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Message from Hon'ble Pro Vice Chancellor

The Preamble of the Universal Declaration of Human Rights (UDHR) considered to be a Bible on human rights world over, calls upon not only the governments to promote human rights, but also on, "every individual and every organ of society.''

The responsibilities of all citizens therefore, in a democratic society are inclusive of the responsibility to promote human rights. To flourish, both democracy and human rights require people's active participation. Human rights education includes learning the skills of advocacy – to speak and act every day in the name of human rights and provide a basis for conflict resolution and the promotion of social order. Rights themselves also clash at times, such as when one person's commitment to respect and the equality and dignity of all people, human rights can create a framework for analysing and resolving such differences.

The concept of human rights is truly vast and embraces many diverse fields of human endeavour. Human Rights as a discipline is evolving extremely quickly. Even as we write many new discoveries and developments are being reported and published. We have tried to avoid endorsing too soon any results which are not yet proved, but at the same time we have covered diverse areas in the most updated manner.

The effort to disseminate human rights education and research by Noida International University further is a compliance of the UGC mandate. In 1985, the UGC prepared guidelines for human rights teaching and research at all levels of education. The XIth Plan included three significant components of the Human Rights Education Scheme, a) human rights and duties, b) human rights and values; c) human rights and human development.

Noida International University has always reinforced the principles and values like human dignity, non-discrimination, zero tolerance to ragging and sexual harassment and justice for all. NIU International Journal of Human Rights is a step further in this direction. This issue of the Journal disseminates information on human rights highlighting the current work in human rights research and policy analysis probing the fundamental nature of human rights as defined by the Universal Declaration of Human Rights.

I congratulate the editorial team particularly Prof. Aparna Srivastava who has been the Editor-in-Chief of the Journal since 2015 and under whose editorship the Journal got listed under UGC – CARE in 2018 and continues to be so.

I sincerely hope that the Journal will be appreciated by the human rights philosophers, researchers and the policy makers alike.

Prof. (Dr.) Parsanjeet Kumar
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Message from the Editor-in-Chief

We are very glad to present Vol. 8, 2021 issue of NIU International Journal of Human Rights (UGC- CARE listed Journal) to our esteemed readers. This journal is published annually as an important means for spreading human rights literacy among its readers, primarily from the Universities and colleges, human rights institutions, human rights practitioners and members of civil society. The Journal has also served the purpose of initiating discussion and thought on present day issues having human rights relevance among scholars working in this area.

The rights based approach to development has been an important area of research, especially after the adoption of the Declaration on the Rights to Development by the UN General Assembly in 1986. The articles in this Journal by learned experts including academicians', scholars and members of civil society emphasize the same, enriching the human rights literature in the process. They also bring into focus the human rights perspective in the current areas of public interest and debate. Apart from thematic representation, we have also tried to give a territorial representation to the authors across the country.

The journal aims to serve as an arena for the public discussion and scholarly analysis of human rights. My heartfelt thanks to our Chairman Dr. Devesh Kumar for always being supportive in all our endeavours and having a vision and perspective of his own which has been a guiding light for us throughout this journey. Our Chancellor Prof. (Dr.) Vikram Singh has directed us throughout since 2015 when I voluntarily decided to take over the responsibility for this journal. He was the happiest when the Journal got UGC – CARE listed in 2018. I would humbly like to add that this Journal retains the UGC CARE tag for 2019, 2020 & also 2021. Our Pro – Vice Chancellor Prof. (Dr.) Parsanjeet Kumar is a person of wisdom. His inputs helped us tremendously to improvise the Journal.

I would like to thank my teammates from the Editorial team - Dr. Shivani Tomar and Dr. Mudassir Fatah for putting in all the hard work. We managed to complete the task and get the Journal published right on time without compromising on any of our routine responsibilities or clubbing the issues. My thanks to my colleagues from the Publications Division too for helping us achieve the target.

I hope that this Journal will prove to be a successful endeavour to create greater awareness and knowledge in the area of human rights. Look forward to receiving your valuable feedback.

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A Narrative Contravention of the Devadasi Ritual: An Unconventional Journey from Approbation to Degradation

Apeksha and Vijay Kumar***

Abstract

The Devadasi edifice in India has a longstanding tradition and inheritance which is being carried on even today as a socio-cultural ritual. The females or girls who are designated as 'Devadasis' are also insinuated as 'servant of God' who were devoted to God as staunch devotee and were believed to be proposed to God in marriage. The Devadasi culture convention can be traced back to seventh century, during the triumphs of the Pandyas, Cholas and Chelas especially in the southern pieces of India. In current circumstance, Devadasis is just sex subjugation or marginal prostitutes who are engrossed in temples when they are pretty much as gullible and innocent as four or five years of age. There are various variables which lead to the pervasiveness of the most despicable evil, 'Devadasi scheme', has also been clearly pronounced in this paper. This examination report proposes a mixture of suggestive and calculative investigation looking at the act of the Devadasi strategy in different states particularly in southern piece of India as Maharashtra, Karnataka, Andhra Pradesh, and Tamil Nadu. Apart from discussing the historical background of Devadasi Prutah, the paper additionally illuminates the connected adversities and struggles of the Devadasi plot dealing with demonstration of prostitution and importuning.

Key words: - *Confrontation, Devadasi, Historiography, Indian Domestic Law, International Law.*

Introduction

Devadasis also connoted as 'servant of God' are young ladies who were committed to God and were believed to be proposed to God in marriage.

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However, they were permitted to choose associates from both married and unmarried menfolk. This partnership could be long and lasting, or only for a short period. But these women were not financially dependent upon their husbands in any way. They premeditated their studies on music and dance, as well as 64 different kinds of craft. In temples or before royal family, they present different dance forms and sing and accept gold and land as a recompence or reward for their dedication. Some preferred to give themselves to God only and lived without a wife throughout.

The Devadasi structure in India is a socio-cultural activity with a longstanding tradition and inheritance which is being carried on. In the subsequent years following more than fifty years of independence, there was extensive pressure for the obliteration of this ubiquitous Devadasi regime through the Agitators and the Evangelists. The practice of Devadasi is a religious tradition in which parents' marriage a child to a deity or shrine. Customarily, marriage takes place before the girl reaches puberty. The method has been used in recent decades to drive underage girls into prostitution. Though laws to restrain such rituals have been integrated by various state governments, the custom remains imbedded in some parts of the country, especially some southern parts of the country. This was caused by the British colonial government's anti-Nautch movement. Though there are numerous states that had verboten this practice of devoting of these juvenile and puerile girls as devadasis, but still the tradition undergoes in innumerable conducts and classifications. There is also a real difference between government statistics and actual data. This research report proposes an amalgamation of evocative and calculative study examining the practice of the Devadasi method in various states especially in southern part of India as Maharashtra, Karnataka, Andhra Pradesh and Tamil Nadu. Apart from discussing the historical background of Devadasi Paratha, the paper also throws some light on the related tribulations and travails of the Devadasi scheme reckoning with act of prostitution and beseeching.

As specified by Oxford Dictionary the expression Devadasis are connoted to a hereditary female dancer associated with Hindu temple. The Devadasi strategy dates back to the civilizations of Harappa and Mohenjo-Daro, where carvings of dancing girls were found. It pertains to the phenomenon where, in the name of religious traditions, an underage girl is drawn into prostitution. The Devadasi culture custom can be followed back as right on time as the seventh century, during the wins of the Pandyas, Cholas and Chelas especially in the southern pieces of India. They were very much well-looked-after and treasurable, and in the public eye they involved a sturdy social job. It was common for them to be loomed and available in inviolable sacred and spiritual functions and also to follow them. However long the chapels and realms were bourgeoning, their advancement can likewise be seen.

