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NIU International Journal of Human Rights

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CONTENT

Prof (Dr.) Kumkum Dewan
Vice Chancellor

PREFACE

NIU International Journal of Human Rights which started in 2014 has been a source of stimulating interest among students, scholars and practitioners of human rights. The present volume represents a snapshot of current knowledge and theories in the field of human rights and is written from the widely differing perspectives of the numerous academic disciplines that contribute to this fascinating and enticing field of study.

The concept of human rights is truly vast and embraces many diverse fields of human endeavor. Human Rights as a discipline is evolving extremely quickly. Even as we write, many new discoveries and developments are being reported and published. While some of these apparent breakthroughs may prove ephemeral or illusory, a large number of them hopefully will change the magnitude of the field for an enhanced, positive and long lasting effect for the entire humanity. We have tried to avoid endorsing too soon any results which are not yet proven, but at the same time we have attempted to be and to encourage our contributors to be—as up to date as possible.

The editorial team under the guidance and supervision of the editorial board - invited eminent academicians to contribute and made sincere efforts in drafting and re-drafting chapters to our exacting standards. What has resulted from these endeavors' is a collection which, we hope, will be a standard work of reference for years to come. Noida International University is happy to share this research with readers. The target audience for this volume comprises scholars and students of all the disciplines that connect to a wide ranging element of human rights from psychology, geography, linguistics', history, sociology, anthropology and more.

I sincerely hope that this journal will prove to be a successful endeavor to create awareness, knowledge and promote quality research in the domain of human rights.

Noida
Date :

Prof (Dr.) Kum Kum Dewan
Vice Chancellor

From the Editor – in - Chief's desk

The NIU International Journal of Human Rights is published annually by the Noida International University, as a part of its commitment to encourage quality research on various dimensions of human rights issues. The journal has also served the purpose of initiating thought, deliberation and discussion on present day issues having human rights relevance across sections.

The present edition of the journal focuses on significant and diverse human rights issues.

First Article by Shri Pupul Dutta Prasad revolves around the ongoing academic debate on Utilitarianism and Human Rights – whether the two are connected, the extent of connection and if the connection is of any relevance to human rights, as such. The second article on *Media and Human Rights focuses on the challenges faced by Indian Journalists* while covering human rights issues. Protection of the rights of the witnesses has assumed significance over the years – Ms Rakshita Kumari and Dr. Anil Kumar's article on *Human Rights of Witnesses in South Asian Countries* covers the topic extensively. Fourth Article is on *Human Rights of Women in India - Legislative and Judicial Approach* by Smt.G.M. Mamatha and Dr. Ramesh. The next article on *Police investigation and human rights* by Shri Sanjay Kumar Jain and Shri Viplav Kumar Chowdhary has to be viewed in the context of the National Human Commission reports over the years - highlighting the fact that a large number of complaints against police are received in the Commission for making unjustified, indiscriminate arrests, including implication of innocent persons in false cases.

It is followed by an article on *Human rights in India –Where do we stand* by Dr. Mamta Sardana and Dr. Meena Bhandari providing an insight to the human rights scenario in the country. Shri Maheshwari Gupta's article on *Women rights under Human Rights & Role of CEDAW* analyses the rights of women under the purview of CEDAW. Dr. Anuradha Pandit Saxena's article examines the Impact of Commercialization on Education from a judicial point of view. Migration in itself is often considered to be a cause and an effect of human rights infringement. Ms Vishakha Goyal has attempted to critically scrutinize the same in her article on *Migration: A human rights issue - Case study of Nagaland*. Language rights and linguistic identity is of immense significance, though less discussed and more discursive in nature: last article by Shri Srinjoy Ghosh titled *Linguistically justified – An essential introduction*, is an earnest attempt to bring into fore certain core dimensions of this iridescent issue.

I greatly appreciate the very valuable contributions made by scholars, academicians and practitioners of human rights to the journal. I express my deep gratitude to all of them and also the members of the Editorial Board whose exhaustive knowledge and experience have enriched the journal.

With an ardent sense of reverence and gratitude, I acknowledge the unflinching support and direction provided by our Chief Patrons & mentors: Pro – Chancellor Dr. Vikram Singh and Vice - Chancellor Prof (Dr) Kum Kum Dewan for this endeavor.

I sincerely hope that the present issue of the journal will help in further stimulating thought provoking research on significant issues concerning human rights and help in bringing about a significant impact in transforming the veracity of human rights in various sectors.

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Utilitarianism and Human Rights: A match made in Hell?

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Abstract

On the face of it, the principle of the greater happiness advocated by utilitarianism seems impeccable. Its prescription of maximisation of benefits for all has an intuitive appeal in a democracy. However, in its application, the centrality of the principle of utility has extremely adverse consequences for human rights. It is seen as riding a roughshod over the inherent worth of the individual rights-bearer. The aim of the paper is to explore the issue of this seemingly irreconcilable opposition between utilitarianism and human rights. The paper suggests that the solution may lie in engaging with less orthodox versions of utilitarianism. Making utilitarianism work in tune with human rights promises to be a win-win prospect for both of them.

Key words: - *Act Utilitarianism, Rule Utilitarianism, Utility, Human Rights, Natural Rights*

Political philosophy as the study of normative questions about organised political life has always given a great amount of attention to the theory of rights, and understandably so. Among political philosophies, utilitarianism occupies an eminent position as one of the best known and most influential moral theories. Its theoretical appeal and practical public policymaking influence have been attributed to its parsimony and universal and easy applicability.

Utilitarianism is a normative doctrine that is based, according to its earliest exponent Jeremy Bentham, on the fundamental axiom that "it is the greatest happiness of the greatest number that is the measure of right and wrong" (cited in Burns, 2005, p. 46). Since its inception, the doctrine has been subject to any number of interpretations. In its modern reformulation, it is "the moral theory that judges the goodness of outcomes – and therefore the rightness of actions insofar as they affect outcomes – by the degree to which they secure the greatest benefit of all concerned" (Hardin, 1988, p. xv).

Utilitarianism has been a source of endless debate since the time of Bentham and Mill. Its proponents argue that the principle of utility and the promotion of happiness, which form the core of utilitarianism, not only represent an excellent theory of personal moral conduct, but are also highly suitable as a public philosophy because of their capability to offer viable solutions to difficult decision-making problems. According to Robert E. Goodin (1995, p. 4), utilitarianism purports to provide a complete political theory, a complete normative guide for the conduct of public affairs. Critics, on the other hand, equate utilitarianism with pure hedonism, and describe it as a crass, crude and calculating doctrine that has nothing but contempt for precious human values and higher ethical considerations (Bradley, 1876; Grote, 1870; Albee, 1902, as cited in Fieser, 2001).

Notwithstanding what can be said in its favour, it cannot be denied that utilitarianism is not a

theory of rights at all (Brandt, 1992, p. 196). However, with the emergence of the idea of human rights in the 20th century as the most dominant ethical idea of the contemporary global age, utilitarianism can hardly afford skirting the question of human rights. Doing so would be to risk becoming irrelevant.

By 'human rights' are meant rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all universal, inalienable, interrelated and indivisible.

If by human rights were meant natural rights of the absolute kind, utilitarianism of all kinds would deny that there are rights in that sense. However, the fact is that human rights set the basic minimum standards for how individuals and institutions everywhere should treat people. To violate someone's human rights is to treat that person as though she or he were not a human being. Human rights, therefore, are necessarily a modern concept and different from natural rights.

This paper explores the relationship between utilitarianism and human rights, and takes the view that utilitarianism need not be seen as hostile to human rights. It is not a homogenous doctrine that it often appears to be. Rule utilitarianism, a particular brand of utilitarianism, can provide effective, if not absolutist, protection to human rights.

Utility and Rights: Conventional View

From a traditional sense, the relationship between utilitarianism and human rights is seen in conflictual terms so much so that it is considered impossible to bring off a utilitarian argument for rights (Gray, 1984). Classic utilitarianism as propounded by Jeremy Bentham made no bones about the incompatibility of utilitarianism and any theory of natural rights. Natural rights, in his words were 'nonsense upon stilts', 'bawling upon paper' (Bentham, 1843). However, Bentham did recognise legal rights of various kinds and described right, the substantive right, as the 'child of law'. What he rejected were rights as embodying the irreducible, inalienable moral claims of individuals. Bentham regarded law not as a 'natural law' but simply as a command expressing the will of the sovereign. According to his principle of utilitarianism, the right act, policy or law is that which causes the greatest happiness of the greatest number. An act is morally right if and only if that act maximises the general good, that is, contributes to overall utility. This is also known as act utilitarianism/consequentialism (Sinnott-Armstrong, 2015). According to act utilitarian, this principle is the foundation of morals and legislation. Both government and the limits of government are justified by reference to the principle (Hart, 1979). In the course of time, the second qualification of 'the greatest number' was left out, and act utilitarian philosophers followed the greatest happiness principle.

However, the principle has not been embraced by all utilitarian philosophers alike. There have been disagreements among them over what is the fundamental value that ought to be maximised. This has led to other forms of utilitarianism in addition to act utilitarianism. There are ethical hedonists for whom the fundamental value is pleasure or happiness, for preference utilitarians it is preference satisfaction, for welfare utilitarians it is satisfaction of interests rather than mere preferences, aesthetic ideals for ideal utilitarians and so on (Goodin, 1991). However, these different forms are united in their common advocacy of maximisation of overall utilities. Individual utilities are to be summed up to make up the overall utility and the difference that is made to that total is the standard for judging public action.

Critique of Utilitarianism

Utilitarianism and its various forms have faced withering criticisms from many angles. From a rights-theorist point of view, nothing is more repugnant to rights than the whole business of aggregating utilities, which completely neglects the moral importance of the separateness or distinctiveness of human beings, not to mention their dignity and autonomy (Rawls, 1990). Bentham's maxim 'everybody to count for one, nobody for more than one' may sound very egalitarian, but when employed in the service of the all important utilitarian or felicific calculus, it reduces individuals into numbers, and ignores their personal uniqueness and the consequent differential abilities and requirements.

Utilitarianism, to the great dismay of the rights advocates, would not flinch from inflicting loss and deprivation on an individual or a set of individuals if doing so leads to the pleasure, happiness or welfare of a larger number of individuals and hence, to the maximum total or the average net happiness or welfare of all the people. If this collectivist bias be the one extreme, on the other, utilitarianism could very well champion the privilege of a few if it were going to secure the maximum aggregate utility. Such vagaries in theory lend credence to the critics' charge that under utilitarianism individuals have no moral worth except insofar as they act as utile-bearing units, easily replaceable and interchangeable with other person-less individuals, adding up to make the aggregate utility.

As a result, critics have caricatured utilitarianism as a Janus-faced philosophy which disregards the separateness of persons and any principle of equitable distribution. Utilitarianism cannot be trusted to protect the interests of individuals or minorities when these obstruct the general welfare or the welfare of large numbers (Gray, 1984, p. 73). Therefore, far from supporting human rights, critics argue, utilitarianism militates against the very basis of rights. They further sharpen their attack by pointing out some bizarre practical implications of the principle of utility including justification of slavery, torture, and mass murder. It is therefore alleged that the divergence between the aggregative principle of utility and the distributive character of rights is too wide to bridge.

Direct and Indirect Utilitarianism: Implications for Human Rights

Utilitarian have not been slow in responding to such criticisms. Act utilitarians have tried to explain that acts like enslavement and genocide would always cause great unhappiness and very little happiness. Not only does harming people in regard to their essential interests hardly ever produce a positive balance of utility: it can also subtly damage the seeming beneficiaries, by undermining the basis of their self-respect (Scarre, 1996, p. 154). Feldman (1997, p. 151–174) has attempted to prove that utility can be adjusted for justice. To achieve this, he proposes to modify the axiology by adjusting the values of the various pleasures and pain. A pleasure is more valuable if it is deserved and less valuable if it is not deserved.

Another argument is that human rights could be regarded as 'rules of thumb' (Smart, 1973, p. 42) so that, although torture might be acceptable under some circumstances, as a rule it is immoral. However, this is apparently quite eviscerated compared with the Rawlsian concept of the priority of right. According to Rawls, the principles of right, and so of justice, put limits on which satisfactions have value (cited in Freeman, 1994, p. 340); whereas, there is nothing in the principle of utility to put restrictions on ends that can be pursued. Even ends injurious to human rights are not impermissible per se.

Therefore, however sincere and well-meaning the efforts of utilitarians to embed human rights in the theory, these fall considerably short of a firm and unwavering commitment to human rights. The rough-and-ready form of utilitarianism therefore requires sui generis deontological

constraints of rights in order to ensure it is not perceived as an essentially anti-human rights doctrine.

Direct utilitarianism is a form of consequentialism which means that the decisive reasons for or against any act or policy are reasons having to do only with its utilitarian consequences as opposed to the consequences of the agent's motive, of a rule or practice that covers other acts of the same kind, and so on (Sinnott-Armstrong, 2015). Such utilitarianism is viewed as being generally and sometimes necessarily counterproductive (Gray, 1984).

For example, let us consider a hypothetical situation in which A expects greater utility if a promise made to him by B is kept. Now, there are two reasons why A can expect the promise to be kept more in a non-act utilitarian society than in an act utilitarian society (Hodgson, 1990, p. 204–210): (i) there is a conventional moral rule as to promise-keeping, and failure to keep a promise may result in criticism of or loss of respect for B; in contrast, in an act utilitarian society there are no moral rules and B's only personal rule is the act utilitarian principle; (ii) wilful failure to keep a promise may damage this useful conventional moral rule by making others less willing to conform and by undermining confidence in the observance of the rule. In an act utilitarian society, A will have a good reason for expecting B to keep the promise only if B believed that it would have greater utility. The condition would be the same if instead of making a promise, B had merely mentioned the act as a possibility. Promising is pointless unless a promisee expected an act which had been promised more than he would have expected the act if it had not been promised, but merely mentioned as a possibility (Hodgson, 1990, p. 205). Even though the utilitarian principle would be served if B's promise to A is kept, the same principle weakens the emphatic nature of a promise. Therefore, direct utilitarianism such as act utilitarianism is believed to have a self-defeating effect.

Indirect versions of utilitarianism have sought to address this problem. Gray (1984, p. 75) argues that 'Indirect utilitarianism embodies and exploits the apparent paradox that utility maximisation will not be achieved by adopting the strategy of maximising utility...its central contention is that utility is best promoted if we adopt practical precepts which impose constraints on the policies which we adopt in pursuit of utility'. One of the evolved forms of indirect utilitarianism that may meet some of the standard objections from the rights point of view is called rule utilitarianism. Its thesis is that an act is morally right if, and only if, it would be beneficial to have a moral code permitting that act, as to have any moral code that is similar but prohibits the act (Brandt, 1983). The adoption of a moral code does not change its basic character that is of a maximising theory. It only makes sure that the maximisation of the general good is tempered with a moral code that is most desirable for a society to have. Whenever an act that promotes the general good comes into conflict with the principles or moral code it would be good to have recognised, the code prevails over such an act. Nothing that violates the code can achieve any good. However, this should not be construed to mean, as some critics suggest, abandonment of utility in favour of irrational rule-worship (Gray, 1984). Rules themselves are selected in terms of goodness of their consequences, and these rules determine which kinds of acts are morally wrong.

Rule utilitarianism by allowing for such a code also fills a visible gap in the utilitarian theory, thereby making it more plausible and consistent. The gap had been with regard to the leap utilitarianism had been making from 'desirable' to 'moral'. If an act produces greater goodness, it is the desirable utilitarian thing to do. However, the 'morality' of an act is not the same as its 'desirability'. Rules or a code connect desirability of an action with a moral obligation of performing that action.

Rule utilitarianism also gives a better account of itself compared with act utilitarianism in evaluating long-range public policy as it addresses the issue of what acts people should perform which, taken together, will maximise happiness in the long run. Recognition of certain

rights in the moral code of a society maximises long-range expectable utility (Brandt, 1983). Therefore, by taking utilitarianism away from short-termism and self-defeatism, liberal rule utilitarianism does seem to provide a "secure and acceptable basis" for equal freedom, contrary to a received view that utilitarianism and liberal priorities are incompatible (Riley, 2008, p. 429).

Gray (1984) is of the opinion that rights should not be seen as smuggling non-utilitarian rationale in utilitarianism because they are supported on utilitarian grounds as 'imposing constraints on utilitarian policy'. He also rejects the idea that they can be merely 'rules of thumb' as suggested by act utilitarians. Rather, insofar as they constrain utilitarian action and deliberation, they possess what might be called 'second-order' utility of their own not always vulnerable to utilitarian overriding. If practices, conventions and moral rules have been carefully selected, there will not be gross disparity between what they require and conduct that promises to maximise benefit (Brandt, 1992.). Despite this if any disparity were to arise, an optimum rule utilitarian code will contain 'escape clauses' to be invoked in emergency situations (Brandt, 1992). This inbuilt flexibility endows rule utilitarianism with certain dynamism and does not allow rules to become so absolutely rigid as to undermine the principle of utility. Human rights finding expression as social rules become more than 'rules of thumb and less than absolutist requirements'. Therefore, it would be reasonable to assert that people have rights not overrideable by marginal or even substantial but only by extreme demands of welfare (Brandt, 1992).

