 district courts, 25 High Courts and one Supreme Court. Courts are the sole responsibility for bringing justice to citizens. It is estimated that around 3 crores cases are pending in courts all over India, with approximately 42 Lakhs in High Courts and more than 65,000 in Supreme Court. This delays a common man's hope for a speedy justice. The Indian courts are facing a huge problem of delay. The whole system of courts and judiciary is burdened with cases and the disposal of cases is pulling down the cause of justice. The reasons for the delays of justice are found in every corner of the justice system. Till now, many have identified the problems of justice system, but have failed to bring any reform. The issue lies in the absence of authorities to remedy the situation as well as ignorance on part of the legal community. Despite the problems being recognized, judicial reforms have been kept out of various reform initiatives taken by our economic policies. "If there is one sector which has kept away from the reforms process it is the administration of justice."³

PROBLEMS OF JUSTICE DELIVERY SYSTEM IN INDIA

As described above, the current framework of Indian Justice System is designed by inefficiency. There are numerous deficiencies in the justice delivery system that need to be looked at in detail.

Pendency of cases

One of the primary issues with the Indian judicial system is the pendency of cases. Pendency simply means the total number of cases in the court system that are yet to be disposed. The Supreme Court accounts for only a small share of the pendency. According to reports which cited data from the National Judicial Data Grid and the Supreme Court, as of now in present

¹ Student of 3rd Year, BBA. LLB., RV Institute of Legal Studies.

² Student of 3rd Year, BBA. LLB., RV Institute of Legal Studies.

³ Vivek Debroy, 'Justice Delivery System in India – A Snapshot of Problems and Reforms' (2008) 47 ISAS Working Paper < <https://www.files.ethz.ch/isn/91150/46.pdf> > accessed 8 February 2022

there are 3.9 crore cases pending in the district and subordinate courts, whereas 58.5 lakh cases in the various high courts across the country, and more than 69,000 cases are pending in the Supreme Court.⁴ Civil cases drag on for years and add to the problem of pendency. The Gujarat High Court remarked that the life span of a civil case was, on an average, between eight and twelve years.⁵ In most years, the number of cases disposed of is lower than the number of cases instituted, so the problem keeps getting worse. Delays in India's judiciary system are not restricted to the courts, it is also a problem in India's specialized tribunals.

Judicial Vacancies

Another drawback in the justice system is there are very low number of judges in the country, in comparison to the number of cases coming to the court. High level of vacancies in the judicial system are available ranging from 22% in police, 33-38.5% in prisons, and 20-40% in judiciary.⁶ According to a report of 2015, there were close to 400 vacancies for the post of judges in the 24 High Courts of the country.⁷ As per data from various reports in 2021, there are more than 400 judges' positions vacant across the 25 high courts, while the lower judiciary has posts of 5,000 judges lying empty. The Supreme Court too has 4 vacancies. When we look at other countries, like in the United States of America, there are around 108 judges per million citizens, and in India there are only 12 judges per million citizens in India. Without sufficient number of judges and such a magnitude of vacancies, cases keep on piling up without enough resources to dispose them.

Poor judicial infrastructure

Eminent legal personalities have strongly argued that India does not spend enough on the judiciary. They found that, out of the twenty-seven states and two union territories covered by the study, the growth rate of judicial expenditures was lower than the growth rate of total expenditures in twenty-one of them.⁸ It shows that the Indian judiciary is not able to budget properly or spend the adequate funds allocated to it. This fact can also be inferred by the disappointing condition of subordinate courts in the country. The inadequate infrastructure in subordinate courts is a big factor that is driving delays. The former Chief Justice of

⁴ National Judicial Data Grid, (NJDG) < https://njdg.ecourts.gov.in/hcnjdgnew/?p=main/pend_dashboard > accessed 10 February 2022

⁵ *Dineshbhai Dhemrai v. State of Gujarat*, (2001) 1 GLR 603

⁶ Janam Bindra, Gireesh Chandra Prasad, 'Justice delivery system in India has serious gaps, shows analysis' (Live Mint, 7 November 2019) < <https://www.livemint.com/news/india/justice-delivery-system-in-india-has-serious-gaps-shows-analysis-11573149064907.html> > accessed 11 February 2022

⁷ Pranav Rudresh, Rida Zaidi, 'Issue with the Indian Judicial System' (iPleaders, 5 July 2016) < <https://blog.ipleaders.in/issues-indian-judicial-system/> > accessed 12 February 2022

⁸ Tata Trust, 'India Justice Report: Ranking States on Police, Judiciary, Prisons & Legal Aid' (Tata Trust, October 2019) < <https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf> > accessed 10 February

India, Dipak Misra had said in 2018, “Courts in the country do not have basic facilities for litigants. Most subordinate courts lack basic infrastructure for judges, court staffs, and litigants.” This problem is mainly due to lacunae in the judiciary’s internal administrative mechanisms.

High cost of litigation

Article 51 of Indian Constitution ensures the free legal aid to those citizens who are incompetent to afford a lawyer. The legal aid mandates the 80% of the Indian population is eligible to avail free legal services. Though legal aid aims to provide free legal services to the weaker sections who otherwise can’t afford it, a survey found that that just one per cent of the respondents were making use of this service⁹. The survey also revealed that 90% of the litigants earn less than 3 lakhs per annum.¹⁰ So, in practice, India has low awareness and high costs of obtaining legal assistance. Most people are unaware of the availability of free legal aid and they consult lawyers who charge exorbitant rates for consultation. Not being able to afford the fees, most of the people are left with no access to justice.

Inefficient criminal justice system

Much of the prisoners in Indian prisons are under-trials, restricted to the prisons till their case reaches a definitive conclusion. Prisons in our country are over occupied and 68% of the occupants are under trials, awaiting investigation, inquiry or trial.¹¹ In India, greater than two-thirds of India’s almost 4.2 lakh prisoners are being held, that is one of the world’s maximum range of under-trial prisoners. They are in prison now no longer due to the fact they have been established guilty, but because they are being tried on non-bailable offences or because they are too poor to pay a bond. The price and struggling, the agony of defending oneself in court is worse than completing the punishment itself.

RADICAL MEASURES TO REFORM THE JUSTICE SYSTEM

We have become so accustomed to the problems of the justice delivery system, that we have accepted it as the true nature of the system itself. But the fact is that a range of reform is required in the legal institution and framework. With this purpose in mind, the Ministry of Law and Justice formed the National Mission for Justice Delivery and Legal Reform in 2011. The Parliament has already taken certain steps in the direction of legal change. Amendment

⁹ DAKSH, ‘Access to Justice Survey 2015-2016’ (Daksh India, 2016) < <https://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf> > accessed 11 February 2022

¹⁰ Ibid (n 8)

¹¹ Japnam Bindra, Gireesh Chandra Prasad, ‘Justice delivery system in India has serious gaps, shows analysis’ (Live Mint, 7 November 2019) < <https://www.livemint.com/news/india/justice-delivery-system-in-india-has-serious-gaps-shows-analysis-11573149064907.html> > accessed 11 February 2022

of the Negotiable Instruments Act, 1881, to reduce the enormous number of cheque bounce cases and amendment of the Motor Vehicles Act, 1988, to lower litigation related to challans are being considered. Even though these are good measures, they do not tackle the underlying discrepancies within the system. We have to look into steps that can be taken to tap the problem at its roots and reform the justice delivery system.

Filling of vacancies

The biggest problem in the justice delivery system is the pendency of cases. Many believe that the Indian government should address the issue of rising judicial backlogs by adding more judges to the bench. The judge-population ratio is 10.5-11 to one million, which should be at least 50-55 to one million.¹² The process of filling up vacancies can be aided by measures like the consideration of the Parliament to increase the retirement age of High Court judges from 62 to 65. Senior law students and trained law graduates can be appointed as Court officers to address the less number of judicial staff. Another measure that has been laid down recently is the decentralisation of judicial power through the creation of a number of benches of the High Court.¹³

Speeding up trials

Justice must be delivered quickly. Thousands of under-trials who are awaiting their day in court should be heard as soon as possible. In circumstances when an under-trial has served a sentence equal to the maximum sentence that might be imposed for the crime for which he is accused, the under-trials should be freed immediately and their cases should be closed. A solution to speed up the trial process is to adopt digital means of communication. Currently, most of the data systems in subordinate courts, where 90% of the total litigation occurs, are still manually managed. Computerisation of these records will not only save time, but also enable members of the judiciary to organise and dispose of matters more efficiently. While this process is already in use in some of the subordinate courts, it urgently needs to be implemented in every level of judicial system.

Alternate Dispute Redressal Mechanism

Indian courts are accustomed to resolving disputes between parties based on the previously established procedure. Supreme Court, has devised a number of instruments for dispensing justice. The creation and development of the PIL jurisdiction is an important example for this. Several innovative legal approaches have been employed, each of which has the potential to

¹² Pranav Rudresh, Rida Zaidi, 'Issue with the Indian Judicial System' (iPleaders, 5 July 2016) < <https://blog.ipleaders.in/issues-indian-judicial-system/> > accessed 12 February 2022

¹³ Law Commission of India, *Reforms in the Judiciary – Some Suggestions* (Law Com No. 230, 2009) para 1.8

serve as a means for legal reform. Alternate case dispensation mechanisms must be implemented in order to help in reduction of pending cases. Numerous civil and family matters can be settled through the ADR and it will immensely lower litigation costs. Several steps have already been taken in this direction with the setting up of mediation and conciliation centres within courts. A number of commercial matters are resolved through arbitration. The Arbitration and Conciliation Act of 1996, the Legal Services Authorities (Amendment) Act of 2002, and Section 89 of the Civil Procedure Code have all established an institutional structure for resolving disputes outside of the court system. We must take the alternate-dispute resolution mechanism beyond the cities. The Gram Nyayalayas as contemplated by the Law Commission should process 60 to 70 per cent of rural litigation leaving the regular courts in districts and subdivisions to devote their time to complex civil and criminal matters.¹⁴ However, in order to alleviate the strain on the courts, this framework for dispute resolution must be tightened.

Tackling corruption

In some instances judiciary has been found to be involved in corruption. In the case of judicial processes, even the media is unable to give a proper and clear picture of the corruption scenario. As per the constitutional provision, there is no provision yet for registering an FIR against a judge who has taken bribe without taking the permission of the Chief Justice of India. So, there is no established system of accountability. But there is an instance where in 2011, Soumitra Sen, a former judge at the Calcutta High Court became the first judge in the India to be impeached by the Rajya Sabha.¹⁵

The impeachment was due to his misconduct and indulgence in corruption, in the form of alleged misappropriation of funds. When talking about the parole system or treatment of prisoners who are considered VIPs in the society, we can see how an influential person can make the mockery of the Justice Delivery system in this country. Since the pronouncement of the Judgment, Sanjay Dutt has misused parole numerous times. According to the records, he has spent more than 40% of his punishment outside the jail being on parole. This attracted a huge agitation, with everyone slamming the state administration that was too lenient to deal with this issue. Ultimately, Bombay High Court had to interfere and strictly addressed this issue. The court said that it was high time the rules for such relief were looked into, and that there was a need for making "radical changes" in the Prisons (Bombay Furlough and Parole)

¹⁴ Law Commission of India, *Gram Nyayalaya* (Law Comm No. 114, 1986)

¹⁵ NDTV Correspondent, 'Justice Soumitra Sen resigns after Rajya Sabha voted to impeach him' (NDTV, 1 September 2011) < <https://www.ndtv.com/india-news/justice-soumitra-sen-resigns-after-rajya-sabha-voted-to-impeach-him-466326> > accessed 13 February 2022.

Rules, 1959.¹⁶ While world's largest democracy needs to show the way to the world, it is actually moving backward by widening the gap between the rich & the poor. So, for restoring people's faith in justice, it becomes a must to deliver justice with equity and thereafter, ensure that there is strict implementation of reforms.

Role of lawyers

Reform of the justice-delivery system is not possible without full cooperation of lawyers and their active assistance. For this, there must be a change in attitude of lawyers while handling cases. For instance, it is often seen that advocates unnecessarily ask for adjournments without good reason merely to delay the litigation process. Judges must deliver a strong message to lawyers and litigants that unnecessary delay will not be sustained. Statutory provisions to record evidence in the absence of the accused must be done, issuing proclamation orders against absconding accused, denying requests for adjournments and striking costs for litigants pursuing frivolous or malicious litigation. There must also be some radical changes in the education system. We need to provide priority to merit oriented and encourage students and fresh law graduates to actively participate in the management of law. This can be achieved by encouraging them to actually participate in the settlement of disputes through the Lok Adalat or through mediation. Students and young lawyers should be motivated to study the ongoing systems, point out the lags and suggest remedies, through research papers. Senior lawyers should teach young lawyers' various aspects of lawyering like court craft, ethics, etc. When the reform begins in legal faculty, it will be reflected in the justice system of the country.

CONCLUSION

The problem of delay in the disposal of cases is the most prominent flaw in our justice delivery system. The Failure of the judicial system in delivering justice within a time frame/a short period of time has brought about a sense of frustration amongst lawyers and litigants. But, the overflowing cases in the courts are not a sign of failure of the judicial system but a sign of faith in the administration of justice. Professionals of the legal field must strive harder to bridge the gaps in justice delivery system and they themselves must not become a cause for the delay of justice. There is a need to give and incept a sense of responsibility in the minds of the legal community which will aid for the smooth functioning of the judicial process. Our country needs a strategy that focuses on both the immediate problems facing its judiciary and

¹⁶ Vaibhav Ganjapure, 'Bombay High Court concerned over misuse of parole rules, asks Maha govt to reconsider them' (The Times of India, 14 February 2014)
<<https://timesofindia.indiatimes.com/city/nagpur/bombay-hc-concerned-over-misuse-of-parole-rules-asks-maha-govt-to-reconsider-them/articleshow/30359816.cms> > accessed 13 February 2022

their root causes. The mistakes of the past must not be repeated. Justice must be made accessible to all sections of the society. Efficiency must be brought about in court management systems. It is time that radical changes be brought about, to remove the problems and reform the justice delivery system in India.

JUSTICE AND THE INDIAN JUDICIAL SYSTEM

Fariya Sharaf¹

Siddharth Anand²

INTRODUCTION

Justice, the shield of innocence, stands for rule of law, absence of arbitrariness and a system of equal rights for everyone in the society. It is the principle that people receive that which they deserve, with the interpretation of what then constitutes “deserving” being impacted upon my multiple fields.

The concept of justice was inserted in the preamble of our constitution to secure its citizens political, economic and social justice and to protect the people from all types of inequalities like wealth, opportunity, race, gender etc. In the case of *Air India Statutory Corporation v. United Labor Union*³, the Apex Court observed that that the main objective of Justice is to provide opportunity and a standard of life to the citizens of the country and allow them to live with utmost dignity.

India has an independent judicial system, which means that courts enforce the law and resolve issues without regard to the power and preferences of the parties at dispute appearing before them. The independence of judiciary in India plays a very vital role in safeguarding the rights of the individual and it ensures that democracy does not give way to individual or group dictatorship, with independent judiciary the spirit of equality, the essence of democracy is alive. The idea of an independent judiciary was propounded by **Montesquieu**, a very famous French philosopher. He was the believer of a concept “**separation of power**” which advocates for division of power between three branches of the Government- Legislature, Executive and Judiciary, with t his idea only the judiciary acquires its independent aura, as none of the branches can overpower or overreach any other branch. We have been following this concept in India from years now as Independence of Judiciary is sine qua non of democracy⁴.

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² BA LLB, Student, at Amity University, Patna

³ (1992)1 SCC 695

⁴ Shaila Arora, Independence of judiciary in India , 2021, volume 4 issue 2, International journal of law management and humanites <<https://www.ijlmh.com/paper/independence-of-judiciary-in-india/#:~:text=It%20safeguards%20rights%20of%20the,independent%20of%20any%20political%20pressures.>> Accessed on January 12 2022.

HIERARCHY OF INDIAN COURTS

Because of the massive population and size of India, the judiciary system is organized and planned as per the requirement of the citizens with the location of courts as per the status to serve the community at large with efficiency. This structure of court has been endorsed by the Constituency of India with the level of power exercised by different levels of courts⁵.

The Judicial system of India consists of three types of Courts namely- **The Supreme Court, The High Courts and the subordinate courts**⁶. As per Chapter IV of Part V of our constitution, The Supreme Court is with the status of the highest level of court. Serious issues which need's immediate attention is also presented in front of the apex court⁷, which is primarily of the status of appellate court. High Courts, which are run by Article 141 of the Constitution, are second courts of importance of India. High courts are mainly confined to jurisdiction of an individual state, group of states or Union Territory. The subordinate courts basically exercise their power of judicial service in district level and are run by the state governments appointed district judges. The structure of judiciary is of such nature that the diverse population can avail justice and no area is left untouched or alienated from the path of justice.

The role of the Courts and judiciary in general, is to be a guardian of the constitution⁸ and guarantor of the fundamental rights of the citizens. It is considered as the most essential pillar in the development of a country and the progress of the society. The most significant role of the judiciary of India is to provide justice to the masses and more precisely, **timely justice**. William E. Gladstone rightly said “**Justice delayed is justice denied**”⁹ and presently, we have over 73,000 cases pending before the Supreme Court of India and about 44 million in all the courts in India¹⁰, which clearly indicates denial of justice to lakhs of litigants who reach out to the judiciary to seek justice and relief. The number is haunting the system should consider

⁵ Ranjit Krishnan Ramanath <<https://www.google.com/amp/s/blog.ipleaders.in/courts-justice-system-india/%3famp=1>> accessed on January 12 2022

⁶ Rana Kamal, 2014, Judicial System in India

⁷ Clearias, 2014The Union Judiciary ie. The Supreme Court (Articles 124-147)

⁸ Importance of Judiciary Sannaulah Kalwar, <<https://nation.com.pk/04-Aug-2020/importance-of-judiciary>> accessed on January 12 2022

⁹ William Gladstone

<<https://www.forbes.com/quotes/9805/#:~:text=Justice%20delayed%2C%20is%20justice%20denied,Gladstone%20%2D%20Forbes%20Quotes>> accessed on January 12 2022

this alarming number because some problem is persisting either in the structure of the organization or the approach which is taken to fulfill or resolve disputes.

JUSTICE DELAYED IS JUSTICE DENIED

It is a legal maxim which means that if judicial remedy or legal relief to an injured party is available, but it is not forthcoming in a timely fashion, it is similar to having no remedy at all. This principle is the basis for the human right to speedy trial and the maxim “**in diem vivere in lege sunt detestabilis**¹¹” which is a Latin maxim which means that delays in the law are hateful. “**Justice delayed is justice denied**”, by William E. Gladstone, best portrays the justice delivery system prevalent in India.

Even after 74 years of independence, the Indian Judicial System does not work within reasonable timelines, which forces us to doubt the competency of our judiciary. Sopan Narsinga Gaikwad, died at the age of 108 before the Supreme Court of India could hear his appeal in a land dispute he had pursued since 1968¹². His case was pending for 27 years before the Bombay High Court which itself is a big question mark on the justice system of the biggest democracy of the world. Delay in justice system and the number of cases pending are a very clear picture of the judicial system which is prevalent, the aim of the judiciary is to pronounce judgement which are just fair and reasonable, but the means to achieve that aim is so unending that the goal itself is losing its importance.

The Supreme Court of India is an enormous institution created by the framers of the Indian Constitution to play a very crucial role in our democracy¹³. It is the duty of the Apex Court to uphold the fundamental rights of the citizens but delaying justice in itself is a gross violation of the basic structure of the constitution, violating Article 21 of the Constitution, which guarantees right to live with human dignity. As of 2021, there are over 4.5 crore pending cases across all the courts in India¹⁴, compared to 3.3 crore pending cases in the year 2019. From these data, we can easily conclude that in the last couple of years, India has added approximately 23 cases per minute to its pendency / backlog list.

¹¹ Justice delayed justice Denied, Benham, William Gurney (1927). Putnam's Complete Book of Quotations, Proverbs and Household Words. quoted in Shrager, David. Editor; Frost, Elizabeth, Editor (1986). The Quotable Lawyer. New York, London: Facts on File New England Publishing Associates. p. 83. ISBN 0-8160-1184-2.

¹² Justice delayed justice denied <<https://www.theleaflet.in/justice-delayed-is-still-justice-denied/>> accessed by January 12 2022

¹³ Justice delayed justice denied Dushyant Dave <<https://www.barandbench.com/columns/all-is-not-well-supreme-court-justice-delayed-is-justice-denied>> accessed by January 12 2022

¹⁴ 4.5 crore pending cases, 50% judges missing -why justice in India takes so long <https://m.timesofindia.com/india/4-5-crore-pending-cases-50-judges-missing-why-justice-in-india-takes-so-long/amp_articleshow/87203443.cms> accessed by January 12 2022

Markandey Katju, former Supreme Court Judge said, “*if no new cases were added, it would take around 360 years to clear the entire backlog of cases across all the courts of India.*”¹⁵

This statement clearly illustrates the enormous number of cases pending before the judiciary, burring the hopes, aspirations and desire for justice, from the courts of lakhs of citizens. So, to imbibe the spirit of justice and equality among the citizen pendency of cases must be resolved.

VIOLATION OF ARTICLE 21 OF THE INDIAN CONSTITUTION

Article 21 of the Indian Constitution has two kinds of rights vested in itself: 1. Right to Life and 2. Right to personal liberty. The right to life, which is the most valuable right of the citizens, has been interpreted by the apex Court in numerous cases, a landmark case being *Maneka Gandhi vs. Union of India*¹⁶. The Supreme Court in this case held that right to live is not just a physical right but includes the ambit of right to live with human dignity¹⁷. Denial of justice or delay in justice by any means is a clear violation of this basic right that is given to each and every individual of our country. Irony is that the institution which is the protector of our rights and is the guardian of our constitution is itself knowingly or unknowingly contributing in infringement of the right, by not delivering justice in a stipulated time frame. Delay in delivery of judgment is definitely a violation of Article 21 of the Constitution and we have heaps of landmark cases establishing the same. *Anil Rai vs. State of Bihar*,¹⁸ a celebrated judgment, highlighted the issue of unreasonable delay in pronouncing justice¹⁹. It was observed by the Court that delay in justice is a clear violation of Right to Life guaranteed under Article 21 of the Constitution, and the irony is that it is the judiciary which is the guardian of our constitution, and stands against all the infringement is contributing in the infringement of article 21 which is the basic and fundamental right of each and every individual.

FACTORS RESPONSIBLE FOR DELAY IN JUDICIAL PROCEEDINGS

Poor Judge to population ratio

¹⁵ 4.5 crore pending cases, 50% judges missing -why justice in India takes so long <https://m.timesofindia.com/india/4-5-crore-pending-cases-50-judges-missing-why-justice-in-india-takes-so-long/amp_articleshow/87203443.cms> accessed by January 12 2022

¹⁶ 1978 AIR 597, 1978 SCR (2) 621

¹⁷ Ambit of article 21 Subodh Asthana <https://blog.ipleaders.in/article-21-constitution/?amp=1#Article_21_of_the_Indian_Constitution> accessed by January 12 2022

¹⁸ CrL. App No. 389 of 1998

¹⁹ Role of courts delayed justice article 21 Adeeti Singh(2020) <<https://cjp.org.in/role-of-courts-in-delayed-justice-article-21-violation/>> accessed by January 12 2022

An independent and methodical judicial system is one of the basic structures of the Indian Constitution. The efficiency of Hon'ble judges and co-operation of advocates are extremely crucial in speedy disposal of cases and with an upsurge in the number of disputes per year, the judge to population ratio must be examined discreetly. Insufficiency of the number of judges to handle the galaxy of disputes and plethora of cases pending in the courts is often cited to be one of the main reasons for delay in justice. The selection and appointment of judges in the subordinate courts is the prime obligation and liability of the State Governments and High Courts and if we want justice to be served at the earliest, this responsibility of them must be highlighted in their vision.