In current circumstance, Devadasis is just sex subjugation or marginal prostitutes who are engrossed in temples when they are pretty much as gullible and innocent as four or five years of age. Practically every one of them are Dalits, the greater part of whom have a place with the Madiga and Valmiki

ranks, two of India's most monetarily impeded positions. The Devadasis of current India are restricted fundamentally in locale of Karnataka, Andhra Pradesh and Maharashtra. They are likewise entitled as Mathangi in Maharashtra. Mathangi is the attribute of Devi or Hindu Goddess considered to be the form of Saraswati, Goddess of dance and music. In Andhra Pradesh she is ascribed as Jogini or Mathamma and Thayamma engendering an infringement on their right to name and personal identification. In Karnataka she is labelled as Telangana, women who is dedicated to the services of Hindu deity. In Karnataka she is designated as Devadasi means any women who are engraved with dedication to serve the mighty God and Goddesses. Notwithstanding, Devadasi is known by numerous names in various locales, like Maharis in Kerala, Murali Jogateen and Aradhini in Maharashtra, Natis in Assam, Basavis in Karnataka and Bhogam-Vandhi or Jogin in Andrapradesh, Thevardiya in Tamil Nadu. In Karnataka, old devadasi is called as jogati and young and immature devadasi were nominated as Basavi.

In previous recorded junctures, the symbol of the devadasi in the Indian creative mind has stirred a great modification. Conceivable to the word, a 'devadasi' was apprehended in high esteem honor, affection, and social repute since she was the ‘maidservant of God’. There were innumerable social reform movements to ameliorate the practice and also, endeavored to abolish the Devadasi structure, anticipating a politically unforgivable social action. An interrogatory call concurred with the withdrawal of imperial support and temple sponsorships. This monetary factor has constrained the devadasis to gross on dissimilar occupations and hence Prostitution and beseeching have been embraced for a huge scope due to the endorsement and approval of occupations inside the Devadasi framework. In present day India the personality of devadasi is a crumbled variant that does not show its creative and scholarly accomplishments. Thus, there is a reasonable concubine, like Amrapali or Madhavi meaning Raj-Nartaki and a sincere whore who are transient, are decorated by the name 'devadasi.' The exploration approach for this task is taken from the setting of Corporal Feminism, which underscores the sexism of ladies' physiques and the probability that they are ‘an indispensable, accepted, social object’.

Elizabeth Grosz, an Australian feminist theorist, in her pivotal collected work entitled Volatile Bodies published in 1994, ventures the manifestation of female body having a blooming veracity and existence in realistic life full of authenticity and truthfulness.; irrespective of the conjecture being an inexcusable and outlandish figure. But in practicality, she has been molded by conventional patriarchal statuses, confounded by man-controlled society, delimited by inexhaustible superstitions and delusions. This idea is huge in light of the fact that, over a time of history, the minimization of devadasis brought about treachery dependent on rank, class and religion. In the current situation 'Devadasis' are betrothed from lower section of hierarchy probably from Schedule Caste and Schedule Tribes. Presently, this practice of devadasi is one in which low-position young ladies are "wedded" to a Hindu Goddess, in their age of puberty and physically prodded by temple priests and individuals from

higher rank proliferating this malevolent practice.

This paper is apportioned into five sections where various segments bestow an outline of the historical significance of devadasis in antiquity and their meticulous repute. The third section deals with the actual state of devadasis in India. The fourth and fifth sections concentrate on the legislative initiative on the practice of the devadasi method in India and on concluding and submitting a suggestion. The trend is especially fascinating, as well as difficult to combat, as it emerges from the intersections of spirituality, poverty and social norms. While discussing the tradition of Devadasi, this paper will cover following points: (a) To discuss the historical and cultural reinforcements of devadasi system. (b) To articulate the background of the devadasi system linking its prevalence in the present day. (c) To focus on why this custom of devadasi undermines both domestic and international law; (d) To investigate how our administration can deal with truly battle this Devadasi practice in appraisal of India's new spotlight on sexual violations and maltreatment in the repercussions of the 2012 Delhi misfortune.

The Historiography of Devadasi Ritual

'Devadasi' is at initially a Sanskrit word that split into 'deva' meaning 'God' and 'dasi' infers 'slaves', which from a genuine perspective connotes 'female hostages to Gods'. (Goswami, 2000; 47). Because of its initial unique origination, the authentic record of the journey of Devadasi framework is distressing and disconcerting. At the point when we make reference to the Devadasi agenda, we can see that the Devadasi upbringing has an elongated and extended history in India, possibly obliging young ladies to serve temple parameters turned out to be an exceptionally inescapable in the sixth century A.D. (Torri, 2009). The originally recorded testimony to a devadasi prutah was in South India during the Keshari Dynasty in the sixth century A.D. (Sahoo, et.al, 2006; 26). The practice began when one of the administration's extraordinary sovereigns found out that those ladies who were skilful in traditional dance ought to be hitched to the divinities to satisfy the divine beings. (Shingal, 2015; 109). The start of the ceremonial was one that was pervaded with extraordinary love as the ladies were nominated to become devadasi were exposed to two significant privileges: first, since they were in a real sense wedded to the God, they were to be regarded as though they were simply the goddess Lakshmi, and second, the ladies were respected on the grounds that they were considered to be "those incredible ladies who could control normal human driving forces, their five faculties and could submit themselves totally to God". (Johari, 2000). Since they were hitched to an unremitting cause, the ladies were endeavoured to be suitable for this moral staunchness. Their key obligations, as well as vowing themselves to a day-to-day existence past marriage, were to take acceptable consideration of the temple proprietor and practice the old-style Indian moves, generally Bharatanatyam, which they would act in temple customs and carnival. Supporters and cohorts were considered to have a higher predilection because of their willingness to support devadasis monetarily. (Prober. Roz et.al, 1999; 36).

The anomalies of devadasi have suffered primarily from culture – officially linked evolutions, their duty of diligence is to assume responsibility of the temple and master the classical Indian dances to be accomplished in the festivities of the temple. They have to mutilate their own existence while dancing and surrender themselves to the deity. (Saskia C, 1987; 16). As customs preclude them from marrying, these devadasis probably have ended up pleading to feed their babies and earn their livelihood. (The Hindu, 2017). Notwithstanding, countless devadasis, infuriating the ritual, need more pay or food to live and deal with their youngsters. Consequently, these causes have made them be assimilated into the exchange of prostitution.

Status during Ancient and Medieval Period

The devadasi mechanism was a crucial component of the religious activities in temples and were an indispensable part of the early Ancient and Medieval civilizations. During the Ancient period the Devadasi were identified as 'atumakal,' 'kontimakalir' and 'muthuvai pendir' often referred to as 'virali' and 'patini.'. (Krishna, 2000; 234). The devadasi method was an important part of the religious activities in the temples. The temple was an important part of the early mediaeval culture and economy, during the Middle Ages the temple appeared as the proprietor of considerable landed property and employed by large committees, including devadasi. (Simmi, 2003). Typically, they were assigned a position on land usually initiated as veil. They were valued as women affiliated with temples, enjoying the influence and role of some emperor, as well as the resources of the temple as their assets.

Status during Chola Period

In the hour of chola during 1011 AD, devadasis were regarded, and Chola King Rajraja offered the property and homes at Thanjavur to the sanctuary artists of the sanctuary of Brahadiswara. (Shingal, 2015; 107). They were additionally accused of the organization of the temples as representatives and guardians of the temple reserves. This persevered until the contemporary age when the delegates of the Brahmin Temple undermined these temple related advantages from devadasis. The success and notoriety of the Hindu temples was characterized by the quantity of devadasis during the tenth century. Luckily, during the Islamic guideline in India, Muslim intruders wrecked Hindu sanctuaries in the northern areas of India. This mass destruction of the Hindu temples in the northern piece of the world prompted a colossal decline in the professionals of devadasi, not at all like the southern piece of India where the religion prospered. (Sahoo,2006). Another recorded jeopardy to the way of expansion of Devadasi began with regards to a frontier revolutionary development, where the British-influenced reformers isolated the custom from the outmoded and strict commitments. They depicted the devadasi conspire as a grievous wrongdoing and held gatherings to sojourn and cease it. (Sithannan, 2016:16). The success and renown of the Hindu temples was estimated by the

quantity of devadasis during the tenth century. In any case, during the Islamic guideline in India, Muslim intruders crushed Hindu temples in the northern locales of India. (Bharathi Harishankar, Et. Al, 2016). This mass destruction of the Hindu temples in the northern piece of the nation brought about a significant decrease in the custom of devadasi, dissimilar to in the southern piece of India where the tributes of ceremonies can in any case be found. (Dalrymple, 2020). Another chronicled challenge to the order of Devadasi came as a frontier change development, where the British-influenced reformers recognized practice from strict and customary traditions. They saw the devadasi framework as a social sick and coordinated gathering to advocate against it. (Srinivasan, 1873).