Act utilitarian J. J. C. Smart (1990, p. 199–201) argues that an adequate rule utilitarianism like the one that protects human rights collapses into act utilitarianism. According to him, any rule which can be formulated must be able to deal with an indefinite number of unforeseen types of contingency. Therefore, whatever would lead an act utilitarian to break a rule would lead the rule utilitarian to modify the rule. No rule, short of the act-utilitarian one, can therefore be safely regarded as extensionally equivalent to the act-utilitarian principle unless it is that very principle itself (Smart, 1973, p. 12.).

In response, it may be stated that it is precisely the ambition of a rule to be capacious which requires it to be defined in general terms. Still, however capacious a rule may ideally be, it cannot be tailored so as to fit every situation. That is why a rule would allow for exceptions just as rule utilitarianism does. At the same time, it would detract from the scope and generality of utilitarianism if every exception were to be incorporated into a new rule. A parsimonious rule with the possibility of exceptions is preferable to an unwieldy rule which still would not be future-proof. However, it must be mentioned in passing that Smart's observations do seem to indicate an innate inflexibility on the part of act utilitarianism which renders it irredeemably antagonistic to human rights.

Utilitarian Contribution to Human Rights

If critics care to pause and see beyond their relentless attack, it is difficult to deny that utilitarianism has a significant contribution to make to human rights. Claims and counter-claims about rights are so commonly invoked in everyday political and social life. Whenever rights/interests come into conflict with each other, and they do so more often than not, it is better resolved by resorting to the principle of utility rather than any ad hoc or arbitrary criteria. In practice, rights do not form an organic, absolute, compassable and indefeasible whole they are sometimes made out to be. In a particular situation a specific right can be justifiably denied if the pursuit of general welfare so overwhelmingly demanded it. If rights by virtue of the moral code can serve as constraints on utility maximisation, so also can extremely compelling demands of welfare supersede a particular right. Besides, inside each problem of

protecting commonly recognized rights there is an implicit maximization problem (Bailey, 1997, 154). Solving that problem may necessitate a trade-off between individual rights and general welfare. With its empirical attitude to questions of means and ends, utilitarianism is arguably better placed than most other doctrines to arbitrate on such matters.

For example, though there is a right to inviolability of one's body, it is easy to conceive of a situation in which one may be forced to give some blood to save the life of another person. And the gravity of the situation may justifiably afford no cause for action to the person so forced because the harm inflicted on his right is far outweighed by the benefit caused to the general welfare. However, if the stakes are raised and a person is forced to part with a vital organ like his kidney instead of a replenishable body fluid, the balance does not tilt towards the general welfare as clearly as in the previous instance.

The above illustration shows that there are hierarchies within rights too. In particular contexts, some rights are weightier than others, just as some issues of general welfare are arguably weightier than some rights. Rule utilitarianism while mandating conformity of an act to human rights does not become blind to the cause of general welfare. After all, it was invented to try to reduce the clash between the principle of utility and the rules of ordinary morality (Brittan, 1983). The underlying insight is that utility will be lost if men make its pursuit their dominant motive.

Conclusion

From the analyses in this paper, it emerges that rule utilitarianism proffers a reasonable guarantee for human rights, if not a strong argument for them. It also contributes notably to the practice of human rights in our complex social, economic and political life. That it can do so without having to repudiate its central tenets speaks of imaginative and flexible interpretations utilitarianism can admit. For its part, utilitarianism, by being sensitive to and supportive of human rights gains by emerging as a more humane and successful theory.

However, if human rights cannot alone be utilitarianism's central concern, perhaps it is because utilitarianism attempts to do too much, to give too comprehensive and extensive an answer to problems of personal or public choice (Sen & Williams, 1982). In an era when the hegemony of the language of human rights (as distinguished from the preeminent need for realising human rights for all) threatens to choke the space for alternative discourses on justice, perhaps utilitarianism provides a necessary corrective.

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Media and Human Rights: Challenges faced by Indian Journalists while Covering Human Rights Issues

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Abstract

In any democratic society, media is expected to work as a watchdog. Safeguarding the rights of people is one of the major duties of this fourth pillar of democracy. Raising the voice against human rights violation is an important professional obligation for journalists but it is full of challenges also. This study talks about the challenges faced by Indian journalists while covering human rights issues. Findings of the study are based on the in-depth interviews of several journalists working at different levels and study of the existing relevant literature. The study highlights the different hurdles faced by Indian journalists during coverage of human rights issues in different contexts.

Key words: - *Human rights, Journalism, Stringer, Media, Violations*

As we all know that the human rights are the inherent rights of a human being regardless his or her nationality, religion, caste, gender, race etc. These basic rights ensure the minimum dignity of a human being and need to be protected. "human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."[1] According to the provisions of this act, the National Human Rights Commission was established in 1993 to deal with the issues related to human rights in India. In addition to that, we have state level human rights commissions also.

"News is what somebody somewhere wants to suppress; all the rest is advertising."[2] The above quote of Lord Northcliffe gives a very suitable definition of news especially in the era of highly commercialized news media. In the context of human rights violations, violators always try to hide or suppress the incident but as a watchdog of the democratic society, it is the duty of media to expose these types of incidents.

India is a country of diversity. Besides geographical and cultural diversities, we have different sections of people with different levels of education and legal awareness. We are very weak at the front of legal literacy. A sizable share of our population does not know anything about human rights. In this situation, media has double responsibilities. First, to create awareness about human rights and second to report human rights violations. Both the fronts are equally important. More coverage of human rights issues will create more awareness and more awareness will certainly reduce the violations.

Human rights violation may occur in any field of life but following areas may be considered

1 - The Protection of Human Rights Act, 1993 (Amended in 2006)
2 - Lord Northcliffe

as more sensitive: i) Custodial deaths ii) Police and other armed forces excesses (torture, illegal detention/unlawful arrest, false implication etc.) iii) Fake encounters iv) Cases related to women/children v) Atrocities on Dalits /member of minority community/disabled vi) Bonded labor.

Objective

The major objectives of this study are as follows:

i) To find out the major challenges faced by Indian journalists in covering human rights issues.

ii) To suggest few feasible solutions to reduce the quantum of challenges faced by Indian journalists while covering human rights issues.

Methodology

It is a small qualitative study. Findings are based on in-depth interviews of various journalists working at different levels and study of existing relevant literature. Journalists working at different levels, from senior journalists working at the headquarters of national media organizations to stringers, were included in the sample.

The term 'stringer' is used for grass root level journalists. They do not work as full time employees of any news organization and paid according to the work done. Economically, it is very difficult for any news organization to appoint full time reporters at each and every part of the country so stringers are the solution. They are very important for reporting network of any news organization. Since stringers work at grass root level in rural and remote areas, they are important in the context of human rights issues. Remote and rural areas are more vulnerable for human rights violations.

Findings

As we know that the objective of this study is to find out the major challenges faced by Indian journalists in covering human rights issues. The findings of the study show that covering human rights issues is full of challenges for journalists working at different levels. Few important findings are following:

- Facing retaliation from violators: In most of the cases of human rights violation, violators are powerful and they try to pressurize journalists. The cases of retaliation have also been observed. Things are worst in remote areas.
- Lack of protection: Journalists are expected to fight for the rights of common man but they don't have any special legal protection considering the nature of their profession. Like any other Indian citizen, they get their powers from the section 19(1) (a) of our constitution which gives freedom of speech and expression as a fundamental right. Sometimes it looks like, a lot of expectations without protection. It is required to mention here that in many countries journalists are empowered with special constitutional protective provisions.
- Objectivity vs national interest: Objectivity is one the basic principles of journalism. Ideally a journalist should be free from any type of bias and their focus should only be on facts and truth but the journalists are also human beings. They are citizens of their respective countries also. It is quite natural for any journalist to be in dilemma when the national interest is at stake. This dilemma is one of the major challenges for Indian journalists also to cover human rights issues especially in conflict zones.

Here, it is relevant to mention the words of former Chairperson, Press Council of India, Justice G.N. Ray N. Ray, "The Press Council in its report of 1991 cautioned that it would not be desirable to shut out the point of view of the militants completely as the people in a democratic society have a right to know what the militants stand for and the basis of their arguments, but there is a point beyond which the state cannot abdicate. While it counseled the press to exercise due caution in disseminating the press notes of the militant groups, equal emphasis was laid on the need for the press to be vigilant against official plants to maintain its credibility."These words show a middle path for journalists specially working in conflict zones to maintain their credibility and professional ethics.

- Highly commercialized media: It is an open secret that now journalism is not a mission any more. It has been converted into profession and industry. We call it media industry and like any other industry the magic word 'profit' is the most important here also. The whole news media industry is running around this magic word 'profit' and all policies and strategies are being prepared to make more and more profit. In this storm of commercialization, the main sufferer is the 'real news'.

Since the media is being treated like an industry and the main goal is to earn more and more profit, the major criteria of news selection is TRP (Television Rating Point) or circulation figures. Advertisement is the main source of revenue for both print and electronic media. This fact makes the advertisers' role very important in deciding content selection policies also. For advertisers, the section of population with good purchasing power, is the most important because this section can purchase their products. A large share of Indian population living in poverty is useless for the advertisers and ignored in content selection. It negatively affects the coverage of many important issues including human rights related to farmers, tribes, laborers, poor people and rural India.

One more aspect is important. Now, the newspapers and news channels are being treated just like any other product. Owners of these news products are involved in many other businesses and industries also. It may be possible that these companies or their direct/indirect partners or the big advertisers are involved in any type of human rights violation but it's very difficult for any journalist to cover these stories.

- Lack of human rights literacy, especially in the journalists working in rural and semi-urban areas: Dearth of knowledge and awareness about human rights issues is also a challenge for journalists (stringers) working in rural and semi-urban areas. Regionalization and localization of media have increased the number of local journalists but they are poorly trained in comparison with full time professional journalists posted in cities and towns.
- Pathetic condition of journalists working at grass root level: as we discussed earlier, conflict zones and remote areas are more vulnerable for human rights violation. Since remote areas are far away from the eyes of different monitoring agencies and level of awareness is also low, violators feel more confident. Regionalization and then localization of news media have changed the scenario little bit. Now media organizations have reporter's network at block level also. It has enhanced the monitoring and vigilance but there are few issues also.

Stringers (The term 'stringer' is used for grass root level journalists. They do not work as full-time employees of any news organization. They are paid according to the work done) are the main sources of news in remote areas for any news organization but they are working in very poor condition. They are paid very less and many of them are working even without identity cards and proper appointment documents. These poor working conditions limit their capacity to perform their duties as a journalist including covering human rights issues effectively.

- Local journalists working also as salespersons: Stringers are also functioning as salespersons. They have to collect advertisements for their respective organizations. Advertisement targets are given to them and maximum advertisement collectors are presented as role models in the meetings. They are dependent on local politicians, businessmen and contractors to achieve their advertisement targets. Usually it is very difficult to write any negative news about the advertisers. It minimizes their capability to fight for the rights of common man.
- Citizen journalism and social media platforms: In the changed technological scenario, every citizen can work as a journalist. Millions of hands are equipped with mobile phones which can click photographs, shoot videos and record audio. Social media platforms are available for all. Anybody can capture the incidents of human rights violation and send it to the citizen journalism section of media organizations or share them on social media sites. Many times mainstream news media organizations use to take stories from social media. There are hundreds of examples when common people captured the human rights violations and shared on social networking sites and then mainstream media also covered those stories. This technological revolution has empowered us to fight against the injustice including human rights violations.

Conclusion and Suggestions

Fighting for the human rights issues and creating awareness about it, are the important professional duties of journalists. We discussed various challenges faced by Indian journalists in covering human rights issues. Few of them are universal in nature, for example: Objectivity vs national interest and highly commercialized news media but many of them are India centric also. The following suggestions may be considered to reduce the challenges faced by Indian journalists in covering human rights issues:

Human rights literacy workshops or programmes should be organized for journalists, especially working in rural and semi-urban areas. This type of training will equip them to cover human rights issues more effectively.

Protection of journalists should be an important concern. The state should provide them a fear-free environment so that they can perform their duties properly. Considering the nature of work, steps should be taken to make a special comprehensive law which can ensure the freedom of news media as well as protection of journalists. It'll empower journalists to cover human rights violation stories without any fear or pressure.

Since any government intervention may be taken as a negative step for press freedom, news media organizations themselves should come with a proper policy to deal with stringers. Though stringers work at the bottom level of reporting network yet they are very important in the era of localized news media. They are the face of journalism in rural and semi-urban India. Steps should be taken to improve their working conditions so that they can fulfill their duties as journalists. It'll certainly improve the coverage of human rights issues at grass root level.

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Human Rights of Witness in South Asian Countries

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Abstract

This study intends to find out what are the tribulations related with the administration of justice delivery system due to lack of adequate legal mechanism to protect witnesses in South Asian countries. An attempts have been made to know who are witnesses, how they contributes their contribution in the establishment of divine term human rights of an individual and impacts of hostile witnesses in organized crime and terrorism? Are there any programs or convention existing between the S.A.A.R.C countries for the protection of witnesses?

Key words: - *Human rights, Witness, Justice, SAARC, Crime*

Witness is the person who is supposed to be acquainted with the facts and circumstances of the case. Criminal case rests upon the testimony given by witnesses in court of law. It not only plays vital role in standing of criminal cases, but is also a resource to dismantle the organized crime.

The upshot of freedom of life and liberty is free and fair trial. Lord Chief Justice Hewart believed that "the fundamental important that justice should not only be done, but should manifestly and undoubtedly be seen to be done." If the criminal trial is not free from bias, judicial fairness, the criminal system would be at stake shaking the confidentiality of the public in the system and anguish would be social contract and rule of law. The role of a witness is very vital for any trial. The credibility of criminal justice system largely depends upon the intrepid, impartial and promptness of a witness .Witness is a pillar on which the case arose. Witness credence and genuineness abets the delivery of justice. Witness is a lodestar of judiciary; his statement illuminates the presiding officer to give judgment. Hence it is the due responsibility of the state to provide threat and embarrassment free environment to the witness so, that it can express itself without any fear, coercion and intimidation.

The South Asian countries had organized an association to reintegrate socio-economic and geo-politically so, that there can be sustainable development of Human Race. But the major barrier for the success of the association is organized crime and terrorism. Cosmopolitan laws for witness protection can be an important mechanism in criminal justice proceedings that can help States to bring criminals to justice, especially in cases of organized crime and terrorism and also act as important measures for terrorism which is the major concern of human right activist.

Today, the warm concern of administration of justice in term of protection of human rights in South Asian countries is transnational nature of organized crime and terrorism. Hence; it is the demand of time that there should be a consistency between the municipal laws of the countries. Their cooperation can have a check point on organized crime and terrorism. Ancillary to this conflict between the establishment of justice and organized crime, it is needed an extensive frame work for witness protection by all member nations of South Asia.

But it is irony that there is only a whisper amongst the member states of South Asian Countries

Classification of South Asian Countries

After extensive study we can classify South Asian countries on the basis of statutory provision as framed related to witness protection into three types of countries

1) Rudimentary stage countries

2) Conceived stage countries

3) Dark stage countries

1) Rudimentary stage countries:-The countries having law in rudimentary stage are Sri Lanka and Pakistan. Strong reason to term these countries to be rudimentary is that these countries had taken positive step toward the enactment of law for protection of human Right of witness and victim. In Sri Lanka the proposal of the draft was proposed by S. S. Wijeratne[1] of the National Centre for victims of crime in order to protect victim's rights. Hence the law commission was established in 2000 to prepare the bill and forwarded it to Ministry of Justice .In 2005 a fund was generated with the help of "The Asia Foundation," for witnesses who were victim. And on 19th February 2015, parliament of Sri Lanka passed the bill "**Assistance to and Protection of Victims of Crime and Witnesses**", in this regard.

In Pakistan "The Sindh Witness Protection Bill, 2013 have been passed by the Provincial Assembly of Sindh on 18th September, 2013 and assented to by the governor of Sindh on 30th October, 2013 and published as an Act of Legislature of Sindh. But both the act is having many lacunae. As in Pakistan the law enacted is a regional in nature i.e. only applicable to Sindh province.

2) The countries having law in conceived stage:- Under this class India and Bangladesh can be categories. These countries can be classified as conceived stage countries because in these countries law regarding protection of human rights of witnesses is in the form of law commission's recommendation. There no proper law for protection program of human rights of witneses as victim. In India 198th report on witness Identity protection and witness protection programs has been recommended by law commission of India. In Bangladesh a committee was established whose member was Dr. Enamul Hoque, Justice Sirajul Islam and Justice Mastafa Kamal was the chairman they have already given their report but still no positive step has been taken for enacting the law for protection of human rights of witness.