India's Judges to population ratio is 21.03 judges per million population²⁰, which is very low for a country like ours, with a population of over 130 Crores²¹. The inadequacy of the number of judges was brought into light in the case of *All India Judges Association vs. Union of India*²², in which the Court opined that the existing judge-population ratio must be raised in a phased manner to ensure that justice is not delayed to anyone in our country. Because it is not possible for a single judge to resolve all the matter listed to him in a single day our motive is not only to dispose of the cases but our main objective is to pronounce judgement which stands still on the scale of justice and equality.

It is the constitutional obligation of the apex court to ensure that the backlog of cases is decreased and if the poor judge to population ratio is a hindrance to it, reasonable steps must be taken to resolve this issue, which is undermining the basic structure of our constitution.

NON-COMPLIANCE WITH THE PROVISIONS GIVEN UNDER SECTION 89 OF THE CODE OF CIVIL PROCEDURE, 1908

Section 89 of the CPC 1908 gives authority and power to the court to refer the matter to the alternate dispute resolution methods when it appears that there exists an element of settlement which may be acceptable to the parties at dispute²³. In such cases, the courts may formulate such settlement and refer the parties to an alternate mean of settling the issue such as Lok Adalat, mediation or conciliation.

²⁰ What is India's judge to population Sneha Rao 2021
<<https://www.google.com/amp/s/www.livelaw.in/amp/know-the-law/what-is-indias-judges-to-population-ratio-187497>> accessed by January 12 2022

²¹ India population < <https://www.worldometers.info/world-population/india-population/>> accessed by January 12 2022

²² (2002) 4 SCC 247

²³ Alternate dispute resolution methods and code of civil procedure ,1908, Uzair Ahmed Khan, 2019
<<https://www.google.com/amp/s/blog.ipleaders.in/arbitration/%3famp=1>> accessed by January 12 2022

The provisions under Section 89 of the Code of Civil Procedure, 1908 is an attempt to bring about resolution between parties at dispute, minimize costs and reduce the burden of the Courts. This was an addition to the Centre of Indian Judicial System, with the objective to provide mutual settlement to the parties at dispute with the intervention of the Court.

Most of the developed countries has adopted the alternate dispute resolution methods long back and presently over 90 percent of the cases gets resolved without any indulgence into litigation. The Supreme Court of India also is of the view that it was necessary to frame alternate resolution methods in the interest of giving full effect to the right to timely justice and in the case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*²⁴, section 89 CPC brought ADR processes into the mainstream of Indian Legal System.

The judiciary should refer the dispute to arbitration or conciliation when it is convinced that there is a possibility of mutual settlement between the parties, and thus, the burden on the courts would decrease and we would certainly see a drop in the pendency of cases.

THE HABIT OF TAKING ADJOURNMENT BY THE LAWYERS

The Adjournment Culture is creeping its way into the Indian Judicial System, which, if not checked, would eventually lead to the destruction of democracy. The Courts of India were supposed to be the only savior of citizen's rights and any barrier that handicaps the system must be unfastened at the earliest. In the justice delivery system, "to adjourn" means to suspend proceedings to another time or place, or to end them²⁵. It affects the whole system of law, eroding the confidence and trust of the citizens in the judiciary. Adjournment adds to the delay in the disposal of cases and contributes to hardship and inconvenience to the parties who is seeking justice.

Lawyers, who are officers of the Court²⁶, must take a note of the fact that seeking unnecessary adjournments not only frustrates the legitimate right of one of the litigating parties, but also hampers the entire system to an extent that the belief of the people of the country on the judiciary gets diminished after each hearing. Thus, to restore that diminishing belief we need to get away with the habit of adjournment.

²⁴ (2010) 8 SCC 24; (2010) 3 SCC (Civ) 235.

²⁵ "What is ADJOURNMENT? definition of ADJOURNMENT". thelawdictionary.org. Black's Law Dictionary. Retrieved 2016-02-24 accessed by January 12 2022

²⁶ The Bar council of India <<http://www.barcouncilofindia.org/about/about-the-legal-profession/history-of-the-legal-profession/>> accessed by January 12 2022

The need to avoid unnecessary adjournments was highlighted in the case of ***Topline Shoes LTD. vs. Corporate Bank***²⁷, in which the Court opined that to achieve speedy disposal of the pending cases, unnecessary adjournments should not be given by the Courts and the same is supported in the case of ***Salem Advocate Bar Association vs. Union of India***²⁸, in which the apex court held that limiting adjournments cannot be held ultra vires or unconstitutional and it is very crucial to have a check on the adjournments requested by lawyers while litigating.

ONLY FIVE HIGH COURTS WITH ORDINARY ORIGINAL CIVIL JURISDICTION

Access to justice has been acknowledged as a pivotal constituent of right to life in India and in all civilized societal groups across the globe. This right guaranteed to the people living in India is so basic and inalienable that no system of governance can ignore its significance, and must not even think of ignoring the right.

High Court, which is the highest Court of a state, plays a very vital part in protecting the rule of law. Supremacy of law is ensured by the judiciary of our country and to safeguard the rights of the individual, High Courts perform many administrative functions within its territorial jurisdiction.

Presently, we have 25 High Courts in India²⁹, High Courts of Telangana and Andhra Pradesh being the newest. Only five High Courts (that is, High Courts of Delhi, Bombay, Calcutta, Madras and Himachal Pradesh) have ordinary original civil they can hear appeals from the others of subordinate courts. The appeal before the High Court from any judgment / decree passed by the subordinate court shall be made within the time frame of 90 days from the date of the decree / order³⁰. So, a matter which involves question of fact and law of such nature that only high courts are appropriate to decide then such cases are also filed in subordinate court and thus contribute to the delay in decision of the case.

This process of appeal from subordinate court to the high court ends up wasting a lot of time of the judiciary and the same matter is dealt twice which makes it troublesome for both the parties at dispute.

²⁷ (2002) 6 SCC 33

²⁸ AIR 2005 SC 3353

²⁹ How many high courts in India <<https://www.careerpower.in/how-many-high-courts-in-india.html#:~:text=There%20are%2025%20High%20Courts,established%20in%20the%20year%202019>> accessed by January 12 2022.

³⁰ Appeal to the high court <<http://www.helpline1aw.com/civil-litigation-and-others/APPEALTT/appeal-to-the-high-court.html#:~:text=The%20appeal%20before%20the%20high,the%20decree%20or%20the%20judgment>> accessed by January 12 2022.

MINIMAL INVOLVEMENT OF INFORMATION TECHNOLOGY IN THE JUDICIAL SYSTEM

Information technology (IT) has been one of the leading drivers of globalization and today, it has restructured the entire work situation. In the 21st century, Information technology has become an inseparable part of our lives and we cannot stress more on how essential it is for our work on a daily basis. Increase in application of computers in almost every field has resulted in the amplification of our growth as professionals and cognizant citizens.

In the year 1990, the NIC³¹ of the ministry of Information technology started the process of computerization in the Supreme Court³² and within a couple of years, the same was done with the High Courts as well. This process of computerization helped the court in eliminating manual processes like generating cause list, creating a database of cases and arrangement of cases in order. Portable electronic devices like laptop have made drafting, a cakewalk for lawyers and now instead of overloading themselves with paper documents and case files, they are at a position to use technology at their advantage to ease out things.

Undoubtedly, IT has made it possible for the courts to dispose of the cases faster. But we cannot deny that there are a lot of areas where the IT has yet not reached in the Indian Justice System and the training and security aspect of the Information Technology shall not be overlooked owing to the galaxy of cases filed each day. Information technology if introduced and practiced in the judicial system then it will help to overcome the number of cases and help to clear the ocean like pendency to at least decrease to the size of river, which will be a blessing in disguise for the nations.

POOR INFRASTRUCTURE AND FEWER COURTROOMS

The Indian Judiciary is not quite in fine fettle and lack of adequate courtrooms and poor infrastructure fan the flames, intensifying the issue. Judicial infrastructure is very critical for improving access to justice and meet the growing demands of the citizens of our country and it is the pre-requisite for reduction of pendency and backlog of cases.

Most courts don't even have basic amenities for lawyers and the situation is even worse in subordinate courts, where even the judges are deprived of the basic infrastructure that they deserve. With poor infrastructure we are lagging behind, the Indian Judiciary is among the

³¹ National Informatics Centre

³² Role of information technology Role of Information Technology in judicial system, Pratiksha Jagtap (2020) <<https://bnwjournals.com/2020/05/09/role-of-information-technology-in-judicial-system/>> accessed by January 12 2022

largest in the world, yet less than one percent of the Union Budget is spent on the judiciary³³. If we want a better outcome from the judicial system, then we must realize that proper allocation of Union Budget by the government must be done to improve the working conditions and infrastructure of the courts.

The infrastructure woes of the Indian Judiciary is highlighted in the chart below³⁴, which makes us sympathize for people who have been working in such conditions from years now.

KC Mittal, Former Bar Council of Delhi Chairman, said “***Funding is a major problem and without appropriate budgetary allocation, things are not going to improve. Judiciary of India must be given proper funds on a priority basis.***”³⁵ we must realize the fact that though rendering justice is noble cause and people associated with this branch are working hard to render justice but without proper infrastructure and funds allocated for the department we are doing injustice with the justice delivery department itself, thus for aspiring justice from the department we must first do justice with the department.

CHANGE IS PRE-REQUISITE

Change is the law of nature, with development in all the fields, the transformation in the judicial system can't be left at a backdoor, because the overall development of a country is directly proportional to the holistic development and reforms in all the sectors and area of the country, The Indian judicial system is the guardian of our constitution, and constitution is the law of the land, thus the judiciary has to be affluent, efficient and eloquent in performing their duties, the backlog of cases in our country clearly depicts that even after delay people have faith in the judicial system, a little modification and change can make this system sigh higher.

India is a diverse country with a population of 138 crores and the number of cases filed per day is exponentially high, to decide those cases the number of judges appointed in the court is disproportionate even the time taken to decide a case also needs to be checked because a single case take years to get the final decision, justice has to be fair and reasonable but the

³³ Bhadra Sinha, Soibam Rocky Singh and Satya Prakash,
<https://www.google.com/amp/s/www.hindustantimes.com/india-news/few-judges-fewer-courtrooms-indian-judiciary-tripped-by-poor-infrastructure/story-uah3AyEY7OsBsT4VwXY5pN_amp.html> accessed on 16 November, 2016 at 9:34 A.M.

³⁴ Role of Information Technology in judicial system, Pratiksha Jagtap (2020)
https://www.google.com/amp/s/m.timesofindia.com/india/good-judicial-infrastructure-has-always-been-an-afterthought-says-cji/amp_articlehow/87230992.cms accessed by January 12 2022

³⁵ Bhadra Sinha, Soibam Rocky Singh and Satya Prakash,
<https://www.google.com/amp/s/www.hindustantimes.com/india-news/few-judges-fewer-courtrooms-indian-judiciary-tripped-by-poor-infrastructure/story-uah3AyEY7OsBsT4VwXY5pN_amp.html> accessed on 16 November, 2016 at 9:34 A.M.

time taken to deliver that is a paramount concern, the number of judges can be alleviated by introducing posts and filling vacancies which are vacant , because the situation is like now or never, if the authorities don't act now the system would be transformed never.

ARE THE COURTS ENOUGH TO DECIDE ALL THE MATTER

As it is not possible for a single chief minister to handle and resolve the problems of the state alone, he has his council of ministers and other subordinate authorities who assist the chief minister in making and formulating the policies in the same manner a single high court or the subordinate court is not enough to decide the matters filed , the introduction of arbitration and negotiation centers is must and the matters which are of such nature that either of the parties are willing for settlement then those cases must be resolved with the alternate dispute method, we can't decrease the cases filed but only accelerate the way of delivering justice, if cases of such nature are transferred to conciliation and mediation group then the matter which involve heinous crime or involve a substantial question of law or fact can be judged and delivered with an increment in the velocity, rape and murder cases or a case of terrorism in which there is a high probability that an innocent person is prosecuted because of the pressure on police officials to act promptly, justice is delivered only when the accused is punished and with the conviction of the guilty the courts maintain the principle of rule of law which is the essence of our democratic nation.

ADJOURNMENT A BANE

Delay leads to disturbance and the adjournment given in cases is the delay which will ultimately lead to disturbance, the lawyers are in support of adjournment because of their own personal and monetary benefit, but we should not forget that delivering justice or facilitating towards the step of justice is a social work, which must be isolated from personal biases, adjournments in cases is one of the major reason of the backlog and collection of cases. With pendency of cases and the time taken in deciding a particular case people are losing hope and faith in the system , if you ask a layman he will never be of opinion of approaching the courts even if his rights are infringed or he has suffered any loss , he will be always of view that he can settle the matter outside the court, and if this attitude continues in our nation then the judicial system is failing, because delivering justice, checking a balance on the other two organs of the government and scrutinizing the state affairs is the duty of the judiciary, it is an autonomous and independent body but if that independent body is

overburdened then the body will collapse. So, to maintain the spirit of judiciary we must step forward to ease out the court with backlog of cases.

STRUCTURAL AND PARTICIPATORY REFORM SHOULD GO HAND IN HAND

The reforms which are discussed above are all structured reform, but the participatory reform is also essential, by improving the infrastructure and disposal of cases we are moving ahead with structural reform but if the justice system focuses on participation and tries to empower golden concepts such as justice in all the aspects of social, political, and economic affair then the reformative process will be holistic. The reform must adapt to the bottom- up approach, the district court is the place where principal problem arises because lakh of litigant approach the subordinate court and if this court is modified and altered then only other changes which are introduced in high courts and supreme court will be effective. The cases in the district court must be analyzed and the reason for their delay should be addressed because the number of cases pending is known to all but the reason why they are delayed is not acknowledged, if the reason for their delay is taken in consideration and resolved then the hype in number will decrease exponentially. Our main aim should be to walk with the overall reform and transformation of the system because the system composes with all the aspects.

INTRODUCTION OF TECHNOLOGY IS THE NEED

The world has transformed, all the fields are availing the benefits of technological advancements but only the judicial body is isolated from the perks and advantage of the innovation in the technological world, if we introduce technology then the voluminous data which is stored in bundles of files and records will minimize to just a single link, and by online records it will be more efficient and accessible as compared to the offline storage , to increase operational ease and maintenance of documents is a better option, it minimize the time required for transferring the data from one institution to other. Lawyers and judges can refer to refer to cases and other documents via electronic medium in spite relying on the physical equivalents, other dissentious activities such as payment of court fee, filing fee and other transaction can also take place in just few clicks. We learn and follow a lot of practices and techniques from other developed countries and one such technique which we must adopt from nations such as Singapore, Australia, United Kingdom and USA is the Online Dispute Resolution which can strengthen the existing ADR process such as conciliation, mediation and arbitration, privacy and transparency is at par with ODR system as proceedings are easily

accessible and untampered.³⁶ with this pandemic the technology has been introduced in the judiciary as well, but only certain matters and few high courts have opted for virtual hearing, but our effort should be that with the end of the pandemic this new introduction in our justice delivery should not diminish rather encompass all the other courts as well, being digital is a boon for everyone and our judicial system should also facilitate this advancement.

NEW TECHNIQUES AND METHODS

In the word of lord Delvin “if our business methods were as antiquated as our legal system, we would have become a bankrupt nation long back” this is so true about our system, we need to improvise and improve our system one the central and revolving issue is the pendency of cases which can be resolved by appointment, introducing seats, even the case and court management technique must be encouraged and embedded in our system. Case management is a comprehensive system of management of events and time is case as it proceeds through the system, from initiation to resolution. Thus, with this technique the backlog of cases will decrease and the pressure on the judicial system will also go down. The Singapore judiciary has opted for case management and now the efficiency in the judicial system of Singapore is recognized all over the world.³⁷

These are suggestive methods and there are many more suggestions and reports release by law commission of India and other reports by Justice G C RANKIN, JUSTICE S R DAS, and JUSTICE VS MALLIMATH³⁸, with inclusion of all these methods and reports the system should initiate the change, “*everything has been said already but as no one listens we must begin again*”- **ANDRE GIDE**. So to begin a new fresh we must keep in mind all the reformative suggestions and the loopholes which exist in our system should be mended.

WHERE THERE IS A WILL THERE IS A WAY

Change is something about which we all talk of but none is willing to change, now it’s time to start implementing the ideas and suggestion, justice delivery system is the backbone of our nation, the third pillar of our democracy , guardian of our constitution, so if the reforms suggested are not followed then the efficiency and efficacy of the system will be hampered, a

³⁶ Krishnava Dutt, Maneesha Kongovi, and Pooja Chakrabarti, Use of technology in the justice system <<https://www.ciiblog.in/use-of-technology-in-the-justice-system/#:~:text=The%20wider%20infusion%20of%20technology,of%20the%20Indian%20judicial%20system.&text=The%20Indian%20judiciary%20has%20been,scope%20have%20been%20rather%20limited>> accessed by January 12 2022

³⁷ Madan Lokur, How to reform India’s judicial system (2019) <<https://www.hindustantimes.com/analysis/how-to-reform-the-judicial-system/story-mCyeVh58HL7TbcLUMaDS3K.htm>> accessed by January 13 2022

³⁸ Madan Lokur, How to reform India’s judicial system (2019)<<https://www.hindustantimes.com/analysis/how-to-reform-the-judicial-system/story-mCyeVh58HL7TbcLUMaDS3K.html>> accessed by January 13 2022

nation is judged by its judicial activities if the judiciary of the nation is vigilant then the development of that particular nation is confirm, with a sound stable and fast judicial system we will be able to achieve the welfare state which we all aspire of because if cases are decided at a faster pace, and the judicial process is eased out then the wrong doers of the society will think hundred times before committing a wrong or crime, the present situation is as such that even if a person commits murder his case takes years to be decided and he is left without any decision for all those years which gives a sense of courage to others as well to follow the same path , but if the process accelerates and people are convicted or acquitted in a decided time- frame the society will have a different and clear vision of the judiciary, and a country which loses faith in its judicial body loses everything , the time is high now the justice delivery system should be organized in such a way that the system is pro and without any flaws then only the decisions pronounced by the system will have the actual effect ,thus to restore the faith and to flourish the changes suggested should be implemented.

SUBSTANTIVE AND PROCEDURAL CHALLENGES TO DECISION- MAKING BY THE NGT: A CASE LAW PERSPECTIVE

Lekshmi M¹

Dr. Syamkumar R S²

INTRODUCTION

In India, the judiciary plays an important role in implementing environmental laws and principles by providing remedies to environmental harm and upholding the constitutional rights of the environment. While determining disputes, the National Green Tribunal Act, 2010 (NGT, Act) requires the application of basic principles of sustainable development and sub principles such as precautionary approach and polluter pays. As a result, the tribunal's fundamental strategy is to strike a balance between the right to development and the right to a clean environment by applying sustainable development principles. In this process, the tribunal has to contribute to the concretization of the broad principles and transform them into a workable proposition.

The complaints can be submitted both online and offline mode. A compensation application can be simply filed with the NGT. A fee of Rs.1000 must be paid to the tribunal for applications that do not entail compensation. In the cases that compensation is sought, the cost will be one percent of the compensation mentioned in the application, with a minimum of Rs. 1000/-. E-mails and letters are also recognized as applications and petitions by the tribunal. The NGT consists of judges and technical experts and the act envisages its own rules and procedures. It has pronounced many excellent decisions addressing environmental issues in many parts of India.

The National Green Tribunal strove to play an important role in conserving the environment and its natural resources. " Every drop of pollution in Ganga is a subject of concern, and authorities must seek severe Plans to protect the Holy River," said NGT's principal bench led by Chairman Justice Adarsh Kumar Goel, referring to an action plan for cleaning the river. The Tribunal has initiated Suo Motu proceedings in response to a representation from a former Judge R. Bhaskaran about the issue of rampant dumping of wastes in Kerala's River Periyar. NGT set timelines to be adhered to by central and state governments for the establishment of sewage treatment plants and using treated sewage to conserve freshwater and groundwater resources, to prevent harm to the rivers and other water systems. The

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tribunal has directed all states to perform research on the 'Carrying Capacity of eco-sensitive zones in various parts of India.

The Hon'ble Tribunal has already decided on issues such as solid and plastic waste disposal, sand mining, and urban air pollution in multiple cases. The tribunal instructed the development of mechanisms to alert the public about "severe" air pollution and to issue precautionary actions. It fined ₹500 Crore on Volkswagen for polluting the environment through "cheat device" in its diesel cars in India. In 2019, the Hon'ble tribunal ordered 3 states (Punjab, Haryana, and UP) to set up cells to monitor air pollution generated by crop residues, which was a major contributor to air pollution in Delhi. In an application filed by Saloni Sing; The NGT directed the Central Pollution Control Board and State Pollution Control Boards to implement action plans for railways to spot and develop a minimum of 36 stations as "eco-smart stations" and to maintain cleanliness on platforms and ensure officers' liability for non-compliance. In light of the rising number of forest fires, the NGT has instructed the Ministry of Environment and Forest to submit statistics on the rise in forest fire incidents over the previous few years and to identify hotspots.

In 2019, NGT has pronounced a judgment after admitting a letter sent by Villagers of Kavaratti in the Union Territory. The Hon'ble bench comprising Justices Raghuvendra Rathore and Satyawan Singh Garbyal directed the Lakshadweep administration to provide portable drinking water to the villagers and to implement the Action Plan suggested by the Central Ground Water Board. In an application filed in 2018, in compliance with Municipal solid waste Management Rules 2016, the Tribunal issued a blanket order summoning the chief secretaries of all states and union territories to personally appear and update the status of the state's identification and development of Model Cities and Towns in the first phase, which will be replicated later for the state's other cities and towns.

Adithya Dubey, a 16-year-old who moved the tribunal through his legal guardian, urged the NGT to stop Amazon and Flipkart from using excessive amounts of plastic in their packaging. The Hon'ble Chairperson Adarsh Kumar Goel has ordered to Central Pollution Control Board to recover fines from these e-commerce firms for violating environmental norms.