Current Day Status

Prostitution can be obvious as 'the demonstration or practice of an individual, female or male, who for some sort of remuneration - financial or something else - participates in sexual relations with various people, who might be of the inverse or same sex' (Nag, 2001). Devadasis became actively engaged in adultery as the temple's tradition of dance and singing declined. Some devadasis entered the commercial sex industry after the dedication, while others engaged in prostitution in their homes and villages. In their villages, these devadasis were referred to as "Public Property." The patron was affiliated with 65 percent of the devadasis, who were mostly single. Shockingly, 95.2 percent of devadasis had kids, and 95 percent of them could not record their supporter's name as the father of their kids during school enlistment. (Columdalur,2011). The majority of devadasis have monthly salaries of less than Rs.1000. The Devadasi method was known as "Sacred Prostitution" in historical research, and it was a part of culture. Nonetheless, the Devadasi conspire is currently known as a type of open, exposed, or unprotected sex, and numerous destitute individuals bequeath their little girls to this obnoxious practice for the sake of mollifying the divine beings. (Dkhar, 2020; 2).

The countenance of Devadasis was imperceptibly distinguished from the so-called prostitution and commercial sex slaves insignificantly as they did not charge for their services and administrations and rather acknowledged blessings and gifts consequently. (Dalrymple, 2020). Some moved to their homes and settled down with their accomplices as they became more veteran. As recently said, devadasis are popular in India's efficient business sex industry. When cultivating activities in towns breakdown, numerous men relocate to urban areas for perpetual or transitory positions, abandoning their spouses and families. Therefore, there is a ready supply of consumers and demand in India's well-organized motorized sex industry. (Desai,2007). What we see is an emotional decrease of the devadasis' status as gifted formal ladies and courtesans, appreciated by all, to that of customary whores and transients, disregarded by their own families and society on the loose. Sriram presents this dichotomy in his composition The Devadasi and the Saint. He urges candidly that 'from one perspective, the devadasi community was the store house of arts and expressions and on the other it was the depository of all malicious and each possible

immoral convention.' (Sriram, 2007: 151). This divided assessment has ascribed to investigate different causes especially Christian evangelists, pioneer moralists, and Indian social reformers. "...these individuals had no reluctance in disapproving the whole Devadasis community as whores and their aptitude as aberrant and eccentric". (Wilson, Bincy, ET.AL, 2019).

Variables Promoting Devadasi Ritual

Almost every social catastrophe or problem has some grounds that make it worse, and these factors come from within the community. These influences are classified as social, geographic, religious, and economic factors in general. Many factors lead to the prevalence of the 'Devadasi scheme', which is one of the most despicable social evils. The variables that contribute to the problem are categorized according to their seriousness.

Poverty

Poverty forms to be a major drive and impediment in formulation of a wide range of social issues. In this case, Girls were only dedicated in the past due to religious beliefs. Later on, poverty becomes a significant motivator for the pledge. In present scenario, devadasis are simply dedicated to be transported to off houses of ill-repute in several regions of world, demonstrating that their commitment is exclusively to procure money. (Moni, 2001). This indicates that the devadasis are from impoverished communities who engage in sex work to support their families. Furthermore, if a girl is devoted fully or falls in love, she is forbidden from the ceremony of linking knots of marriage with any human being and is obligated to serve the deities until her last breath. Many poor families escape the burden of dowry by dedicating their daughters, and the daughter often feeds and look after the entire family just like a son by participating in all the household chores but without any recognition. (Dkhar, 2020; 2). Therefore, Poverty seems to be the focal cause for promoting this immoral practice, whereas there are several other factors which could not be overlooked.

Spiritual and Religious Delusions

The practice of this vindictive Devadasi prutah is inextricably linked to the Hindu faith and religious delusions irrespective of the fact that there are several interwoven superstitions and fallacies which leads to the consecration of girls into this profession. In India there is a deep conviction and blind believe on various local deities and people seems to be staunch follower of their Divinity which probably results in bestowing their loved daughters for the well-being of their family and community. Second, commitment is made in order to heal the girls or other family members who are afflicted or disabled. Another unfounded idea is that if a girl's hair becomes wrinkled or has Jat, then she is born to be dedicated for serving deities. According to a proclamation made by NGOs and

academics, the Jat is caused by fungus, but adherents claim that the "Jat" is a symbol of Yellamma, the patron goddess of Maharashtra and other southern parts of India also revered as 'Mother of Universe' or 'Jagadamba'. (Lalou, Carolline, 1995). Another frivolous reason for dedicating daughters to this unsolicited profession is to resolve any family related issue or common village problem. Even in certain cases when there are circumstances such as elongated sickness, infertility in women and undoubtedly dearth of money and hunger and consequently a commitment was signed to purge these hitches. (Kamat, 2016). The staunch believers have faith that this is the way through which their Goddesses imbibe all their predicaments and absurdities. (Evans, Et. Al, 1997). Hence, there are several social and economic reasons which join hands with superstitious beliefs and poverty in promoting this kind of atrocious ritual.

Caste System

The connotation of Devadasi plot is generally very common among the people belonging lower strata of society or concomitant with Scheduled castes or Scheduled Tribes. Conferring on various research there is an indispensable relationship between the poverty and the people from lower rank or caste which forms the foundational cause for many families devouring their daughters to become an ardent devadasi serving and following each and every command given by temple authorities. In actual reality the Devadasi tradition seems to be not only a ritual but also a major social concern that mostly concerns the Scheduled Castes and the perseverance is adapted largely in non-Brahmin humanities.

Devadasis are ordinarily the females who descend either from a family that rehearses this malevolent practice as an acquired custom or they are inclined from local communities that recapitulates the Devadasi framework as mundane. (Anil, 2020). Apart from these elements like custom and innate culture, poverty is indistinguishably associated with the caste section. Therefore, it is one reason why the rate is so high in lower strata of hierarchy and hence, most of the females trapped in this system emanates from lower standings. Devadasi communities are impoverished, so the girls work hard to provide monetary support to the family. (Catherine, 2014). Devadasis from high society families are getting amazingly uncommon in present day times as high society men additionally constrain lower position families to submit their girls as devadasis. Upper class men also compel lower caste families to commit their daughters as devadasis, and the money for the girls' sexual services is compensated for by the upper-class men. (Arun, 2011; 33). NGOs reports that five thousand to fifteen thousand young girls who are auctioned secretly every year. They are then assaulted by the temple priest and illegally auctioned into prostitution before succumbing to AIDS. (Deepa, Et. Al. 2016).

Inherited Implementation of Practice

The level of dedication and commitment of puerile and infantile young girls is the result of congenial inherited tradition being followed from the very commencement of the practice. It is customary for the daughters of devadasis to remain fully devoted and committed as a staunch devadasi. (Moni, 2001). Here, the method is a genetic tradition in many lower caste families alone. Many girls become devadasis as a culmination of their mother or grandmother adhering to the Devadasi scheme. Another overview tracked down that 32 percent individuals in its investigation were from families with a background marked by devadasis (Orchard, 2007). The intended purpose to devout young ones to serve the deities throughout their life varies from one family to another. There are families where a portion of the progenitors were devadasis and left the calling, however on the off chance that they go through any wellbeing or monetary challenges, they will restore the control by dedicating young ladies from the family. (N.D Shiva, 2009).

Social Pressure

Another predominant intention in forsaking a young daughter is cultural and societal sturdiness. Privileged upper class individuals oblige lower-class families to bestow their young girls and therefore, it becomes an easily accessible targets for them to commence underlying sexual experiences with such females. Fundamentally, the same privilege is venerated by temple priests who either with force or authority of power influence the families to sanctify their little girls. Once a young girl is sanctified, she ought to give sexual gratification to high society guys, clerics, and other astounding and rich guys. (Colundalur, 2011). Fortunately, it is discovered that commitment is frequently due to economic reasons rather than upper-class pressure. (Weidman,2003).

All of these key components are interwoven. All of this falls within the purview of religious, social, and economic circumstances. However, the commitment stems mostly from religious/superstitious ideas.

The Devadasi Structure and its Confluence with National and International Law

In the eyes of national and international law the devadasi convention is illegal and should strictly be verboten. This subsection first addresses India's attempt to dismantle the conduct, accompanied by an evaluation of India's international legal commitments.