The Judicial trend in India:- In recognition of the Common Law tradition that India follow lays great faith in judge-made law or the principle of stare decisis[2]. Since the spirit of law is more important than its letter, the history of development of common Law has largely been that of judicial interpretation of law in favour of civil liberties, individual and now collective or group rights. The Apex court of India has time and again reiterated that legalist interpretations of law are to be carried out in accordance with the rights-affirming values of the constitution, which are constantly being expanded with the evolving needs of people.

U*pholding of social justice and protection of human rights requires that we have socially committed judges, socially committed law enforcement agencies and socially committed lawyers*.[3]

1- Somapala SamarasingheSrimegaWijeratne of the National Centre for victims of crime ;he was also the chairman of Legal Aid Commission of Srilanka
2- Prof.S.P. Sathe, Honorary Director, Institute of Advanced Legal Studies, Pune
3- MsFlavia Agnes , Advocate, Bombay High Court and co-founder Manjlis, a legal resource centre

At the trail court, judges must ensure that the prosecution and investigation are not lax. Their role is not limited merely to that of an umpire – they should actively participate in the proceedings[5].

Victims expect and must get empathy from the courts. The process of getting justice on the ground is so long and cumbersome that it leads one to wonder whether dialogues such as these will really change things[6].

As judges, we must build consensus on what we as a body can do to discharge our duty and safeguard human rights of victims both within our states and outside them[7].

In the public interest case (W.P. Crl. No. 109/2003 and batch) in National Human Rights Commission v. State of Gujarat[8] a series of orders were passed by the Supreme Court. There, the National Human Rights Commission (NHRC) filed a public interest case seeking retrial on the ground that the witnesses were pressurized by the accused to go back on their earlier statements and the trial was totally vitiated.

The Supreme Court observed:

"…….*A right to a reasonable and fair trail is protection under Articles 14 and 21 of the constitution of India, Article 14 of the International Covenant on Civil and Political Rights, to which India is a signatory, as well as Article 6 of the of the European Convention for protection of Human Rights and Fundamental Freedoms. On perusal of the allegations in the special leave petition and number of criminal cases coming to this Court, we are prima facie of the opinion that criminal justice delivery system is not in sound health. The concept of a reasonable and fair trial would suppose justice to the accused as also to the victims. From the allegations made in the special leave petition together with other materials annexed thereto as also from our experience, it appears that there are many faults in the criminal justice delivery system because of apathy on the part of the police officers to record proper report, their general conduct towards the victims, faulty investigation, failure to take recourse to scientific investigation etc*."

Then, on the question of protection of witnesses, the Supreme Court referred to the absence of a statute on the subject, as follows:

"*No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses. For successful Prosecution of the criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trials in most of the sensational cases do not start till the witnesses are won over. In this view of the matter, we are of opinion that this petition (by NHRC) be treated to be one under article 32 of the Constitution of India as public interest litigation*."

The Court directed that in the counter-affidavit of the Gujarat Government, it should indicate the steps, if any, taken by it for extending protection to the lives of victims, their families and their relations; if not, the same should be done. The Court also wanted to know whether any action had been taken by the Gujarat Government against those who had allegedly extended threats of coercion to the witnesses, as a result whereof the witnesses had changed their statements before the Court. The Court also directed the Union of India to inform the Court about the proposals, if any, "to enact a law for grant of protection to the witnesses as is prevalent in several countries"

5- Justice K.T Thomas , former Judge , Supreme Court of India.
6- MsNavazKotwal, Coordinator, Gujarat Programme, Commonwealth human Right Imitative.
7- Justice J.S Verma ,Former Chief justice of India and Former Chairperson National Human Rights Commission
8- 2003(9) SCALE329

By a subsequent order passed on 12th July, 2004, the Supreme Court issued directions to all States and Union Territories to give suggestions for formulation of appropriate guidelines in the matter.

3) The Dark stage:- Nepal, Bhutan, Maldives, Afghanistan are the countries which can be countries to be in dark stage with regard to witness protection program it is because in these countries after a long list of violation of human rights of witness no effort has been yet been put by the legislator for formulating a strong law for protection of human rights of witness/witnesses.

Conclusion

The principles and objectives of SAARC are to ensure the welfare and quality of life of the people of South Asia. The member states for the first time in year 1987 felt that without suppression of terrorism and organized crime it is quite impossible to improve the quality of life of the people of South Asian countries. In eighteenth SAARC Summit on November 26-27-2014 in Kathmandu for the first time member state determined to deepen regional integration for peace and prosperity by promoting mutual trust, amity, understanding, cooperation and partnership. The Leaders unequivocally condemned terrorism violent extremism in all its forms and manifestations and underline the need for effective cooperation among the member states to combat them. They agree to take effective measures to combat illicit trafficking of narcotics and psychotropic substances, arms smuggling, money laundering, counterfeit currency and other transnational crimes. They directed respective authorizes to ensure full and effective implementation of the SAARC Regional Convention on suppression and its Additional Protocol, including through enacting necessary legislations at the national level to root out terrorism. For this they also agreed to establish a cyber-crime monitoring desk. But these steps are not sufficient to put fetter on terrorism and combating organized crime. The platform on which criminal justice system stands is witness; hence this important underpinning protection must not be ignored.

Suggestions

The protection of witness is a natural right hence it must be ensured beyond the boundaries of nation. There is a requirement of cross border cooperation for the protection of witness so, that these nation can combat with transnational terrorism and organized crime. The proper definition of "witness protection is essential for proper identification of witness so, that the law implementing agency can ensure their protection. Being civilized nations all the member states must increase cooperation among them for protection of witness. All the member states by cross border cooperation must generate funds for the rescue and rehabilitation of witness/ victim of organized institution is needed. The work division among the various department of institution is needed with proper demarcation. There must be proper and regular training programmers for the personal involving in the witness protection programmers.

The ample resources must be pooled and deployed in each country in this regard. And a nodal points and linkage must be set up among the nation so, that each nation can easily get information regarding protection programme. The nation providing shelter and identity must maintain the mutual cooperation and confidentiality with the state who has asked to provide cooperation for the protection to its witness by providing shelter. It is high time to consort together to provide precautionary measure and treatment to witness instead of providing legal aid. Witness must be protected from media exposure and in case of child witness there must be proper and arrangement for his/her education. There is a requirement of internal arrangement of witness protection in the state as well as there is a need of bi-lateral and multi-lateral treaties among the member states.

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Human Rights of Women in India - Legislative and Judicial Approach

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Abstract

"Human dignity is the quintessence of Human Rights"

-Chief Justice J.S.Verma

Patience, Perseverance, Tolerance, Sacrifice, Generosity, Kindness are the most powerful words which reflect the character of a women. Whose service is always remained as unnoticed and continuously subjected to various kinds of human rights violations. Generally Human beings can be considered as indispensible and most intelligent species on this planet. Significantly they form an integral part of the society and the contribution of the human beings towards the development of the society is noteworthy. But when it is concerning with human rights, there is always gross violation of human rights of certain categories who are considered to be the most vulnerable and weaker sections of the society. They are subjected to humiliation, indignity and inequality from time immemorial. To understand the true significance of the concept of women rights it is important to note the meaning of Women Human Rights. This paper deals with protection of Human Rights of Women which is envisaged in part III of Indian Constitution and how the Judiciary has interpreted and strengthened the rights of Women.

Key words: - *Human Rights, Women, Legislative & Judicial Approach, Fundamental Rights*

The term "women's human rights" refers to bundle of rights required for the very existence of women who perform various roles in the society. To improve the status of women continuous efforts have been initiated and ensuring their implementation as well. In this regard, various international movements have accompanied with national movements in attaining greater significance to improve the conditions of women. These movements began its momentum in 1980s and 1990s, women's movements around the world spread like a web and got a concrete shape in reforming the rights of women. The focus was made on important issues such as social, economic, political and cultural aspects. In this regard it is important to note the meaning of Human Rights.

Human Rights are referred as the basic or Fundamental Rights which are also called as inalienable rights and natural rights. These rights accrue from the birth of an individual; hence these rights are also called as "Birth Rights" which are inherent in all individuals irrespective of race, religion, caste, sex, and place of birth. One of the most cardinal principles is, if International Law is recognition and respect towards the rights of women. The major areas of gross human rights violation are sexual harassment, female infanticide, domestic violence, rape, Dowry harassment, kidnapping, abduction, molestation, female feticide etc. However a number of conventions have been concluded under the auspicious of United Nations to protect rights of women. The major conventions are United Nations charter, Commission on the status

of women, Universal Declarations of Human Rights, Beijing Conference, CEDAW etc.,

Thus the Human Rights of women is regarded as inalienable, integral and indivisible part of universal human rights. Human rights and fundamental freedoms are considered to be most important rights of all human beings and their protection and promotion lies on their respective governments. Human rights must be enjoyed to its fullest extent by each and every individual irrespective of race, religion, caste, sex and place of birth. To give effect to the desired goal i.e. to maintain equality and dignity of Women various International Obligations have been taken up.

So in order to implement International Obligations, Indian parliament has enacted various statistics to protect the Interest of Women Human Rights. Few of them are Indian Constitution, National Commission for Women Act 1990, The Protection of Human Rights 1993 and Domestic Violence Act, Dowry Prohibition Act, Maternity Benefit Act and Equal Remuneration Act and so on.

In connection with the above, as early as in 1946 itself the Commission on the Status of Women was established to deal with women's issues. The Universal Declaration of Human Rights has affirmed the principle of the inadmissibility of discrimination and proclaimed that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. However, there is continued to exist considerable discrimination against women primarily because women and girls face a multitude of constraints imposed by society, not by law. It violated the principle of equality of rights and respect for human rights.

The advancement of women has been a focus of the work of the United Nations since its creation. The Preamble of the Charter of the United Nations sets as a basic goal to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. Furthermore, Article 1 of the Charter proclaims that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for Human Rights and fundamental freedoms of the people without distinction as to race, sex, language or religion.

The United Nations is committed to the principle of equality of men and women, meaning equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system has dedicated itself to ensuring the universal recognition, in law, of equality of rights between men and women and to exploring ways to give women, in fact, equal opportunities with men to realize their human rights and fundamental freedoms.

The General Assembly on November 7, 1967 adopted a Declaration on the Elimination of Discrimination Against Women, and in order to implement the principles set forth in the Declaration, a Convention on the Elimination of All Forms of Discrimination Against Women was adopted in 1979 is often described by the General Assembly as an International bill of rights of women which consisting a preamble and 30 Articles which deals with series of measures which will end the discrimination against women. The convention also provides for securing equality between men and women through ensuring women's access to public life and political participants including education health and employment this is only convention which has recognized reproductive rights of women, the state parties have accepted to implement those commitments through appropriate measure. India is a signatory to CEDAW which has ratified on 25-6-1993

The women in India have always been considered subordinate to men. Though the Articles contained in the Constitution mandates equality and non – discrimination on the grounds of sex, women is always discriminated and dishonored in Indian society. Although various efforts

have been taken to improve the status of women in India, the aspirations of founding fathers of Indian Constitutions pertaining to equality still remained as daydream.

Historical Background of Women Human Rights in India

In the present scenario Human Rights of women is of great concern. So an attempt has been made to lay emphasis on Human Rights of women in India and how they are being violated. Although special rights are ensured to woman as compared to that of men, yet the concept of equality remained undue.

Though the necessity of reviewing Indian women's status across the historical phases is non-controversial, the task is fraught with innumerable difficulties. As historian Romila Thapar remarks, "Within the Indian subcontinent there have been infinite variations on the status of women diverging, according to cultural milieu, family structure, class, caste, property rights and Morals".

Status of Women in Vedic Period: During the Vedic period, women enjoyed a fair amount of freedom and equality. The Vedic period can best be termed as the period of feminine glory and also of masculine sagacity and liberalism. Women participated in all spheres like men. They studied in *Gurukuls* and enjoyed equality in learning the Vedas. Girls in higher societies were allowed to undergo *Upanayana* rite. Great women like Gargi, Atreyi, Ghosa, Apala, Lopamudra, Visvara, Indrani and Yami, inter alia, were accomplished in art, music, dance and even warfare. In Aitareya Upanishad, the wife had been called companion of husband. In the Rigveda, the wife has been blessed to live as a queen in the house of the husband.

The status of women in India was based on liberty, equality and cooperation what, however, made them different was the emphasis on spirituality and religion, duty and cooperation in family life.

Position of Women in Medieval Period: During medieval period the status of women has declined and the social evils spread like epidemic diseases which have resulted in deterioration of rights of women. The important social barriers of that time are Sati System, Child Marriage, Illiteracy, Devadasi System and Dowry which led to the creation of unhealthy society where in the women's basic Human Rights were violated and curtailed. These problems resulted in indignities and inequalities which made women to confine from walls and thereby causing the hindrance to the growth and development of women in the medieval society.

Women in British Period: During British regime, the position and status of women has changed drastically due to the impact of western culture and education on the society. This has paved the way for the development of women. Major changes took place in social and economic fields of the society which has resulted in eradication of inequalities and indignities which were deep rooted into the Indian Society. The notion of spreading education to women was germinated in the British Period. The important attempt was made by the Christian Missionaries to spread education to girls. As a matter of fact the presidential towns such as Madras, Calcutta, and Bombay did not give admission to women till 1975. Only it was in 1882 the female were allowed into educational institution for learning.

Effective Social Movements of Active Social Reforms: Infect it is because of various social reforms who had contributed to the growth and welfare of women which has changed the

structure of society itself. There were important social reforms such as Raja Ram Mohan Roy, Swami Dayananda Saraswathi, Ishwar Chandra Vidya Sagar who raised their voices against the evil practices such as Child Marriage, Sati System etc., They also advocated various concepts like widow remarriage, restraint of Child Marriage, Prohibition of Sati System and Property rights for Woman including political participation etc. In 1927 till India Women's Conference was held and gained importance in uplifting the status of women later on many legislations were enacted in this regard.

Women's Human Rights Meaning & Definition: The term "women's human rights" refers to bundle of rights required for the very existence of women who perform various roles in the society. To improve the status of women continuous efforts have been initiated by International and Domestic Organization and ensuring their implementation as well.

Women's human rights refer to a revolutionary notion aimed at emphasizing that women's rights are human rights and they are entitled to such rights by the virtue of being human. The concept of women's rights helps to focus on women in the human right movement. Women's human rights are given great importance in the Convention on the Elimination of all Forms of Discrimination against Women. A woman's human rights framework equips women with a way to define, analyze, and articulate their experiences of violence, degradation, and marginality.

Important Constitutional & Legal Provisions for Women in India: The principle of gender equality is enshrined under the Indian Constitution the Preamble, Fundamental Rights, Fundamental Duties and Directive Principles contain protective provisions with the object to remove inequalities. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the CEDAW which led to passing of various enactments for the protection of women.

Constitutional Provisions: Indian Constitution provide for equality and positive discrimination including socio economic, education and political rights of women. Fundamental Rights ensure equality before the law and equal protection of law and prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth and guarantees equality of opportunities in the matters of public employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Article 14: State shall not deny equality before law and equality protection of laws on the basis of religion, race, caste, sex, place of birth.

Article 15 (1): The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15 (3): The State to make any special provision in favour of women and children.

Article 16: Equality of opportunity for all citizens in matters relating to employment to any office under the State.

Article 39(a): The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood.

Article 39(d)): Equal pay for equal work for both men and women.

Article 42: The State to make provision for securing just and humane conditions of work and for maternity relief

Article 46: The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation.

Article 47: The State to raise the level of nutrition and the standard of living of its people.

Article 51(A) (e)): To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.

Article 243 D(3): Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat.

Article 243 D (4)): Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

Article 243 T (3): Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality.

Article 243 T (4): Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide.

Thus it is very clear that the Supreme law of land has provided and guaranteed various provisions for the protection of Women rights and their development in all spheres. In order to give effect to the Constitutional provisions the Central government and state governments have enacted numerous laws for the well being of women.

Legal Provisions: To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

Legal Regime for the Protection of Rights of Women in India

- Indian Constitutional Law, 1950
- Indian Penal Code, 1860
- The Employees State Insurance Act, 1948
- The Family Courts Act, 1954
- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956 with amendment in 2005
- Suppression of Immoral Traffic in Women and Girls Act, 1956

- Immoral Traffic (Prevention) Act, 1956
- Dowry Prohibition Act, 1961
- The Maternity Benefit Act, 1961 (Amended in 1995)
- The Medical Termination of Pregnancy Act, 1971
- The Equal Remuneration Act, 1976
- The Factories (Amendment) Act, 1986
- Indecent Representation of Women (Prohibition) Act, 1986
- The National Commission for Women Act, 1990
- The Protection of Women from Domestic Violence Act, 2005
- The Prohibition of Child Marriage Act, 2006
- The Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act and Rules, 2013.