The National Green tribunal is very keen on tackling environmental issues from time to time. In 2020, the Hon'ble Tribunal has issued an order which included guidelines passed by the Central Pollution Control Board for the management and disposal of Biomedical Wastes

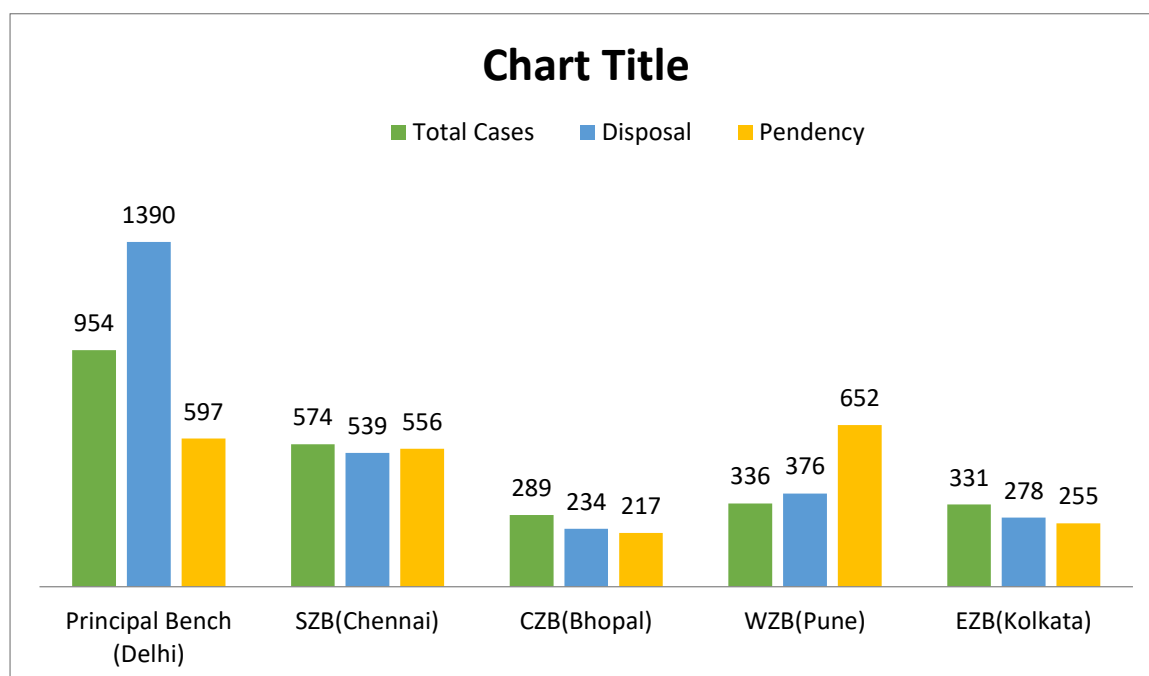
arising out of Covid 19 disease. The order attempted to remedy the inadequacies in Bio-Medical Wastes Management Rules, 2016.

It's important to examine how the tribunal manages to strike a balance between the right to development and environmental protection. The court has not only brought attention to the country's major environmental issues, but it has also built a new dynamic operational style to enhance public awareness. The Article undertakes an analysis of selected decisions of the tribunal to understand the evolving dynamics in the application of the pertinent provisions of the NGT Act. The Article thus endeavours to identify the lacunae in the decision-making process of the NGT thereby highlighting those substantive and procedural aspects of the Act that may need restructuring.

CASE STATISTICS- INSTITUTION, DISPOSAL, AND PENDENCY

The NGT's jurisdiction is divided into four zones: one Principal bench in Delhi, the Southern zone in Chennai, the Central zone in Bhopal, the Western zone in Pune, and the Eastern zone in Kolkata. The tribunal comprises a chairperson and both Judicial and Expert members.

The following statistics data illustrates the number of cases submitted, their disposition, and their pendency in the NGT's Principal Bench and all Zonal benches from 1st September 2020 to 31st August 2021.³



³ See NGT website <<https://greentribunal.gov.in/bench-wise-institution-disposal-and-pendency-cases-ngt-principal-bench-and-all-zonal-benches>> Accessed at (Oct 1,2021, 12 pm),

Principal Bench

The chart shows a total of 954 cases filed over the period. The overall number of cases disposed of by the main bench is 1390 while 597 before the main bench are pending.

South Zone Bench

In the stated period, the overall number of cases filed before the Chennai bench is 574. It has disposed of 539 cases. But still, 556 cases are pending.

Central Zone Bench

As per the statistical data, Bhopal Bench shows the smallest number of cases filed as 289, with a total case disposed of 234 throughout the period. Data show that there are 217 cases were pending.

Western Zone Bench

There have been 336 cases filed, 376 cases disposed, and 652 pending cases. The western zone has a high pendency rate of the cases.

Eastern Zone Bench

The Number of cases filed in the period was 331. Kolkata Bench has disposed of 278 cases. The number of cases pending were 255.

From the Period of the inception of the tribunal in July 2011 to 31st July 2017, 22568 cases were instituted before all the benches as many as 19213 cases stand disposed of, leaving the pendency of 3355 cases in all the Benches of the National Green Tribunal⁴. As on date, August 31, 2021, 35,764 cases were instituted of which 33,411 have been disposed of and 2353 were pending. In 2016 the disposal rate was 74% and in 2017 the rate increased by 85% and in 2021 the rate is 93%. Even if there is an increase in the total disposal rates, quick disposal of cases within 6 months is always questionable.

The principal bench has made considerable efforts to reduce pending matters filed before it. But the selection of sufficient judicial and technical members is problematic in most of the other benches. That is the reason for the high rate of pendency in the western zone. Some matters from the western zone jurisdiction have also been resolved by the tribunal's main bench.

⁴See NGT International Journal on Environment, Volume.II of 2017, <<http://archived.greentribunal.gov.in/Writereaddata/Downloads/NGT2017Vol2combine21112017.pdf>> Accessed at Oct 22,2021,10.50am

SUBSTANTIVE AND PROCEDURAL LACUNAE: AN ANALYSIS OF SELECT CASES

The tribunal is a unique, fast-track body composed of judges and environmental experts who will ensure that disputes are addressed quickly while also attempting to protect the environment. In recent years, several cases have been adjudicated by the National Green Tribunal, and these cases need to be critically examined to see whether the Tribunal succeeded to impart environmental justice as envisaged by the Statute.

Manoj Mishra v. Union of India⁵

A petition was filed by the applicant on 8th February 2016 before the tribunal against the Delhi Development Authority (DDA) for permitting the Art of Living Foundation (AOL) for organising the three-day cultural event at the Yamuna flood plains. There was a 7-acre stage, which was able to accommodate 35,000 musicians and dancers. In addition to the 650 portable toilets spread over 1,000 acres of territory, new dirt tracks were installed. 35 lakh persons and more than 20,000 foreign guests participated. (According to the organizers). Tribunal heard the contentions by clubbing together several original and miscellaneous applications filed by the applicant for the protection of the river Yamuna.

Several respondents to the party have raised their contention in defense of the allegation of destroying the floodplain of river Yamuna while holding the event. The Delhi Development Authority also claimed that the area where the art and culture festival by the Yamuna flood plains were not under its Jurisdiction. The Ministry of Environment Forests & Climate Change (MoEFCC) asserted that the event required small and temporary construction and therefore it did not require their approval. The AOL foundation further asserted that the authorities as per the prior Yamuna judgment have not demarcated the floodplains and hence cannot be held liable for the damage to the flood plain⁶.

The tribunal, chaired by Hon'ble J. Swatanter Kumar clarified that the tribunal is solely concerned with the environment and biodiversity damage done to the river and is not concerned with the cultural festival that was supposed to take place. It was further noted that the AOL foundation has not obtained permission from some authorities responsible for conservation, development, and management of water pollution in the Yamuna river including the Ministry of Water Resources, River Development, and Ganga Rejuvenation,

⁵ O.A. No. 65 /2016 (Principal Bench, New Delhi) Judgement 7th Dec 2017.

⁶ Manoj Misra v. Union of India & Ors; O.A.No.6/ 2012 (Principal Bench, New Delhi), Judgement 13th Jan 2015.

resulting in these authorities in exercising their due diligence. For the damage caused to the environment, ecology, biodiversity, and aquatic life of the river, AOL foundation was held liable and imposed 5 crores in the exercise of powers under Sections 15 and 17 of the NGT Act, 2010. Art of Living appealed to the Supreme Court⁷. But the matter has not been decided by the Hon'ble apex court.

The tribunal bench relied on several previous decisions of its own and Supreme Court⁸. It invoked Precautionary Principle, Polluter pays Principle and the Sustainable Development. In this instance, while the Committee report submitted to the State of Yamuna River Bed Floodplains by the High Powered Committee of Experts, the Hon'ble Tribunal awarded the compensation to be paid by the respondent for bringing the natural biodiversity of the flood plains to the previous status. NGT is an expert body to ensure that compensation is determined accurately. There are no parameters in the act when the compensation is determined. The study of the decisions of the Art of Foundation case reveals that, when compensation is awarded, there is no scientific method or objective criterion used by the tribunal. It has reviewed the compensation several times. NGT has not made liable any other respondents like Delhi Development Authority or any other organization for the damage of the vegetation caused to the floodplain. NGT act remains silent on the provision that who will pay the compensation. MOEFCC suggested that this provision should not be left on the executive.

LG Polymers India v. Union of India & Ors.⁹

The incident occurred on May 7, 2020, when reports began to circulate that a chemical factory in R.R. Venkatapuram Village, Pendurthy Mandal, and Vishakhapatnam had spilled Styrene, a toxic gas. Eleven people died as a result of this, and more than 100 more were hospitalized. More than 1000 people have become ill as a result of the outbreak. There was also environmental and habitat harm. LG Polymers was the owner of the plant from where the gas spilled.

Notably, the High Court of Andhra Pradesh took Suo motu cognizance of the incident shortly after it occurred, ordering the State Government to form a committee of appropriate officers not below the rank of Principal Secretaries. The National Human Rights Commission also

⁷ Vyakti Vikas Kendra India v. Manoj Misra & ors, Civil Appeal No.00683/2018 (pending)

⁸ Society for Preservation of Kasauli and its Environs v. Bird's View Resort and Ors, O.A No. 69 of 2017; Tirupur Dyeing Factory Owners Association v. Noyyal River Ayacutdars Protection Association and others Civil appeal No. 6776 of 2009.

⁹ O.A. No. 73/2020 (Southern Zone ,Chennai) Judgement 8th May 2020.,

initiated suo motu proceedings. NGT has appointed another 5 members committee and initiated suo motu proceedings. The Joint Committee constituted by the NGT filed their report on 28th May 2020 found LG Polymers liable. In this case, the NGT determined that LG Polymers is strictly liable for environmental damage and related losses, including loss of life and public health. The NGT ordered the company to pay 50 crores of Penalty which stands as a lesson for all the industries carrying chemicals and hazardous substances should have proper care and safety. LG polymers appealed to the Supreme Court.¹⁰

While the case is pending before the Andhra Pradesh High Court, NGT has initiated Suo Motu proceedings. This case is an application of several laws. NGT applied Public liability insurance Act, Strict liability and absolute liability rule, environment Protection Act 1986. According to the NGT “ Styrene gas is a hazardous chemical as under Rule 2(e) which can be read alongside Entry 583 of Schedule I of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 and enacted on the premise of absolute liability to indemnify the general public affected by industrial activities”. But the NGT has imposed Strict Liability only. It can also be seen that multiple laws with limited enforcing agencies, poor checks, and monitoring were done by NGT. These accidents show that after the lockdown ends these industries resume their activities. The court could have widened its scope to direct the government to initiate precautionary efforts to minimize industrial accidents and ensure safety measures.

Federation of Rainbow Warriors, Margao Vs Union of India & Ors and Hanuman Laxman Aroskar & Anr Vs Union of India & Through MOEF & Ors¹¹

An appeal against grant of an environmental clearance for the construction of a Greenfield International Airport in Mopa in Goa was filed before the Principal Bench of the National Green Tribunal, New Delhi in 2015. Tribunal granted the environmental clearance under EIA Notification, 2006. Subject to the compliance with some environmental conditions in conserving the air, water, noise, sound, soil, and biotic environment.

NGT perused the contentions raised by both the appellants and respondents and held that there can be no development at the cost of the environment. It also held that the fundamental needs of the present generation cannot be overlooked but should be in line with

¹⁰ Lg Polymers India Private Limited v. Andhra Pradesh Pollution Control Board, Civil Appeal No.11327/2020.

¹¹ Appeal No. 61/2015 And Appeal No. 1/2016 [M.A No. 11/2016 M.A.No.203/2016] (Principal Bench, New Delhi)Judgement 21st Aug 2018

environmental protection. It allowed the environmental clearance by stating that no development is possible without harming the environment.

The tribunal took nearly three years to decide the appeals (despite the fact that the NGT Act requires that an appeal be decided within six months of filing) and dismissed them simply by stating that the court attempted to strike a balance between ecology and the environment on the one hand, and public utility projects on the other hand. The parties appealed to the Hon'ble Supreme Court.¹²

The Supreme Court questioned the adjudicatory function of NGT. According to the Hon'ble Supreme Court, "The NGT concluded the submissions which were urged before it in one paragraph¹³. It failed to comprehend the true nature of its role and power¹⁴. It failed to carry out its adjudicatory function given under the act. it failed to consider any of the substantial issues related to livelihoods, flora and fauna, eco-sensitive zones, the Western Ghats. It quashed the judgment of National Green Tribunal. But on Jan 16, 2020 the same bench of the Hon'ble Supreme Court reiterated the necessity to balance the need for airport on one side and the protection of the environment on the other side. The Hon'ble J. Chandrachud observed that "The NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16 (h) read with Section 20 of the NGT Act 2010 by merely deferring to the decision to recommend and grant an Environmental Clearance.¹⁵" In the judgment the Hon'ble judge considered the crucial role of expert members in deciding environmental disputes.

The Hon'ble bench reversed the earlier judgment and accepted the statements of the Environmental Appraisal Committee (EAC) and accepted the action plan of MOEFCC concerning flyways

¹² Infra.14

¹³ Infra.14; stated in the case

¹⁴ Hanuman Laxman Aroskar v. Union of India, 2019 SCC Online SC 441

¹⁵ S.16 (h); an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986); S.20; Tribunal to apply certain principles. -The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

M/S. Sterlite Industries (India) v. The Chairman Tamil Nadu Pollution Control Board & Ors¹⁶

The Appellant Company is a copper smelter plant that is engaged in the manufacture of copper cathodes and copper rods operating at Thoothukudi Tamil Nadu. It was reported to the appellant company that the people of New Colony, Keela Shanmuga Puram, and other regions in Thoothukudi received some complaints of eye irritation and throat suffocation due to some emissions from the company. Tamil Nadu Pollution Control Board served a notice on the unit for contravening the restrictions imposed under Section.21 of the Air Act. The appellant company stated that there was no evidence to prove that people's stated irritations were related to the plant emissions.

District collector of Thoothukudy (Respondent No.2), has taken an objection about the maintainability of the appeal on the ground that the appellant-company has a statutory remedy under Section .31 of the Air Act of filing an appeal before the duly constituted Appellate Authority. All the respondents have contended that the incident of 23rd March 2013 was a clear case of emission of SO₂ in violation of the prescribed standards and not calibration.

The Hon'ble bench chaired by J. Swatanter Kumar held that there is no question of maintainability of this appeal as it is related to the environmental question. The judgement further added that the averments indicated by the respondents are required to be supported by proper scientific data or analytical report which ought to have been taken immediately on the date of occurrence or immediately thereafter. So the respondents failed to establish any cogent evidence before the Tribunal. The Expert team appointed by the Tribunal in its report made no critical remarks on the operation of the plant and found that the operation of the facility is mainly in line with the scientific requirements and notified parameters. So the Tribunal permitted the appellant industry to commence its production and operate its industry subject to certain conditions. But the respondents appealed to Supreme Court¹⁷.

The Supreme court questioned the maintainability of the NGT in this case. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act or the National Green Tribunal Act. since no order or decision

¹⁶ Appeal No. 57 of 2013 [Appeal No. 22 of 2013 (SZ)& Appeal No. 58 of 2013 [Appeal No. 23 of 2013 (SZ), (Principal Bench, New Delhi), Judgement 8th Aug 2013

¹⁷ Tamil Nadu Pollution Control Board v. Sterilite Industries Ltd. Civil Appeal No. S 4763-4764/2013

had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent., the NGTs order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

As pointed out by Hon'ble Supreme Court, a leapfrog appeal is not permissible under NGT Act. NGT has only conferred appellate jurisdiction from an order passed in exercise of the first appeal. NGT cannot assume its power of appeal from an appellate authority. it can only hear from an original authority. Question of maintainability of case is an important problem in this case. The Hon'ble Supreme court reminded that NGT cannot strike down or examine the validity of any law enacted by the legislature.

In United Kingdom, leapfrog appeals are allowed under Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996¹⁸.

Him Jagriti Uttaranchal Welfare Society v. Union of India¹⁹

In 2014, the matter was brought before the court by the NGO Him Jagriti Uttaranchal Welfare Society, which requested the immediate ban on plastic packaging of carbonated soft beverage and liquor for other non-essential goods, given its adverse effects on the human health and the environment. In 2019, the NGT constituted an expert committee, submitted a report largely in line with what the NGO said. The committee recognized concerns about excessive use of plastic, particularly in packaging for non-essential products. Despite evidence against possible contaminations of chemicals 'leaching' from plastic bottles in to food or fluids, NGT disposed of the case by requesting governmental authorities to take the required measures. Petitioner appealed to Supreme Court²⁰

The petition was filed before in NGT in 2014. But the Hon'ble Tribunal solved the problem in 2021 merely by passing on the responsibility to the State Government to take proper action. The apex court admitted the argument put forward by the appellant. While hearing the appeal the Hon'ble bench of Justices Y.D.Chandrachud and M.R Shah criticised the tribunal for shifting their responsibility to the Government authorities. Plastic disposal is a very serious issue and the NGT has heard the matter in its original jurisdiction. so it must have taken proper decision. This is a significant problem met by NGT which takes too long to

¹⁸ S Franes Ltd. v. The Cavendish Hotel (London) Ltd., [2018] UKSC 62

¹⁹ O.A. No.15/2014 (Principal Bench, New Delhi), Judgement 1st Jan 2021

²⁰ Him Jagriti Uttaranchal Welfare Society v. Union Of India & Ors , Civil Appeal No.2314/2021

resolve critical environmental issues and petitioners appeal such matters to the Supreme Court. NGT must therefore be attentive and in keeping with its purpose.

Forward Foundation v. State of Karnataka & Ors.²¹

The applicants are a charitable trust under the relevant laws in force. The grievances of the applicants were of the commercial projects been developed by the Respondents 1&2 (Mantri TechZone Private Limited and Core Mind Software and Services Private Limited) respectively. The development projects were setting up of a SEZ park, Hotels, Residential Apartments, and

Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake. Applicants submitted that development projects had encroached the Economical Sensitive Area, mostly the *Rajakaluves* (Storm Water Drains) which drains rainwater into the Bellandur Lake. The ecological sensitive land was allotted by the Karnataka Industrial Area Development Board (KIADB) to the respondent 1. The State Level Expert Appraisal Committee (SEAC) held various meeting to examine the project. One of the meetings decided that respondent 1 to submit a revised plan and obtain a Non Objection Certificate (NOC) from Bangalore Water Supply and Sewerage Board (BWSSB) for the revised plan. The NOC issued by the BWSSB covers only an area of 17,404 square meters whereas the noted area by the SEAC is 13,50,454.98 square meters.

The applicants alleged that respondent 1 had obtained a NOC from the BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units, which forms a very minuscule part of the total project. The applicants contended that the grant obtained from KSCPb to the respondent 1 also contained a condition with respect to environmental clearance from the competent authority that no such construction should take place unless such clearance order was granted. The applicants also alleged that the respondent 1 had violated the order given by the KSCPb and commenced construction. Another contention of the applicants was that conversion from 'protected zone' to 'residential zone' is a violation of law. The applicants also contended that construction of wetlands between two lakes are violative of Rule 4 Wetlands (Conservation and Management) Rules, 2010.

Respondent 1 had replied that the project land allotted by the competent authority are well within the environmental rules. Respondent 1 had also denied that allegation that the project would destroy the *Rajakaluves* and also dry the wetlands. The respondent also contended that

²¹ O.A. No. 222 /2014(Principal Bench, New Delhi) Judgement 4th May 2016,

it has already spent a sum of Rs 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities etc., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties. The respondent had also contended that the media and articles which had published that construction was unauthorized, illegal was prejudicial. The main contention of respondent 1 was that since the application for Environmental Clearance was granted on 17th February, 2012 as well as articles been published in the local newspaper, such a petition is barred by time and the Tribunal has no power to condone the delay which in fact has not even been prayed by the Applicants. The respondent also contended that the Tribunal has no jurisdiction to entertain and decide this application in the form and content in which it has been filed, as no question or substantial question of environment has been raised in relation to the Scheduled Acts under the NGT Act, 2010.

The issue before the tribunal is regarding the maintainability of the suit. The tribunal had allowed the application to be instituted under Sec.14 and decided that the application filed on 13th March 2014 was well within the limitation period mentioned under the afore-mention section. The reasons for which are given below. The tribunal mentioned that even though the Environment Clearance was obtained on 12th February 2012, due to repeated breach of notices a fresh 'cause of action' arose every time. The tribunal mentioned that the respondents 1&2 had breached the orders many times for the past 2 years and whenever they breached the orders, a fresh 'cause of action' arose.

NGT imposed a new buffer zone of 75 metres for lakes and wetlands which will be a no-construction zone, as opposed to 30 metres of buffer earlier in Bangalore. NGT ordered Mantri TechZone Private Limited to demolish structures created at buffer zone in the vicinity of lakes and rajakaluves in Bengaluru, the tribunal also issued directions to respondent 1 and 2 to pay a sum of Rs. 117.35 crores and Rs. 22.5 crores, respectively. In this judgement, there is a balance between sustainable development and protection of the environment. Sec.20 of the said Act places a mandate on the tribunal to apply the 3 principle of 'Sustainable Development', 'Precautionary Principle', and the 'Polluter Pays Principle', in settlement of disputes before it.

The tribunal had decided that demolition of the construction of not possible as the respondents have taken huge loans from financial institutions and it would be detrimental on

them. But rather, the tribunal had directed the State to commission a committee and directed the respondents to abide by the environmental norms. The tribunal also issued directions to respondent 1 and 2 to pay a sum of Rs. 117.35 crores and Rs. 22.5 crores, respectively. The tribunal had calculated the amount from 5 % of the total project value. The tribunal tried to maintain buffer zone. The applicants appealed to Hon'ble Supreme Court.²²

The Hon'ble Apex court added that wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment. But if we peruse the judgement of NGT in this case it tried to balance the right to development and right to environment. But it has extended the buffer zone. The NGT by its order issued on May 4, 2016 had directed to maintain a buffer zone and green belt of 75 meters from the periphery of lakes, 50 meters from the edge of primary, 35 meters from the edges of secondary and 25 meters from the edges of tertiary Rajkulewas (storm water drains). It was set by NGT expanding the buffer zones under the Revised Master Plan (RMP) of Bengaluru, which was 30 meters in the case of lakes, and 50 meters from primary, 25 metres from secondary and 15 metres from Rajkulewas. The modifications made by the tribunal was against the Revised master Plan of Bangalur., The Karnataka Industrial Area Development Act, Planning Act, Karnataka Municipal Corporations Act, 1976, as per which the buffer zone was already fixed by the statutes. NGT cannot unilaterally change in the stipulated limits stipulated in the instruments having statutory character. They have transgressed in to the legislative realm.

CONCLUSION

India established the National Green Tribunal (NGT) in 2010 as a quasi-judicial and Fast Track Court for environment-related litigations. Thus the country has become one of the pioneers in the establishment of a special green court among developing nations. NGT's environmental intervention has garnered a massive response from many areas of the country in the years since its beginning. However, the court has enormous administrative and financial issues.

One of its weaknesses is its expert members' 'lack of environmental finesse.' As mentioned above, the western Zone shows highest pendency of cases. It was shut due to the absence of members at key posts. Act mandates one chairperson, minimum 10 fulltime technical members and 10 judicial members and maximum 20 full time expert members and 20 judicial members. NGT never has the minimum strength of technical officers and judicial officers to

²² Mantri Technoze Pvt. Ltd. v. Forward Foundation, Civil Appeal No. 5016/2016

deal with the growing number of environmental litigations across the country. The appointed experts are usually specialists in a certain sector and not the environment in general. For Example, An expert, who works in Industrial Sector for many years cannot understand the issues arising out of Forest Conservation. In addition, NGT should appoint professional experts to support the scientific assessment of environmental damages, compensation and fine on a case- to- case basis.