The Devadasi System and its Confluence with Indian Domestic Law

It all started with the announcement of government of India about the consecration of females for the purpose of prostitution unlawful in 1924, it ostensibly condemned the devadasi ritual. Since then, numerous Indian

governments, notably those in the south, have enacted a variety of bans aimed primarily at the devadasi system. (Chawla, 2002). The Bombay Devadasi Protection Act ("Bombay Act"), enacted in 1934, was the first of the directed laws. (Bharathi, Et.Al, 2016). The practise was considered unlawful by the Bombay Act, regardless of whether the girl was devoted with or without her agreement. During whole twentieth century, similar regional regulations were implemented in different regions of South India, including the Madras Devadasi (Prevention of Dedication) Act of 1947; this law was passed in the Madras Presidency and it gave Devadasis the legal rights of marriage and declared the act of dedicating young girls to temples as austerely illegal , the Karnataka Devadasis (Prohibition of Dedication) Act of 1982; the act of dedication of a woman as devadasis was declared unlawful and void, the Andra Pradesh Devadasi (Prohibition of Dedication) Act of 1988; this section entails the prohibitions for Devadasis marriage schemes and punishment for propagation, and, most recently, the Maharashtra Devadasi (Abolition of Dedication) Bill of 2005; a comprehensive law was enacted to abolish the practice of dedication of women as devadasis to Hindu deities or on being treated as objects of worship. (Ibid.).

The devadasi conduct is virtually illegal grounded on these Acts, across the country, with regulations explicitly targeting areas where the devadasi tradition flourishes. Despite these various restrictions, the execution of aforementioned Indian domestic laws has been insufficient and derisory due to various false reporting and the unlawful nature of practise. In 1990, the Indian Supreme Court in Vishal Jeet vs. Union of India had distinguished to look into issues of forced prostitution; also, to rescue those victims who are trapped in marketable sexual exploitation and are liable to get proper medical facilities. Right to Education and should be given proper specialized training in other disciples so that they can lead a noble and dignified life. (Shingal,2015: 117) and suggested that the current measures be assessed by both the focal and state governments. It was the call for change and during that various legitimate cases and requests have been recorded in which the Indian Supreme Court and different courts, most famously the High Court of Mumbai, have given decisions and statutes censuring the devadasi custom. On February 13, 2014, the Supreme Court as a massive victory for defenders of women's rights, asked the Karnataka Chief Secretary to take all necessary steps to avert the women from becoming devadasis or temple maidservants by means of obligation and pressure. (Goswami,2000).

Regulations under International Law

The tradition of devadasi undermines not only domestic regulations, but also a number of international treaties and laws. The procedure, in fact, is blatantly in infringement of the Universal Declaration of Human Rights ("UDHR"), the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, and Optional Protocol to the Convention on the Rights of the Child on the

Sale of Children, Child Prostitution and Child Pornography. (Shingal, 2015:117). Notably, India is a signatory to all of these provisions and protocols, showing that the universe as a whole is trying to sojourn this commotion. Foremost among these safeguards are restrictions on marital rape and human trafficking, especially in children and women, as well as the commitment to provide a decent life for children. (Hanchinamani,2001). Through the presence of various international restrictions, there are at least three problems with applying international law to the art of devadasi. First, all of the above treaties and agreements lack compliance procedures for examining citizen grievances. As a result, considering India's many foreign obligations, the international community, or even citizens within India, are unlikely to be able to keep the country liable in an international forum. Second, since the devadasi institution is primarily domestic, the international community must rely solely on Indian domestic courts to apply international law to it. Unfortunately, there is a considerable shortage of implementation of such legislation in India. Third, analogous to the debacle of domestic law, the devadasi system's clandestine existence makes enforcement of international law exceedingly difficult.

The vindictive convention of devadasi not only challenges and subverts various domestic conventions and procedures, but also encounters innumerable international accords and protocols. Nevertheless, the procedure is explicitly yet perceptible blatantly due to infringement of the the Universal Declaration of Human Rights ("UDHR") for example Article 1 confers that all human beings are born free and is liable to enjoy equal rights in dignity which obviously devadasis are not relishing; Article 3 deliberates that everyone has , the right to life, liberty and security, again which seems to be shadowed for Devadasis; Article 4 gratifies that the practice of slavery and servitude should strictly be prohibited which again seems to be dismal in case of females cramped in this malevolent evil of devadasi, International Covenant on Civil and Political Rights which came into force on 23 March 1976 in agreement to Article 49 which pledges that every individual must respect the civil and political rights of other individuals including right to life, freedom of speech, freedom of assembly and freedom of religion which again seems to be violated in case of devadasis who seems to animate life without their verdict , International Covenant on Economic, Social and Cultural Human Rights including right to education , right to housing and right to appropriate standard of living, right to health and culture but the opprobrium of devadasis is that they all are yet deprived of such fundamental rights , Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) came onto existence in the year 1979 which sets up an outline for what constituents comes under discrimination against women and national action to be commenced for ending such discrimination , Convention on the Rights of the Child, and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography related to the extensive and on-going practice of sex tourism to which children are very much exposed . (Shingal, 2015:117; Wilson, Bincy, ET.AL, 2019).

Unfortunately, India is a signatory to these provisions and conventions, showing that the universe overall is trying to sojourn this commotion. Foremost among these fortifications are restrictions on conjugal assaults and marital rape and also human trafficking, predominantly in young girls and females, just as a commitment to stretch a good and comfortable life to kids. (Hanchinamani,2001). Through the presence of various international restrictions, there capitulate three issues with applying international restrictions to the custom of devadasi. In the very first place, the entirety of the above settlements and arrangements need consistence methodology for looking at citizen grievances. Thus, considering India's numerous foreign obligations, the global local area, or even residents inside India, are probably not going to have the option to keep the nation gratified in an international assembly. Second, since the devadasi association is intrinsically domestic, the international forum should depend exclusively on Indian domestic courts to pertain international law to it. Unfortunately, there is a notable deficiency of implementation of such enactment in India. Third, analogous to the debacle of domestic law, the devadasi system’s clandestine existence makes enforcement of international law exceedingly difficult.

Decisive Steps taken to Confront the Malevolent Practice

Despite the fact that both local and international law forbid it, the devadasi tradition continues to persist. As previously said, the primary grounds for its endurance are economic factors, religious presumptions, and sociological commandments, all of these factors encourage a female to participate in the activity while also inhibiting any positive countermeasures ensured to combat the tradition in general and to put a full stop on the lineages of Devadasi tradition. While the reason for the devadasi custom appears to have solid ties in Indian way of thinking, current disclosures in India say that the greater part is starting to battle for considerable shift. This segment contends that judges can take advantage of this accelerating perspective to hammer the last nail in the coffin of the devadasi exercise.

Considering that the culture of India is rebooting its sense of ethics and taking a huge leap for outpouring tougher measures to safeguard young girls from their formerly perilous circumstances. Notably, this seems to be the best motive for courts to keep tabs on the bourgeoning devadasi system. Henceforth, Judges can play a pivotal role in combating such immoral act of devadasi prutah.

Judges can Enforce the law fervently: The most evident power of the judge is to guarantee that the law, as put down by the Legislature, is effectively understood and enforced. In the case of sexual manipulation in India, particularly in ensuing the devadasi ritual, courts would play an important role in rigorously implementing the newly enacted regulations, which, as previously stated, provide accelerated grounds of action against those who conduct or work following the delinquency. The Supreme Court of India intends to take the charge on the conundrum by actively prosecuting people partaking in the

methodology and to bring this in execution, the Court has passed various ordinances to numerous proprietors of India, as for example, Karnataka Chief Secretary, take genuine endeavors to secure young girls and females who intend to devote their lives to this debauched devadasi custom. (Nair, 1994). In mandating the Chief Secretary to implement the laws and policies against the conduct, the court establishes a certain constructive norm in which the judge anticipates the authorities to take every reasonable safeguard to guarantee that the framework isn't engendered. (Lee, Hyun ,2011; 27).

Judges should exert subjective norm through their Verdicts: Amongst the most plaguing those striving to abolish the devadasi system is that those adjacent to the conduct appear to have an intrinsic endorsement almost in the form of an unwritten rule, that licenses it to continue. For detractors of the procedure, combating societal acceptance is likely to be the first and most substantial battle. Arbitrators, for their part, have the power to change society's values through their decisions, particularly when such judgments are in accord with the national will following a historic event like the 2012 Delhi tragedy. Indian courts would do well to add to the current societal pressures against the malpractice by their verdicts and deeper motive.