Role of Judiciary in Protection of Women Human Rights: Judiciary in India has reiterated the Human Rights of women by filling the vacuum in municipal law by applying, wherever necessary, International instruments governing human rights.

'Wife should undergo a medical examination to prove her virginity was found to violate her right to privacy and personal liberty enshrined under Article 21 of the Constitution'- The Hon'ble Supreme court observed in Surjeet Singh v. Kamaljit Kaur

The apex judiciary in India has interpreted a number of basic human rights of women in the light of fundamental rights guaranteed in Part III of the Constitution. These fundamental rights have gone much beyond the American Bill of Rights. In a series of cases the Apex Judiciary has set some remarkable standard of asserting the gender equality and Human Rights of women. The dignity of women was upheld by the Hon'ble Supreme court of India in the case of Rupan Deal Bajaj v. K.P.S. Gill.

As is observed in Air India v. Nargesh Mirza, the validity of the Indian Airline's and Air India's service rules providing that an Air Hostess had to retire from service at the age of 35 or on marriage-whichever was earlier, or if she got married within four years of confirmation or on first pregnancy was struck down and held to be arbitrary. In case of State of Maharashtra v. Madhukar Narain, the Hon'ble Supreme Court pointed out that even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes.

In Bodhi Satwa Gautam v. Subra Chahraborty, the Hon'ble Supreme Court pointed out that rape is a crime against basic human right and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21.

In the case of The Government of A.P. v. P.B. Vijay Kumar, AIR 1995 SC 1649, it was observed that the special provision under Article 15(3) which the state may make to improve woman's participation in all activities under the supervision and control of the state can be in the form of either affirmative action or reservation.

In C. B. Muthammavs Union of India, the court held that discrimination against women, in traumatic transparency, is found in this rule. If a women member shall obtain the permission of government before she marries, the same risk is run by the government if a male member contracts a marriage. One fails to understand the naked bias against the gentler of the species.

In the case of Pragati Varghese v. Cyril George Varghese, the Hon'ble full Bench of the Bombay High Court pointed out that section 10 of the Indian Divorce Act, 1926 under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on the ground that it violates the fundamental right of a Christian woman to live with human dignity under Article 21 of the Constitution.

In case of Noor Saba Khatoon v. Mohd.Quasim, the Hon'ble Court held that we have opted for a secular republic, secularism under the law means that the state does not owe loyalty to any particular religion and there is no state religion. That too, The Hon'ble Calcutta High Court extended the iddat period till such time the woman re-marries, to allow Muslim women a maintenance allowance beyond the customary iddat period of about three and a half months under the Muslim Women (Protection on Divorce) Act, 1986.

Supreme Court judgment in the case of VishakaVs. State of Rajasthan regarding sexual harassment of working women. In the case of Vishaka and OrsVs. State of Rajasthan and Ors. (JT 1997 (7) SC 384), the Hon'ble Supreme Court has laid down guidelines and norms to be observed to prevent sexual harassment of working women. Mrs. Sujata Sharma vs Shri Manu Gupta and others.

In this recent case, Delhi HC in its landmark judgment stated that the eldest female member of the family can be its "Karta".

Suggestions and Conclusion

It can be concluded that Human Rights are the breath of individuals without which it is impossible to lead a dignified life which is guaranteed as Fundamental Rights under Article 21 of Indian Constitution. Indeed numerous International Conventions have been convened under the auspicious of United Nations. In accordance with the International Treaties and Agreements, Indian Parliament which is empowered under article 253 of Indian Constitution has incorporated various provisions and enacted plenty of Legislations for the protection of Women Human Rights. Further it can be stated that, the existing Legal and Administrative measures seems to be inadequate and insufficient. Therefore to provide protection to the Rights of Women, strict and stringent Laws must be enacted to eliminate all forms of inequalities and indignities against Women.

With regard to this, public awareness about the value of Women Human Rights should be spread through various effective public awareness programmes. Central and State governments should strive to maintain the Dignity of Women. However, in this connection the role of Judiciary is of paramount consideration. In-spite of various stringent sanctions by the courts, Human Rights are being violated to the greatest extent which needs immediate attention to curb and control gross Human Rights violations.

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Police Investigations and Human Rights

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Abstract

Can effective investigation not be carried out by the police without violating the human rights norms? Are Human Rights and police investigation per se incompatible and opposite in nature to reconcile? Are compliance of human rights norms act as hindrance or obstacle in professional investigation and maintenance of peace and tranquillity? Is 'bending of law' sine qua non without which the investigating agency cannot effectively bring the offenders to the book? Are investigating agencies justified in using coercive or unethical means to crack the case or build up evidences to secure conviction from the court? How can we ensure credible and trustworthy investigation that also fulfils the requirements of human rights? These are some of the intriguing issues that have been discussed in this paper.

Key words: - *Police Investigations, Human Rights Norms, Detention, Arrest, Custody*

Policing and Human Rights are closely related concepts. The general belief, ironically though, is that good policing cannot go hand in hand with human rights. Most people have heard the argument that respect for human rights is somehow opposed to effective law; effective law enforcement means to arrest the criminal, and to secure his conviction, it is necessary to "bend the rules" a little bit. In this way of thinking, human rights are perceived to be obstacles in effective law enforcement.

Investigation of crime is an important part of policing. For effective investigation of the crime, laws in our country gives a lot of power, some even discretionary, to the police officers, most important amongst which is the power of arrest. In this context, different aspects of the linkages between the human rights and police investigations have been discussed in this paper.

Police Investigation: Objectives and purpose

Simply put in, primary objectives of any police investigation are collection of evidences in order to prove commission of crime by an offender. As defined in Section 2(h) of the Criminal Procedure Code (Cr.PC), police 'investigation' includes all the proceedings under the Code for the collection of evidences conducted by a police officer. The Supreme Court in *H. N. Rishbudvs State of Delhi* while construing the term 'investigation' observed that under the Code (Cr.PC) investigation consists generally of the following steps:

1. Proceeding to the spot,
2. Ascertaining all the facts and circumstances of the case,
3. Discovery and arrest of the suspected offender,
4. Collection of evidence relating to the commission of the offence which may consist of

a. The examination of various persons (including, the accused) and the reduction of their statements into writing, if the officer thinks fit,

b. the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and

5. formation of the opinion as to whether on the materials collected, there is a case to place the accused before a Magistrate for trial and is for, taking the necessary steps for the same by filing a charge-sheet under Section 173.

The most important purpose of investigation of crime is thus collection, collation and analysis of evidences relating to the offence and based on evidences so obtained, put up a final report to the judicial magistrate for magistrate for conducting trial and deciding the matter.

Safeguards Available to the Suspect or the Alleged Accused Person

Examination of the suspect or the alleged offender is an important part of the police investigations. However, a number of safeguards have been provided to the persons to be examined during the police investigation by the Constitution of India and the Cr. PC, as mentioned below:

- Article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself.
- Article 21 of the Constitution provides that no person shall be deprived of his/her right to life or personal liberty, except in accordance with the procedure established by law.
- Article 22 of the Constitution provides that the arrested person shall be informed of the grounds of arrest; the arrested person has right to consult and be defended by a legal practitioner of his choice; and he shall be produced before the nearest magistrate within 24 hours of such arrest.
- Guidelines on Arrest as prescribed by the Supreme Court in *DK Basuvs State of West Bengaland* Section 41 B, 41C and 41 D of the Cr. PC provides for the procedure of arrest and duties of the officer making arrest such as identity of arresting officer, preparation of arrest memo signed by member of family/relative/respectable member of the locality at the time of arrest, informing the ground of arrest, right of arrested person to meet advocate, right to inform his family members/relative about the factum of arrest and place of arrest, display of information pertaining to arrest at district control room and Police HQ etc.
- Section 41 of the Cr. PC provides for not to arrest a person without warrant, unless there is a reasonable satisfaction on the basis of investigation done about the person's involvement in a cognizable offence and a need to affect his/her arrest.
- Section 46(4) of the Cr. PC provides that no woman would be arrested after sunset and before sunrise, other than in exceptional circumstances, and a woman police officer be associated while effecting arrest of a woman.
- Section 50 of the Cr. PC provides for the right to know the grounds of arrest and right to be released on bail in case of bailable offence.
- Section 50A(1) of the Cr. PC provides that a relative or a friend of the arrested person should be informed about the fact of arrest and the place where he/she is being detained.
- Section 50A(3) of the Cr. PC provides that information regarding the arrest and the person informed about the arrest should be is recorded in the designated register kept in the police station.

- Section 54 of the Cr. PC provides that if some injuries are found on the body of the arrested person at the time of arrest, the same should be specified in the Arrest Memo and the arrested person be medically examined.
- Section 51(2) of the Cr. P.C provides that search of the arrested person must be done with due respect to the dignity of the person. Search of women should only be made by other women, with strict regard to decency.
- Section 55A of the Cr. PC provides that the police officer is under legal obligation to take reasonable care of the health and safety of the arrested person.
- Section 57 of the Cr. PC provides that any arrested person not to be detained beyond 24 hours without the express order of a Magistrate.
- Section 160 (1) of Cr. PC provides that a woman or any male person, below 15 years of age not to be summoned to a police station for questioning, the questioning of any such person to be done by the police officer only at the place of residence of such woman/minor.

Human Rights Violations During Police Investigations

Procedural laws, primarily contained in the Criminal Procedure Code gives immense power to the police to keep in custody a person, suspected to have committed a crime, under certain circumstances, and for certain purposes, during the course of investigation of the crime. As discussed above, the laws however also provides for a number of safeguards for the person in the custody of the police. Despite these legal provisions instances of human rights violations during the police investigations are often reported, some of which have been discussed in greater details hereunder:

Illegal Detention: Illegal detention –that is detention of a suspect without formal arrest during the process of investigation -is a common form of human rights violation by the police across the country. '*Cases are not unknown where persons are arrested by the police but no entry of arrest is made in the register, and it is only when the police decides to produce the person arrested before the Magistrate that they make an entry of arrest in the register, thus creating a record showing that they have complied with the requirement of production within twenty-four hours'*

Illegal confinement of the accused persons is mostly resorted to by the police to extract confession from the accused and informally recover weapon of offence & other incriminating material at his instance before production of the accused in the court since after formal arrest and police/judicial remand the police is required to follow the due process of law. Sometimes relatives of the absconding accused are put in illegal confinement for securing his arrest. Detention of a lawfully arrested accused person for more than 24 hours without authorisation from a magistrate in contravention of the statutory and constitutional requirements has been held as illegal detention by the Courts in a catena of judgements. It has been held by the Apex Court in *In The Matter Of MadhuLimaye And ... vs. Unknown* that Article 21 and Clauses (1) and (2) of Article 22 of the Constitution of India go together, and constitute parts of one scheme. Interpreting the above Constitutional provisions Kerala High Court in the case *Poovan vs. The Sub-Inspector of Police* held that a detention of a person in police custody beyond 24 hours is illegal. It can neither be cured nor waived, and it is an offence punishable under Section 342, I.P.C.In *SharifbaiMehmoobvs*. *Abdul Razakalso* the Bombay High Court held that "The provisions of the Criminal Procedure Code expressly require a police officer to produce the person whom he has arrested for commission of a cognizable offence before the Magistrate within 24 hours. If he fails to do it, he will be certainly guilty of wrongful detention of the person whom he has arrested". In the case *Sartaj s/o Mohd. Husain vs. State Of*

U.P.(Habeas Corpus No. - 383 of 2010, Allahabad High Court), keeping a person even in the residences of the police officers within the police station premises for any reason for more than 24 hours was held as violation of his right by the Allahabad High Court. In the case *Mahendra Jain (Patni) vs. Union of India* the Calcutta High Court ruled that in case a person is detained under the garb of interrogation for prolonged period, such person could be treated at par with accused and it will amount to custodial violence and violative of Article 21 of the Constitution of India.

i. Torture, degraded, cruel and inhuman treatment while in custody : As defined in Article 1(1) of the 1984 United Nations 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' torture is"*...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions*". Use of criminal force including physical torture, commonly known as 'use of third degree' and cruel and abusive conduct with the detainee and arrested person is another most common form of human rights violation which takes place during the course of police investigations. The reasons why policemen often resort to torture during the course of police investigation is not far to seek. In their own perception, the policemen torture a suspect with the 'professional objectives' to get evidence during the course of investigations which may be the following:

1. to extract information or confession from the suspect in order to solve a case;
2. to recover stolen property or weapons of offence;
3. to unearth other crimes which an arrested hardened criminal may have committed;
4. to ascertain the whereabouts of the associates.

ii. Use of handcuff: Applying handcuffs on the accused person arrested during the course of investigation is usually resorted to by the police as the police escort finds it comfortable to use the fetters and be at ease. Handcuffs are sometimes used as a punitive measure also. Instances of police parading an arrested accused person with handcuffs in the public view is however not common as can be seen in the case *State Of Maharashtra vs. Ravikant S. Patil.* In this case during the investigation of a murder case, the police suspected that Ravi Kant Patil (the respondent) was a party to the said murder. He was arrested in Karnataka State and was brought to Sholapur in the early hours of 17th August, 1989. A local paper called Tarun Bharat published from Sholapur, carried in its issue of 17th August, 1989 a news item which stated that the respondent, an under-trial prisoner, would be taken in a procession or a parade from Faujdar Chavadi Police Station through the main squares of the city for the purpose of investigation. On 17th August, 1989, the respondent (RavikantPatil) was handcuffed and both his arms were tied by a rope and he was taken through the streets. On the writ petition filed by Ravikant Patil, the Supreme Court observed that the police had no right to cause public humiliation to the arrested person.

The use of handcuff can also amount to degraded, cruel and ill treatment and violative of basic dignity of the arrested person as it exposes the arrested person to public ridicule and humiliation. The Supreme Court in a catena of cases has held handcuffing and fettering as inhuman and unreasonable, amounting to human rights violations. In the case *Sunil Batra Etc. vs. Delhi Administration and Ors. Etc*. the Court observed that "Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture."In

another landmark case *Prem Shankar Shukla v. Delhi Administration* the Supreme Court held that use of handcuffs and fetters is against human dignity, and that "it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security". The Court categorically held that handcuffing is prima facie inhuman, unreasonable, arbitrary and as such repugnant to Article 21 of the Constitution of India. To prevent the escape of an under-trial is, no doubt, in public interest, but "to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him along in the street and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture."The Court also laid down certain legal norms for use of handcuffs which were re-affirmed by the Supreme Court in *Citizens for Democracy vs. State of Assam* and in *Sunil Gupta vs. State Of Madhya Pradesh*.

iii. False implication: False implication in offences for extraneous considerations is another serious category of human rights violations occurring during the police investigations. In the case *Perumal vs. Janki*(Criminal Appeal No.169 of 2014 (arising out of Special Leave Petition (Criminal) No.1221 of 2012)the Supreme Court has specifically ruled that a policeman would be liable for prosecution if he files a charge sheet against a person despite knowing his innocence. In this case one Nagal reported to the respondent, working as a Sub-Inspector in an All-Women Police Station, Pollachi (Tamil Nadu) that the appellant enticed the complainant of marrying her and had sexual interaction several times on account of which the complainant became pregnant but when she asked the accused(the appellant)to marry him he refused. Upon this report, the respondent registered a case under sections 417 and 506(i) of the Indian Penal Code. Eventually, the respondent filed a charge-sheet against the appellant who was tried but was acquitted of both the charges. After the acquittal, he filed a complaint under section 190 of the Cr. PC praying that the respondent Sub-Inspector be tried for an offence under section 193 of the IPC as though Nagal alleged an offence of cheating against the appellant which led to her pregnancy, upon registration of the case when she was subjected to medical examination, she was not found to be pregnant. In spite of the definite medical opinion that Nagal was not pregnant, the respondent chose to file a charge-sheet with an allegation that Nagal became pregnant. Therefore, according to the appellant, the charge-sheet was filed with a deliberate false statement by the respondent. The Supreme Court observed that a police officer filing a charge-sheet does not make any statement on oath nor is bound by any express provision of law to state the truth but being a public servant is obliged to act in good faith.

iv. Improper Investigation: Improper investigation is another type of human rights violation which also sometimes results from the police investigations. The issue was discussed by the Supreme Court in the case *State of Gujarat vs. Kishanbhai*(Criminal Appeal No. 1485 of 2008)wherein the Supreme Court ordered fastening accountability on investigating officers and public prosecutors, if it was found that their deliberate lapses resulted in acquittal of the accused in cases involving serious offences. In this case lack of evidence led to acquittal of a man who was accused of luring a six-year-old girl to the field, raping and then killing her, and severing her feet to steal her anklets. The trial court found him guilty and awarded death sentence, but both the High Court and the Supreme Court found the evidence grossly inadequate to declare the man guilty. The Supreme Court directed that on the culmination of a criminal case in acquittal, the investigating or prosecuting officials responsible for such acquittal must necessarily be identified and a finding be recorded in each case, whether the lapse was innocent or blameworthy. The Court further directed that each erring officer must suffer the consequences of his lapse by appropriate departmental action whenever called for, and taking into consideration the seriousness of the matter the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending on his culpability.