The newspaper 'Indian Express' reported on March 1, 2021 that the NGT has dismissed more than half of the cases in 2020. According to an analysis of these orders by The Indian Express, the orders were based on the technical issue that the appellants did not approach the Tribunal in a timely manner. Further to section.16 of the NGT Act, 2010 in conjunction with clauses mentioned in Environment Impact Assessment Notification, 2006 an environmental clearance can be challenged by an affected party **within 30 days** while the Tribunal has the authority to condone another 60 days' delay given "sufficient cause". Recently while deciding a case²³, the Hon'ble Supreme Court held that provisions of the NGT act must be construed with intention to highlight them, especially as they concern protections of right under Article 21 and also deal with vital environmental Policy and its regulatory aspects. So the Hon'ble apex Court added every provisions of the NGT must be given its due meaning by comprehending the mischief it intends to remedy. Thus the provisions relating to the condonation can be construed liberally.

There are also significant problems in implementing the NGT's orders into action. Section 24 of the NGT Act and section 35 of the NGT (Practice and procedure) rules specifies that the compensation amount as ordered by the tribunal should be remitted to the authority of the Environmental Relief Fund (ERF) as mentioned under section 7A of the Public Liability Insurance Act, 1991. It has been noticed that polluters do not follow this guideline. Further, there is no institutional mechanism or environment protection agencies to ensure that the environmental regulatory authorities comply with the orders of the tribunal. There is a Report on the Environment Manage Relief Fund dated March 2020 by Debadityo Sinha for Vidhi centre²⁴. Report clarified that neither

NGT or MoEFCC has maintained any records of the compensation awarded by NGT in terms of Section 24(1) of the NGT Act. It is also unclear whether any amount has been

²³ Supra n.27

²⁴ Accessible at <https://vidhilegalpolicy.in/wp-content/uploads/2020/06/Management_of_ERF_Debadityo_Sinha_VCLP_2020.pdf>, (4th Nov 2021,8am)

utilized from the ERF in terms of Section 24(2) of the NGT Act. Thus the non-compliance with the orders of NGT awarding compensation that the money is not being credited in the ERF fund nor is it being directly disbursed to the victims.. As a result, the Act must be restructured to create an Environment Protection Agency, similar to the 'EPA' in the United Kingdom, to monitor the compliance with the tribunal's decisions.

As per the provisions of the Act, it shall decide the matters within statute. However, in many situations the issues were decided in long period and inadvertent conclusions were taken that made parties appeal to the Supreme Court. NGT orders are appealed before the Supreme Court where a heavy penalty is imposed by the tribunal. The majority of compensation orders have been appealed to the Supreme Court and have yet to be resolved. This is also a significant issue faced by India's environmental cases.

Some environmental courts around the world have very extensive powers like Civil, Criminal and administrative jurisdiction. United States department of Justice possess 43 environmental prosecutors to hear criminal cases against public and private parties for violating nation's environmental laws. Unlike Brazil's and the United States' environmental tribunals, India's National Green Tribunal does not have criminal jurisdiction.

As pointed out by Pring & Pring, Alternate Dispute Resolution Mechanism is also a critical Component while dispersing environmental justice by green courts. The New South Wales Environmental Court's "Multi-Door Courthouse" approach, which incorporates a wide range of opportunities for parties to resolve issues outside of the courtroom, is the most comprehensive model of ADR. Queensland, Western Australia, and New Zealand are both good examples. National Green Tribunal Act, must be amended with Alternate Dispute Resolution as a foundation which would help in reducing cost of environmental litigation in higher courts

In India, National Green Tribunal is established with limited number of offices which hinders justice delivery mechanism. Jurisdiction of the court must be more comprehensive and should be established in multiple locations. National Green Tribunal Act, 2010 must be restructured with more autonomy and a broader scope for successful environmental protection that is compatible with human development.

JUSTICE DELAYED IS JUSTICE DENIED- IS ALTERNATE DISPUTE RESOLUTION A NEED FOR AN HOUR IN CIVIL MATTER

**Mamatha R¹
Mahantesh G S²**

INTRODUCTION

"Justice delayed is justice denied,"³ a legal maxim states that if legal remedy is available for a party who has been injured, but it is not provided in a timely manner, it is practically the same as having no redress at all⁴.

This principle is the basis for the right to a speedy trial and other rights aimed at speeding up the legal process, as it is inequitable for the injured party to have to sustain an injury with little possibility of resolution. The expression has become a rallying cry for legal reformers who believe that courts and governments are taking too long to resolve legal disputes, either because the current system is too complicated or overworked, or because the topic or party in question lacks political favour⁵.

In the Indian context, on March 19, 1955, then-Indian Prime Minister Jawaharlal Nehru addressing the members of the Punjab High Court at the inauguration of the court's new headquarters in Chandigarh, "Justice in India should be simple, quick, and inexpensive." He had correctly said that litigation was a sickness, and that it could not be a good thing to allow a disease to progress before seeking medical help. Nehru had adamantly emphasised that cases should not be delayed, citing the proverb "Justice Delayed is Justice Denied."

Delays in the administration of justice devalue verdicts in general. It usually causes anxiety among litigants and resulting in the degradation of evidence used to decide rights. The legal system of a country influences how its residents view issues that affect the country as a whole and their own lives in particular. Delay sends the incorrect message about the justice delivery system, exposing the court to public scrutiny and eroding the trust of the general public, who see the judiciary as their final option and a temple of justice.

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³ Martin Luther King Jr., used the phrase in the form "justice too long delayed is justice denied" in his "Letter from Birmingham Jail"

⁴ Justice Delayed is Justice Denied, < https://advocatespedia.com/JUSTICE_DELAYED_IS_JUSTICE_DENIED visited on 14/2/2022

⁵ "Identify a Socio-Legal Problem of Your Choice and ... - Yola"

<<http://www.grkarelawlibrary.yolasite.com/resources/LLM-Res-KG.pdf>> accessed February 10, 2022

Cases must be resolved in a timely manner in order to sustain the rule of law and provide access to justice, which is a recognised fundamental right. Due to a massive backlog of cases for which the existing judge strength is absolutely inadequate, the legal system is unable to provide prompt justice.

Delay is defined as "a case that has been in court/judicial system for longer than the customary period that a case of that sort should take to be resolved."

The constitutional promise of ensuring social, economic, and political justice to all citizens, as stated in the Preamble of the Constitution, will not be realised unless the three organs of the state, namely the legislature, executive, and judiciary, work together to find ways and means of providing equal access to the Indian justice system to the Indian poor also.

India has an independent judicial system. The Indian judicial system is organised on a federal level.

- Supreme Court
- High Court
- The District Court.

The Supreme Court of India is also referred to as the country's highest court. It consists of 33+1 judges⁶ (33 judges plus India's Chief Justice). In India, the Supreme Court is the highest legal authority and the final court of appeal.

The Supreme Court is followed by the High Court as the state's highest judicial authority, which is governed and directed by the chief justice of the state. In India, there are 25 high courts⁷.

District Court, known as Subordinate Courts, is the last in the hierarchy. District and session judges are in charge of these courts, which are overseen and directed by their respective high courts. The lower courts are further divided into two types: (i) Sessions Courts and (ii) Civil Courts.

The Supreme Court and High Courts are provided with appellate jurisdiction. Appeals from the District Court go to the high court and from the High Court to the Supreme Court.

⁶ The Supreme Court (Number of Judges) Amendment Bill, 2019 was introduced in Lok Sabha on August 5, 2019 by the Minister of Law and Justice, Mr. Ravi Shankar Prasad and the bill was passed on 7th of August 2019 in Rajya Sabha . The Bill amends the Supreme Court (Number of Judges) Act, 1956.

⁷ as of 4 April 2020

Delay invites a lot of problems and prolong pendency of cases causes serious consequences on the public. An effective, fair, and expedient trial is the fundamental right of every citizen. The Supreme Court in recent years by invoking Article 21 have tried to give some relief to people in this regard.

Delays produce a slew of issues, and the prolonged pendency of cases has major ramifications for the public. Every citizen has the right to a trial that is effective, fair, and timely. In recent years, the Supreme Court has attempted to provide some assistance to persons in this area by citing Article 21.

It is critical in the judicial system that a person get justice in a timely manner. The Indian judicial system is particularly notorious for this characteristic of delayed justice, which ultimately destroys the goal of the trial, if not entirely, at least substantially. It is impossible to call a trial fair if it is not conducted in a timely way.

If there is no legitimate justification for the events, an excessive delay in issuing the verdict is inherently unjust to the accused party, and he should be released from his crime. There is a filing deadline. Prescriptions must be followed while making a written statement, amending a pleading, issuing summons, and so on. Due to pressure from attorneys and advocates, it was dropped.

Reasons for the pendency of cases-

Vacancies in Judiciary -

A large number of vacancies is a serious hindrance to swift justice. Even at the Supreme Court, the sanctioned strength for justices is 31 yet the working strength is only 25, implying that six judgeships remain empty.

Inadequate number of courts

This is another source of problem that contributes to case pending. The judicial system suffered a serious blow due to an insufficient number of courts. In its Report No. 245, the Law Commission of India discusses the construction of extra courts to reduce delays and expedite the resolution of cases. In the case of *Imtiyaz Ahmad v. State of Uttar Pradesh*⁸, the Supreme Court further asked the Law Commission to establish new courts.

No provisions regarding time limits-

⁸ AIR SC 2012 642

There are no restrictions for time constraints, and there is no deadline for submitting written statement, amending a pleading, issuing summons, and so on.

Judges are being transferred

Another key reason why the court system is slowed is because of this. When a new judge is appointed, he or she may order a de novo trial, which delays the administration of justice.

Inadequate specialised knowledge

Judges' lack of specialised expertise has a direct influence on the judicial system's delivery. Many new crimes have evolved as a result of advances in science and technology, such as cyber pornography and cyber stalking. Many judicial authorities are obliged to acquire particular knowledge in order to deal with such offences.

Large number of appeals

The large volume of appeals also slows down the resolution of cases. Courts must devote valuable time to dealing with the increasing number of appeals. As a result, courts are unable to dedicate their time to other vital problems.

Adjournment on a regular basis

In civil cases, frequent adjournments drag down the justice delivery system. In its Seventy-Seventh Report, the Law Commission of India identified frequent adjournments as a major source of delay⁹. Despite the fact that the Code of Civil Procedure states that "no such adjournment shall be granted to a party more than three times during the hearing of the matter," Unfortunately, our courts do not adhere to this norm.

Reasons for delay in civil matters-

Non-appearance of the parties-

Many witnesses fail to attend in court because they are aware of the Court's complicated, sluggish, lengthy, and time-consuming procedure. Many times, witnesses are unavailable due to death, a change of address, or a transfer, among other reasons.

Non-compliance with order X C.P.C

Order X CPC¹⁰ deals with the court's investigation of parties. "In order to make effective use of the provisions of Order X, it is essential that the trial judge read in advance the pleadings

⁹ 77th report was submitted in the year 1978 November on Delay and Arrears in Trial Courts

¹⁰ Section 89 of the Code of Civil Procedure, 1908 gives power to the court to refer the matter to the alternate dispute resolution methods when it appears to the court that there exists an element of settlement which may be acceptable to the parties then the court may formulate such settlement or propose a tentative

of the parties and should know the case of each party only then he can put questions and frame issues properly," the Law Commission of India writes in its Seventy-Seventh Report. As a result, non-compliance with Order X's requirements prolongs the situation.

Non-compliance with the terms of Section 89 of the Criminal Procedure Code

Section 89 states that if a disagreement may be resolved outside of court, the issue will be coordinated for ADR rather than proceeding with the regular procedure. This clause was inserted by the amending Act to shorten the time it takes for civil disputes to be resolved outside of court with the parties' permission using procedures like as arbitration, conciliation, Lok Adalat, and mediation. Judges, on the other hand, occasionally neglect to send cases to ADR, which is another factor that slows down case resolution. Civil cases are delayed due to noncompliance with Section 89.

Service of summons is being delayed

A summons is a legal procedure that is used to force a defendant to appear in court. "When an action has been validly initiated, a summons may be issued to the defendant to attend and answer the claim," according to Order V of the CPC. In general, individuals strive to avoid being summoned. As a result, the trial will be delayed. Personal service and substituted service are the two types of summons service provided under the Code. If the defendant seeks to escape serving of the summons, Rule 20 of Order V, which deals with substituted service, must be used. Substituted Service is the most effective method for avoiding summons service delays.

Impact of delay on the society

- **Decrease in the faith of the people on Judicial system-** People's trust in the judicial system erodes when a judgement is delivered too late, contributing to an unfavourable image of the court in the eyes of the general public.

The common people's faith in the court system has eroded, and they are finding it difficult to re-install it, which has major implications for the country's justice system.

- **Memory of the witness and the Judge fades:** As a result of the delay in a trial, the witness' memory fades, he is unable to recall the correct sequence of events, forgets the event, and in some cases even dies, and important evidence in a case becomes stale, and the party with the strongest case may lose. Even the Judge who hears the

arguments forgets or just remembers portions of the arguments, which is to the detriment of the parties.

- **Wrongdoers have the opportunity to escape legal action:** Delay in enforcing the law enables the perpetrator to dodge the law, to the detriment of the opponent. In many situations, the perpetrator takes advantage of the situation to avoid accountability. It's also possible that the opponent accepts to the wrongdoer's demands or loses the lawsuit completely.
- **The witness's retention and the judge's fading:** Because of the delay in a trial, the witness' memory fades, he is unable to recall the right sequence of events, forgets the incident, and in some circumstances even dies, and vital evidence in a case becomes stale, and the side with the strongest case may lose. Even the Judge who hears the arguments forgets or just remembers portions of the arguments, which is to the detriment of the parties.
- **Mental and physical agony to the parties to the suit-** The parties to the lawsuit are suffering from mental and bodily anguish. : When a case drags on for an extended period of time, it can create mental and physical distress to the parties involved.
- **Written Submission** - "Defendant should file Written Statement within 30 days from the date of serving of summons on him," according to Written Submission Order VIII CPC. However, this clause is not obeyed in its entirety. Defendants frequently extend the proceedings by failing to file a written statement on time. As a result, the time it takes to file a written statement adds to the time it takes for cases to be resolved.
- **Remedies available will loses its importance-** If remedies are made accessible to a side but the decision is not delivered within a reasonable period, the objective of justice will be hindered, and justice will finally be denied. For example, a basic partition action might take up to 15 years to be resolved.
- **Witness's non-appearance:** Another factor that causes delays in civil proceedings is when a date and time for a hearing is set and the parties fail to appear on that day and time. Because the respondent is usually aware of the likelihood of a negative verdict, he strives to get as many adjournments as possible to present his case. Furthermore, the parties' failure to present for cross-examination contributes to the delay.
- **Adjournment. Requests from Advocates:** Advocates/lawyers have a practise of requesting an adjournment for a variety of reasons, such as a client who has not paid the advocate, a case that has not been prepared, or a fear of losing the case.

Code of civil procedure contributing for the speedy disposal of civil matter-

The Code of Civil Procedure has been amended different times and such amendments have brought forward certain changes to ensure that the trial procedure is shortened.

1. The amendment regarding Section 148¹¹ was that courts had the authority to expand the required period for an act.
2. An amendment to Rule 9 and Rule 9A of Order V put into reality the responsibility of putting forward the summons to the defendant. This amendment expressly authorizes the use of newer means of communications like couriers etc.
3. Another important amendment in this respect has been "Section 27¹² of the CPC (Amendment) Act, 1999 and Section 12¹³ of the CPC (Amendment) Act, 2002": The amendment provided the commissioners with the power to record evidence and such power not to be restrained just to themselves. Prior to this amendment, the judge used to be over-burdened and it was a cause of delay but through such delegation, the process has become much faster.

Other proposals to guarantee speedy disposal of cases

1. Adherence of Alternate Dispute Resolution mechanism under Sec. 89 CPC;
2. Check on unnecessary and frequent adjournments.
3. Proper adherence to the provisions of C.P.C.1908 and Cr. P.C. 1973
4. Minimizing the delay in service of summons and filing written statements and other related matters.

The reason one goes to court is to get justice, and "Justice Delayed is Justice Denied" Unfortunately the judicial system in India is based on Evidence and facts not conscience or morals, so it should be easier, once having the facts at hand, all it needs is argument and hearing and quicker pronouncement of Justice. A judicial system that is only concerned with

¹¹Section 148 of the CPC states that where any term is fixed or awarded by the Court for the doing of any act provided by CPC, it is the discretionary power of the Court that Court may enlarge such period from time to time, even though the term originally fixed or awarded may have departed

¹²Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed on such day not beyond thirty days from date of the institution of the suit.

¹³Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

evidence and facts should not be concerned with taming the plaintiff and defendant's souls with time, but rather with delivering justice as quickly as possible; this delay/denial of justice leads to an increase in "Out of Court settlements," which are cheaper and faster, resulting in a loss of trust in our judicial system.

Right to speedy Justices

Legal justice to all citizens is one of the key mandates of the Indian Constitution. This has been explicitly spelt out in Article 39 – A of the Constitution that directs the state "to secure equal justice and free legal aid for all its citizens."

Speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under Article 32 for the purpose of enforcing such right. In *Hussainara Khatoon v/s State of Bihar*¹⁴, *A R Antulay v/s R S Nayak*¹⁵, *Ranjan Dwivedi v/s CBI*¹⁶, *Imtiyaz Ahmad v/s State of UP*¹⁷ it was fundamental right of the citizens to have a speedy disposal of the matter.

RECOMMENDATIONS

Based upon the reasons for the delay, the common or general recommendation can be use the modern technologies in the court/ setup e-courts, increase the no of courts, appoint more Judges, effective implementation of Gram Nyayalaya at the rural level, judges should not allow the adjournment often, the amendment to CPC should made so as no adjournment is done very easily, effective implementation of ADR, simplifying the civil procedure code, etc The researcher wants to propose the following to reduce the delay in the civil matter-

- Section 80 of CPC should not be alternative remedy. This should be exhausted in partition suits, disputed relating to divorce, maintenance etc so that remedy will be delivered faster, and both the parties will be in win -win situation.
- If there is any question of law to be discussed, then only court should entertain the matter for admission. The certificate should be given by an officer of ADR institution for appeal.
- Improve the quality of law graduate so that they will be able to do justices to their client

¹⁴1979 AIR 1360, 1980 SCC (1) 81

¹⁵1988 AIR 1531, 1988 SCR Supl. (1)1

¹⁶SCC (2012) 8 495

¹⁷AIR SC 2012 642

- Impose reasonable restriction on unnecessary appeals. There should be an letter of recommendation of appeal from the registrar of Courts mentioning the grounds of appeal. There should be one or two appeals.
- To establish mobile courts so that the delay can be reduces.
- To give status of ADR awards free from appeals, appeals can be allowed only if the consent is not free.
- To strengthen the institution with proper infrastructure, human resource etc.

ADR is the old concept of justice's delivery system in India. it is suggested that ADR system should be institutionalised. But at the same time a caveat is also suggested that one must be careful to avoid the dysfunctions that frequently accompany successful institutionalisations. Because the ADR movement is still in the formative stage, there is much to learn about the feasibility of alternatives to litigation.

TRIBUNALS IN INDIA: MECHANISM TO DELIVER TECHNICAL JUSTICE

Meenakshi¹

Prof. (Dr.) Subhash Chandra Gupta²

INTRODUCTION

The meaning of justice basically is to behave with others as we want for ourselves. In other words, justice includes fair play, reasonable behavior to others, a situation where all are treated equally and which is just and right. The concept of justice has no limited definition and it is not reasonable to make the boundaries over it. Lord Denning defines justice as- ‘What the right-minded members of the community... believe to be fair’. Justice is opposite of unjust, unfair, arbitrariness, biasness etc. At present, the meaning of justice is used in a broad sense, welfare governments also focusing on the different forms of justice, just like social justice, economic justice and political justice. The framers of the Indian Constitution ensure justice through the preamble of the Constitution, the preamble focuses on social, economic, and political justice.

Social justice is related to the justice which protects the society and also ensures the justice through the rules, regulations and custom or usage of society. Social justice ensures all persons treated in society equally without any discrimination on the basis of religion, race, sex, cast, birthplace. According to Dr. Raphael ‘Justice protects the rights of the individual as well as the order of society’.³ The idea of justice is based on society, because society is the main source of origin of law and the main purpose of making law is to make justice in society. P.B. Gajendragadkar, J. defines social justice in words- ‘By social justice we mean ending all kinds of social inequalities and then to provide equal opportunities to everyone’.⁴ Article 14th of the Indian Constitution ensures the equality and rule of law in the country.

Economic justice means that the citizens should be treated equally at the opportunity to earn money for livelihood. The Part IV of the Indian Constitution directs the state to ensure the

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³ KK Ghai, Speech on Justice: Meaning and Types of Justice, <<https://www.yourarticlelibrary.com/speech/speech-on-justice-meaning-and-types-of-justice/40361>> accessed 31 January 2022.

⁴ *Id.*

equal pay for equal work, humane conditions of work, economic security for futures, availability of resources and fair and equitable distribution of wealth and resources.⁵

Political justice includes the right to vote, right to the election and also reservation of seats to different classes includes female. The democratic form of government is the protector of political justice. Because the meaning of democracy is ‘the government, elected by the people, for the people and to the people. In other words, Political justice provides the opportunity of representation in government.

India follows the principle, rule of law, which means that no one is above the law and all will be treated equally according the law. The framers of the Constitution were well aware of the value of justice, and during the framing of the Constitution, they added relevant provisions in the Constitution which are essential for the delivery of justice.

The Indian Constitution provides the Fundamental Rights and Fundamental Duties which is an example of social justice and the Directive Principles of State Policies ensures socio-economic justice. The democratic, republic and sovereignty provisions of the Constitution ensures overall political justice.

When we talk about the justice delivery system, it is the body or a structure by which justice is delivered. If there is no proper justice delivery system, then justice cannot be delivered. As per the needs of society, societal changes are necessary because change is the nature of society. It is necessary for any justice delivery system to modify it according to the needs of society, because the ultimate aim of the justice delivery system is to deliver justice in society. The effective justice delivery system ensures effective access to justice. According to M Cappelletti- ‘Effective access to justice can thus be seen as the most basic requirement - the most basic human right of a system purport to guarantee legal rights’.⁶ The democratic and welfare government is a protector of its citizens, and it also maintains justice in the society. It is better for any justice delivery system to modify itself as per requirement of society. Under the scheme of the Constitution of India, the lawmaking power is vested in the legislature. The legislature is empowered to make the relevant laws for reformation of the justice delivery system.

⁵ *Id.*

⁶ Law Commission, *Assessment of Statutory Frameworks of Tribunals in India* (Law Com No 272, 2017).