Conclusion

The devadasi legacy which was previously an honored institution paying due respect for those chosen women who serves as devadasis, has degraded into an entrenched sex trade and commercial sexual exploitation of juvenile and poorer girls. Lots of women are still engaged to the institution on every other year for the sake of their financial needs, spiritual stresses, and personal problems, despite the fact that it is no longer as common as it was once, due to strictly outlawed by both domestic and international law.

Recommendations

1) In most of the state Devadasis are unaware that the system is a societal scourge. As a result, the government and NGOs must periodically review awareness and public outreach campaign initiatives at the district level and in popular districts.
2) Devadasis must be raised and given basic education so that they could be identified as individuals rather than denoted by conventional names like basavi or jogini. This initiative may be carried out by the board members of Social Welfare team of each state.
3) There are conflicting problems as deprivation, unemployment, and emotional instability in contemporary Scheduled Caste social groups, specific education programs along with inclusive growth for teenage women are needed to be coordinated by state officials and NGOs. Self - help groups have the potential to play a significant role in mitigating commitment and dedication of girls for this ruthless cause.

4) Throughout time, the template of devotion has shifted dramatically. Laws and regulations, on the other hand, continue to define devotion in a limited way. As a result, necessary amendments at the state and national level are required giving the clear line of demarcation between the definition of commitment and dedication.
5) Religious values and prehistoric customs represent a big cause in dedication of girls from low-income families. More restrictive intervention rules are needed to keep track of offenders like priestly class and local miscreants.
6) Furthermore, there have been reports of Devadasi women tying the knot. The marriage, on the other hand, is shallow, insecure, and tyrannical of Devadasi females. As a result, the media must contribute significantly in dispelling the prejudice connected with Devadasis in matrimony. As a consequence, documentaries about the Devadasi system's complicity and deterrence should be shown as trailers at cinemas in covered areas.
7) One possible explanation for the Devadasi system's longevity seems to be that aging Devadasis are deserted by their families and society, leaving them to struggle for themselves. Some states, like as Karnataka, already have pension plans in place. These pension and retirement schemes must be properly implemented in all states and closely checked to ensure that benefits are delivered to Devadasis.
8) Devadasis has an active phase of fifteen to twenty years, beginning at the age of thirteen or fourteen. They have a higher risk of contracting sexually transmitted infections. To safeguard and rehabilitate Devadasi females, special medical workshops and detention centers must be held.
9) Offspring and children of Devadasis are another persecuted minority belonging to vulnerable community. They become socially aberrant and delinquent as a result of humiliation and abandonment. Numerous efforts have been made to establish residences and educational institutions for these adolescents. The aim of such intervention strategies in context of public inclusion is controversial. To assimilate them into social structure, certain regulations must be developed at the government level.

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The Mahabharata Conundrum: Querying Draupadi's Rights and Responsibilities

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Abstract

Issues around 'Rights' and 'Responsibilities' have fascinated scholarship round the world. In the contemporary contexts these debates hold more water as the concepts become more nuanced and politically loaded. But when we try to comprehend these in ancient times, challenges manifest. The sources that we are dealing with need to be verified for their veracity but more important discourses around such concepts have actually to be searched in a day and milieu when political formations were constantly changing, transitions from tribal to state set up were happening along with constant fluctuations in social hierarchies. While looking at ancient India, we need to additionally examine institutions of caste and class that have an unspoken alliance with politics of the day. Assessment of human rights could have happened only amongst those who held power or had an ideological hold. They had the occasion to discuss these and make an effort to apply the concepts socially and legally too. Social stratification often ensured that rights of some prevailed over those of others. What historians often miss out is that social stratification has a nuanced gendered dimension too and, therefore, the analysis of issues such as rights and responsibilities become much more complex. It is true that students of Ancient India are not fortunate to have first person accounts of individuals of the time. So, we fall back on myths and attempt to cull out some historical information and then proceed to work on credible historical explorations and reconstructions. Here we are taking the case study of Draupadi within the Mahabharata to investigate issues of 'Human Rights' but complementing these with concept of 'Responsibilities', which were socially and politically mandated. The effort is located within the realm of plausibilities, assuming that characters such as Draupadi actually represent an intersectionality of class, caste and gender.

Key words: - *Human Rights, Outrage, Patriarchy, Polyandry, Responsibilities.*

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Introduction

The Mahabharata is an epic with encyclopaedic complexity. Like a true epic it is extremely lengthy and deep with an equally profound import. The period of its composition and compilation is expansive; from at least 4th century BCE to 4th century CE. The Mahabharta is highly diverse, not only because of disparity in its manuscripts but also because the narrative moves off into numerous sub-narratives and is thickly intertwined with discussions on theology, ritual lore, legal discourses, philosophy, cosmology, and astronomical instruction. What fascinates a reader of the text is its inherent quality to weave a web of conversations and dialogues that bring to surface numerous kinds of dialectics many of which centre around the issue of dharma; understood as duties and responsibilities and often in conflict with the issue of rights in a given social order. Draupadi represents one such dialectics whose presence within the text justifies the phrase 'necessary evil', when viewed from the vantage of the mythographers of the day. She conjures up complexities that they would want to rid themselves of but at the same time recognise that she is the soul of the epic, often directing the course of the magnum opus. She clearly threatened the established order of a society and state that was moving sturdily in the direction of robust patriarchy. Draupadi is an intriguing character not just because she had a very strange birth in the family of Drupada of Panchala, but also because she propels the plot of the story by representing a form of dissent often bordering on destruction. In a way her birth from the fire symbolized her all-consuming desire to destroy enemies.

ISSUES OF CONCERN: RIGHTS AND RESPONSIBILITIES

How does one examine Draupadi's character from the perspective of Human Rights and Responsibilities? Human Rights is a very contemporary phrase and its utilization in ancient past may not be entirely fair. However, every society works out some basic rights, duties and responsibilities for those who share common culture and social mores. Sometimes the state adds a list of its own expectations and stipulations marking more privileges to some individuals and conferring more responsibilities on others. This is clearly not worked out in a democratic way. There are always some, who on accord of their birth, military prowess or ideological supremacy stand to benefit as decision makers while others struggle to make their voices heard. In ancient India, caste and class differentiation certainly brought about a wide gap between rights and responsibilities, but gender too was a factor that made situation quite complex as a result of its intersectionality with class and caste. Therefore, analysing a character like Draupadi from the vantage of Human Rights and Responsibilities is a tricky proposition. The objective of the paper is to understand the historical process that rendered Draupadi a repertoire of responsibilities even as she cried aloud for her rights. The numerous shades that appear in Draupadi's portrayal can puzzle any reader. For a student of the discipline of History it is important to attempt a rationalization that is analytically correct and based on an investigation that is in sync with the times analysed. However, one's gender

location in the twenty first century prompts divergent views, often in contradiction with objectives of historical analysis. Here we are forced to think of what Aristotle spoke of historians in his very famous Poetics: that they are supposed to tell what had happened though a person of literature or a philosophy could afford to digress to inform what should have happened. Ethics of the discipline of History directs one to stick to the norms of historical reconstruction.

Different Shades:

Draupadi as an Assertive Individual

The representation of Draupadi in the Sabhaparva, where she was dragged into the assembly (sabha) of royal men as Pandavas lost the game of dice, is the starting point of reflection here. Even as Draupadi is important through the narrative, it is at this point that she was forced to regress into a liminal space. Interestingly, her entry into this space when she was obviously marginalized to the periphery, was also an occasion for her to rediscover herself. Draupadi took advantage of the peripheral space to a) throw legalistic questions in the direction of the elders in the assembly, b) highlight the state of her humiliation as she was menstruating and c) to strategize and remind men of her clan, including her sakha (friend and mentor) Krishna, about her right of seeking protection. In the process she made all reflect on the issue of her rights and question their perception of her responsibilities.