Reasons behind Human Rights violations during the Police Investigations

The reasons why policemen often resort to human rights violations during the course of investigation of a case as discussed above are not far to seek. The most important reason perhaps, is the pressure to work out the case. As observed by the Supreme Court in S*ube Singh v. State of Haryana* "the public (and men in power) expect results from police in too short a span of time, forgetting that methodical and scientific investigation is a time consuming and lengthy process. Police are branded as inefficient even when there is a short delay in catching the culprits in serious crimes. The expectation of quick results in high-profile or heinous crimes build enormous pressure on the police to somehow 'catch' the 'offender'. The need to have quick results tempts them to resort to third degree methods." Functioning under such pressure, the police, as observed by the Padamanabhaiah Committee on Police Reforms, often tend to follow the 'criminal to crime approach' instead of the 'crime to criminal approach' which should be the norm. Lack of awareness about scientific methods of investigation besides desire to achieve quick result, sometimes, results in human rights violations during the course of investigation by the police. In the prevailing police sub-culture, infliction of torture is considered very effective in detection of crime, while use of 'extra-legal' methods by the police during the course of police investigation sometimes has sanction of the society also. People sometimes support and even 'demand' torture of the apprehended alleged offender to extract confessions or leads from him.

Adherence to Human Rights Norms during Police Investigations

Violations of human rights by police during the investigation of a crime, however, have a number of negative effects. It not only adversely affects image of the police in the society, in the absence of scientific evidences the prosecution also fails in the court. Unlawful means during the investigations sometimes even results in the guilty escaping sentence while the innocent getting punished. In contrast, respect for human rights norms by the police during the investigations enhances its effectiveness. Respect for human rights by police is, in addition to being a moral, legal and ethical imperative, a requirement also. Compliance with human rights norms during police investigations can be achieved to a great extent by bringing in attitudinal changes in the police force by effective training. Emphasis onuse of scientific aids in investigation can prove to be quite effective in reducing resort to third degree measures by the police in cracking cases. Forensic science tools (ballistics, chemists, biologists, finger print specialists, etc.) can play extremely useful role in investigation of cases, thereby minimising human rights violations during the investigations. More importantly, functioning of the lower level Police Officers should be effectively supervised by their superiors to ensure adherence to lawful methods during the course of investigation.Instead of having a protective approach towards the acts of omission and commission by their subordinates, police leadership should focus on building an atmosphere to facilitate the observance of human rights.External oversight bodies such as Human Rights Commissions and Police Complaint Authorities can also play an important role in bringing element of accountability in police working.

Conclusion

Police officers, being instrument and representative of law, are duty bound to uphold the Rule of law. When police officers break the law for the purposes of law enforcement, it leads to miscarriage of justice and undermines the confidence of the public in the police. The rule of law which can be served effectively by protection, promotion and enforcement of human rights, must prevail in all circumstances and for all ends, and therefore must be the guiding factor for police action. Respect for human rights norms, therefore, is a practical necessity and essential to effective investigation.It must also be understood that proper observance of human rights is NOT a hindrance to effective police investigation. Rather, it is an essential element of

any effective investigation for ensuring justice. It is, therefore, imperative for police officers to always act in a lawful and ethical manner while conducting investigating of a crime.

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Human Rights in India – Where do we Stand

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Abstract

Human Rights is a sensitive issue for any country and has had significant attention nationally and internationally in the Press and in the political arena. While there is renewed commitment to Human Rights advocacy there is also an upward trend in popular culture of depictions of torture. India being a country with tremendous diversity status of a developing country and a sovereign secular democratic Republic with a huge population makes this issue a very complex one and requires careful and adept handling. Our country has an effective judiciary, NGOs and several other autonomous bodies to look into this burning issue but there is still a lot more left to be desired. This Paper attempts to highlight those areas of Human Rights which require attention of the government and other bodies involved in it.

Key words: - *Constitution, Judiciary, Contemporary, Political Rights*

Human rights in India is an issue complicated by the country's large size, its tremendous diversity, its status as a developing country and a sovereign, secular, democratic republic. The Constitution of India provides for Fundamental rights, which include freedom of religion. Clauses also provide for freedom of speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad. The country also has an independent judiciary and well as bodies to look into issues of human rights.

In its report on human rights in India during 2013, released in 2014, Human Rights Watch stated, "India took positive steps in strengthening laws protecting women and children, and, in several important cases, prosecuting state security forces for extrajudicial killings." The report also condemned the persistent impunity for abuse linked to insurgency in Maoist areas, Jammu and Kashmir, Manipur and Assam. The report also went on to state, "The fact that the government responded to public outrage confirms India's claims of a vibrant civil society. An independent judiciary and free media also acted as checks on abusive practices. However, reluctance to hold public officials to account for abuses or dereliction of duty continued to foster a culture of corruption and impunity.

Cases of Human Rights Violations in India

Caste-based discrimination and neglect of tribal communities is a continuing problem in India, as is sexual abuse and other violence against women and children. The awarding of the 2014 Nobel Peace Prize to activist KailashSatyarthi spotlighted the fact that millions of children in India are still engaged in the worst forms of labor.

Incidents of violence against Dalits and Adivasis were reported from states including Uttar Pradesh, Bihar, Karnataka and Tamil Nadu. According to statistics released in August, over 47,000 crimes against members of Scheduled Castes, and over 11,000 crimes against members

of Scheduled Violence against women and girls.

Women's Rights

In November 2014, more than a dozen women died and many others were critically ill after undergoing sterilization procedures in the central Indian state of Chhattisgarh. This led to an outcry against target-driven approaches to family planning programs.

Legal reforms were introduced in response to the 2012 Delhi gang-rape and murder, but at time of writing the Indian government had yet to introduce monitoring and reporting mechanisms to track their implementation. Reports of rape—including of Dalit women, individuals with disabilities, and children—continued to make national news in 2014, leading to protests.

In early 2014, the government introduced guidelines for the medical treatment and examination of women and children who report rape, but failed to allocate resources necessary for their implementation. At time of writing only two states had adopted the guidelines.

Maternal mortality rates have declined in India but remain a concern because of weak referral systems and poor access to medical assistance in many parts of the country.

Although nearly 322,000 crimes against women, including over 37,000 cases of rape, were reported in 2014, stigma and discrimination from police officials and authorities continued to deter women from reporting sexual violence. A majority of states continued to lack standard operating procedures for the police to deal with cases of violence against women.

In over 86% of reported rape cases, the survivors knew the alleged offenders. Statistics released in August showed that nearly 123,000 cases of cruelty by husbands or relatives were reported in 2014. In March, the central government announced that it was considering allowing for the withdrawal of a complaint of cruelty if a compromise is reached between the parties.

In July, a committee appointed to evaluate the status of women made key recommendations on prevention, protection and access to justice for women and girls facing violence. Among other recommendations, it urged the government to make rape within marriage a criminal offence, introduce a special law on honour crimes, and not dilute laws relating to cruelty by husbands.

In December, the government stated in Parliament that it intended to amend the Penal Code to criminalize marital rape.

Caste-based village bodies continued to order sexually violent punishments for perceived social transgressions. Discrimination and violence against women from marginalized communities remained widespread, but reporting and conviction rates were low.

Lack of accountability for security forces and public officials responsible for abuses perpetuates impunity and leads to further abuses. Police reforms are urgently needed to make the force rights-respecting and accountable.

Abuses by the police and security forces including extrajudicial killings, torture and rape, as well as corruption at all levels of government, are the most significant human rights problems in India.

Muslim Woman's Rights in India

One of the vital concerns in India is the non-discrimination between genders. Muslim Woman in India is one of the major groups deprived of their equality within the Human rights framework.

Sexual violence

India is home to the largest number of sexually abused children in the world. About 53% of children have been subjected to some form of sexual abuse. In 2012, India introduced the Protection of Children from Sexual Offences Act (POCSO) to deal with cases of child sexual abuse. However, it took two years to record the first cases under the law and there are huge gaps in its implementation with the conviction rate under the act being only 2.4%.

Child labour

India has the largest number of child laborers' under the age of 14 in the world with an estimated 12.6 million children engaged in hazardous occupations.

Forced Labor

India has the highest number of people living in conditions of slavery, 14 million, most of whom are in bonded labour.

Human Trafficking

Human trafficking is a $8 million illegal business in India. Around 10,000 Nepali women are brought to India annually for commercial sexual exploitation. Each year 20,000–25,000 women and children are trafficked from Bangladesh.

Restrictions on Free Speech

Vaguely worded laws that criminalize free speech continue to be misused. Police in various states have filed charges under the Indian Penal Code or the Information Technology Act for online comments critical of important political figures, including the prime minister. In one instance, five young men were questioned by the police for sharing anti-Modi comments over the phone. The police also targeted student magazines in two instances for critical comments on some political figures, includingModi.

Despite commitments to protect freedom of speech, the government has not taken decisive action against militant groups that threaten and attack people over views they do not like. In the face of weak government responses and threats of lawsuits from Hindu ultranationalist groups, a few publishers withdrew or cancelled books being prepared for publication.

Abuses by Armed groups

In March, three men were tortured and killed in Lohardaga, Jharkhand state, allegedly by Maoist fighters. In May, around 250 villagers were abducted and held hostage for a day in Sukma, Chhattisgarh state, reportedly by Maoist fighters attempting to pressurize the state government to stop work on a bridge. Maoist armed groups were accused of threatening and intimidating Adivasi (Indigenous) people and occupying schools.

In Jammu and Kashmir state, armed groups threatened mobile phone operators and attacked mobile towers and telecom offices in May, June and July, killing two people. In September, unidentified gunmen killed a three-year-old boy and his father in Sopore. The same month, the

bodies of four armed group members suspected to have been killed by rival groups were found in the state.

In July, armed group members attacked a police station and bus station in Gurdaspur, Punjab state, killing three civilians.

Arbitrary Arrests and Detentions

Human rights defenders, journalists and protesters continued to face arbitrary arrests and detentions. Over 3,200 people were being held in January under administrative detention on executive orders without charge or trial.

Conclusion

Human Rights is a sensitive area and requires attention of people from all walks of life and a concerted efforts to preserve their sanctity - only then can violation of Human Rights in India can be curbed.

On line activism has a great role to play in the technological era to highlight the incidents of human rights violations in various spheres. It is hoped that the various stake holders particularly the government sector – which has an enormous responsibility – will initiate every step possible to prevent and protect human rights of the people.

The conclusion on all the aforementioned issues and deliberations are yet to reach a consensus on. The sooner it happens the better it would be for the country and the people at large.

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Women Rights under Human Rights & Role of CEDAW

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Abstract

Explanation of human right we can get in the 'Universal Declaration of Human Rights' which was passed by all the nations of the world including India. Inclusive of which to make it more specific in 1948 United Nation passed two conventions which talks about civil and political rights & other on economic, social & culture rights. We have series of rights listed under both conventions, like right to vote, right to free and fair election, right to participate in the governance of the country under political rights of first convention. Some rights under second convention concerning economic, social and cultural rights are rights of all willing persons to have gainful employment, right to education, right to have a standard of living consistent with human dignity and the right to equality of opportunity. More efforts should be taken into consideration at academia, NGO's, school to spread the awareness about Women Rights under Human Rights to successfully head the stair of democratic living.

Key words: - *Gender Discrimination, Women Rights, UDHR, CEDAW*

Freedom of Expression & Women Rights

"*God adapted women's nature to indoor and man's to outdoor work….As nature has entrusted women with guarding the household supplies, and a timid nature is no disadvantage in such a job, it has endowed women with more fear than man…..If anyone goes against the nature given him by God and leaves his appointment post….he will be punished."[Reference: (c. 430-355 B.C.)*[1]

Human rights established power of every individual. We can ever support out debate on human rights with the 'Universal Declaration on Human rights and the two conventions 1966'. The protection of human rights act 1993 provides for the constitution of nation Human Rights commission, Human Right commission in state.

Question arises do we really need to question regarding women rights or it should be automatically balanced in the constituency. While going through the several published papers/works I came across so many sensitive issues related to women. The issue will remain debatable post the conclusion of this paper.

What is not said about human rights and what is left to highlight gender inequality and suffering women after every next door. Every house has some story of the women of the family who is suffering in some pieces of harassment whether social or moral. Do we have any solution for this discrimination! Human rights define almost all parts of individual quality of life. Women rights are questioned after every second in every nation. Can we make some resolutions and decisions looking to our past records? Right to education if we investigate at

1 - The Economist, I, 42]

every level of settlement and ensure the basic education of the individual, it can help to understand the importance of Human Rights and definitely could make the people understand the gap between the justice happening amongst men and women.

No Reservation-Only Identical

Gender equality does not mean giving priority to women, it just need to emphasize the equal treatment of women. Women should be spared of the discrimination and feeling of incapability. Growing awareness about women empowerment, somewhere affecting men dream thought of superiority, and challenging their insecurity complex which is beaten by the achievement of women. Women never want any extra reservation for anything professionally but only little respect to born as daughter, sister, mother & wife, this is also because naturally feminine ismore sophisticated, but not because she is under weaker section of the society and not capable of standing for heading any race. The learning of indistinguishability has to be achieved. (See Figure 1)

Figure 1 Source: Center for talent innovation

Overview of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In 1979, following two decades of documentation and deliberation, the UN Declaration on Women was codified as the Convention on the Elimination of All Forms of Discrimination against Women, commonly known as CEDAW. This visionary international women's bill of rights cautiously acknowledges the importance of traditional obligations to the family but also establishes new norms for participation by women in all dimensions of life. It gives precise definition and actionable protection to a broad range of women's rights in marriage and family relations, including property and inheritance and access to health care, with an explicit mention of family planning. It establishes the principle of equal protection for women as citizens in their own right entitled to suffrage, political representation and other legal benefits; to education, including elementary and secondary education that provides professional and vocational training free of gender stereotypes and segregation; and to formal employment, deserving of equal pay, social security benefits and protection from sexual harassment and workplace discrimination on the grounds of marriage or maternity.

One hundred and eighty-eight U.N. member states have now ratified CEDAW—giving it the active participation of more U.N. member states than any other treaty—with the stunning exception of the United States, which continues to reside in the unlikely company of Iran, Sudan, Somalia and a few Pacific Island nations in having failed to ratify. President Jimmy Carter signed the treaty in 1979 and sent it to the Senate, where it has languished ever since because of the high bar of 67 votes necessary for ratification and the fierce opposition of conservatives to international entanglements and women's right .(See Figure 2 next page)

In 1992, CEDAW was expanded so that gender-based violence is also formally identified as a

fundamental violation of human rights, and governments are encouraged to take action. This breakthrough drew on claims by feminists of evidence of demonstrable abuses of women "including torture, starvation, terrorism and even murder" that continue to be routinely accepted without legal recourse in many places. "Crimes such as these against any group other than women would be recognized as a civil and political emergency as well as a gross violation of the victim's humanity," Charlotte Bunch of the Center for Women's Global Leadership at Rutgers University, and one of our distinguished contributors, wrote in a path breaking 1990 article in Human Rights Quarterly. In 1993, at the Vienna Conference on Human Rights, drawing on a slogan that originated with a grassroots coalition of Philippine women, Bunch first made the claim that "women's rights are human rights," which Hillary Rodham Clinton, another prominent contributor to this volume, then memorably incorporated into her remarks at theU.N. Fourth World Conference on Women in Beijing in 1995 and made a global mantra.