In this 21st Century, the traditional definition of justice has changed as per reform in various sectors of the world and the area of justice has become broadened. At present, the definition of justice also includes technical justice. The term technical is defined in the Merriam Webster Dictionary as follows, ‘which is marked by or characteristic of specialization or relating to a particular subject’ ‘based on or marked by a strict or legal interpretation’ and in this dictionary Justice is defined as, ‘the quality of being just, impartial, or fair’ or ‘the principle or ideal of just dealing or right action’ or ‘conformity to this principle or ideal: righteousness’. So, the meaning of technical-justice is, justice in specific matters or particular subjects. The subject which is specific or technical by nature, requires that you solve matters with technical knowledge, as is the nature of matters. The tribunals originated in the judicial system for dealing with some specific matters or issues with the help of experts. The tribunals are the bodies which solves the technical matters with technical knowledge and delivered technical justice. The Supreme Court mentioned that ‘.... Like many other nations, India recognized the need for Tribunalisation of justice to provide for adjudication by persons with ability to decide disputes in specific fields as well as to provide expedited justice in certain kinds of cases.’⁷ At present in India there are many tribunals are established and establishing in deferent of subjects such as service matters, tax disputes, labor issues, environmental protections, company matters etc.

JUSTICE DELIVERY SYSTEM OF INDIA

The justice delivery system is the set of bodies which is constituted for administration of justice in the country, under the scheme of the Constitution. The justice delivery system is the protector of rights. It means it is a medium which ensures justice in the society and plays an important role in regulation of the society.

The original Constitution of India made arrangements for its judicial system and set the hierarchical system. In Articles 124⁸ to 147 of the Constitution, provisions related to the Indian Supreme Court. Articles 214⁹ to 232 and 241¹⁰ makes the arrangement for High Courts for each State and Union territory. The Articles 233 to 237 related to the constitution of the district court and subordinate Court.

⁷ *Madras Bar Association vs Union of India*, WP (C) No 804 of 2020.

⁸ Establishment and constitution of the Supreme Court, art124.

⁹ High Courts for States, art 214.

¹⁰ High Courts for Union territories, art 241.

India is the world's largest democracy and most populated country, due to which the registered number of cases is very high and all cases are related to different subject matters, and it is not possible for any person or any mechanism to solve all types of matters, without any help of experts. Some socio-economic disputes require quick solutions or expert advice without any delay. So, alternative or supplemental bodies are needed for the justice delivery system. The Law Commission of India pointed out the meaning of Tribunals in the words that 'The Specific forum especially devised to deal with specific disputes caters to the needs of persons who seek resolution of these specified types of disputes.'¹¹ Various provisions of the Constitution also provide a variety of rights for its citizens and also provides an arrangement for enforcement of rights.

The post '42nd Constitutional Amendment Act 1976', the part XIV-A (Article 323-A and 323-B) inserted in the Constitution. These provisions empowered the legislature to make the laws for the establishment of tribunals. The tribunals are established for solving specific disputes or technical matters, which are provided through the Statute. At present in India variety of tribunals working in different of the area, Article 323-A deals with the tribunals for service matters, and 323-B deals with the tribunals for other matters, in Article 323B specified subjects are, tax, customs, labor and industrial disputes, land reform, election disputes for central and state legislature, regulation the price and distribution of foods and other goods, etc.

Sometimes the tribunal system looks against the principle of separation of powers, because the meaning of that principle is to make the separation between the organs of government. India does not strictly follow this principle as followed by the United States.¹² But in the present time the U.S. attitude in this regard has also changed.

Cardozo, J. said that-

The doctrine of "separation of powers" is not a doctrinaire concept to be made use of with pedantic rigor. There must be sensible approximation, there must be elasticity of adjustment in response the practical necessities of government which cannot foresee today the development of tomorrow in their nearly infinite variety.¹³

¹¹ Law Commission, *Assessment of Statutory Frameworks of Tribunals in India* (Law Com No 272, 2017).

¹² *Delhi Laws Act 1912, In re*, AIR 1951 SC 332 (346-47); *Ram Jawaya Kapur v State of Punjab*, AIR 1955 SC 549; *Indira Nehru Gandhi v Raj Narian*, AIR 1975 SC 2299.

¹³ *Panama Refining Company v Ryan*, [(1935)293 US 388(400)]

At present, application of the principle of separation of power, has changed and it is used in practical sense not its strict meaning. The tribunals and other quasi-judicial bodies established at the executive level through the statute of the legislature and the statute delegates judicial powers over it. The quasi-judicial bodies are constituted for providing an additional judicial system and these are the important part of the justice delivery system.

The tribunal system was established as a parallel of traditional courts but not properly, because this system came under the judiciary. Article 136 of the Constitution deals with the special leave to appeal of the Supreme Court, the Supreme Court has the power over all subordinate courts and tribunals in the territory of India. Article 227 empowered the High Court to superintendence over all the subordinate courts and tribunals within jurisdiction. So, we can say that tribunals are under the justice delivery system not beyond it. Both the Articles ensure that, the tribunal system does not infringe the principle of Separation of Power and it comes under the judicial system.

REFORM IN JUSTICE DELIVERY SYSTEM: THE NEED OF THE HOUR

At present the Indian judiciary is facing a lot of backlogs and there is an instant need for reform in this system.

The Law Commission of India focused on reform in our judicial system and said that-

The system is not being able to keep pace with the new cases being instituted and is not being able to dispose of a comparable number of cases. The already severe problem of backlogs is, therefore, getting exacerbated by the day, leading to a dilution of the Constitutional guarantee of access to timely justice and erosion of the rule of law.¹⁴

Shortcomings of the Indian judicial system

- **Pendency of cases-** ‘Justice delayed is justice denied’- (William Goldstone), The meaning of the above maxim is that there is no meaning of justice if we did not achieve it in the right time. The delay in the administration of justice is one of the biggest backlogs in our justice delivery system. As on 03 Feb 2022, there are more than 41103371 cases pending in the lower courts across India, in which

¹⁴ Law Commission, *Arrears and Backlog: Creating Additional Judicial (wo)manpower* (Law Com NO 245, 2014).

31807821(77.38%) cases more than 1 year old. In the High Courts, 5678149 cases pending, and in which 4850167(85.42%) cases more than 1 year old.¹⁵.Therefore, the establishment of quasi-judicial bodies or tribunals is one of the major solutions to overcome this backlog.

- **Lack of proper infrastructure-** Currently in India, maximum Courts are facing infrastructure problems, as, no proper court hall, toilet facilities also very poor, mainly for females, library facility is not available for advocates and judges, and some others, electricity, water, sitting or the waiting area, etc.

On 23 October 2021, N.V. Ramana, J. speaking on the issue of proper infrastructure of judicial system on the occasion of building inauguration, of Aurangabad Bench of the Bombay High Court, said that- ‘Good judicial infrastructure for courts in India has always been an afterthought. It is because of this mindset that courts still operate from dilapidated structures making it difficult to effectively perform their functions’.¹⁶ T.S. Thakur, J. also emphasized on the issue in 2016 and during the speech, the CJI had tears in his eyes explaining the lack of infrastructure in the judicial system.

Already facing a lot of problems, the judiciary faced some additional problems during the pandemic COVID- 19. After the announcement of virtual hearing, there was no proper technology in many courts and number of judges and advocates did not have proper knowledge about virtual hearing.

‘...only 27 percent courts being able to place a computer at judge’s dais with video-conferencing facility, justice delivery, especially at lower courts, has greatly suffered during the course of the pandemic. The CJI’s repeated calls for overhauling the processes to improve judicial infrastructure could not have come at better time than now’.¹⁷

As per National Mission for Justice Delivery and Legal Reforms, adequacy of judicial infrastructure is a basic condition for reducing delay and legal reforms. The Supreme Court established a National Court Management System (NCMS) that says that there is a direct connection between physical infrastructure, personnel infrastructure, digital

¹⁵ National Judicial Data Grid, Summary Report of India (2022)

<<https://njdg.ecourts.gov.in/hcnjdgnw/?p=main>> accessed 3 February 2022.

¹⁶ Indianisation of our country’s legal system is need of the hour, says CJI Ramana <<https://theprint.in/judiciary/indianisation-of-our-countrys-legal-system-is-need-of-the-hour-says-cji-ramana>> accessed 17 January 2022.

¹⁷ Niranjan Sahoo and Jibran Khan, judicial Infrastructure: Will National Judicial Infrastructure Corporation Help? <<https://www.orfonline.org/expert-speak/judicial-infrastructure/>> accessed 25 January 2022.

infrastructure, and pendency. The NCMS plan highlights how infrastructure can fulfill goals such as providing optimum working conditions to increase efficiency.

- **The Vacancy in seats-** According to the data ministry of law and justice, Government of India¹⁸, at present the sectioned strength of judges of the Supreme Court across India is 34 and the current working strength is 32 and sanctioned strength of the total Judges in the High Court is 1098 and the working strength is 687, it means 411 seats are vacant. The situation of subordinate courts is also very poor. This is the biggest problem in our judicial system.

Kiren Rijju, the Union Law Minister pointed out that-

Availability of adequate number of judges and judicial officers, supporting court staff and physical infrastructure, complexity of facts involved, nature of evidence, cooperation of stakeholders viz. bar, investigation agencies, witnesses and litigants and proper application of rules and procedures. There are several other factors which may lead to delay in disposal of cases. These, inter-alia, include vacancies of judges, frequent adjournments and lack of adequate arrangement to monitor, track and bunch cases for hearing.

GROWTH AND NEED OF TRIBUNAL SYSTEM

Tribunal system is not a very old concept, it developed with the concept of a welfare state. Apart from India there is the tribunal system in many other countries like UK, France, Australia, Canada etc. India became Independent in 1947 after a long slavery, it was the necessity of state to increase the pace of development works in the Country. In this modern world, tribunals have become an indispensable part for our legal system, because the world focusses on socio-economic growth, due to that the state activities continue and some issues arising, which are different in nature. These different issues impose the burden over the judiciary. Therefore, the justice delivery system needs reform so that it becomes more efficient for providing justice and maintaining the rule of law in the Country. The democratic nature of government and socio-economic features are the major source of this alternative justice delivery system or tribunal system.

¹⁸ Govt of India, Ministry of Law and Justice, Statement showing Sanctioned strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts (17.01.2022) <<https://www.doj.gov.in/appointment-of-judges/vacancy-positions>> accessed 25 January 2022.

Highlighting the importance of tribunals, the Law Commission of India determined that-

The Tribunals have the power to adjudicate over a wide range of subjects that impact everyday life. Tribunals function as an effective mechanism to ameliorate the burden of the judiciary. The law Courts with their elaborate procedures, legalistic fronts and attitudes were deemed incapable of rendering speedy and affordable justice to the parties concerned. Particularly in technical cases, it was felt that the nature of the statutes required adjudicatory forums comprising of persons having expert knowledge of the working of these laws. The Tribunals emerged not with the sole promise of speedy, effective, decentralized dispensation of justice but also the expertise and knowledge in specialized areas that was felt to be lacking in the judges of traditional Courts.¹⁹

The Constitution of India originally does not make any specific provision regarding the tribunal, independent India focusing on the development of the country, due to which some changes required in the field of justice delivery system. The traditional judicial system was not capable of working according to the day by day changing scenario of society and it became very necessary to establish an alternative mechanism for justice delivery.

According to H.W.R. Wade-

The social legislation of the twentieth century demanded tribunals for purely administrative reasons; they could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving large number of small claims. The process of Courts of law is elaborate, slow and costly.... Commissioners of customs and excise were given judicial powers more than three centuries ago. Tax tribunals were in fact established as far back as the 18th century.²⁰

The legislature passed 42nd Constitutional Amendment Act 1976 and amended the Constitution by adding Article 323-A and 323-B. Both the Articles confer power to establish tribunals under given subject matters.

¹⁹ Law Commission, *Assessment of Statutory Frameworks of Tribunals in India* (Law Com No 272, 2017).

²⁰ *ibid*.

In the *Union of India v. R Gandhi*²¹, the Supreme Court held that- ‘A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal’.²²

At present the tribunals are a very emerging solution to deal with technical matters arising out of the welfare state. The establishment of the tribunals is part of the judicial reforms in the Country.

N.V. Ramana, J. also focuses on an alternative dispute mechanism in the words that-

‘We must not forget that the focal point of any justice system is the litigant, the justice seeker’. ... ‘usage of alternative dispute mechanisms such as mediation and conciliation would go a long way in reducing the friction between parties and would save resources. It also reduces the pendency and requirement of having lengthy arguments and judgments.’²³

EFFICACY OF TRIBUNALS IN JUSTICE DELIVERY SYSTEM

The tribunals are the part of quasi-judicial bodies. The tribunals solve the disputes between the government and individual, or between individuals. The tribunals are playing an important and meaningful role in the adjudications of disputes and they are needful for access to justice. In *L. Chandra Kumar v. Union of India*, the Supreme Court pointed out that-

The setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of the various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances.²⁴

Adjudication through administrative tribunals has become an indispensable phenomenon in every legal system of the modern world. Today, the bulk of decisions affecting the life, liberty and property of individuals, comes not from the courts, but emanates from these new adjudicatory bodies, agencies or institutions, commonly referred to as administrative

²¹ (2010) 11 SCC 1.

²² Law Commission, *Assessment of Statutory Frameworks of Tribunals in India* (Law Com No 272, 2017).

²³ *Indianisation* (n 16).

²⁴ *L Chandra Kumar v UOI*, (1997) 3 SCC 261.

tribunals. The justice delivery system is a system which is reforming with the demand of society.

The tribunals have some specific features which make it the effective alternative mechanism of justice delivery-

- The tribunals are not bound with strict procedural and evidentiary rules;
- The working of tribunals is based on the principle of natural justice and the rules of the related statute;
- The Tribunals are established to deal with technical matters with technical knowledge and solve the disputes with the help of expertise and this is important for quality justice;

According to Robson-

Administrative tribunals do their work more Rapidly, more cheaply, more efficiently than ordinary courts...possess greater technical knowledge and fewer prejudices against Government give greater heed to the social interests involved decide disputes with conscious efforts at furthering social policy embodied in the legislation.²⁵

- The tribunals solve disputes in less time;
- The tribunals are the Cost effective because the tribunal system provides self-representation;
- Tribunals are essential for fulfilling the purpose of justice to the door.

Independence, accessibility, expertise, quickness, and no cost for justice are some characteristics of the tribunalisation. At present, the Tribunals are performing an important role in our justice delivery system and the judiciary gave supplemental status to tribunals²⁶.

THE NEED OF REFORM IN THE TRIBUNAL SYSTEM

The tribunals are established to reduce the drawbacks of the judiciary, but at present the tribunals are already facing a lot of problems such as pendency, vacant of seats, government interference, infrastructure issues etc. As per report of the Law Commission of India²⁷, the top 5 tribunals in India have 3.5 lakh cases pending. The Income Tax Appellate Tribunal has

²⁵ Law Commission, *Assessment of Statutory Frameworks of Tribunals in India* (Law Com No 272, 2017).

²⁶ *SP Sampath Kumar v UOI*, AIR 1987 SC 386; *ibid*.

²⁷ Law Commission, *Assessment of Statutory Frameworks of Tribunals in India* (Law Com No 272, 2017).

91,538, the Custom, Excise and Service Tax Tribunals have 90,592 cases, the Debt Recovery Tribunal had 78,118 cases, the Railway Claims Tribunal had 45,604 cases pending at the end of 2016. The Central Administrative tribunal had 44,333 pending cases in August 2016. All backlogs are harmful for the tribunal system. Tribunals are an important part of the justice delivery system so we can't ignore the reformation of the tribunal system. The legislature and the judiciary also play an important role in reforming tribunals, through various statutes and verdicts. The Supreme Court always pointed out the independence, uniformity, and efficiency of tribunals in India.

The Finance Act, 2017, merged some tribunals which had the same functions. The government abolished some tribunals because it seems unnecessary layer in judicial system, such abolishment was done through the 'Tribunal Reform (Rationalisation and Conditions of Service) Act 2021'.²⁸

Recently in April 2021, the President of India promulgated an ordinance 'Tribunal Reform (Rationalisation and Conditions of Service) Ordinance, 2020', which makes the provision related to the search-cum-selection committees for the appointment and terms of office for members of 15 tribunals. The act empowered the Central Government for making the rules related to the terms, qualifications and salaries for the Chairperson and members of these tribunals. The ordinance was challenged in the supreme court on the basis of Independence of tribunals and the apex court struck down the provisions of the ordinance which are breaking the independence of tribunals.

The Supreme Court held that-

The Union of India shall constitute a National Tribunals Commission which shall act as an independent body to supervise the appointments and functioning of tribunals, as well as to conduct disciplinary proceedings against members of tribunals and to take care of administrative and infrastructural needs of the tribunals, in an appropriate manner.²⁹

²⁸ The Economic Times News, (13.08.2021) <<https://m.economictimes.com/news/india/tribunals-with-high-pendency-abolished/articleshow/85282187.cms>> accessed 3 February 2022.

²⁹ *Madras Bar Association v UOI*, WP (C) 502 /2021.

Independence is important feature of the judiciary and justice delivery system.³⁰ Tribunals are working as a supplement of the judiciary; Therefore, independence of tribunals should be required³¹.

Further the Supreme Court held that-

Judicial independence of the tribunals can be achieved only when the tribunals are provided the necessary infrastructure and other facilities without having to lean on the shoulders of the executive. This can be achieved by establishment of an independent National Tribunals Commission as suggested above.³²

The legislature enacts the ‘Tribunal Reform (Rationalisation and Conditions of Service) Act 2021’ but the act also challenged on the Supreme Court by the *Madras Bar Association*³³, The act provides uncontrolled power of government for make rules regarding qualifications, appointments, terms and conditions of service of chairman and members of tribunals. The Supreme Court has pointed out that the Bill has been passed without any discussion and has the similar provisions as were in the Ordinance which the Supreme Court has struck down in its earlier judgment. The Supreme Court also pointed out that the provisions affect the independence of tribunal and are against the principle of separation of power.

CONCLUSION

Access to justice is a basic or fundamental right which is secures under the Constitution and various documents of international law. The judiciary is the medium which is established for providing justice. Justice is the aim of any democratic or welfare state. It is necessary for any welfare state to modify its functions in accordance with the changing needs of society. Justice has various forms and it is the responsibility of the state that ensures all the forms of justice. The people of a nation may have confidence that they get justice through the courts and tribunals which are established for delivery of justice. The judiciary is established as a guardian of rights and liberties. The judiciary contributes vitally in settling disputes. Some features of the judiciary are very important for its proper working, such as, fairness, accessibility, independence, justice with quality, etc. all these features are important for judicial functioning in almost every legal system.

³⁰ *Kesavananda Bharti v State of Kerala*, AIR 1973 SC 1461.

³¹ *R Gandhi* (n 21).

³² *Madras Bar Association* (n 29).

³³ *Madras Bar Association v UOI*, WP (C) 1018/2021(pending).

It is also important for any state to maintain and reform its justice delivery system from time to time as per changing statutes of society. At present across the world focusing on making the justice delivery system more effective and responsible for the people. In India reform in the justice delivery system is also a topic worth discussing. An alternative justice delivery mechanism is also a part of this reform. The effective system important for providing quality justice in all matters.

The tribunal system is known as an alternative mechanism of the justice delivery system and the tribunals are a strong mechanism for removing the backlogs of the judiciary. The key purpose of the establishment of tribunals is to deliver technical justice. The basic difference between court and tribunals is that courts are established to deliver justice in civil and criminal matters, but the tribunals are established to solve the disputes which are specific in nature and it is a platform, which delivers faster, quicker and cheaper justice to all.

Independence is not only important for the traditional justice delivery system; it is also important for any judicial and quasi-judicial system. Any interference of the government in the working of any court and tribunal is not good and it can destroy the public trust on the justice delivery system. Tribunals should be independent from government interference. The working of tribunals is based on the related statute and principle of natural justice. Tribunals are an effective system to reduce the pendency and workload of the judiciary. In present scenario, tribunals are emerging as one of the main supplemental parts of the judicial system.

For its functioning tribunals require special knowledge and experience for delivering quality justice. special knowledge means knowledge in a particular field in which tribunals relate.

After the study of related statutes, in India the clear position of tribunals is poorly understandable, because uniformity of working, establishment, appointment of members is still not clear. There is a need to have a more vibrant, dynamic and a transparent reformation in the justice delivery mechanism such as the tribunal justice. Tribunalisation of justice needs to be looked upon as an alternate and effective form of justice delivery system which in turn itself requires significant and some major reforms which has become evident through the study on this topic. The rationale behind the same can be put up as an independent and impartial justice delivery system can deliver a good justice and the people have faith in it. There is lack of research work that have been carried out in this field.

SUGGESTIONS

- There should be an effective alternative mechanism to attain finality.
- The pendency rate of cases, in some tribunals is very challenging and it questioned the reason behind the establishment of it. it is important to make a time limit for the hearing of disputes.
- Vacant seats of tribunals must be fulfilled.
- The appointment process of the chairperson and members must be transferable.
- There should be the terms and conditions of service uniform in all the tribunals of country, and it should be reasonable and proper that it not make any harm on the independence of the tribunal.
- The functioning procedure of tribunals should be uniform all over the country.

ROLE OF NGOS IN IMPLEMENTATION OF RIGHT TO INFORMATION ACT IN THE STATE OF ODISHA AND PROMOTING GOOD GOVERNANCE

Nirlipta Acharya¹

INTRODUCTION

“The informed will forever govern ignorance and people who mean to be their own governors must arm themselves with the power knowledge gives”-James Madison²

The significance of knowledge can be ascertained from an incident when Emperor Akbar asked Birbal, “What is the most Powerful Weapon?”

Birbal replied:

“We have known from our Mythologies that once ‘Brahamastra’ was considered the most powerful weapon. Now we think a Canon is the most powerful weapon. But a man’s most powerful weapon is his own intelligence. If a man is intelligent, he can come out of dangers, defend himself from the enemies, can prosper in life and can help others also.”³

So, the knowledge was & is considered as most powerful weapon for a person. In Indian Religious context also the significance of the knowledge has been explained in Bhagwat Gita by Lord Krishna. While explaining the same to Arjuna, Lord Krishna said as: -

“yaj jnatava na punar moham evam yasyasi pandava yena bhutany asesani drakasyasy atmany atho mayi” The meaning of this shaloka is; “Having obtained the Knowledge from a self-realized soul, one will never fall again into such illusions, for by this knowledge you will see that all living beings are but part of the Supreme, or, in other words, that they are Mine.”⁴ Further, while guiding Arjuna, as to, how the ignorance should be removed, Lord Krishna said as: “Asmad ajnana-sambhutam hrt-stham jnanasinatmanah Chittvainam samsayam yogam atisthottistha bharata”⁵. The meaning of this shaloka is;

“So, the doubts that has been arisen in your heart out of ignorance should be removed by your power of knowledge. Armed with yoga, O Bharata, stand and fight.”

¹ Ph.D. Research Scholar, Utkal University, Bhubaneswar

² Sheldon, Garrett Ward. “*The Political Philosophy of James Madison*”. JHU Press, 2003.

³ Sarin, Amita Vohra. Akbar and Birbal. Penguin Books India, 2005

⁴ Prabhupada, AC Bhaktivedanta Swami, Abhay Charan, and Abhay Charan Bhaktivedanta. Bhagavad-Gita as it is. Los Angeles: Bhaktivedanta Book Trust, 1972.

⁵ Bhagavad Gita. "AC Bhaktivedanta Swami Prabhupada." TheMacmillan Company, New York (1990).

Even though the above content of Bhagwat Gita has religious orientation and are divine in nature but indicate that ignorance leads to doubts which make the individual weak. The doubts in oneself can be removed by knowledge only and one can fight the war of life, which also means that one can sustain in this world with the help of power only and power comes from knowledge only. Knowledge depends on quantity and quality of information and its application. Moreover, history has already established that the human race has developed itself with the help of many inventions and by enhancing its knowledge about universe with the passage of time. So, it is because of knowledge of so many aspects, that the humans are there, where they are today. Thus, the knowledge is vital. A man is but what he knows. With knowledge cometh wisdom, that transforms man into rational being. A man's action cannot be guided by sound judgement in the absence of wisdom founded on true and correct facts.