Draupadi was reluctant to adhere to the call to appear in the assembly. Yudhisthira had lost his property including himself, his brothers and wife to the kauravas in the game of Dice with Kauravas. Now Draupadi was asked to appear in the male dominated assembly to own up her status as a dasi, a slave to Kauravas. Draupadi felt humiliated as she was asked to appear in sabha when she was in a rajasvala state i.e. when she was menstruating and had her tresses open, indicating that she was in 'such a state'. Veena Das points out to the fact that this was one state recognized in a woman's life, in ancient times, when she 'could enjoy immunity from men and from complete possession by the male world'.[i] She had the right to be in her own world. So, Draupadi felt violated by the call. She bided her time. When the messenger informed her of the decision taken at the assembly, she retorted by asking that the messenger to first confirm with Yudhishthira whom did he lose first; himself or Draupadi? She wanted to know that how could she, 'wife of the Pāndus, sister of Dhrstadyumna Pārsata, and friend of Vāsudeva, enter the hall of kings?' After all she was the wife of King Dharma and equal to him by birth. She insisted in knowing whether she could be labelled a slave or not.[2] In Uma Chakravarti's opinion Draupadi's question was oratorical as the messenger had previously clarified to her that Yudhisthira had lost his brothers and himself before losing her. Draupadi, however, demanded that the question be answered[3]. The query was clearly meant to raise the legality of the stake and get Yudhisthira to contemplate on the 'lawfulness' of his act – the dharmik-ness of it – now that the fleeting insanity

which absorbed him appeared to have ended.[4] Simultaneously she brought attention to her complex social and personal identity. For Draupadi it was a moment of moral crisis. She certainly felt humiliated and perplexed that her husbands could actually exercise their proprietor right on her. For her the central issue was her own right on her person and also her social right as a kshatriya woman.[5] Hiltebeitel seems correct in assuming that Draupadi definitely wanted the question to be raised in the sabha which she expected would function as a court of law and in turn, would decide the issue of dharma.[6]

When the messenger returned and put the question to him, Yudhishthira did not stir, as though he has lost consciousness. Since he made no reply, Duryodhana intervened, 'Let Draupadi come here and ask the question herself. All the people want to hear what she has to say'. Eventually Duhshasana dragged the reluctant Draupadi to the court. Before that Vidura had already warned Duryodhan, 'You don't know it, fool, you are tied in a noose! . . . you are a deer provoking a tiger's wrath . . .She is not a slave yet. Bharata! I think she was staked when the king was no longer his own master.[7]

Draupadi's outrage: A Feminist Cry for autonomy?

Since Yudhishthira lost himself first what right of ownership did, he had on her? By this question young Panchali raised a moral and legal issue that confounded all. Even Bhishma Pitamah found it difficult to answer as he belonged to the school of patriarchy that endorsed complete rights of wife ownership to husband, whether a slave or not (II.60.40). Was Draupadi's question a feministic cry of autonomy? Borrowing from contemporary vocabulary, we are tempted to ask if Draupadi really raised a 'Woman's Question'? In Uma Chakravarti's[8] opinion Draupadi was possibly not making an argument for gender equality through this query, rather she pronounced her entire case within the specificity of her own situation as a kshatriya woman, equal in status to her husbands and digging further into the legality of the issue. Her question befitted an analysis that assumed ownership right of a husband on his wife. She only questioned Yudhishthira's about his status at the time of losing the bet, certainly not his proprietor right on the wife. It was a legalistic query: how could one who was reduced to slavery put any one else, including the wife, on a stake? Within the epic Draupadi has been shown time and again remembering her kshatriya status. We do agree with Chakravarti that the query was possibly not made from an intentional gendered perspective, yet the fact remains that it had the potential to challenge existent gender relations. Brian Black points out an additional dimension to the argument; in comparing her own birth-rank with that of Yudhisthira's, Draupadi was not really disagreeing to becoming a potential slave as a ksatriya.[9] What she pleaded was that her own social station did not result from that of her husband's. If one were to view the trajectory from this angle, although Draupadi may not have made a case for all women in general, she certainly did make for herself as a wife and a woman who possessed a distinct identity, underwent separate set of experiences and was certainly more than a

mere extension of her husband's personality. In doing that Draupadi's argument could have reverberated with those of many other women regardless of their class or caste peculiarities.

In this legalistic dialogic tirade Vikarna asked, on behalf of Draupadi, how could only one man's right be counted when she was common wife to all brothers. He openly critiqued Yudhisthira for his vice even as Yudhisthira was known for his dharma-espousal otherwise and reiterated the legal standing of a man who lost himself first. The assembly saw reason in the argument but for Karna it was an occasion to avenge his humiliation of being rejected at Draupadi's swayamvara and so he argued, that everyone in the assembly saw Yudhishthira make the bet, and everyone saw him lose all that he owned. Since Draupadi was a part of 'all that he owned', she was won fairly and in accordance with the law. But most important Draupadi had been mentioned by name when the wager was placed and none of the Pandavas contested it at the time. Karna argued that Draupadi, as a woman, was by nature 'dependent' (asvatantra).[10] Besides, he added that a virtuous woman had only one husband while Draupadi shared the five Pandava brothers, making her a whore (bandhaki) who ought to be stripped in public.

Draupadi was beside herself in grief, but she first decided to defend her husband's stating that Shakuni cheated and fooled all. Even here we see an individual thinking simultaneously of her rights and responsibilities. She had to do her best to save her husbands. She beseeched to king Dhritrashtra that 'This foul man (Duhshasana), disgrace of the Kauravas, is molesting me, and I cannot bear it!'. She openly challenged the king with a subtext query if he were really following his dharma. She cried that the Time was out of joint—the Kurus allowed their innocent daughter and daughter-in-law to be molested! What greater humiliation than that . . . a woman of virtue and beauty, now must invade the men's hall? What is left of the dharma of the kings? Dhritrashtra was jolted to the core and responded by granting Draupadi three boons. Once again, she used those to save her husbands from slavery and the recovery of their weapons. She still did not think of herself.

Silence on Molestation: Confounding's of Patriarchy?

The text also brings to the fore the immorality of silence and the lack of responsibilities on the part of male protagonists. Barring Vidura and Vikarna none was willing to argue in her favour. One would have expected Bhishma Pitamah to put his foot down or Dhritrashtra to come to his senses, but that were not to be. No one would have understood her right to her personhood. In popular versions of the story (II. 61.23), she apparently prayed to Krishna, her sakha, her deity, as the disrobing continued and asked 'Dost thou not see the humiliation, the Kauravas are forcing upon me? For me there is no husband, sons, relations, for me there is no brother no father . . O Krishna, save a distressed soul sinking amid the Kauravas.'. In the scholarly Pune Critical Edition of the epic, however, there is no Krishna, and the miracle is left unexplained.[11] Edgerton believes that what she got was cosmic justice, miracle happening because of inner strength

and chaste existence and not any godly intervention. It vindicated her courage and virtue (dharmic purity) as she stood up to the political and social order, reminding the rulers about the dharma of the king. The public disrobing of Draupadi is consistent with the moral paradigm of patriarchy. This is a climactic moment for the Kauravas—they have 'defeated' and humiliated the Pandavas.

Purshottam Aggarwal refers to the public disrobing as an occurrence of a patriarchal world view: 'Duryodhana could think of no better way than ordering the public disrobing of Draupadi to decisively emphasise the disgrace and final defeat of the Pandavas in the game of dice'. Pandavas did not protest because in their opinion Duryodhana, even in his reprehensible act, was justified in terms of their version of ethics that was in sync with patriarchy. Agarwal has shown that the disrobing of Draupadi, was an instance of how political discourses, constructed by 'collectivities', have consciously contextualized molestation and rape exclusively in the 'problematic of the contest between two groups or communities, thus altering it into a justifiably defensible act, in fact into a much-needed political strategy'.[12]

We certainly see a connect between violence and female sexuality and the way in which a woman's body becomes a site for settling male issues. Draupadi's response can be linked to her innate right to question this link. The connect has a kind of ubiquity; it was there in the days when the Mahabharata was composed and compiled and it was witnessed as recently as the Partition of India, when women were at the receiving end as men settled score with their rivals. It was perceptible when new nations, such as Bangladesh, were born. It is common even now when issues of 'honour killing' and 'love jehad' have emerged in contemporary India. Draupadi had obliquely raised a vital issue: how could a man or men decide her future? This did not go down well with male mythographers. As Iravati Karve says this turned out be her greatest error; she ended up threatening the most noble of the Pandavas, Yudhishthira, with a powerful question in her robust critique and he found it difficult to answer and possibly nurtured this humiliation all his life.[13]

But Draupadi's questions to Yudhishthira did not end here. In the passages III.28-34, the arguments regarding kshatriya svadhrama were once again taken up. It was an extended argument of the sabhaparva when both Draupadi and Bhima were reconciling with the heaped-up poverty and injustice done to them. Draupadi, once again, took Yudhisthira in field of his expertise; dharma. She asked an intelligent, logical and pertinent question that even when they were in the right why did Duryodhana and Kauravas stood to gain? She recalled what had happened with her in the previous parva and once again rebuked Yudhishthira for not following his kshatriya dharma. She lamented the condition in which Pandavas found themselves in the forest and finally berated Yudhishthira for not applying his power (tejas) at the appropriate time and, instead transforming it into patience and forgiveness (kshama)[14]. Running throughout the argument was an incapacity to understand why he did not become furious[15] (manyu) at what had happened or give in to his anger. She reminded Yudhishthira that there was no warrior who does not get angry (III.28,

34), implying that that Yudhisthira shirked the dharma of a warrior. She just took him head on. Once again this left her eldest husband very uncomfortable.