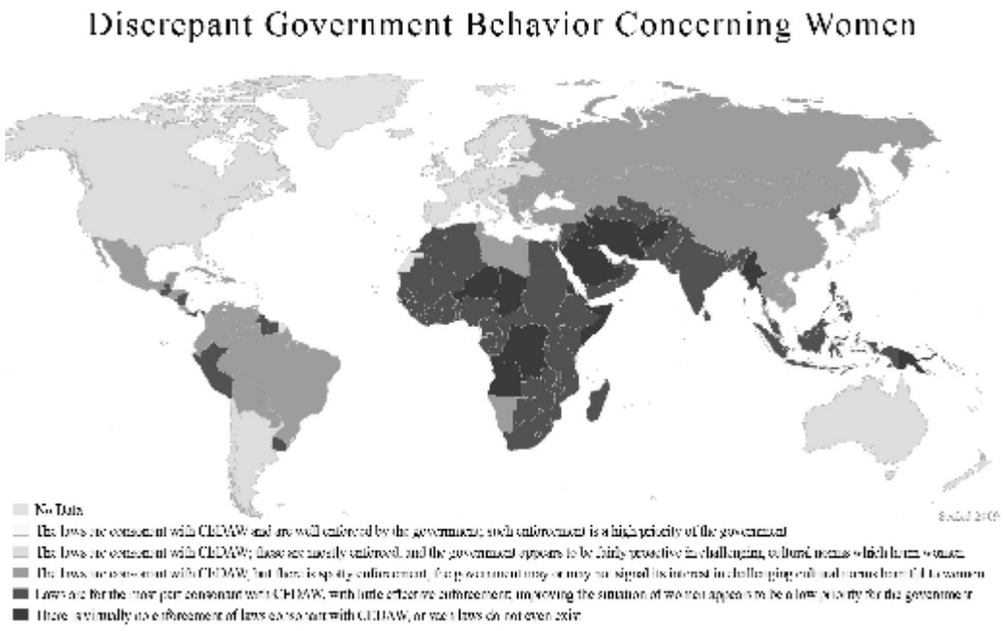

Figure 2 – CEDAW Discrepant Behavior

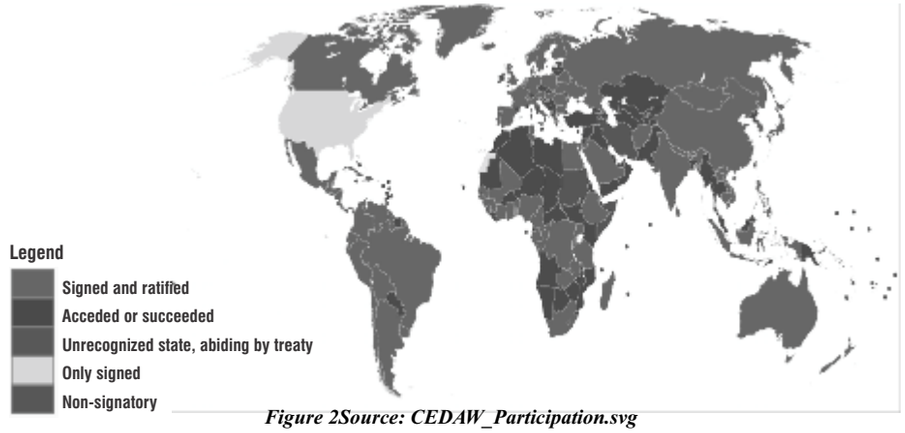

Figure 2Source: CEDAW_Participation.svg

Scenario of Rights Today

We now approach the 20th anniversary of the Beijing summit with growing interest of policymakers in the issues raised there, but with public support compromised by increasing politicization—too often verging on demonization—of the women and girls' agenda. The U.N.—where women have long gathered with big dreams and secured historic legal and institutional changes to achieve them—has itself come under renewed and relentless attack as it seeks to build on the accomplishments and address the failures of its much heralded Millennium Development Goals with a new and refined set of aspirations for sustainable development post 2015. Criticism comes not only from conservatives opposed to multi-lateral alliances and to the universal standards for human rights and social justice the U.N. has long promoted, but also from many progressives understandably troubled by the institution's structural weaknesses, inefficiencies and frequent failure to deliver on the promises it makes. Still, our contributors—many of whom have spent decades working within or lobbying around the U.N.—remain committed to holding the institution accountable, along with its member states.

This volume reminds us that we still need independent women's rights organizations to tackle inextricable, cultural and legal discrimination and deeply embedded structural inequalities. Long-term success in shifting practices that harm women and girls will require continued support for instrumental, ground-based strategies at work alongside strong, sustainable advocacy movements. This is what policymakers often refer to as an "enabling environment."

According to the report on Womensenews.org/2016/03 under "*Women Rights on Agenda of UN from the start" dated 21st march 2016 says The UDHR stakes a landmark claim that discrimination against women be viewed as a necessary and appropriate matter of international concern, not as a category privileged and protected by local sovereignty or by local customary or religious practices governing marriage and family relations. It also recognizes that women oppressed in private places cannot realistically claim their legitimate rights as human beings. The state must be obligated to extend rights to women and eliminate everyday forms of discrimination*."[1]

In 1967, a formal Declaration on the Elimination of Discrimination against Women was written, and the following year the U.N. marked the 20th anniversary of the UHDR with a special conference in Tehran, Iran, where women's rights provided a rare arena of agreement between Russians, eager to call attention to the educational and employment opportunities their government had granted women, and Americans, for whom these issues were gaining momentum as a result of an emerging second wave of feminism. The conference adopted resolutions encouraging support for a legal rights project to address gender discrimination and development assistance targeted to women, especially in largely agricultural economies based on women's labor. Most significantly, it identified family planning as a basic human right and paved the way for the establishment of a U.N. fund for population. Between 1975 and 1995, the U.N. sponsored four international conferences on women that produced wildly optimistic blueprints for the achievement of concrete gains. They have since been dismissed by some as lacking both focus and practical strategies for implementation, while others insist that however often they may still be unrealized or violated, these programs for action have raised awareness, shaped aspirations and in countless significant and concrete ways helped change laws and alter behaviors.

1 - Ref-Womensenews.org/2016/03 under "Women Rights on Agenda of UN from the start" Womensenews.org

Gap Between Theory & Practice In Human Rights Protection

There is always a sense of disappointment when we talk about Human Rights or we can call it an imbalance between men and women rights. Women should equally be entitled to exercise their individual rights as men do. It goes noticeably unnoticed by the group of orthodox people that women are also human and they have full & equal freedom to enjoy their rights. It is an urgent need to awake the orthodox mentality towards discriminatory practices against women, and need to make them aware of the human rights.

Need to Safeguard Dignity of Women

To do the needful to the question raising about the dignity of a woman some resolution should be promoted with literary efforts to educate women about their legal rights. Lows should be made to shoulder the women to encourage them to identify and discuss the problems & then work together to find legal solution for them.

With reference to the book :— " Good Women do not inherit land"', Author has done research on the tribal women belonging to Jharkhand Bihar & narrated the story of their lives which is suffering from discrimination from the male dominant society, records from the several newspaper reports.

Work Participation

Taking example of Jharkhand State, where women known as Santal are few in numbers as main workers (census table, 1991 & 2001) while many men in the villages narrated how they were unable to cultivate land without the help of women. Women being counted mostly as marginal worker- women's work is mostly thus treated as marginal.(Marginal worker:- any work done for less then 180 days in a year is define as marginal.) Where men are counted as cultivators, even though their agricultural activity too constitutes less than 180 days of work.Women's relatively higher work participation rates. While linked to poverty also reflect higher level of mobility and economic independence. This is conformed from analysis of gender development indicators in eastern India that reveal that gender backwardness here is more due to economic and social deprivation than gender discrimination. (Rustaji, 2006)

Powerful author NityaRao in her book "Good Women do not inherit land, Politics of land and Gender in India" unfold the lives and anxieties of Santal women in Dumka district, Jharkhand. From very beginning, aadiwasi women come alive trough separate of histories. Land for the Santal women is not a more economic resource. It further stands for security, social position and identity, and in this men have a distinct advantage. Soon after, she says traces the relationship between the Santal and their land from historic time to the present when they have access to both modern legal system and their own Women Rights. Whereas if we see the world startup total value of e-commerce of India is 15-16$ in which 10% of that is with companies with women owners or founders, up from% five years ago, 10% of all startups in India are set up by women,30-35% of startups in India are into e-commerce and related businesses and 17% of e-commerce startups have women founders - Reference Hindustan Times 29february 2016.

Conclusion

Giving a conclusive remark is not an easy job looking at the sensitivity of the issue. It will take lot of effective training and education to spread the awareness about Human Rights not just men or women Rights. Huge concern is also the legislation which is particularly delicate and much debate question, in which talks about the protective legislation and conceived to protect women against exploitation. The attitude that housework and children are women's, rather than men's responsibility was always matter of debate. But yes arguments do play a role. Revitalization of thoughts and order should be taken in concern with the passage of time.

Women Rights under Human Rights & Role of CEDAW

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Impact of Commercialization on Education: A Judicial Perspective

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"Education is not a preparation for life; Education is life itself."
- John Dewey

Abstract

Education gives the true meaning to life. It is the '*enlightenment of life*'. Therefore all the governments in the world are trying to secure to their citizens the basic right to education and various international and domestic laws are made to support the affirmative actions of the governments. In India 'the right to education' has been recognized as Fundamental Right within 'right to life' by the Supreme Court and subsequently the right has been added through Article 21–A. Apart from being Fundamental Right the Right to Education has also been recognized as basic Human Rights. The Supreme Court of India in its various milestone decisions secured the right to education including it within 'Article 21 of right to life'. But today these ideals of the Constitution regarding education face a threat because of the problem of commercialization of education. The constitutional commitments and the parent's duty to provide education are seriously affected by the dangers posed by the commercialization of the education system. With the globalization and privatization the field of education especially higher education has become an arena for commercial educational institutions. The commercialization of education has been a big challenge before the constitutional institutions and a major threat to Fundamental Right to Education. The Supreme Court in its landmark decisions not only addressed the problem of commercialization of education but also given appropriate guidelines to control the problem and ensure "Right to Education' to all.

Key words: - *Education, Fundamental Rights, Commercialization, Globalization*

Introduction

The lines of the American Philosopher and Educator quoted above imply that education signifies '*enlightenment of life*'. In ancient India thinkers and philosophers said that education makes a man a complete human being and that it is the bedrock of all happiness, fame and pleasure. 'Chanakya' the famous Indian statesman & philosopher said way back in 2300 years, "that mother and father who do not give education to their children are their enemies." It is also said that a human being does not attain his full heights until he is educated. Indeed all the major civilizations of the world recognized the magic that can be created by education. All the governments in the world today are trying to secure to their citizens the basic right to education. The international and domestic laws substantially support the affirmative actions of the governments.

In India 'the right to education' has been recognized as fundamental right within 'right to life' by the Supreme Court and subsequently the right has been added through Article 21–A. This right ensures 'free and compulsory education for the children from 6 to 14 years of age' and does not include right to higher education as a fundamental right, nevertheless the right to higher education is a human right too. There are many social, economic, cultural, and political problems in the way of proper enforcement of the fundamental right to primary education and

human right to higher education. Commercialization is also one such problem that is creating hindrances in securing the right to education as a human and fundamental right.

Right to Education: A Human Right

Recognizing the importance and necessity of education the international community has included the 'right to education' within the basic human rights. The Universal Declaration of Human Rights (Article 26), the International Covenant on Economic, Social and Cultural rights (Article 13), the Convention on the Rights of the Child (Article 18 and 29), The Convention on Elimination of All forms of Discrimination Against Women (Article 10 and 14), and the Convention against Discrimination in Education (Article 3, 4, and 5) are some important international instruments which secured the right to education as a human right.

UNESCO (United Nations Educational, Scientific & Cultural Organization) in its policy paper on "Change and Development of Higher Education" emphasized that, state and society must perceive higher education, not as a burden on federal budgets but as a long term domestic investment, in order to increase economic competitiveness, cultural development and social cohesion. The global movement for providing 'Education For All' (EFA) was also started in 1990 and recently it is reaffirmed that the drive to achieve the EFA goals also contributes to the global pursuit of the eight Millennium Development Goals (MDGs), especially MDG 2 on universal primary education and MDG 3 on gender equality in education, by 2015. Thus education as a life-long right has been established under various international human rights documents.

Education as a Fundamental Right

The domestic law of India also secured the Right to Education under 'Article 45' of the constitution which is the part of Directive Principles of State Policy. Initially it was not a fundamental right however the hon'ble Supreme Court of India in its milestone decisions of *Mohini Jain V. State of Karnataka and Others* secured the right to education at all levels including it within 'Article 21 of right to life', and thus really giving the term 'life' a true meaning as quoted above. In the year 2002 the 'right to education' was included in the category of fundamental rights by the insertion of 'Article 21–A' through the Constitution (Eighty Sixth) Amendment Act of 2002. The amendment also costs a duty on the parents or guardians under Article 51 A (j) to provide opportunities for education of his child or ward. Article 21-A as discussed above does not cover the age above 14 and thus does not include secondary, vocational or other skill education. Another shortcoming of this provision is that it excludes children below 6 years. However in the case of *Unnikrishnan V. State of AndharaPradesh* the Supreme Court uphold this right from the age of 0-14. In this case the right to education was secured under right to life. Similar opinion is given in the case of *Modern School V. Union of India*. After eight years of this amendment the enforcement of this fundamental right is still not very satisfactory.

Problem of Commercialization of Education: Factors responsible

In ancient India the doors of education, the highest noble virtue, were open only to a few privileged classes. The trend unfortunately continues in present times. Commercialization of education has led to the opportunities of education being available only to a select, privileged class. Today the ideals of the constitution regarding education face a threat because of the problem of commercialization of education. The constitutional commitments and the parent's

duty to provide education are seriously affected by the dangers posed by the commercialization of the education system.

With the globalization and privatization the field of education especially higher education has become an arena for commercial educational institutions. We all are aware of the unethical practices of the institutions by which they influence the students for taking admission with them. With these practices the education field has become an open market.

The GATS (General Agreements on Trade in Services) document has included education sector in its category of services. This development has opened the doors for the wholesome commercialization of education in the developing countries like India, combating global economic competition, though it has 50 % of world's illiterate population.

The commercialization of education has been a big challenge before the constitutional institutions and a major threat to fundamental right to education. Enormous demand for higher education in India has led to the industrialization of education. Various central government policies and educational forums tried to focus on this issue of vital importance but the problem remained unanswered.

On one hand the international organizations like UNESCO declared that education is a 'life long process' and its purpose is to establish a learning society. On the other hand the problems like commercialization of education leads to create an educational imbalance between the children of poor families and of upper class. Today even the middle class children wish to get education in private schools.

For the commercialization of education following factors are responsible:

- Resource Constrain in the hands of government.
- Less investment in education by government.
- Uneven spending.
- State's tendency to divert resources.
- Problem of private institutions of finding their own resources.
- Gender inequality.
- Unethical Competition.
- Demand for qualitative education.
- Opportunities in abroad.
- Growing consciousness for education.
- Inability of government.
- Liberal laws for regulation of commercialization.
- Lack of resources and irregular classes in government school.
- Inadequate infrastructure.
- Absenteeism of teachers.

Problems created by Commercialization of Education

The commercialization of education will not only destroy the ethical and social ideals of education it will harm the future of the national education system. The existence and

development of private institutes is somewhat necessary in present scenario of globalization and privatization but the uncontrolled and money minded attitude of educational institutions require urgent attention and redressal.

The commercialization of education creates the following issues in the present educational scenario like:

- It negatively affects the access of masses to education as education goes beyond the reach of common man.
- Increase in Corruption.
- Exploitation of parents and children.
- Unethical and illegal collection of payments.
- The parents and the children prefer short cuts and are more interested in degrees rather than knowledge.
- Manipulation in examination.
- Exploitation of teachers and nonteaching staff.
- Producing money minded youth.

If this problem is not addressed soon it will not only destroy the true spirit of the education but will make the 'right to education only a paper promise'.

Role of Supreme Court

Analyzing the judgments of the Supreme Court will give a clear idea about the gravity of this problem as well as some solution to it. The Supreme Court ensuring the fundamental 'right to education' always showed its concern about the problem of commercialization of education. When this issue was raised up in various National Policies on Education and several states prohibited the capitation fee the Supreme Court as the pioneer of Indian constitution took up the issues seriously and pronounced some land mark judgments relating to this issue.

These cases were also related to the 'right to education' but in this paper we will only analyze the views relating to the commercialization of education. In the Case of *Mohini Jain V. State of Karnataka and Others* (popularly known as capitation fee case) the Karnataka legislature passed an Act the 'Karnataka Educational Institute (Prohibition of capitation fee) Act, 1984, purporting to regulate the tuition fees in private medical collages in the state, with a view to eliminate the practice of collecting capitation for admitting students in the institution. By issuing a notification under the act the government fixed Rs.20,000/- (twenty thousand) per year as the tuition fee payable by the candidates admitted against government seats and the students from Karnataka states to pay Rs. 25,000/- per year. The Indian students from outside the state of Karnataka needs to pay Rs. 60,000/- per annum. The petitioner Miss Mohini Jain of Meerut, U.P. challenged the validity of this notification when she was denied the admission as she was unable to pay the exorbitant tuition fee of 60,000/-. The apex court considered the question whether this capitation fee infracts the right to education and held that the capitation fee brings to the fore a clear class bias and hence patently unreasonable, unfair and unjust. The court also held that charging capitation fee for admission is illegal and it amounted to denial of citizen's right to education. The court said that capitation fee makes the availability of education beyond the reach of poor. Ensuring the fundamental right the court observed that in India education has never been a commodity for sale.