CONCEPT & ORIGIN OF RIGHT TO INFORMATION

In a democracy, the accessibility to public records and information is an essential requirement for a modern government. Democracy is a system which help both the government and people to work together and see the growth and welfare, to work this out there should be openness which leads to a concomitant of free society. This is possible only if the people can have the 'right to know' and if it is exercisable by the people. In a democratic set up the people are sovereign, they have right to know what their representatives are doing. Hence, information is indispensable for the transparency and accountable functioning of a true democratic government. It provides an important guard against abuses, mismanagement, corruption and corrupt practices. It is also beneficial to the governments as openness and transparency in the decision-making process assist in developing citizen's trust in governmental actions and maintaining a civil and democratic society."⁶ More than 177 years ago, James Madison, the fourth President of the US said: "A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance; And a people who mean to be their own governors, must arm themselves with the power which knowledge gives."⁷

Martin says that "one must distinguish between four different though related notions: freedom of speech, freedom of the press, freedom of expression and freedom of information.

⁶ Goel, Sumar L. Right to information and good governance. Deep and Deep Publications, 2007.

⁷ Matthews, Richard K. "James Madison's Political Theory: Hostage to Democratic Fortune." *The Review of Politics* 67, no. 1 (2005): 49-68.

It is essential to keep the four separates, even though they are often used interchangeably. Although they related to similar things, they are not identical.”⁸

The terms ‘right to information’ and ‘freedom of information’ are often used interchangeably and have been regarded as a fundamental human right. In very first session in 1946 the UN General Assembly adopted Resolution 59 (1) stating, “Freedom of information is a fundamental human right and.... the touch-stone of all the freedoms to which the United Nations is consecrated.” Therefore, governments around the world are increasingly making available more information about their activities. Over fifty Countries around the World have now adopted comprehensive Freedom of Information Acts or Right to Information Acts to facilitate access to records held by governmental bodies.”⁹ Various factors such as international pressure, modernization, corruption and scandals, recognition of Right to Information as a human right etc. have been responsible for this wave.

RIGHT TO INFORMATION AND INDIAN CONSTITUTION

Right to Information has been given the status of Fundamental Rights under Article 19 (1) of the Constitution of India and the Fundamental Duties of the citizen entrusted under Article 51 A (h) and (j) of the Constitution of India states that the citizen should have the spirit of inquiry and reforms and to involve in the development of the nation to strive towards excellence in all spheres of individual and collective activities. “The ideology is that every citizen pays taxes, so that the citizen should be informed what the government is doing with the help of those money, to know how the government works and what are their roles, functions, powers, duties, liabilities, etc. towards the people of India”¹⁰. This gives them more power and right to know how their money is being spent by the government.

Until the mid-seventies, the Indian system of democratic administration did not recognise the concept of access to information as a fundamental prerogative of a citizen of a democratic government. The Hon'ble Supreme Court for the first time in State of Uttar Pradesh Vs. Raj Narain¹¹ decided as follows:

⁸ King Jr, Martin Luther. "Letter from a Birmingham jail (1963)." Martin Luther King Jr., Malcolm X, and the Civil Rights Struggle of the 1950s and 1960s: A Brief History with Documents (1963).

⁹ Mendel, Toby. "Freedom of information as an internationally protected human right." Comparative Media Law Journal 1, no. 1 (2003): 39-70.

¹⁰ Jenkins, Rob, and Anne Marie Goetz. "Accounts and accountability: theoretical implications of the right-to-information movement in India." Third world quarterly 20, no. 3 (1999): 603-622.

¹¹ State of Uttar Pradesh v. Raj Narain (1975 AIR 865,

“There can be few secrets under a government of responsibility like ours, where all public servants are held accountable for their actions. Everyone in our country has a right to know what their public officials are up to, and they should be held accountable for, everything they do. In every public transaction, they have a right to know all the details. Even if the right to know is not absolute, it should be taken into account when secrecy is asserted for transactions that have no impact on public safety. The public does not benefit from the veil of secrecy that is placed over everyday business. Such secrecy can rarely be reasonably sought after. Parties and politics, personal gain, or everyday bureaucracy are all good reasons to have it on your mind. The primary defence against oppression and corruption is the duty of public authorities to explain and defend their actions”.

Court further observed that:

When it comes to treasury-stock market relations or Interior Department business on public land, the information must be made available to Congress under the Constitution. Allowing a court to provide them the protection of an unbreakable confidentiality would be tantamount to ascribing to them a character they don't deserve, one that looks to have been developed solely for the aim of obstructing the investigation of facts that could reveal a liability. It must be necessary for the open flow of official communication or the efficient conduct of official business to justify a privilege, and it must be a secrecy that would have stayed or would have remained inviolable if it had not been made public. In how many official business transactions is such confidentiality typically observed? Let the merits of retaining such otherwise inviolable secrecy be decided when a true instance of such otherwise inviolable secrecy arises. Court also quoted, Lord Lansburgh who has said in *Robinson v. State of South Australia*¹², “The privilege is a very limited one, and should only be used sparingly, based on the fact that the material cannot be given without causing harm to the public interest, rather than the fact that the documents are confidential or official, which is not a valid ground for their non-production. According to him, the courts must protect genuine public interests and ensure that the admitted privilege is not extended in such litigation in light of the increasing expansion into trade, business, and commerce of state activities and the claim of privilege in relation to liabilities arising therefrom”.

After the Supreme Court and the High Courts issued a series of rulings, the concept of a citizen's right to information was further developed. However, because there was no law or

¹² *Robinson v. State of South Australia*, 1931 AC 704

norm requiring public authorities to spread information about the right, it was only available in legal documents and newsprint.

In 1986, the Supreme Court in the famous case of *Mr. Kulwal vs. Jaipur Municipal Corporation*¹³ gave, “a clear-cut directive that Freedom of Speech and Expression provided under Article 19 of the Constitution clearly implies Right to Information as without information the freedom of speech and expression cannot be fully used by the citizens.”

Because of this legislation, our government officials and public institutions have been able to acquire information and work on it. It enshrined the right of every Indian citizen to have access to and control over financial information held by any state authority, and it placed responsibility on such authorities to ensure that the information they possess is used properly and is free of corruption. When it comes to candidates for public office, the Supreme Court of India stated that “every citizen has a right to know about expenses and assets against them, because these candidates serve the public services with their own desire.”¹⁴ According to the preceding example, not only candidates, but also political parties, religious institutions, educational institutions, and even private schools and public corporations are subject to this Act.

ROLE OF RTI ACT IN PROMOTION OF GOOD GOVERNANCE

“Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing.”

-Justice P N Bhagwati

To gauge a country's progress, RTI can be used as an indicator. There was no way for citizens in India prior to 2005 to have access to any information handled by a Public Authority. It was difficult for the average person to gain access to issues of public concern. Because citizens were unable to participate in social, political, or economic debates unless they had access to pertinent information, it was impossible for them to do so. The following are some of the reasons why the act is so fundamental to democracy:

Features that help in strengthening the democracy:

- i. According to the law, every citizen has the right to ask public authorities for information.

¹³ *Mr Kulwal v. Jaipur Municipal Corporation* AIR 1988 Raj 2

¹⁴ *The CPIO, Supreme Court of India v. Subhash Chandra Agarwal & Anr* AIR 2010 Delhi 159

- ii. Information requested by citizens must be provided by public agencies, subject only to limits related to national security, individual privacy and third-party data.
- iii. Fee has been imposed for the purpose of verifying fraudulent applications. However, those who fall below the poverty level are excluded from paying fees.

Features that lead to transparency:

- i. An enormous amount of data must be made available to the general public through the use of manuals mandated by law.
- ii. A wide range of government-funded organisations, including every department, are now subject to the RTI.

Features leading to accountability:

- i. According to the RTI Act, both a Central Information Commission and a State Information Commission must be established. Public Information Officers are subject to the oversight and control of these commissions, which serve as the Second Appellate Authority.
- ii. As soon as feasible, but no later than 30 days, public officials must submit information (not later than 48 hours in the matters pertaining to life and liberty of an individual).
- iii. Central or State Information Commissions may levy fines in the event of delays in providing information. The Commission has the authority to propose disciplinary action against officials who fail to provide requested information on purpose.
- iv. An appeals process has also been established in the event of denial or the failure to submit adequate information. The Department's First Appellate Authority serves as the first appellate authority, while the Central Information Commission or State Information Commission serves as the second appellate authority.

'Ultimate concern for people's welfare' is what "good governance" means. "Government and its bureaucracy follow policies and discharge their duties with a deep sense of commitment; respecting the rule of law in a manner which is transparent, ensures human rights, dignity,

probity, and public accountability.”¹⁵ The government is not the only institution capable of governing. Non-political organisations like civil society and the corporate sector also fall under this umbrella. It covers everything from the family to the state, in other words. Various forms exist, including those that can be seen and those that cannot; formal and non-formal; ‘state-centric’ and ‘citizen-centric,’ and centralised and decentralised.

RTI ACT AS A TOOL OF EMPOWERMENT FOR COMMON PEOPLE

Under the RTI Act, Citizen groups like NGOs are empowered to review the planning and development permissions in detail to see if they were provided after considering all criteria or if any unfair compromise was made to benefit certain groups. They can also contact the department to request an inspection of a building or a business location to ensure that it is being used in line with the permits and conditions that have been granted. As a result of their monitoring of the real progress and divergence from sanctions, they can make an appeal to the authorities. The RTI Act allows individuals and groups of individuals to request public authorities provide them with environmental protection data. If they want information on the upkeep of structures and areas and the rules governing development surrounding them, citizens can use the RTI Act to get it, and they can even conduct social audits to uncover any significant discrepancies between the permitted and actual growth. Using the RTI Act, “people and citizen groups can ensure that the self-employment benefits reach the proper target groups established down under the plan and that they are successfully exploited for employment generation of the unemployed.”¹⁶ It is possible to use the RTI Act to help the unemployed and underemployed find work by enhancing their education and training. In the absence of job creation, this can assist those seeking and demanding ULB job creation programmes.

PUBLIC INTEREST UNDER THE RTI ACT, 2005

Right to information law do not define public interest since it is a very subjective idea that varies from place to country on the basis of their governmental framework, socio-economic environment, and development challenges. “Depending on the country, the real interest of the persons accessing that information, and the legitimate national interest, balancing these

¹⁵ Kulkarni, Ashwini. "Governance and the Right to Information in Maharashtra." *Economic and Political Weekly* (2008): 15-17.

¹⁶ S. K. Borah, *Right to Information Act: A Key to Good Governance*, VOL -2, Issue- 2, *International Journal of Humanities and Social Science*, p.11 (2013).

strategic objectives with public interest is a delicate balancing act.”¹⁷ However, taking a broader view, the following factor is crucial:

- “The nature of the information sought”
- “The time period of the information sought to measure the sensitivity of the information sought”
- “Whether the disclosure would assist the public in understanding the importance of a matter”, which has become a national debate.
- “The extent of the information already available in the public domain, through the media and other information broadcasting channels”.
- “The key underlying any disclosure, being, the genuine and legitimate interest in the public's access to information”.

Public interest does not refer to matters which are merely of interest to the public to know in the sense of gratifying curiosity or providing amusement. In general, following may constitute public interest' favouring disclosure of information¹⁸:-

- (i) “Promoting transparency and accountability of public authorities in making decision by them”
- (ii) “Promoting transparency and accountability in spending the public money”
- (iii) “Detecting corruption, injustice and negligence”
- (iv) “Revealing the information affecting public safety”
- (v) “Allowing disclosing information permitting public to make an informed decision, promoting a debate and discussion on the issue of public importance”.

For example, if the government's goal is to implement universal health care reform, but openness and transparency could jeopardise its ability to achieve this goal or make it appear incompetent in responding to a national crisis, the only option is to balance these competing and conflicting interests. Increased transparency and accountability were made possible by the use of RTI.

EFFECTS OF RTI ACT IN PROMOTING GOOD GOVERNANCE

RTI has a conspicuous impact on Indian society. Some of the major impact of RTI are as follows:

¹⁷ Aslam, Mohd Aqib. "Right To Information Act, 2005 (India): A Tool for Social Change in Indian Society." EPRA International Journal of Multidisciplinary Research (IJMR): 256.

¹⁸ Jain, Anshu. "Good governance and right to information: a perspective." Journal of the Indian Law Institute (2012): 506-519.

1. Firstly, it is about greater Transparency. RTI is an instrument to the public which exposes Government Rules, regulations and decision of public authority. This can be said to be a remarkable citizen administration interface.
2. Secondly, right to information acts as an instrument which provides information and empower state holders. By this People are having a knowledge of what's happening in the government by taking copies of documents, print outs, e-documents and this helps citizens for social development.
3. Thirdly, a corollary to first is RTI process a citizen centric approach for inclusive growth and development. The very purpose of RTI is reduce the Secrecy between people and government. Which will lead to the Government's decisions are pro-citizen.
4. Fourthly, Information and knowledge is appropriate and democratized. To be specific a large portion of rural and urban people are utilizing RTI tool for developmental purpose.
5. Fifthly, RTI will help in reducing the corruption rate. Because, RTI has forced the people in Government Organization to be more transparent and accountable. The reason for corrupt practices is due to lack of transparency and accountability.
6. Lastly, Government will be more and more accountable in business. Any malpractices and deviations in present days will attracts the headlines of media through RTI by the activists.

Sarva 72 Sikhya Abiyan, Mahatma Gandhi Rural Employment Guarantee Scheme, Indira Awas Yojno, National Rural Health Mission etc. have been highlighted by RTI campaigners in recent years. As a seventh measure, the government has passed the Citizen Charter and the Time Board Services Act. To put it another way, the government is now a partner in the growth of the general public. RTI is clearly having a significant impact on the development of Government-Citizen Partnership. The following are examples of this in action:

1. "Daily wage earners in Ghara Katara village, Shankar Garh Block, Allahabad, were not receiving their rations on cards. On December 19, 2006, approximately 21 villages filed RTI applications in which they questioned the administration. As a result, they received their rations the very next day."¹⁹

¹⁹ Kannan, Preeti. "Adopting the RTI Act as a mechanism to fight corruption to promote effective aid delivery in India." (2011).

2. In Sidhakahna Jot Keshav village, Uttar Pradesh's Bahraich district, 5 residents have submitted RTI complaints challenging the district administration's handling of local roads, drainage, and Indira Awas Yojna allotment. And the authorities swiftly erected roads and drains in response to such RTI requests, as well as allotted Indira Awas to 32 villages.
3. A complaint was lodged against the postmaster in Chaibasa, a tribal village in Jharkhand, for his irregularity in reporting to work and for bribery and action was taken immediately against him.

The Act's ability to combat high-profile corruption is expanding as social activists, civil society organizations, and regular citizens use it effectively. An empirical study found that the RTI had a considerable influence on reducing corruption, even though it was considered one of the most difficult challenges to overcome. According to a survey of 20 states, the Act has reduced state-level corruption by 18.5% on average. Transparency International²⁰ and the Centre for Media Studies performed a countrywide study, and the results showed that India's economy has expanded at an unprecedented high pace of 8–9% per year in the last three years due to a decrease in corruption and malpractices. This shows that RTI has a significant and positive impact on government transparency and accountability. The mere act of submitting an RTI application empowers individuals, particularly those who are poor or disadvantaged in India, and often leads to actual consequences.

Odisha Pond Scam Case

K.S. Sagaria, a "resident of Kushmal village in rural Orissa," filed an RTI application in 2010 seeking information on the number of ponds developed in his community under the government's national wage employment scheme. He learned that the ponds had never been built, despite the fact that funds had been allotted and squandered. In response to citizen protests, the local government was forced to suspend officials implicated in the pond scam.

Adarsh Scam

A 31-story structure was developed in Colaba, Mumbai, a desirable real estate location." Originally, a six-story structure was planned for the Kargil War widows and brave soldiers to occupy this ground. A plea filed by two activists revealed that the land was owned by the

²⁰ Bhattacharyya, Sambit, and Raghbendra Jha. "Economic growth, law, and corruption: Evidence from India." *Comparative Economic Studies* 55, no. 2 (2013): 287-313.

Ministry of Defense, not the Maharashtra government. In the early days of the RTI Act, this happened. Government officials become numb as a result²¹.

2G Scam

It was the telecom ministry, led by Adimuthu Raja, that was involved in the 2G scandal. Slowly but surely, this exploitation was revealed the rot of corruption that had been growing throughout the Congress Party for months. And RTIs helped to expose the bribes paid by government officials, which cost the country about Rs. 1,50,000 crores.

Commonwealth Games Scam (The Diversion of Dalit funds)

After the 2G scandal was exposed, "the Commonwealth Games scam set up India for international disgrace. During the CWG, Suresh Kalmadi oversaw the corrupt deals that were done. In the athletes' quarters, there was a terrible stench. He caused India to lose Rs 95 crores by awarding the contract to Swiss Timing for Rs 141 crores, according to an RTI application²².. The Delhi administration syphoned rupees 744 crore rupees from the monies allotted to the social welfare of Dalits to CWG," according to another RTI. Further investigations were launched because of the CWG fund diversion. Dalit and Adivasi organizations under the National Coalition for SCSP-TSP Legislation used budget papers and RTI to discover that the Union Budget denied Dalits and Tribes an astounding 5,27,723.72 crores in cash from the seventh to twelfth five-year plans (till 2014-15)²³.

Indian Red Cross Society Scam

An RTI application filed two months after its implementation revealed how Indian Red Cross officials misappropriated millions of rupees earmarked for the Kargil War Relief and Rehabilitation Fund (for those struck by natural disasters). The IAS officers were later found to have spent this money on opulent purchases²⁴.

This is by no means a complete list. Since its inception in 1996, RTI has had a profound impact on education. To put an end to corruption, it has made it simpler for individuals to detect schemes. The fight against corruption is far from over, but India appears to be on the right track.

²¹ Kumar, D. Krishan. "Corruption: A Threat to Good Governance." *Dynamics of Public Administration* 29, no. 2 (2012): 150-159.

²² Jha, Amaresh. "Mapping Right to Information in Print: Critical Study of Times of India and Hindustan Times."

²³ Ramachandran, Vimala, and Sapna Goel. "Tracking Funds for India's Most Deprived: The Story of the National Campaign for Dalit Human Rights' "Campaign 789"." *International Budget Partnership* (2011).

²⁴ Aga, Aniket, and Chitrangada Choudhury. "A dappled sun: Bureaucratic encounters in the working of the Right to Information Act in India." *Comparative Studies of South Asia, Africa and the Middle East* 38, no. 3 (2018): 540-556.

ROLE OF CIVIL SOCIETY ORGANISATION IN PROMOTING GOOD GOVERNANCE THROUGH RTI

Additionally, civil society organizations have been instrumental in boosting public knowledge about RTI and supporting citizens in making RTI inquiries. To raise awareness, state-wide bus trips are organized. In many communities, college students are given the opportunity to speak at public events, and special programmes are put together for them. Thousands of flyers, banners, and folders are produced and dispersed. This has led in citizens becoming aware of their fundamental right to information and becoming more informed of their rights under the law.²⁵ The Satark Nagarik Sangathan (SNS), a Delhi-based non-governmental organization (NGO), runs an information center for the local residents and slum dwellers to help them in filing RTI applications and has successfully moved forward in improving the quality of public services including water, sanitation, the public distribution system, and helped improving even the performance of local elected representatives. With the help of the law, high-profile corruption is becoming more difficult to avoid. This year's Commonwealth Games were plagued by allegations of corruption in the awarding of contracts and tenders.

RTI petitions filed by the Housing and Land Rights Network, a Delhi-based NGO, indicated that the Delhi government had diverted monies from its social welfare programmes for infrastructure construction under the Commonwealth Games, according to a press release from that year²⁶.

As part of its Pahal initiative, the Tata Institute of International Affairs (TII) has worked to improve local governance in rural regions by streamlining the flow of government information, streamlining service delivery, and strengthening local authorities. Social audits and the creation of citizen charters ensure that government funds are utilized on a more equal basis. Violent officials have been fined for accepting bribes, and villages have regained money that had been lost due to corruption. Voting in gramme sabhas (village assemblies) and holding elected officials accountable are some of the ways that village residents are reviving democratic participation in their communities. Chhattisgarh's model district of Mochha is using RTI to help people gain jobs, scholarships, and retirement benefits for the elderly. They also pushed for frequent attendance from government doctors and

²⁵ Kaushik, D. S. "Right to information act-A tool of good governance." Excel journal of engineering technology and management science (An International Multidisciplinary Journal) (2012): 1-6.

²⁶ Surie, Mandakini Devasher. "Right to Information in India: An Effective Tool to Tackle Corruption." Retrieved May 8 (2011): 2018.

schoolteachers. Over 200 officials were charged with corruption following an RTI investigation in Bihar's Madhubani district²⁷. It can reduce corruption by 80–85 percent if it is implemented in every village and household. Only ten percent of the funds allocated to alleviate poverty were able to reach the intended recipients due to corruption. Corrupt officials and politicians received the rest of the money that had been swindled.²⁸ The poor peasants will now be able to participate fully in the process of development, thanks to the Right to Information Act. After the Act, the quality of project work has begun to improve.

An example of how effective RTI can be is reflected in this story of a slum-dweller who wanted a ration card. The victim was told that he would have to pay a bribe of Rs 2,000 to obtain a new ration card. But he just went ahead and applied for the ration card without giving any bribe or groveling in front of officials for pity. The slum-dweller, however, decided to become the enforcer of good governance. He found out in how many weeks people who paid bribes got their ration cards. He waited for an extra four weeks and then applied for information under RTI. Using the simple format and with a Rs 10 application fee he delivered it to the PIO at the Food and Supply office. He asked up to which date applications for ration cards had been cleared and the details of the progress of his application. This shook up the corrupt officials, since this would be written confirmation that they had given ration cards to others who had applied after him, which would be conclusive evidence that they had no justification for delaying his card. The ration card was given to him immediately. No bribes, no endless visits and no begging before the corrupt. Our RTI-empowered citizen was able to enforce the supremacy of the citizen by using RTI.²⁹

Women's empowerment, youth development, democratic rights, the rights and entitlements of the impoverished, abuse of executive discretion, and the building of participatory and good governance have all seen a wider usage of RTI. As Aruna Roy and others have proven, “now it is also utilised by politicians for pure political warfare, agents of corporate for commercial purposes and 'information businessmen' clothed as activists for extortion and ulterior motives.”³⁰ The RTI degenerates into score-settling and mudslinging when there is no public interest in requesting information. Non-productive tasks tether the executive and

²⁷ Tiwari, S. K. "Right to information: an important tool of social development, good governance and strong democracy." Global Media Journal: Indian Edition (2010).

²⁸ Ibid

²⁹ Rani, K. Jhansi. "Right to Information Act in India: An Effective Tool to Combat Corruption." In Corruption in the Public Sector: An International Perspective. Emerald Publishing Limited, 2021.

³⁰ Narsaraj, K., and K. Resheta Reddy. "Chapter-14 right to information act and good governance." right to information act tool In Strengthening Democracy in India (2021): 155.

government machinery, reducing administrative effectiveness. Dalits, minorities, people from underprivileged backgrounds, and those in economically precarious situations have all benefited from RTI's development." Currently, the focus is on exposing government officials and politicians. The core preamble of the Right to Information Act differs from this.