RESPONSIBILITIES OF DRAUPADI

Accepting a Polyandrous marriage

Strangely this non-conformist Draupadi, with potential to be a torch bearer to future feminists, showed puzzling fluctuations in her character. Let us try and understand how she responded to the issue of her own marriage to the Pandavas. As the myth runs, king Drupada of Panchalas organized a swayamvara for his daughter, Draupadi, which was actually a competition of sorts and where Arjuna excelled and won her hand. Karna was almost successful but Draupadi ridiculed him as sutaputraa, a man of lowly status. Swayamvara technically was a practice by which a woman was allowed to choose her husband. But by the time of the story becomes popular it actually was reduced to an occasion where the father of the bride could display his wealth and strength and contrive her union with the match of his choice. Arjuna had successfully won over Draupadi at the swayamvara. He along with his brother Bhima, took her to his mother and told her of they got for her. 'Look what we have got', they tell her; She was inside the house, without seeing them, said, 'Now you enjoy (bhunkta) and share that together'(I.182.1-2). But a little later on seeing the girl she cried out, 'what have I said'. She turned to Yudhishthira and apologized for the adharma (grave mistake) that she had committed and asked him to redress the situation. Kunti explained that she only repeated what she was in a habit of saying and was a little less careful even now (pramada) (1.182.4). Brian Black wonders if Kunti had herself described her words as something spoken carelessly and out of habit why should these words carry so much weight?[16] Without doubt the power of speech is a dominant and recurrent theme throughout the epic. But did the words of women characters always had the power of words enjoyed by their male counterparts? We have already discussed how Draupadi's words or questions were not always answered. In the case of another narrative, where Shakuntala tried to convince Dushyant that the son was his, her words hardly had any impact on him even when she was speaking the truth. But in this case Kunti's words would be taken as sacrosanct by Yudhishthira, though not immediately.

At the behest of his mother, Yudhishthira first requested Arjuna to marry her as he had won her. Arjuna pleaded he could not do that because dharma did not allow a younger brother to marry when the elder was still unwed (I.182.8). Meanwhile Yudhishthira had gauged the mental state (manobhava) of all brothers and their love for (1.182.12) the peerless beauty and fearing a breach declared that she would belong to all of them. We wonder if the words of mother were the real factor or the overtaking of the emotion of love or the issue of unity amongst the brothers. In opinion of Arti Dhand, there was a very real danger to the family in allowing only one of the brothers to have a wife while others remained unmarried.[17]

When Drupada got to know of it he pleaded against it stating that while

polygyny was acceptable, the sacred law did not permit a woman to have many husbands. This is when Yudhishthira brought in the binding words of mother as the first counter argument. He insisted that following mothers' command was in line with dharma. Draupadi's brother Dhrishtadyuma also found the situation confounding as the elder brother sought to marry a woman won by younger brother[18]. Yudhishthira followed his own logic and cited the case from tradition of a brahmana woman Gautami Jatila who, served her seven husbands who were learned seers.

There is yet another justification which came from none other than Vyasa himself. Brian Black reminds us that Vyasa was the grandfather of the Pandavas, and had his own interest in continuing the family line. Also, as a story teller, his appearances within it often moved the story along, as well as offered the perspective that enabled understanding larger cosmic implications of the action undertaken.[19] Even before the marriage had taken place, he had informed Pandavas of the story of the daughter of a sage who got attention of Shiv with her tapas (1.157.8) but had tested his patience by repeating mantras for a good husband five times and was in turn cursed by Shiva that in her next birth would have five husbands. Draupadi was the maiden in this birth and Pandavas would be her husbands. Vyāsa's account, thus, offered karma and rebirth as an explanation for the polyandrous marriage.

Draupadi's reaction to the marriage drama may seem incredulous to begin with. She who has otherwise been shown to be quite articulate on different issues in the text was totally quiet on this. She was neither aghast not outraged by the prospect of polyandry. How does one reconcile to her acceptance of a situation which would ordinarily appear very exploitative to any woman? Did she acknowledge it as her fate and accept the responsibility with ease? Did she not perceive the connect between her sexuality and social pressure? S. D. Singh seems right in pointing out that the idea of five husbands did not seem to suggest any moral atrocity to her[20]. The responsibility was accepted with ease by Draupadi even as it made later mythographers clearly very uncomfortable.

We need to rationalize this from the socio-historic vantage. What could really explain this silence? The only acceptable argument is that she was already conversant with the institution of fraternal polyandry. This may also explain why other Pandava brothers did not participate in the swayamvara competition. They knew that if Arjuna would win they would, anyway, have an access to Draupadi by the norm of fraternal polyandry. Even Karna remarked at a point that Draupadi would never leave her husbands 'because women deemed it a desirable attribute to have more than one husband. Krishna (Draupadi) having managed to secure them, would not be easily alienated'.[21] Kunti's horror at her mistake and Drupada and Drishtadyuma's resistance all seem to be later interpolations. At the time of the origin of the myth, fraternal polyandry may have been a common practice among many people.

While on the issue of fraternal polyandry and Draupadi's acceptance of the practice, there is yet another issue that needs some observation. We sense that while Draupadi's polyandry needed to be justified by many later mythographers,

little attention was paid to the fact that Pandavas were simultaneously polygamous too and have other wives. That was never considered outrageous, as Drupada had already explained. But if we were to see it from Draupadi's perspective, it might have hurt her, especially in the case of her favourite husband Arjuna. We wonder if she could have ever forgiven her sakha Krishna for encouraging Arjuna to abduct Krishna's sister Subhadra and then marry her. She felt intense jealousy at Subhadra's coming and when Arjuna approached her she said, "Go where the daughter of the Satvata race (Subhadra) is. Under the weight of the new bond, the older one loses''.[22] Later, however, she accepted many wives of all Pandava brothers and behaved like a chief queen.

Contemporary instances of Polyandry

Polyandry has remained a concern with many mythographers but the fact remains that it was not as scarce a practice as the Dharamshastras would make us believe. Fraternal polyandry as a marital institution has been in existence in many pockets of the subcontinent. A. Ayapana has shown that among Iravas of central Kerala fraternal polyandry seemed to be the only form of the domestic group.[23] Himalayan polyandry is well documented by sociologists like D. N. Majumdar[24] and Gerald D. Berreman[25] and they have shown that though other forms of marriage have continued this seemed to be the most congenial one in areas where there has been resource crunch or little scope for division of property. Among some of the Himalayan tribes like the Loharis in Jaunsan Bawar area, polyandry may actually extend into what Majumdar terms polygynandry, which is the marital union involving a multiplicity of both husbands and wives.[26] In some villages, polyandry is more common among upper castes. For those who live as agrarian serfs and don't own land, for instance the Koltas, the incidence of polyandry is much lower than among landowning communities. D.N Majumdar also informs us that the Khasas justify the survival of polyandry by stating that they are the descendants of Pandavas.[27] Berreman rationalizes this in terms of connection between availability of land and need of family labour to till it, without any threat of fragmentation. Fraternal polyandry thrives in such scenarios.