In *Unnikrishnan V. State of Andhra Pradesh* the Supreme Court was asked to examine the

correctness of the decision of Mohini Jain case. Several writ petitions were filed by various medical, engineering and other professional collages contending that if the government follows the Mohini Jain's judgment they will have to close down their collage. The five judges bench of Supreme Court partly overruled the decision of Mohini Jain and held that free education up to the age of 14 years only is a fundamental right and after that the obligation to provide education is subject to the limits of the economic capacity and development of the state and the state can discharge this obligation by establishing its own institutions or by aiding, recognizing or granting affiliation to private institution.

The apex court recognizing the present inevitable need of private institutions and incapacity and inefficiency of government institution held that "the hard reality that emerges is that private educational institutes are necessary in the present day context. It is not possible to do without them because the governments are in no position to meet the demand particularly in the sector of medical and technical education which calls for substantial outlays. While education is one of the most important functions of the Indian state it has no monopoly therein. Private education institutions including minority educational institutions too have a role to play". Regarding the issue of capitation fee the court said that it is not right that any amount charged must be described as captivation fee. It is not possible for the private educational institutes to survive if they charge fee prescribed by the government institutions. The charging of the permitted fees by the private educational institutions which is bound to be higher than charged by in similar government institutions cannot itself be characterized as capitation fee. The court said that the private section's sectors should be involved and encouraged in the field of education but they must be allowed to do so under strict regulatory control in order to prevent private educational institutions from commercializing education. The court further made observations regarding control of commercialization of education and laid down some guidelines for admission and tuition fee. Some of the important guidelines include:

1. 50 % "free seats" to be filled by the nominees of Government or University.
2. Selection on merit basis (either by common entrance, or as determined by competent authority).
3. Common entrance exam is desirable.
4. Remaining 50 % seats to be filled by candidates prepared to pay prescribed fee. Allotment on the basis of merit.
5. No quota reserved for management, or for any family, caste, or community.
6. Same criteria for free and payment seats.
7. No other eligibility criteria for free or payment seat.
8. Reservation for constitutionally permissible classes as per merit is permitted.
9. No. of seats fixed by the appropriate authority.
10. Professional collage not permitted to increase seats without permission.
11. Only registered society may establish a professional collage.
12. No separate collection of applications, single notification.
13. Collage to intimate all details regarding admission and fee to competent authority.

Other than above guidelines the court also prove for publication of selection list, ceiling of fee by committee constituted by state etc. for the control of commercialization in education. This scheme framed by the Supreme Court was also extended to the minorities institutions with

certain modifications.

This issue of commercialization of education and the correctness of the scheme of Unnikrishnan case was again forwarded before the apex court in the case of *T.M.A. Pai Foundation V. State of Karnataka*. The 11 judges' bench of Supreme Court held that to check commercialization the scheme of free and payment seats was incorrect. The court objected the scheme suggested in Unnikishnan's case stating that in practice, it has been the case of the marginally less merited rural or poor student bearing the burden of a rich and well exposed urban student. Regarding the capitation fee the court held that "there could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not resorted" the court also said that "reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering". This judgment showed the changing attitude of the Supreme Court toward the private institutions but government and private institutions interpreted the decision according to their own satisfaction and therefore Supreme Court interpreted the Pai Foundation judgment again in the case of *Islamic Academy of Education V. State of Karnataka*, in which the court laid down that merit should be the criterion for admissions. They warned the private self-financed institutes against profiteering and the charging of capitation fee. They also directed the government not to fix a rigid fee structure. Providing the professional institute full autonomy in their administration as they are unaided the court also provide for reservation in favor of financially or socially backward sections of the society.

Again in the case of *P.A. Inamdar V. of Maharashtra* the issue of commercialization of education was addressed by the hon'ble Supreme Court. The court deciding about the self financed institutions held that merely because resources of the state in providing professional education are limited, professional educational institutions, which intend to provide better professional education cannot be forced by the State discipline. The court rejected the charging of capitation fees but suggested a limited reservation of seats, not exceeding 15% as the NRI quota.

Suggestions and Conclusion

The decisions given by the Supreme Court suggested some schemes for the control of the problem of commercialization of education. Apart from it various commissions, forums, and national policies have given some important recommendations regarding this issues. Analyzing these judgments and policies would provide some concrete suggestions which include:

1. Giving recognition to education as a long term domestic investment
2. Review and reanalyze the recommendations of planning commission, ministry of education, and other commissions relating to education with respect to present situation
3. Proper funding to education sector
4. Control on uneven spending which means to correct the imbalance in educational spending between the less educated and the best educated.
5. Control on diversion of resources from education to other sectors.
6. Increase investment and allocation for higher education.
7. Increase the quality of education provided in government institutions.
8. Strict Legislations to control and regulate private institutions should be made
9. Heavy penalty should be imposed on the institutions not complying with the regulations made for control of commercialization of education

10. As the private institutions depends more on the fee charged on the students they should be allowed to meet their regular expenditures but not capital expenditure
11. Clear and unambiguous provision should be made to control the actions of foreign universities. As the GATS would open the education sector in India to foreign universities
12. A mechanism should be made to ensure that no capitation fee should be charged and the institutes do not collect fee for profiteering
13. A balance in policy and practice should be established to harmonize the interests of both government and private institutes.
14. Through the concept of 'corporate social responsibility' the big industrial houses should be encouraged to participate in the development of education level in India.
15. A law for banning commercialization of education should be passed. The National Institute of Educational Planning and Administration favored this idea on 2 May 2005
16. The education should be established and recognized as a social service for people's development as considered by UNESCO rather than a profit industry

The effect of globalization and privatization is visible in the judgments of the Supreme Court. Today with all the international and national economic development the education sector is recognized as a profitable market. The big industrial houses and private institutions are involving themselves in to the field of education. This involvement is often criticized for bringing unnecessary commercialization and competition in the education system but the truth is that the necessity of these private education institutions cannot be denied in present situation at the same time total withdrawal of the state from the higher education will defiantly affect the interest of the country.

A country like India needs both government and private sectors. The dangers imposed by the commercialization of education can be solved by the harmonious attitude of both sectors and by realizing the fact that the real problem is not of commercialization but of providing access to education for common masses. A healthy partnership between private and government institutions will certainly serve the country in a better way. Thus it can be concluded that although the Supreme Court of India has changed its attitude as demanded by the change in the present social scenario but the total withdrawal of state from the field of education especially higher and professional education would cause irreparable damages to the interest of the country.

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Migration: A Human Rights Issue - Case Study of Nagaland

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Abstract

Nagaland had been witness a very high growth rate (64.1%), during 1991-2001.After witnessing such a high growth, the state has been observing a negative growth rate (-0.47%), during 2001-2011.The state has not been suffering with any kind of epidemic, war, political disturbance , natural calamity or any other aliment. Such a huge change in population growth rate can't be natural, either there is some error in the collection of data officially or mass scale migration is happening. This paper is trying to focus on second reason that is migration. Either the in-migration from outside the state during 1991-2001 was very high or now the out-migration from the state has increased at an alarming rate, through this study I am trying to find the concrete reason behind such a vague, different in comparison with average Indian growth rate and suggestions to check this problem.

Key words: - *Nagaland, Population Growth Rate, Migration, Out-Migration*

Usually, lack of urban facilities, upward mobility, Unemployment and livelihood issues are the main cause of migration, particularly if we talk about the north eastern region of India we may say that lack of facilities, opportunities and development issues are significant in these states. These states represent a huge diversity in geographical features inhabited by different peoples with distinct ethnic makers. Even its connectivity with rest of India is through a 22 kms narrow land corridor in Siliguri popularly known as "chicken's Neck".

This region had served colonial interest during British period and even till date it is considered as "un-administered Tribal" community. In the year 1971, the north Eastern council (NEC) was created by an act of parliament and a separate ministry of development: Development of north eastern Region (MDNONER) was constituted in the year 2001.with the great efforts of this society, some higher education institutions have also been developed. This step could become one of the mile stone to control migration for the purpose of education[1].According to census of 2011, The State of Nagaland is one of the least populated states of India, and ranks 25th population wise, owing to its population of less than 20 lacks. The population of Nagaland is spread over an area of over 15000 kilometer square, with a population density of just over 100 in one kilometer square of area, (Nagaland census 2011).

Nagaland consist of the former Nagas hills district of Assam and the former Tuensang frontier divisions, administered earlier by the President and finally got the status of separate state on 1 December 1963.it consist of seven administrative districts, inhabited by 16 major tribal communities along with other sub-tribes. The census has recorded abnormal change in the population of some states in north east region. Nagaland is among one of them where a negative population growth has been observed

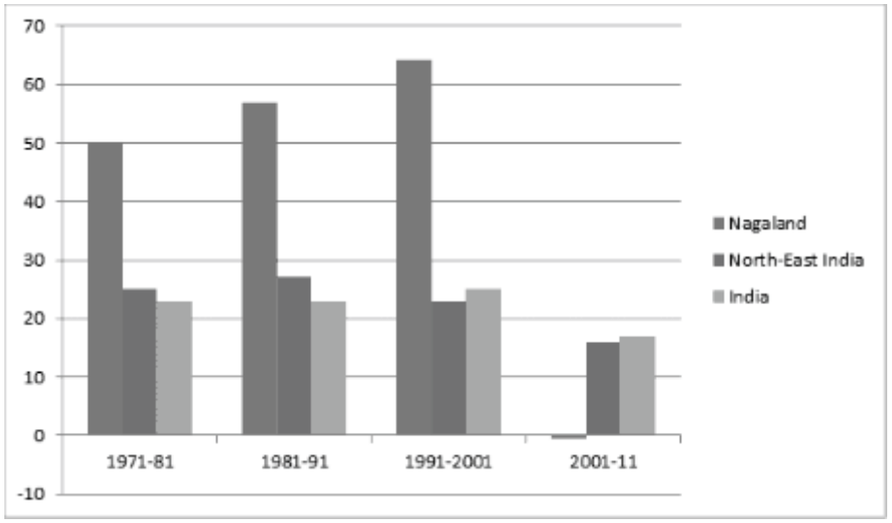

Figure:1 Decadal population growth rate (1971-2011 in %)Source: Sharma and Kar (1997);GOI(2011a)

In the above figure we can analyze that between the period of 20 year i.e.; (1981-91 and 1991-2001), there is negative population growth of 56.08% and 64.53% respectively, although during this period, Nagaland was among the fastest growing regions in the world. The number of countries whose population grew faster than that of Nagaland decreased from 6 in 1980-90 to 2 in 1990-2000 and then increased more than 150 in the year 2010.for the very first time in independent India there is a state which has witnessed a significant decline in population without any epidemic, natural calamity or political disturbance. This data itself a sufficient source to explain the complexity of the problem. If such a huge decline in population is not due to any natural reason, then it should be a matter of concern for population scientist. Social scientist discussed this issue and drew three possible reasons for this:

1. Migration is one serious cause of concern in case of Nagaland
2. Some also argued that in-migration was the responsible reason for the high population growth rate between the years 1991-2001.
3. HIV/AIDS and drug addiction causes high death rate and migration due to medical reasons.

Statement of the Problem

The main focus of the present study is to examine the underlying reasons behind changes in the demographic trends in Nagaland. Therefore, the study is based on the following objectives:

1. To identify the main reasons for decline in population growth rate after two decades of high growth in Nagaland.
2. To examine the major reason of migration in Nagaland.
3. To suggest suitable measures to check on migration for the equal distribution of population in India and to find the best use of untapped natural resources of Nagaland.

Methodology

This study uses mainly secondary data. The sources of the data are published and unpublished sources like books, journals, reports, publications, unpublished doctoral dissertation and concerned web sites etc. There could be two reasons for such a drastic change in population growth rates, either there was some error in the collection of data in census of 2001 or there is

migration from the state on mass scale. Let us investigate on migration first.

Migration

It is an important factor in changing the size and structure of the population. The migration process affects the areas to which migrants have moved in and areas from which they moved out. The unprecedented growth of population in the State recorded the highest growth rate in the country with 6.4 percent per annum during 1991-2001. Though the natural growth of population is not to be ruled out, the growth of urban population is attributed largely to migrant population as well. Here a migrant is defined as one who leaves the village for wage earning employment for at least one month and maintains ties with the village by returning at festivals, agricultural peak Seasons etc., at least once in a year.

The migrants in Nagaland may be basically classified into the following categories:

a) Indigenous or local migrants who migrate to nearby towns from their native villages in the State in search of better livelihoods or for other family and personal reasons. Almost always, these migrants settle permanently in the towns though they continue to maintain a close link with their village of origin

b) Migrants from outside the State whose reasons for leaving their native village to come to Nagaland may or may not be exactly the same as the local migrants, but they also come for the same avenues as the indigenous Migrants. This category of migrants does not settle in the State permanently and eventually return to their native States. Factors of migration are generally for better livelihood and facilities that urban areas offer its residents. A consideration of the migration trends in terms of the factors for which people decide to relocate themselves to urban areas show that among the local population, need for better or higher education facility and employment opportunity are the two most common factors.

Table:1 - Decadal pattern of migration factors(in percentage)

Factors	Upto 1960	1961-70	1971-80	1981-90	After 1990
Self education	13	18	23	21	8.0
Child education	Nil	0.6	2.2	4.0	9.0
Employment	10.8	21	30	32	25
Health	Nil	Nil	0.1	0.1	0.1
Amenties	2.6	6	13	11	14
Marriage	0.8	3	1.6	2.3	3.0
Service posting	Nil	6.4	14	25	35
Born (*those who had given their place of birth as in the town)*	71	41	Nil	0.3	Nil
Others*	2.2	3.4	4.2	5.3	4

**others' include self employments, business and any unspecified activities/reasons*
Source: Urbanization & Living Standard in Nagaland, 2003.

From the above table we can conclude that top three reasons for migration is employment, service posting and amenities respectively. The first two can be considered for same reason. So we can conclude that if we develop basic amenities and employment opportunities we can stop the critical problem of migration. Employment opportunities can be developed either by the effort of government through social development schemes like NREGA or its own administrative departments. These opportunities can also be developed through the promotion of private investment. Now if we compare the status of Nagaland with rest of India in context of different socio economic Indicators we understand the problem in better way.

Table:2

Indicators	Nagaland				Rest of the India			
Years	1981	1991	2001	2011	1981	1991	2001	2011
Population growth rate	50.0	56.08	64.53	-0.47	24.66	23.86	21.54	17.64
Per capita income	10560	14103	16582	17898	8793	11579	16684	24304
Human development index	0.328	0.46	NA	0.609	0.302	0.381	NA	NA
Female literacy	40.39	54.75	61.46	76.49	29.76	39.29	53.67	65.46
Literacy	50.28	61.65	66.46	80.11	43.57	52.21	64.83	74.04

Source: *1.Population growth rate and female literacy: Govt of India (2011a, b) 2.Income per capita: Reserve Bank of India (2005, 2011) and Govt of India (2011c)3. Human Development Index: Govt of India (2002) and Suryanarayana and Agrawal (2011)4. Female work participation rate: Govt of India (1999a, 2008a)5. Infant Mortality Rate: IIPS and MI (2007, 2009)6. Urbanization: Govt of India (1985a, 1992, 2011a, 2011b).*

If we analysis Table 2, we can see the difference between literacy and female literacy in Nagaland with average statistic of rest of the India .here the problem of migration cannot be checked with the schemes like MG NREGA because the literacy rate is really high (80.11) hence in this state people cannot be satisfied with minimum wages and casual laborer job, they want growth and better job opportunities.

Employment

a) Agriculture: The economy Nagaland state is basically agriculture economy. The soil is fertile and climatic conditions are favorable but due to undulating relief, intensive agriculture is not possible. Still agriculture has highest contribution in the state net domestic product (including Livestock).Here the agriculture practices are mainly oriented towards food product i.e., it is monoculture towards paddy crop. Average yield of the principal crop is very low (16 qu/ha); lower than other hilly states of North eastern region. Less expansion of land share under permanent cultivation, traditional means of irrigation and lack of mechanization are the major causes behind it. Only 38% of villages (459 out of 1224 villages) accounted for moderately high land productivity, rest of the villages has even lower productivity (below 13.3 qu/ha). Rural economy has two major source of employment either on agriculture or on forest produce

b) Manufacturing: In the state, the growth of urban centers is not driven by industrialization. Till date there are no major industries or corporate establishments worth mentioning and the Government remains the largest employer in the State. Transportation is contributing a fast increasing percentage share towards state net domestic product but to further grow, this require infrastructure. In this state only 1/3 villages are well connected with pucca roads.15% villages are highly in accessible.1/3 of the state falls under the category of highly remote. Since road accessibility is poor in the state, a few pockets developing

along the road and on the main towns of the state is marked as the areas of high development. It means that road network has positive impact of development and influence socio-economic attributes in the state.