SOME NOTABLE CASE STUDIES FROM ODISHA WRT. RTI ACTIVISM

Exposing Pension Fraud in Odisha Pension fraud in Odisha has been brought to light thanks to the work of RTI activists. In numerous blocks in the district, officials and elected members of gramme panchayats are still disbursing old-age and widow pensions in the name of deceased persons. Government money have been allegedly stolen by officials in Balikuda block by disbursing social welfare benefits to deceased recipients using a forged signature and thumb impression. Despite the fact that Hunduri Swain and Charulata Muduli died last year, they have received widow's pensions. A group of villagers who had recently lost loved ones to illness or death reported that they were surprised to learn that their old-age pensions had been paid to them despite their deaths occurring six months ago. In addition, a large number of Tirtol residents between the ages of 40 and 50 have obtained old-age pensions. RTI Activists claim that hundreds of people in the Naugaon and Biridi blocks of the district have received pensions under various government schemes. According to the activists, the district collector has ordered the Balikuda Block Development Officer to undertake an investigation and take action against corrupt officials after being informed of the pension scam by Osakana locals. When an RTI application was filed in the Jagatsinghpur block by social activist Debendra Kumar Nanda, a similar pension scam was revealed.

Exposing Rice Millers Scam in Odisha

This fraud involves rice millers working with government officials to carry out fictitious transactions and then selling the heavily subsidized PDS rice they received from the government back to them at a profit of 17 rupees per kilograms. According to the government's list of Rabi season paddy sellers in 2008, nearly half of the entries were bogus. Farmer's reports claim that the persons in the records don't live in his hamlet and don't own any land there. "My name is on the list, but I don't have a place to call home. What hope do I have in selling paddy? Another farmer remarked. RTI activist Ajit Panda was alarmed to see that the government purchased 77,000 quintals of paddy from Nuapada in May 2008, when a severe drought had destroyed the majority of the crop. As he delved more into the paperwork, he learned that the transaction was false. Millers are printing farmer identification cards, which are then used to conduct fraudulent paddy deals. As soon as the sub-collector and civil

supply officer submit their reports, action would be taken against the perpetrators, as ordered by Nua pada district's collector.

CONCLUSION AND WAY FORWARD

Corruption has been reduced because of RTI's participation in the development process. An open and participatory governance structure that safeguards the socio-economic interests of every citizen, particularly those who are most vulnerable to the effects of economic growth because of their entitlements has only begun to take shape. People will be more involved in all aspects of development if public authorities are more transparent and aggressive in disclosing policies, programmes, and outcomes. For the benefit of citizens, it is essential to improve both the public and private sector's awareness and knowledge to use information more effectively. To put it another way, efforts should be undertaken to raise effective demand for better service delivery. About 10 per cent of the more than 300 million poor people are aware of the RTI to get their hands on guaranteed benefits. Consequently, the government, non-profit organizations, and the media must work together to raise public awareness about the importance of obtaining and utilizing information, as well as how to do so most effectively in everyday life. To ensure full disclosure of public operations and to participate in the development of social and economic policies, non-governmental organizations (NGOs) play a key role. It's a difficult job, but one that can be handled if mass media platforms like radio and television are used to reach the intended audience. A multimedia approach should be used to promote information literacy and to democratize knowledge, which, in turn, are essential for people's empowerment, ensuring the reach of entitlements to the beneficiary groups, and for equalizing opportunities for sharing the benefits of development in different parts of the country.

SOCIAL TRANSFORMATION THROUGH INFORMAL JUSTICE SYSTEMS WITH SPECIAL REFERENCE TO TEMPLE JUSTICE SYSTEM

Dr. Rajendrakumar Hittanagi¹

INTRODUCTION

In various parts of the world, elders' groups and temple management committees, and *panchayats* play significant role in dealing with various kinds of disputes and establishing social harmony with a view to achieve social transformation. Despite there being cultural, communal, religion and caste differences among these Informal Justice Systems or institutions, some common features can be observed. If such institutions are not recognized by the state, they face certain amount of problems in relation with state authorities. The fact that such institutions are perceived as legitimate institutions by the local population, would help in developing new strategies of making access to justice² improved and building rule of law by including such informal justice institutions.³ This would help in meeting human rights standards. But visible changes may not be expected in the short term.⁴ "As justice needs a foundation to rest on, the resting of law on indigenous pillars provides one way forward."⁵ It is important to note the conceptual analysis of NSJS. The United Kingdom's Department for International Development (DFID) defines "[n]on-state justice and security (NSJS) systems...[as] all systems that exercise some form of non-state authority in providing safety, security and access to justice. This includes a range of traditional, customary, religious and informal mechanisms that deal with disputes and/or security matters."⁶ Throughout the

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² When access to justice in Asian nations is compared to access to justice in Western nations, one sees that culturally tailored ways of thinking and approaching life produce different conceptions of crime and justice. See Jianhong Liu, *Asian Paradigm Theory and Access to Justice*, 32 (2016). J. CONTEMP. CRIM. JUST. 205, 211–17

³ Tilmann J. Röder, *Informal Justice Systems: Challenges and Perspectives* Available at <https://worldjusticeproject.org/sites/default/files/informal_justice_systems_roder.pdf>, last visited on 24.5.2020

⁴ *Id*

⁵ Julia Hüttermann & Nazila Ghanea-Hercock, *Peace and Reconciliation in Africa: Some Questions Regarding the Application of Gacaca in the Rwandan Context* 3 (1999) Available at <<http://restorativejustice.org/rj-library/non-state-justice-systems-and-the-state-proposals-for-a-recognition-typology/7009/#sthash.LDFjreFr.dpbs>> last visited on 24.5.2020

⁶ DEPT FOR INT'L DEV., *BRIEFING: NON-STATE JUSTICE AND SECURITY SYSTEMS* 1 (2004), Available at <<http://www.worldbank.org/publicsector/legatUBriefingNSJSSFinal.doc>>

world, people continue to turn to informal or non-state justice systems to settle disputes.⁷ The state justice system is often an unsuitable forum to deal with conflicts in local social relationships.⁸ As a study by Penal Reform International (PRI) explains, the factors leading to the prevalence of such systems include the large numbers of people that live in rural areas with very limited access to the formal state justice system, the correspondingly limited infrastructure of the formal justice system, and the fact that the state justice system is often an unsuitable forum to deal with conflicts in local social relationships. PRI identifies informal justice as NSJS, composed of a combination of traditional justice systems, popular justice forums, and alternative dispute resolution forums. All of these informal justice systems share similar characteristics: voluntary participation, reliance on social pressure to ensure attendance and participation, informal process, basis in restorative justice, decisions based in compromise rather than rule of law, and the central role of the disputants and community in the process.⁹

The salient features of NSJS or informal justice systems may be said to include that it views the problem or dispute as that of the whole community or group; it emphasizes on reconciliation and restoring social harmony; it appoints traditional arbitrators from within the community on the basis of status or lineage; it allows for high degree of public participation; customary law is merely one factor considered in reaching a compromise; the rules of evidence and procedure are flexible; there is no professional legal representation; the process is voluntary and the decision is based on agreement; an emphasis on restorative penalties; enforcement of decisions secured through social pressure; the decision is confirmed through rituals aiming at reintegration; like cases need not be treated alike.

LITERATURE REVIEW

Prof. Upendra Baxi in a monograph titled as ‘Towards Sociology of Indian Law’ published by Satvahan Publications New Delhi, refers to the implications of law as a social process. He states that dispute institutions and processes figure in ethnographic account only incidentally. Their significance to social stability and change is perceived only occasionally. He calls Non-State Justice Systems as people’s law. He observes that there two broad complexes of norms, institutions and processes that exist in Indian society by which disputes are settled. One is indigenized and the inherited official national and regional legal systems and other one is

⁷ BRYNNA CONNOLLY, *Non-State Justice Systems and the State: Proposals for a Recognition Typology*, (2005). 38 CONN. L. REV. 239.

⁸ *Id.*

⁹ *Id.*

traditional 'systems' of local tribunals operating with customary law norms. Equally indubitably, these systems support and complement each other in a variety of ways (Iswaran, 1964; 241-43). Prof. Baxi discusses in chapter titled as People's Law, Development and Justice, some the available literature in terms of description, explanation and evaluation. He opines that the case studies focusing on dispute processes are infrequent. According to him such studies should essentially focus on 1. Dispute processing structure, 2. Types of disputes involved 3. Process by which settlement structures were activated 4. Ways in which dispute matters were considered 5. Decision- making process by which substantive outcomes were reached 6. Types of sanctions attaching to substantive outcomes, 7. Ways of handling intransigents sanctionees, 8. Relationship of local system of dispute resolution with wider national legal system 9. Functions of local dispute settlement process 10. Identification of recurrently applied rules, standards and precepts called as customary or local law. Prof. Baxi mentions that there are three types of non-state judicial systems in rural India. One is caste-based, second is community-based and third is innovative, reformist non-state judicial system. The distinctions among these types of non-state judicial systems are explained in detail by the author. The author opines that the effectiveness of sanctions is an empirical question, which has not been closely examined in relation to non-state judicial systems. The author makes reference to Cohn's statement that "the way people settles disputes is a part of its social structure and value system." He also makes reference to Kidder's failure of adjudicative ideal because of which there is over recourse and non recourse to courts. There is also reference to the relationship between "local laws way" and "lawyers' law". At the end of the chapter, he raises certain relevant questions by analyzing Henderson-type critique of indigenous dispute settlement systems and by making reference to the study of avoidance of disputes.

Tilman J. Röder in his article on Informal Justice Systems: Challenges and Perspectives¹⁰ opines that Informal Justice Systems (IJS) have existed in almost all societies and in all times. He also discusses the reasons as to why rural people prefer to approach informal justice systems. One of the reasons is that it is exercised by trusted people in the language everybody speaks, and decisions are taken according to rules known to all community members. IJS aims at restoring social peace instead of enforcing abstract legislation. They ensure better access to justice as they are consent and justice oriented.

¹⁰ See *supra* note 1

Brian Tamanaha has stated that ‘although non-state justice systems do not meet the requirements of the rule of law, they can and do satisfy rule of law functions. Author mentions about disadvantages of IJS also. Some of them are that they may create conflict in heterogeneous societies and their decisions tend to be gender-biased. Human rights violations are major concerns in such IJS. They are also not immune from corruption, nepotism, and other factors influencing the procedural fairness. There is no one-size-fits-all model, as the traditions and values on which informal justice systems are based are highly diverse. The reform and strengthening of informal justice institutions and the creation of effective linkages with the state will fail if this has not been prepared together with the members of the respective communities in an inclusive process.

DISPUTES REDRESSAL MECHANISM

In Buthanatheswra temple, on every Saturday disputes of the parties are getting resolved. Any person having a dispute can submit his grievance to the deity by paying Rs.50. towards notice charges and a receipt will be issued for the same, and a notice will be issued to opposite party by fixing three dates (only Saturdays). In the said notice, the name of the party who has willingness to get his issue resolved is mentioned and it is also stated that the opposite party (if willing) and with a free consent can appear before *Nya peeta*. There is no pressure or coercion.

After the due receipt of the said notice both the parties appear before the *Nya peeta* and after due enquiry if both the parties agree to the decision final verdict will be delivered. Every Saturday approximately 200 members appear before *Nya peeta* and get resolved their grievances. New cases will be registered only on Saturdays.

NATURE OF DISPUTES REDRESSED

Majority of the disputes are relating to money recovery, family and land disputes. Sometimes cases pending in the courts are resolved through such non-state judicial systems. As for as, money recovery is concerned, only principal amount is permitted to be recovered. That is, no amount of interest money is directed to be recovered. Such similar type of practice is also observed amongst Hindus which is called as *damdupat* under Hindu legal system. This rule prohibits the recovery of the amount of interest at any one time in excess of the principal amount of the loan. In this type of non-state justice system, criminal cases like, rape cases, dowry cases, juvenile cases are not allowed but civil matter like money transactions, labour issues, wages problems etc., are taken up for resolution.

FINDINGS

1. The studied NSJS have authority based on spirit and religious factors.
2. They have the history of around 400 to 500 years.
3. Written documents relating to their history are preserved but only to the extent of previous 20 years are available.
4. Around ten thousand cases are decided during previous 10 years.
5. Only disputes of civil nature are resolved and normally criminal cases are not considered.
6. As far as social importance of these systems is concerned, people regard them in high esteem.
7. These systems are centering round faith in deity.
8. Total number of members in the committee ranges from five to ten.
9. Experienced, independent persons with common sense are elected
10. There is no appeal against the decision of the committee.
11. These are non-political and non-profit systems and are not subject to control of any outside agency.
12. The members of the committee recuse themselves from hearing a case if any of their relative is party to the dispute.
13. Some members of the committee are illiterate and some are graduates. But with their general knowledge and sometimes by relying upon reported decisions of the courts, they decide the disputes.
14. In some cases, they have personal acquaintance with the facts of the dispute and parties to the disputes. It is because of this; parties do not take liberty to mislead anyone involved in the dispute resolution process.
15. They are not caste or community-based systems.
16. In some cases, if required they visit spot and make survey of it and take decisions. They normally do not take public opinion into consideration.
17. Due to lack of support by the state agencies, these committees are facing difficulty in conducting their proceedings.
18. State agency, like police departments treat such committees as unauthorized committees to resolve the disputes.
19. Normally the committees will not take *suo moto* cognizance of the case.
20. Oral complaint is accepted and anybody can file complaint against opposite party.

21. They adjudicate disputes in temple premises only.
22. Even pending cases in court of law are withdrawn, if they are resolved by the committees.
23. In certain cases, presiding officers of the court of law have appreciated the role played by such committees.
24. The decision is based on morality, equity, religious norm and legal principle with humanistic approach.
25. Some cases are decided within one or two sittings, but some cases take long time to be resolved by the committee.
26. Fear of deity (*Daivas*) or *Butas* is the main factor behind implementation of the orders issued by the temple committee along with social pressure.
27. During the period of our study there was no single case of human rights violation was reported.
28. Aim of these temple committees is to ensure fairness in resolving the disputes and deliver justice to the parties.

CONCLUSION

Overall impression of these non-state judicial systems working in the Chikamagalur district is good. This is the main reason as to why there is less number of litigations in the courts of law of Chikamagalur district as compared to other districts. Even though the people of Chikamagalur district are peace loving, whenever disputes arise, they prefer to take them to temple committee because of its advantages like quick and cheap remedy it provides and ensures win-win situation for both parties. It is better to integrate these systems into state judicial systems and make them part of wider national legal system. It is very much essential now to strengthen our indigenous judicial systems to realize and establish our constitutionally ordained social order and facilitate social transformation for the betterment of mankind.

ROLE OF CUSTOMS IN PROTECTING NATIONAL SECURITY

T V Rajesh¹

INTRODUCTION

Collection of revenue and police power are two extremely important portfolios for any government as far as internal governance is concerned. The Department of Revenue of the Government of India collects Direct Taxes through the Central Board of Direct Taxes or CBDT and indirect taxes are collected through the Central Board of Indirect Taxes and Customs. This article delves into the importance of the department of Customs, which has a multifaceted role of collection of revenue, protection of social life, protection of the national security, all these while ensuring facilitation of the trade across the borders. The department of Customs is conspicuously present at all authorized international entry-exit points such as International Airports, Sea Ports, and other trade gates at the land borders. Though the basic duty of the department is to collect revenue for the exchequer and to prevent leakage thereof, the duty to protect the national security is embedded therein. The leakage of revenue can happen by way of evasion of duty on the goods properly imported or by way of smuggling the goods into the country. Our country, with a vast coastline of about 7500 kilometres² and sharing highly porous borders with countries such as Pakistan, China, Nepal, Bhutan, Bangladesh etc., is susceptible to a lot of smuggling through these areas. The foreign goods that find a place in the country can broadly be categorized as permitted and prohibited goods. Permitted goods can be dutiable or non-dutiable, while prohibited goods can be absolutely prohibited or conditionally prohibited (restricted subject to certain conditions). Thus, the first charge on any goods that enters the country lies with the department of Customs and is subject to the provisions of Customs Act, 1962. Therefore, though security agencies such as Border Security Force (BSF), Indo Tibetan Border Police (ITBP), Sashatra Seema Bal (SSB) and Indian Coast Guard (ICG) are always alert and vigilant against any infiltration or movement of the enemy, the importance of the Customs department cannot be undermined.

FOREIGN TRADE POLICY AND INDIA

The ruling governments are generally expected to formulate its Export Import Policy in the larger interest of the country. Export Import policy or International Trade Policy can be of two types – the Protective type policy and the Free Trade policy.

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²“Centre for Coastal Zone Management and Coastal Shelter Belt”, (2011)

<<http://iomenviis.nic.in/index2.aspx?slid=758&sublinkid=119&langid=1&mid=1>> accessed on 2 March 2022

Protective Trade policy indicates that the government would be more interested in protecting the domestic industry from the influx of foreign consumables which may threaten the very existence of domestic industries, thereby even increasing the chances of unemployment. Weakening the domestic industries can never be an option for any country and for developing countries in particular. Right from the days of Independence, India had been following a Protective Trade policy and was more of a closed economy, since the architects of the country wanted us to be independent in all senses. The country closely followed the policy till the early 1990s.

On the other hand, Free Trade policy envisages a complete absence of restrictions on the exchange of goods and services among the nations³. The policy also encourages the countries to do away with Customs tariff on goods, quota system in international trade, and subsidies on domestic products. The Free Trade policy should ideally allow the seamless movement of goods across the borders and is very advantageous mostly for the developed countries, while it could stifle the domestic industries in developing or underdeveloped countries. There is definitely a vast difference between the products manufactured by the developed countries and those manufactured by the underdeveloped countries. It would be extremely difficult for the latter to compete with the former in the international market. Further, unless protected in the domestic markets, such industries will, during the course of business, succumb to the competition from the trade giants from the developed countries, thereby increasing unemployment in the country. Theory of 'survival of the fittest' gets applied here. Post 1990, India has changed its Foreign Trade Policy, and opened up the economy, embracing the LPG (Liberalization, Privatization, Globalization) policy. Looking at a small segment of Indian market, say, Television Industry pre and post liberalization would indicate that a lot of indigenous companies such as BPL, Videocon, Crown, Dianora etc. have vanished from the market now, and the markets are now ruled over by the multinational giants.

India, as an independent country and being an aspirant to have its own share own trade of international business, became one of the signatories⁴ of General Agreement on Trade and Tariff (GATT, which later became World Trade Organization or WTO). The GATT, which came into effect on 1st January, 1948 and which ultimately aims at removing all barriers in

³ "Shodhganga, A Study of Foreign Trade of India Export Performances and Related Policies Since 1980" (2014)

<<https://www.google.com/url?q=https://shodhganga.inflibnet.ac.in/handle/10603/205020&source=gmail&ust=1646303283730000&usg=AOvVaw0SB-IWsV7w3EzIUenxw9wH>> Accessed on 2 March 2022

⁴WTO (1948)

<https://www.wto.org/english/thewto_e/countries_e/india_e.htm> Accessed on 2 March 2022

international trade, begins with “With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation,.....”⁵

FOREIGN TRADE POLICY AND CUSTOMS

As already discussed, all the goods and services that move across the border are governed by the provisions of Customs Act, 1962 and the Rules and Regulations made thereunder. These Act, Rules and regulations are in line with economic policies that are adopted by the government of India from time to time. When the government decides to have a closely monitored and controlled economy, the department closely monitors the trade and when the government decides to liberalize the economy, the Customs rules are liberalized thereby allowing free movement. Till the early nineties, the government believed in protecting the indigenous industries and therefore, any import of consumables from foreign countries were restricted mainly with a view to protecting the indigenous industry that produces the same goods in the country. However, when the country embraced the policy of LPG in the early nineties, it was felt that too much of protection would make the indigenous industry complacent and thereby they would lose the competitiveness. Therefore, a policy level decision was taken to ensure a level playing field and allow the international corporate giants to enter the country and thus enhance national competitiveness. It was also decided to facilitate legitimate trade and protect the national economy only from illicit movement of goods⁶. What is interesting is that the policy decisions related to international trade and tariff, bilateral or multi-lateral commercial relations, schemes meant for export promotions, restrictions pertaining to imports etc. are finalized by the Ministry of Commerce and Industry⁷ and not the Ministry of Finance under which the Customs department functions. The Central Government, through the Ministry of Commerce and Industry notifies the Foreign Trade Policy for every five years, by exercising its power conferred under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992)⁸. Therefore, it is quite essential that these two departments work in close co-ordination, in the interest of

⁵General Agreement on Trade and Tariff 1995, Article 1 Part 1

⁶ Customs In The 21st Century, “Enhancing Growth And Development Trade Facilitation And Border Security”(June 2008)<http://www.wcoomd.org/~media/wco/public/global/pdf/topics/key-issues/customs-in-the-21st-century/annexes/annex_ii_en.pdf?la=en> Accessed on 2 March 2022

⁷Department Of Commerce, Ministry Of Commerce And Industry(2021)

⁸Legal Framework and Trade Facilitation, Legal Basis Of Foreign Trade Policy(June 30 2019) <<https://dgft.gov.in/sites/default/files/ft17-051217.pdf> > Accessed on 2 March 2022

trade as well as the Country. In order to ensure this aspect, the Director General of Foreign Trade, under the Ministry of Commerce, has established a well secured Electronic Data Interchange (EDI) System for various documentation related activities pertaining to import and export of goods through various ports and airports in India, with the department of Customs, Export Promotion Councils (EPCs), Banks etc⁹. This has been done with a view to reducing the physical interface of the trade community with various government authorities, including Customs, as well as to reduce the transaction cost of the business.

ROLE OF CUSTOMS

The Government of India derives its powers to legislate and collect duties on imports and exports from Entry No. 83 of List 1 to Schedule VII of the Constitution¹⁰. Accordingly, Section 12 of the Customs Act, 1962 provides for collection of duties that move across borders in accordance with the rates of duties specified in two schedules to the Customs Tariff Act, 1975. Customs department in India is an agency of the Central government, that is vested with the powers of collection of revenue on the trade across the Indian borders in accordance with Section 12. At the same time, Section 11 of the Act provides for Power to prohibit importation or exportation of goods. Thus, it can be seen that the department has been vested with the responsibility of balancing revenue collection, trade facilitation and national security. It functions under the administration and supervision of the Central Board of Indirect Taxes and Customs (CBIC) under the Department of Revenue, Ministry of Finance.

Being placed under the Ministry of Finance, the department is largely perceived to be a major revenue collector alone. But in fact, the Customs department has a much onerous task to do. It is for the department to implement the prohibition of import or export of many items, which are prohibited under various acts. Section 11 of the Act empowers the department for this purpose, which reads as under:

Section 11 in the Customs Act, 1962

Power to prohibit importation or exportation of goods. —

(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled

⁹ Ibid, 1.19

¹⁰ CBEC, Customs Manual(2014)

before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following: —

(a) the maintenance of the security of India.

(b) the maintenance of public order and standards of decency or morality.

(c) the prevention of smuggling.

(d) the prevention of shortage of goods of any description.

(e) the conservation of foreign exchange and the safeguarding or balance of payments.

(f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver.

(g) the prevention of surplus of any agricultural product or the product of fisheries.

(h) the maintenance of standards for the classification, grading or marketing of goods in international trade.

(i) the establishment of any industry.

(j) the prevention of serious injury to domestic production of goods of any description.

(k) the protection of human, animal or plant life or health.

(l) the protection of national treasures of artistic, historic, or archaeological value.

(m) the conservation of exhaustible natural resources.

(n) the protection of patents, trademarks and copyrights.