Amenities

Basic amenities here refer to the various facilities available to a particular household or community that reflects the quality of life. In an urban setting, amenities such as water supply, electricity, sanitation, etc. are determined largely by the macro level planning and policy of the State to meet the infrastructural requirements of the urban areas. Given the high proportion of population aged below 20, increasing urbanization is likely to be the trend in the near future. Finally the best connected towns; Dimapur and Kohima, seem to be the ones where civic facilities like housing, power, water etc. are breaking down under the force of migration. Surprisingly, some amenities like power Availability seems to be better in rural areas. The migrants also seem to be mainly in small household enterprises like shops and such establishments. Yet in the urban areas, lack of industrialization implies that only the Government offers scope for jobs in the industrial sector

Conclusion

In this state work population ratio is high (45.22%) in 1991, which is higher than national average. But the dependence ratio is also recorded high with continuous increase of non-workers in demographic frame

1. Possibility of horticulture development. According to National Committees on the development of backward Areas 8 the extension of horticulture in some parts of the North East will meet with some difficulties of transportation. In remote areas which are difficult of access, it may be possible to pursue the cultivation of nut trees, since in these the problem of deterioration of the fruit in transit dose not arises. This extension of area under potato needs to be pursued along with related investments in cold storage and marketing.
2. Handloom and Sericulture: The development of handlooms in the North Eastern Region will have to concentrate on commercialization of local skills and designs. This would involve identification of a number of products which would have market potential within the region, in the rest of the country and also in the export markets. Scope of Munga silk production is also very high but the need is to provide linkages for the production of market driven patterns and from this area even the country can increase its exports.
3. Floriculture: The state comprising Eastern Himalaya and become one of the unique florist regions of the world. It is graphically linked with the mountain tropical flora of Malaysia and the temperate flora of Eastern Tibet, Sino-Burmaand N.E. Area. The diversity of habitat and climatic conditions has supported a very rich flora in this region. Quite a few of the best known plants of the temperate gardens of the world could be successfully introduced from this region. More than 700 species of orchids which have supported a multimillion dollar horticulture industry in United Kingdom, USA and Europe.
4. Development of Physical Infrastructure and markets to support Industries is very much essential to provide boom to market activities hence to provide employment opportunities and ease in living condition, which will prove a remarkable check to keep migration in control.

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Linguistically Justified – An Essential Introduction

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Abstract

In this introductory paper, I will be previewing two necessary ideas: the association between language ownership and language rights, and the hopelessness of accomplishing social and political neutrality given the ineluctability from language; in addressing issues of linguistic discrimination.

Key words: - *Language Rights, Linguistics AndHuman Rights, Language and Identity Conundrum, Aegis and Associated Language.*

Introduction

It's been imperative for some time now that Language warrants rights - rights that can play the determining factor in manifesting, proliferating, and even reconstructing the dynamics of present day iridescent power and dominance, midst the shifting economies and unsettled boundaries. The overwhelming critique of this sync has led to an elevated regard for the intricacy of Language and justice as there are many circumstances where Language is seen to play an unenviable mantle in the unceasing compromise of social inequity. Circumstances having a distinct nature of linguistic discrimination at its core have led to the seemingly unanimous response of the recognition of language rights.

The exactness of the concept of language rights is open to debate and the fuzziness exists in more than a few quarters – the relation of language and identity being a core conundrum. It has been widely professed that holders of such rights do not have the requirement to be speakers of the languages, but can include languages themselves minus its human usage capacity due to its immanent value. This in turn leads us to a singular wondering – if the rights are speaker centric there is a need to be clear on the notion whether such rights accrue to speakers as individuals or by the generality of them being members of particular groups; if the rights are language centric then we need to ponder whether an inherently variable social practice is in distress of being alienated from the interests of speakers. Additionally, there are conflicts between both these rights, since far from establishing an individual right to use language x or y, appealing to the ineradicable value of languages is in fact a means of assigning rights to languages or linguistic communities against their own members.

Excluding these wonderings for a later look into, it is conceivable to agree that the unmitigated motivation behind the notion of language rights is to assure that an identifiable linguistic community – popularly ethnic minorities – is bestowed especial forms of safeguard and aegis based on their associated language. The stream of consciousness here is that the lack of such rights can result in the aggravation of interethnic tensions. For a cue, in elucidating what they call *linguistic human rights*, Philipsonand Skutnabb-Kangas (1995:483) state, '*If the rights of minorities are respected, there is less likelihood of conflict. Linguistic diversity is not casually related to conflict, though ofcourse language is a major mobilizing factor in contexts, where*

an ethnic group feels itself threatened.'[1] The notion of language rights has had widespread appeal, amassing a spectrum of support among sociologists, anthropologists, linguists, political philosophers and community activists (Bloommaert 2001a,b; Kymlicka 1995; Philipson and Skutnabb-Kangas 1995;). And this is precisely why language rights need to be handled with careful consideration, so that we can better understand the pros and cons of putting forth language rights as a means of dealing with linguistic discrimination.

In this introductory paper, I will be previewing two necessary ideas which include the association between language ownership and language rights, and the hopelessness of accomplishing social and political neutrality given the inescapability from language; in addressing issues of linguistic discrimination.

The Association between Language Ownership and Language Rights

I want concisely to remark on a stimulating complementarity between the discourse of language rights and language ownership. Language rights are mostly driven by the need to safeguard the interests of minority language groups in the presence of a more dominant language. The classic example herein is the global domination of English which has often been portrayed as the cause for the uprooting of many ethnic minority communities and the cultural endemic-ity of their speakers (Maurais and Morris 2003; Philipson, 1992). The overarching reaction that speakers have the right to adhere to their minority language is subsequently presented as a political strategy to fend off the infringement of English into the domains of social life that have till now been the jurisdiction of these other languages. On the flip side, other scholars (notably, Kachru, 1986; Widdowson, 1994; Jenkins 2000) have encouraged to re-examine the issue of language ownership. Here, the claim is that as the dominant language becomes widely used by the speakers of a minority tongue(who are also not the native speakers of the dominant language), they too, should be considered legitimate owners and should have equal say in regards to what linguistic constructions count as universally appropriate (grammatically, notionally, standard, etc). Thus, the discourse of language rights lean towards minority languages (and their speakers), the discourse of language ownership is used to call for the collective ownership of 'languages of wider communication' (Fishman 1989: 254), notably Spanish, English or French. The discourse of language rights is therefore chiefly concerned with interlanguage inequality between a minority tongue and the dominant encroachment and presenting this as a question of maintaining a minority group's cultural autonomy (Bloomaert 2001a; May 2005).

The discourse of language ownership on the other hand is in the realms of intra langua geinterrelativity albeit intra language inequality, that is the relationship between different varieties of a single language[9]. This is in no way stating that supporters of language rights have ignored intra language inequality - in fact, they have acknowledged the need to address the difficulties that arise when a more prestigious variety leads to the stigmatization of a less prestigious variety. Nonetheless, the overarching assumption has been that it is a reasonably direct matter to extend the notion of language rights from its core of inte rlanguage discrimination to intralanguage discrimation (Philipson and Skutnabb-Kangas 1995). Conversely though, it is difficult to assert that nontraditional speakers should also have the right to the language of wider communication in the name of intralanguage inequality. The reason is straightforward – the spread of a language of wider communication tends to give rise to new varieties (e.g. New Englishes) and in many cases new first language (Creole languages), which means that there is no unitary language that could be treated as the entity of

1-To distinguish between 'different languages' and 'different varieties of the same language' in the context discussed will not be objectively possible as such distinctions are parallel to factors of sociopolitical nature, linguistic structure and appropriateness, mutual intelligibility. The distinction therefore should not be treated as 'chiseled out' as it is changeable and it application are subject to the aforementioned factors.

the right (though there is an interesting attempt at eagle-eyeing the contours of such a unitary view; refer to Jenkins 2000; House 2003; Siedhofer 2001).

The question that emerges is which variety (of the language) speakers should be adhering a right to - even though the issue with an unitary language can similarly occur with a minority language which incites upon the fact that the question of which variety adhered to as the entity of the right may prove problematic even in the case of interlanguage inequality (*In some cases, the pressure to come up with appropriate practices can lead a group to engage in reinvention, such as modifying the practices in ways that fit the demands of a rights discourse. This may include providing the practices with the necessary authentication demanded by rights-conferring authorities, and asserting that these practices unanimously reflect the collective history of the group*.Tamir 1993:47)

The dearth of unanimity regarding the assignment of rights also returns us to one of our prior questions: Are language rights conceived in lieu of individuals or groups? The universal that language is a social practice that showcases an engrained group culture, has given more weight to the fact that language rights are generally understood as group rights (May 2001, 2005). But it has also been significantly suggested that individuals should be considered as the bearers of language rights, in addition to group centric thought (Skutnabb-Kangas, Kontra, and Philipson 2006). The latter suggestion can be unrelenting, provided we are prepared to distinguish between different kinds of language rights, since the types of language rights concerning groups and individuals differ in their character. Individual based language rights are more likely to be inalienable and able to transcend both societal as well as geographical boundaries, making them more in sync with the global epidemic of migration and mobility that make it seem that 'any' and 'all' individually work for the institution of their singular selves. On the flip side, rights that are group centric has the undeniable postulate that these rights are only attainable to individuals who are acknowledged as group members and this further posits thoughts on the criteria of 'attaining group-ship'. Continually, questions like what kind of criteria is postulated? Who decides on these criteria? What is the dexterity of the criteria in terms of being contested? What are the exit strategies should some acknowledged group members want to relinquish it? Exit strategies tend to be delicate and notoriously divisible, since if a sufficient majority of the individuals making up the group decide to abolish it, then under such circumstances it could seem as endangering the continued existence of the group itself. Such a situation could easily get out of hands and it is entirely possible that individual and group rights could be in conflict, and the individual right to exist may even be rescinded in order that the group's right to remain existing be fortified.

A linked matter that requires serious reflection is the reification of social practices that are inherently alterable and flexible. Whether or not we resolve to make the new variety or the standard variety the entity of a right, we are in either case assuming that there is an identifiably stable variety that can be coherently construed as such an entity. To be precise, we are supposing that there exists a definable linguistic entity to which a speaker (individual or group member) can claim some moral or legal privilege as the entity of a right. But this statement becomes challenging in light of the historicity of language. At the very least, it is an assumption that deserves reconsidering. Varieties take time to emerge as identifiably distinct linguistic systems with conventionalized names (see Schneider 2007 – in the case of postcolonial Englishes). But speakers could already be experiencing linguistic discrimination way before any occurrence of a observably distinct linguistic system, that is, to bring to attention the fact that linguistic discrimination need not have the source of an established or identifiable variety since the very act of speaking differently is tantamount to being the 'other', which can be more than a cause for linguistic discrimination. Mention can be made of speakers' use of distinct lexical items, phonological variables, styles of discourse, without essentially assuming that such uses belong to some clear stable variety. Specific constructions

can themselves become the direct objects of social comment: a turn of phrase may be considered socially incongruous, marking a speaker as uncivilized and raising questions about his or her class background; the unexpected placement of a preposition may lead to questions about the speaker's linguistic competence; and the use of alveolar stops instead of dental fricatives (English words *tree* and *three* trending towards being homonyms) may lead to harsh remarks about the speaker's apparent lack of proper education (Cameron 1995). The intention for this is that discriminatory language practices are less often about the properties of language itself than about how speakers are perceived. This quandary – how to deal with linguistic discrimination that doesn't involve having admittance to a perceptible named variety – is constituted by the fact we cannot reasonably limit our argument of linguistic discrimination only to those cases involving identifiable varieties, while ignoring discrimination that involve distinct lexical items, phonological variables, or styles of discourse. Language practices are exhaustively and robustly present in all these cases, and if the idea of language rights is to be justly feasible, it needs to be able to deal with these more elusive and imprecise forms of linguistic discrimination.

The Ineluctability of Language

Earlier it has been mentioned that language is a social practice, but inspecting language as a form of social practice should not blind us to the fact that not all social practices are alike. Language differs or rather is alien to other social practices due to its ineluctable tendency. This *unavoidability* of language is not a recent observation (Kymlicka1995:111; Rubio-Marin 2003:55). Unlike other cultural and in most social practices it is absolutely impossible to avoid the use of a specific language - since for a proper sync between participating individuals and communities, language is important for a seamless coordination. This tendency of language has grave political repercussions since it is nigh impossible for any governing institution to be entirely neutral so as to be seen not to favor any particular language. For example, a governing state can render that it aims to be secular in nature by ensuring that any verdict it makes is not influenced by the worldview or the value systems espoused by any religion. However, the state has to clearly adopt a definite language or specific languages to conduct any kind of activity at all, with the all-encompassing concern being that those individuals who are incompetent in the chosen language (s) are clearly handicapped from those that can speak the language(s). The ineluctable property of language provides a thought-provoking challenge for the proponents of liberalism within the scope of language rights (Kymlicka 1995; May 2001). Liberalism provides the ideas of rights with its most cogent justification, and the liberal justification of rights is based on neutrality as a political goal (Taylor 1994:62). Therefore, there is an imminent need to sort out how the ineluctability of language and an inclination towards neutrality can coalesce in the context of liberalized democracy. What is being hinted is simple – the sense that each community within a society gets to use its own language for all major institutional purposes – a sense of seeming neutrality of language rights, which could be condemned for favoring a return to some version of apartheid (see Wallerstein 1991). Such a stance would invariably exemplify what Benhabib (2002:8) describes as 'mosaic multiculturism' - '*human groups and cultures are clearly delineated as identifiable entities that coexist, while maintaining firm boundaries, as would pieces of a mosaic*'. But one cannot extend this utopian thought of neutrality where diverse communities sync together under an umbrella of a singular public sphere as it is completely and irrevocably compromised by the ineluctability of language.

The reason is plain yet definitive – No language is equally alien to different communities/ groups in the society therefore it is unlikely that such an 'alien' language can be the language of the public sphere. The public-sphere language instead would be one that is already spoken

by some members of the society, thus immediately privileging those speakers, which goes against the neutrality notion. But the supposition that even if an alien language were somehow chosen, we can expect that through the tides of time, a certain percentage of individuals would become more competent in using this language than the majority. This scenario can occur in certain scenarios – when native speakers of the alien language are brought in as language coaches to provide the required language training; or it can also occur when there is a development of a specific stylistic and linguistic register in the language due to individuals using it for various activities. Apart from the mentioned scenarios another highly plausible denouement can be that this neutral public language will become the first language of a percentage of the group – which would invariably complete the circle and lead us back to where we had started from: in what way to merge ineluctability with neutrality.

The alternative if nothing otherwise is simply conceding that neutrality is unattainable. Such a move will be a permanent tattoo of showcasing language's irreducibly insular nature, and any social concession will require users of a language to be conditioned about what they can expect from their own language practices as well as from those of the surroundings per-se. The aim is therefore to recognize and foreground the variegated interests at stake and the need for their negotiation, rather than hoping or claiming for linguistic neutrality that seems dismissal to the state of unlikelihood. This alternative aim would therefore bring into picture that language is always inseparable from potentially conflicting interests, and that compromising is a necessary boon in a plural society. The ineluctability of language is a unwavering reminder of this fact.

Conclusion

Any thought to language and justice needs to pay close consideration to the idea of deliberation. The course of deliberation forces actors not only to be aware of their own interests but likewise be aware of others' interests. Deliberation thus becomes a metalinguistic phenomenon when in the process of such debates, the nature and purpose of language is foregrounded as the direct object of query, rationalization, and counterargument. The crucial impact that such an approach makes is that, acts of deliberation characteristically target to arrive at working agreements rather than consensus (Dryzek 2000). A working agreement attunes to the fact that the deliberating parties may still be divided by fundamental issues, but there is a willingness to put aside those differences for the moment. This temporary truce is crucial for a working agreement as the window of revisiting is always ajar, for any iridescent likelihood in matters of changing social conditions, thus enabling to oblige the shifting attentions of actors.

This is in no way suggestive of the fact the deliberative inclination is absent from problems. A rather basic problem is that deliberating parties may be of unequal status and power and this invariably leads us to the pondering on the fairness of the deliberative approach if one party has the overarching ability to impose its own agenda to the point that it remains unopposed. Related to this, are certain challenging questions – Should it be the case that only arguments that follow the principles of logic are admissible? What kind of language(s) should be used? And how do those fare who do not speak any of the chosen languages? These are indeed difficult but theorists of deliberative democracy have made noteworthy progress in determining them (refer to Bonham 1996; Dryzek 1990; Gutmann and Thompson 1996). Situating language rights in the context of deliberative democracy is an earnest pursue as a circumstance can be made that individual basic rights, are needed to guarantee that deliberative processes are as democratic as possible (Gutmann and Thompson 1996). The issue at hand is therefore an interesting intertwining – the notion of rights and its application to the changing nature of actors' interests coupled with the changeability of language itself (refer to Gal and Irvine 1995); and not just the relationship between rights and deliberate democracy.

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