(o) the prevention of deceptive practices.

(p) the carrying on of foreign trade in any goods by the State, or by a corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India.

(q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security.

(r) the implementation of any treaty, agreements or convention with any country.

(s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India.

(t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige.

(u) the prevention of the contravention of any law for the time being in force; and

(v) any other purpose conducive to the interests of the general public.

From Section 11 (2) mentioned above, it can obviously be seen that the first and foremost reason for any such prohibition mentioned in Section 11 (1) is the maintenance of the security of India. Even prevention of smuggling, which means plugging in the leakage of revenue, is accorded only the third preference. To cite a few examples of the duties of the department other than collection of revenue, every consignment of trade is expected to be examined to verify whether there is any violation of CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention), which is a multilateral treaty to protect endangered plants and animals¹¹. Further, as seen in recent times when there is a shortage of Onion and the government restricts or prohibits the export thereof or any other product, it is for the Customs department to be alert and stop if any export is done in a routine manner. The department is the first law enforcing agency to implement any Intellectual Property Rights across the borders, in terms of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007¹². For this purpose, any copyright as defined in the Copyright Act, 1957, trademark as defined in the Trade Marks Act, 1999, patent as defined in the Patents Act, 1970, design as defined in the Designs Act, 2000 and geographical indications as defined in the Geographical Indications of Goods (Registration and Protection) Act, 1999 will be treated as "intellectual property". Based on the notice of the right holder given to the Customs department in accordance with the rules, the clearance of any goods suspected of infringing intellectual property rights can be suspended and the right holder may be informed.

Improving international trade is one way to improve the standard of life in developed and developing countries and therefore, international trade is a key driver for economic growth and development¹³. No doubt, the standard of living of the people in the country should be enhanced. But then, it becomes a herculean task for the Customs department to strike a

¹¹Cites, General's Keynote Address At The Commission On Crime Prevention And Criminal Justice (14 February 1996) <<https://cites.org/eng>> Accessed on 2 March 2022

¹² Central board of indirect taxes and customs (2007) F.No.305/96/2004-FTT(Pt-I)

¹³ ibid

balance between ensuring that nothing wrong happens in the movement of goods and facilitating the smooth functioning of the trade. There was a time till the early nineties, when there was frequent patrolling of Customs officers across the seashore and interception of smuggled goods including gold, silver, electronic items and other consumable items. There used to be 100% physical verification of the goods to be exported goods as well imported at the ports. The Baggage Rules of Customs applicable to the passengers coming after a period of stay abroad was not liberal at all and all the goods brought by the passengers were thoroughly checked and subjected to high tariffs. However, the traditional method of physical verification of each and every item which was in vogue during the pre-liberalized era can no more be adopted in view of the improvement in international trade relations, the importance accorded to the trade and the multilateral conventions entered into between the countries under the auspice of WTO and other world bodies.

Further, there has been a lot of changes in world dynamics. The role of the department of Customs was being slowly changed from that of an “Inspector” to that of a “Facilitator” and a lot of measures were being introduced in this line. The acts of terrorism were much less during the period prior to nineties, and most of the concerns of smuggling were limited to evasion of Customs duty or at the most drugs. But the terror attacks of 9/11 in the USA forced the countries to think about the aspect of security too. By the time, the ball of modernization of Customs had already started rolling and there was no going back. Therefore, it became vital to address the security concerns too. And thus, the Customs organizations across the world now address three basic issues – revenue, security, and trade facilitation, giving equal importance.

DEPARTMENT’S EFFORTS TO ENSURE SECURITY

The department of Customs in India has been quite sensitive to the problems faced by the trade community in their international trade, as well as the requirements of ensuring security. When the policy decision was taken to do away with ‘Inspector Raj,’ there is no question of ‘harassing’ the trade with physical verification always. Initially, it was decided to only random checking or on a sample basis. With the advent of technology, it was learnt that technology can offer a great help in ensuring facilitation and the department’s requirements at the same time. Therefore, the department has adopted the latest technologies to ensure security by way of non-intrusive verification and has formed a Risk Management System (RMS). A separate Directorate General of Analytics and Risk Management (DGARM) has

been formed in the month of July 2017¹⁴ under the CBIC in order to take care of this aspect. The Directorate would collect the data from across the country from all the Custom Houses, Director General of Foreign Trade, Customs Brokers etc. and the data so collected are analyzed. The data so collated would be used along with the intelligence inputs to identify the high-risk category shipments or movement goods and will be thoroughly verified separately. In order to equip the officers at the operational level with modern technology and help them apply the knowledge of risk management, the data is shared with the preventive departments of the department as well as the Directorates¹⁵ meant for gathering intelligence. The technology advancement would help the department for a paradigm shift from responsive action to predictive action, thereby enabling to build a forward-looking organization.

The technology also enables the officers to take up desk-based audit of the trade, based on the electronic documents filed by them by way of the EDI system. Various parameters such as the category of the business house, turnover of the business, contents of the consignment, country of origin (in case of imports), country of receiver (in case of exports) etc. are taken into consideration while deciding to physically open and check the consignment placed before the Customs for export or import. Further, the RMS system randomly picks the consignments for physical examination, based on the aforementioned parameters and risk factors assessed. This saves the trade from a lot of harassment, avoidable expenses and valuable time, while the department of Customs saves a lot of manpower and moves towards improving the 'ease of doing businesses'.

The liberalization policy reposes a lot of trust on the trade community. The immediate aim of every trade is to make more profit and therefore, from the Nehruvian era to the pre-liberalized era, it was widely believed that the trade community could do anything, including illegal means, to fetch a profit during the course of their business. Therefore, any declaration of goods made by them was not taken for its face value, and the department would conduct a 100% check on the consignment and collect appropriate duty applicable. However, post liberalization, the concept has changed, and the trade community is treated as those who bring development, employment and thus prosperity to the country. Therefore, suddenly the trade community became more respectable and beyond suspicion, unless specific intelligence

¹⁴ Directorate set up under CBEC for data analytics and nabbing evaders(14 July 2017)<https://economictimes.indiatimes.com/news/economy/policy/directorate-formed-to-flag-high-risk-areas-in-customs-gst/articleshow/59577530.cms?from=mdr> Accessed on 2 march 2022

¹⁵ Directorate of Revenue Intelligence (DRI) and Directorate of GST Intelligence (DGGI) are two agencies exclusively meant for plugging the leakage of revenue, and to curb other smuggling activities.

indicated otherwise. Presently, the trade would declare the content of their import or export consignment, calculate the appropriate duty thereon, pay the same online, and produce the receipt thereof to Customs to clear the goods! The self-assessment scheme was introduced by the government in the Finance Act, 2011. While the department understands the concerns of the trade and facilitates them to this extent, the trade has a responsibility to reciprocate and understand the requirements of the department and fulfil them. To encourage the trade to do this, the department has started the practice of honouring the trade and categorizing them based on their compliance level. The consignment of the top category would mean least of risk. Thus, the trust-based partnership with the trade is another way the department has devised to ensure security.

WCO EFFORTS TO ENSURE SECURITY

WCO or the World Customs Organization is an independent intergovernmental body working towards improving the efficiency of the Customs administrations across the globe. The organization initially called as Customs Co-operation Council (CCC), was established on 26th January 1952 and presently has 183¹⁶ Customs administrations as members, including India. The WCO, which was mainly concentrating on the measures to improve trade facilitation by way of reducing customs intervention in the trade and Customs tariff on goods started realizing the importance to be given to the security aspect after the world started experiencing more and more terror threats in the recent times, especially after 2001. The Customs contribution to fighting terrorism was further crystallized recently by the Punta Cana Resolution¹⁷, which was adopted at the WCO Policy Commission in December 2015. The Punta Cana resolution has highlighted the critical role that the Customs administrations have to play in protecting national security and urges all Customs administrations to be proactive in contributing to border security.

The WCO takes up initiatives to prevent smuggling mainly in the field of IED (improvised Explosive Devices), Arms and ammunition etc. as well as to prevent terrorist financing. WCO's initiatives include creating awareness, providing trainings, taking up Customs-trade programmes, providing practical tools to manage cross-border terrorist threats etc.¹⁸. The

¹⁶ World Customs Organization WCO Membership<<http://www.wcoomd.org/en/about-us/wco-members/membership.aspx>> Accessed on 2 March 2022

¹⁷ Building on the previous WCO instruments and agreements, especially on the WCO Security Programme, the Punta Cana resolution is the Customs community's action plan and renewed pledge of solidarity that provides a diplomatic backdrop for further counter terrorism activities.

¹⁸ World customs organisation 'solidarity' (24 march 2016)
<<http://www.wcoomd.org/en/media/newsroom/2016/march/solidarity.aspx>> accessed on 2 march 2022.

WCO also liaises with the Customs partners at the international level for better border management practices and to enhance sharing of critical security information among all law enforcement agencies.

During the session that held in June 2005 at Brussels, WCO decided to adopt the SAFE Framework of Standards in order to facilitate and secure the international trade. This framework accorded high importance to the Trade-Customs partnership in order to ensure the security of the goods that move across the borders. This also introduced the concept of Authorized Economic Operators (AEO)¹⁹, preloading advance cargo information etc²⁰. Authorized Economic Operators include manufacturers, importers, exporters, customs brokers, ports, airports, warehouses, distributors etc. The WCO also takes up capacity building measures by providing for accreditation of experts, by organizing seminars for field level Customs officers of the members, by analyzing risk factors involved etc. The WCO also takes initiative for better co-ordination of Customs administrations worldwide and to have a cordial relation with private partners, so as to seamlessly obtain the data related to the trade.

Another major challenge the WCO has identified for the Customs in the operational field in the international area is counterfeiting and piracy. While counterfeiting of currency is a major threat to the economic security of the country itself, counterfeiting of other things and piracy are threats for the trade and intellectual property rights of individuals and gives rise to unfair competition. Counterfeit products, which are manufactured only with a motive of making profits and without following any standards and without adhering to any approved quality yardsticks could be harmful in various ways. There are spurious pharmaceutical products, food products, shampoo, auto parts etc., which can adversely affect the health of the consumers and economy of the country.

RESULT OF ALLOWING FREE TRADE AND TRUST

As discussed above, the Indian Customs authorities as well as the World Customs Organization have been adopting a lot of technology enabled measures in order to balance security and facilitation. Efforts are being made to ensure security without any intrusive

¹⁹ WCO SAFE Framework of Standards defines an Authorized Economic Operator is defined as a party involved in the international movement of goods, in whatever function, that has been approved by, or on behalf of, a national Customs administration as complying with WCO or equivalent supply chain security standards.

²⁰ World Customs Organisation 'IPR, Health and Safety Programme'

<<http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/ipr.aspx>>

Accessed on 2 March 2022

verification. Though it is definitely a good move to repose more trust on the trade, the following live cases can be food for thought to consider as to whether our society in general and the trade community in particular have really matured enough to deserve that kind of trust.

- The Indian Express, 29.03.2019 reported about seizure of 106.9 Kg of Gold by the Directorate of Revenue Intelligence (DRI) from a smuggling syndicate in Mumbai's Dongri area. The gold was smuggled into India by concealing the same in import consignments of melting scrap and was in various forms having different weights, such as ropes, wires, rods, discs, etc.²¹.
- The Hindustan Times, Mumbai, on 21.10.2019 reported that 60kg of gold bars and 58kg of silver bars of foreign origin, collectively valued at ₹23.15 crore, were seized by the DRI from the cargo terminal at the domestic airport in Santacruz. It was also reported that in April 2019, 19 Kg gold bars were seized by DRI from the Jawaharlal Nehru Port Trust (JNPT). The gold was smuggled into India from the UAE in three scrap metal pipes, by a firm Shourya Exim. It was also reported that on June 15, DRI had intercepted 12 cargo consignments at Concor Air Ltd, a logistics company, at Santacruz airport and had seized 32.28kg of gold valued at about ₹10 crore²².
- Times of India, Mumbai, reported on 05.07.2019 about smuggling of 19 Kg of gold bar worth about Rs. 6 Crore into the country by concealing the same in a container of Iraqi dates, which was detected by the officials of Jawaharlal Nehru Custom House at Nhava Sheva²³. It will be interesting to note that the container was checked based on specific information in this regard and otherwise it would have gone unnoticed, and the smuggler would have had his last laugh. Obviously, this was a case of misdeclaration of goods in the container of Iraqi dates.
- The Economic Times on 22.10.2019 reported about the seizure of contraband cigarettes worth about Rs. 1.55 Crore by the Directorate of Revenue Intelligence at Kolkata. The cigarettes were of different brands from Indonesia, Myanmar etc. The said contraband

²¹Darpan 'biggest ever' gold seizure by dri' (29 march 2019)

<<https://www.msn.com/en-in/news/newsindia/biggest-ever-gold-seizure-by-dri-1069-kgs-of-gold-recovered-from-mumbai/ar-BBV0QfM>> Accessed on 2 March 2022

²² Manish k Pathak, 'gold and silver bars worth ₹23 crore seized from airport' hindustan times (21 october 2019)<<https://www.hindustantimes.com/mumbai-news/gold-and-silver-bars-worth-23-crore-seized-from-airport/story-9pt6k7mcsflpigrmsfygi.html>> accessed on 2 march 2022

²³Ahmed Ali, 'rs 6-crore gold bars smuggled in dates container' the times of india(5 july 2019) < <https://timesofindia.indiatimes.com/city/mumbai/rs-6-crore-gold-bars-smuggled-in-dates-container/articleshow/70083173.cms>> Accessed on 2 March 2022

cigarettes were being smuggled through the Indo - Myanmar border and the truck carrying the cigarettes was intercepted at Guwahati²⁴. The truck was intercepted by the DRI officers based on a specific information received by them.

- It was reported by the Mathrubhumi daily on 28.11.2019 that during the period from 27.02.2017 to 17.03.2019, a total of 4,522 Kg of gold worth about Rs. 1,473 Crore was smuggled into India through Mundra Port, mis declaring the same as Brass scrap, by painting the gold to appear like brass. The smuggling of gold was done by declaring it to Customs as import of brass scrap by two companies viz. Al Rams Metal and DP Steel Scrap. The money towards this smuggling was being done through Hawala deals²⁵.
- Business Standard, New Delhi dated 14.11.2018 reported about the seizure of 12 improvised explosive device (IED) detonators, 15 hand-grenades and an AK-56 rifle with 234 rounds of ammunition at Akhnoor border by the DRI and the Army. The arms and ammunition bearing distinct Chinese markings were being smuggled from Pakistan. The seizure was made by the DRI based on a specific intelligence to the effect that some intruders from Pakistan side will attempt to infiltrate into India from a specific location at the international border²⁶. The operation was carried out by the DRI with the support of the Indian Army.
- As recently as 17.01.2020, Mumbai Mirror reported about seizure of high-quality Bangladesh origin counterfeit currency with face value of Rs. 18.75 lakhs²⁷. It was revealed that the said counterfeit currency notes were smuggled into the country from Bangladesh. Since the currency notes were seized from carriers, investigation is yet to be conducted about the mode of smuggling or crossing the border. Since such high quality Fake Indian Currency Notes (FICN) affects the economic security of the country, the act falls under the definition of 'terrorist act' in terms of Section 15 of the Unlawful Activities (Prevention) Act, 1967 and the case will be entrusted to the National Investigation Agency (NIA) for further investigation.

²⁴ Anuradha Himatsingka, 'DRI seizes contraband cigarettes' The Economic Times,(22 October 2019) <http://www.dri.nic.in/writereaddata/4540884_2019-11-04.pdf> Accessed on 2 March 2022

²⁵ 'Gold worth Rs 1,473 cr smuggled into India concealed as brass scrap', Mathrubhumi (28 November 2008) <<https://english.mathrubhumi.com/news/kerala/gold-worth-rs-1-473-cr-smuggled-into-india-concealed-as-brass-scrap-1.4317556>> accessed on 2 March 2022

²⁶ 'Dri seizes cache of explosives, foils infiltration bid at akhnoor border' business standard(14 november 2018)<https://www.business-standard.com/article/news-ians/dri-seizes-cache-of-explosives-foils-infiltration-bid-at-akhnoor-border-118111401295_1.html> accessed on 2 march 2022

²⁷ 'DRI stumped by high quality Bangladesh-origin counterfeit Indian currency', MumbaiMirror(17 January 2020)< <https://mumbaiirror.indiatimes.com/mumbai/crime/cops-stumped-by-high-quality-of-fake-currency/articleshowprint/73308655.cms?prtpage=1>> Accessed on 2 March 2022

- ANI news on 13.11.2017 reported that a consignment of export, kept ready for export at the Inland Container Depot (ICD), Patparganj, Delhi was intercepted by DRI, only to find antique sculptures concealed therein, which were subsequently seized. It was revealed during investigation that the sculptures belonged to the 8th Century AD and are worth crores of rupees in the international market²⁸. Subsequent investigations resulted in seizure of 36 more sculptures from the godown of the smuggler, who was arrested. It clearly indicates that the smuggler was frequently misusing the system and smuggle out the said items, in spite of all the technology enabled security measures taken by Customs.
- Red sanders are a highly endangered species and extremely in demand in the international market. It is listed in Appendix-II of the Convention on International Trade in Endangered Species of Wild Flora & Fauna (CITES). Though export of the same is totally prohibited, smugglers go to any extent to get the same out of the country to make a quick buck. India Today Live on 07.09.2018 reported a seizure of red sanders wood worth about Rs. 4.5 Crore by DRI, from the Nhava Sheva Port in Maharashtra. The consignment of red sanders was stuffed in the container and was kept ready for export at the port. The consignment was declared to Customs as 648 cartons of polyester yarn weighing 18.522 Metric Tonnes²⁹.
- Times of India, Jaipur on 13.01.2019 reported Seizure of Red sanders worth Rs. 6.50 Crore by DRI³⁰. The Red sanders weighing about 14.5 MT were concealed in the containers under sandstone and were kept ready for export from the Inland Container Depot (ICD) at Kanakpura. It is an extremely serious issue that in a highly secured area like ICD, goods can be stuffed without the knowledge of the authorities. Or even bringing unauthorized goods to the ICD in such a concealed matter also cannot be brushed aside very lightly.
- In an interesting incident, a ship carrying containers which was on a voyage from Mangalore to Colombo was called back by the DRI authorities, based on the specific intelligence that red sanders were being smuggled out of India in the said vessel by

²⁸‘DRI seizes export consignment of antique smugglers in Delhi’, ANI news (13 November 2017) < <https://www.aninews.in/news/national/general-news/dri-seizes-export-consignment-of-antique-smugglers-in-delhi201711132105250003/>> Accessed on 2 March 2022

²⁹ Divyesh Singh ‘Red sanders wood worth Rs 4.5 cr seized from Mumbai port’, India Today (7 September 2018) <<https://www.indiatoday.in/india/story/red-sanders-wood-worth-rs-4-5-crore-seized-from-mumbai-port-1334112-2018-09-07>> Accessed on 2 March 2022

³⁰ ‘Red sanders worth Rs 6.50 crore seized’ The Times of India (13 January 2019) <<https://timesofindia.indiatimes.com/city/jaipur/red-sanders-worth-rs-6-50-crore-seized/articleshow/67506526.cms>> Accessed on 2 March 2022

concealing the same in containers. The Businessline dated 25.11.2017 reported that the DRI, Mangalore seized 16.99 tonnes of Redsanders valued at about Rs. 6.78 Crore at New Mangalore Port³¹. The goods in the container were declared to be 'Mysore Detergent Cake' and was being sent to Sharjah.

- In a case of misdeclaration reported by the Times of India, Ahmedabad on 12.03.2019, the DRI seized China made drones, which were brought into the city through Air Cargo, by mis declaring the same as Camera Tripod, household goods and electronic items³². The DRI's operation was carried out after the consignment of drones was cleared by Customs based on the declarations submitted by the importer thereof and was based on a credible intelligence input.
- In yet another example of taking advantage of the trust reposed by the department, by mis-declaring the goods, the Mangalore Today, reported the seizure of Muriate of Potash by the DRI, Mangalore on 25.01.2010 at New Mangalore Port. Based on credible information, the Directorate of revenue intelligence, Mangalore intercepted five containers which were kept ready for export. The invoice and other documents submitted to Customs along with the Shipping Bills had declared the goods as Bentonite powder. The containers had originated from Hassan and was on its way to Malaysia, via New Mangalore Port, after completing all the Customs formalities³³.

It may be observed from the above that the aforesaid cases are only the recent ones, which are reported in the media. The departmental statistics would reveal the actual figures of smuggling by way of mis-declaration, utilizing the regular trade channel could be huge. Smuggling activities have always been there, right from the days of regulated trade. Hoodwinking Customs officers on duty in order to save the Customs duty and thereby to make a quick buck has always been the strategy of the smugglers. But after the LPG, when the world became small and the Customs duties came to be so less that smuggling became less lucrative, they changed the strategy of smuggling. It became easy for the smugglers to

³¹ 'Red sanders worth Rs 6.79 crore seized in Mangalore', BusinessLine(20 August 2014)
<<https://www.thehindubusinessline.com/news/Red-sanders-worth-Rs-6.79-cr-seized-in-Mangalore/article20847926.ece>> Accessed on 2 March 2022

³² 'DRI nabs drone consignment from Ahmedabad', The Times of India(12 March 2019)
<<https://timesofindia.indiatimes.com/city/ahmedabad/dri-nabs-drone-consignment-from-ahmedabad/articleshow/68365913.cms>> Accessed on 2 March 2022

³³ 'DRI team confiscates illegal MoP at Mangalore port' Mangalore Today
<<http://www.mangaloretoday.com/newsbriefs/DRI-team-confiscates-illegal-MoP-at-Mangalore-Port.html>> Accessed on 2 March 2022

conceal the goods in containers, mis-declaring it to be something else, and the risk involved is far less.

When the world and trade community is advancing in every aspect, it is definitely not a good idea to go back to the olden days of ‘Inspector Raj’. However, if the export stuffing is done in the supervision of an officer, or even under the CCTV, footage of which can be submitted later on to the department, it can instill some kind of responsibility on the side of the exporter and similarly, de-stuffing may be done in the presence of an officer. This can reduce the cost of checking at the ports, though it may involve slightly enhanced cost for the supervision. However, incurring slightly higher cost on the trade is far better than compromising on the national security.

CONCLUSION

As already discussed above, though the trade relation between the countries is definitely important for various factors such as development, friendly relation, enhancing the standard of living etc., it cannot be at the cost of the sovereignty and security of the country. India should probably take a lesson or two from the American counterparts and formulate policies that do not compromise the right of the government to verify thoroughly what is moving in and what is moving out. Proper inspection and verification of any movement across the borders, be it of persons, goods or services, is mandatory in United States of America after the incident of 9/11. They have completely revamped the system by amalgamating different services of the Government and formed Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), who handles any movement of people and goods through the American borders. For decades to come, Customs will remain a vital force for security and the enhancement of the economic well-being of nations.³⁴ The department of Customs should be strengthened by giving sole responsibility to curb smuggling and should be empowered with authority to prosecute all kind of offences of infiltration and smuggling through the international borders. The ‘no-checking’ policy also feeds corruption as well as foddors lackadaisical attitude, as the onus of declaring the goods lies with only the passenger/trade and the checking happens only on the direction of a machine.

³⁴Customs In The 21st Century ‘Enhancing Growth and Development through Trade Facilitation and Border Security’

<http://www.wcoomd.org/~media/wco/public/global/pdf/topics/key-issues/customs-in-the-21st-century/annexes/annex_ii_en.pdf?la=en> Accessed on 2 March 2022

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