Draupadi's Responsibilities: Commitment to the concept of Pativrata, the devoted wife

Through an apparent historical-anthropological rationale one has been able to justify Draupadi's lack of shock at the practice of polyandry but how does one accept yet another trend towards her apparent domestication to which she appears a willing partner. How does she admit to patriarchal derision of women? The Anushasana parva of the Mahabharata informs us that the nature of woman was to injure man. 'Be a man wise or foolish, a woman drags him down' (XIII.48.36-37). It is emphasized that women were so sinful that if on one side of the balance scale such instruments such as death and destruction, a razor, poison, snakes and fires and on the other women alone are placed, they would

be equal to them (XIII.38.1.29). Furthermore, the Mahabharata tells us that women were the root of all evil and of low mentality. The strange fact is at that at one point in Vanaparva, she seems to accept the denial of autonomy and acknowledges the need of approval of her husbands and mother-in-law. To Krishna's wife Satyabhama, in Virataparava, she says, 'I serve meals to my mother-in-law, make sandal paste for her, I do not criticize or argue with her'. In the Vanaprava she tells Satyabhama that she kept a record of kosha (treasury) for her husbands and ensured their good will (III.222.56). Elsewhere, she had said that there is no god like husband; by his kindness all expectations can be fulfilled while his anger can nullify a wife's desires.

Rationalizing Contradictions

A reader of the epic can easily get confounded by such apparent contradictions. How does one explain such see-saw of responses, so many varied shades of one's character? Laurie Patton has noted how Draupadi's words were not the 'monochrome statements of a pativratā, but rather, various voices … which alternated between fierceness and meekness, savvy and servitude, authority and submission'.[28] That's where a historian steps in. When we speak of women's choices and voices especially in case of mythologies, we need to remember that these voices are largely mediated voices. The characters are created beings and become voices of people who shaped them or narrated their story. When the process happens over generations the voices may change and contribute new aspects to the character's personality. Are these then truly the voices of women or of those on whose behalf they were speaking? There is a possibility that on analysing history of women's volition we actually encounter the politics of male conferral.[29] Contradictions within the character's personality also start showing up as authorship of annotations becomes diverse and with a changed mindset. The inconsistencies start becoming apparent.

Historically speaking it appears that Draupadi and her story may have been very popular within the oral- tribal set up of what we call later 'Vedic period' (roughly between 1000 and 500 BCE), when the society may have been relatively more egalitarian and the matriastic (mother-dominated) element may have been still prevalent, giving the feminine some sort of autonomy.[30] But with the passage of time and as the society grew more hierarchical and patriarchal, the female element was possibly made to submit to the new structures by the mythographers. In subsequent renditions of the text there would have been attempts to constrict Draupadi's character, and make her more domesticated. In that case the logical argument for the mythographers would be to remove her polyandrous attribute altogether. However, this was possibly difficult from the vantage of the plot of the story. It was the polyandrous character of Draupadi that must have pushed the narrative forward. Besides, the core story must have become so popular that complete elimination of this dimension would not have worked out in the sanskritized- brahmanized version. Draupadi, her five husbands, her fiery attributes, her refusal to be a mute victim, her open criticism of her husbands, her direct connect with Krishna and her strength in liberating

her husbands must have certainly appeared baffling to later mythmakers but would have also provided them with literary canon to puncture her larger-than-life portrayal by highlighting her dangerous ambitions and power to hold those on. We know that eventually Draupadi's resolve for revenge (that she reminded her husbands by keeping the hair untied) was constructed as the fundamental rationale for the Great War. The patriarchal moral of the story has been touted in the perception: when women demand their 'rights' they become 'responsible' for all the wrongs in the society.

Conclusion

When we re-read the story of Draupadi in the twenty first century, the problematics associated with Draupadi's 'rights' and 'responsibilities' continue to bother us. As mentioned above, Human Rights may be a modern term, but innate rights of men and women have been a subject debated long in history. We wonder if we can ever divest the issue of rights from power-politics of the day. What Draupadi stood for was for her rights as an individual, a member of ruling kshatriya clan and also as a woman, avenging her humiliation. Could she really get justice? Throughout the text she was reminded of her responsibilities. The paradox of Draupadi's life was that despite being wedded to the most influential men of her time, she seemed to be facing one crisis after another. Her husbands, especially Yudhishthira and Arjuna, seemed to have failed her time and again. Amongst all the men in her life, she seemed to have been closest to Krishna but he also failed her on some occasions, particularly in letting her sons become victims to Ashwathama's wrath, which she thought could have been averted. She must have felt acutely isolated and lonely despite being so well placed on social ladder and seemingly respected for her intelligence and power over her husbands.[31]

In fact, her assertion of rights was always countered by a litany of responsibilities. As a student of History, one is tempted to ask: was there a considered attempt on the part of mythographers, of the changing times, to hedge in free-spirited, intelligent and fiery women who they feared could become role models for other women and an obvious threat to growing patriarchy? Or was it a failure of a society to recognize women as human beings with some inalienable natural rights? Did Draupadi really get the protection that she had hoped to secure in the presence of her husbands? The epic does not really resolve the conundrum but leaves its readers (and listeners too) with a sense of profound engagement, often generating numerous responses befitting changing social formations and power structures that in turn beckon new and distinct explorations. What we can be sure of is that the text makes everyone restive and triggers an encyclopaedic philosophical thirst.

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A Study on Relationship Between Awareness in Human Rights and Attitude Towards Social Commitment Among Prospective Teachers in Kerala

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Abstract

Education is a unique feature that plays the most dominant role in the life and evolution of mankind Every person's right to life, right to liberty, right to education, right against exploitation, right to property, and right to equality is emphasized. Human rights are these rights that are necessary in order for us to live as human being Human rights give us dignity and Education for international understanding, Human Rights, Social Responsibilities, fundamental freedoms are unlikely to develop spontaneously in schools. equality. The present study revealed that there exists significant difference in Human Rights Awareness among prospective teachers. Necessary steps should be taken to provide Human Right Education to prospective teachers because these prospective teachers are the teachers of tomorrow. The Human Rights Awareness will help to promote the optimal level of global peace by protecting and preserving human rights. To attain the optimum level of global peace there should be drastic change in curriculum, for this, the human rights education should be included at all levels of the curriculum. The very concept of unity in diversity has been playing a vital role in the Indian situation. We all know that India is multi religious multilingual and multicast state but above all these we are all human being. To attain this beautiful concept that we are all human beings, curriculum should prepare according to that concept in short, this concept can be attained only through human rights education.

Key words: - *Human Rights, Social Commitment, Kerala.*

Introduction

Education is a unique feature that plays the most dominant role in the life and evolution of mankind. Man, that is fully educated in the real human resources and is considered as an important valuable and tangible asset to a country. The economic development of a country depends fully upon such real assets. Hence

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education primary, middle, secondary, higher secondary and college play a vital role in shaping, sharpening, and refining the personality of the individual. Every individual has dignity. The principles of human rights were drawn up by human being as a way of ensuring that the dignity of everyone is properly and equally respected that is to ensure that a human being will be able to develop fully and use human activities such as intelligent talents and conscience and satisfy his or her spiritual and other needs." All human being are equal and they are all brothers."-Rig-Veda

Every person's right to life, right to liberty, right to education, right against exploitation, right to property, and right to equality is emphasized. Human rights are these rights that are necessary in order for us to live as human being Human rights give us dignity and equality. Human rights allows as to fully develop our human abilities They protect our rights to participate in society to work and provide for ourselves, to participate our culture and speak our language to live in peace.

Education for international understanding, Human Rights, Social Responsibilities, fundamental freedoms are unlikely to develop spontaneously in schools. So, it is very important for students to be aware of human rights and social commitment. Awareness of human right is necessary prediction for a healthy democratic society. It helps in developing global perspective and awareness in protecting as from discrimination in preparing as to raise our voices against abuse of human rights in the world and in accepting our responsibilities. Today we have great aspiration the peace, stability, security, and sovereignty of the nation, strengthening of our democracy, equitable socio-economic growth to achieve nurturing our youth to one day lead a nation greatly strengthened by our hard work and commitment

Need and Significance of the Study

Education is one of the most potent means to spread the message of human rights and to ensure that corresponding change in attitude and values is brought about to ensure a long-term impact. Every day in the news we hear reports of human rights violations. There is always a close relationship between legislation implementation and education indeed knows your rights are the message of human rights says that "education shall be directed for the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. However proper instrumentation of human rights it is the necessary for everyone to known about his or her own rights." Human Rights the most significantly of all rights, are the rights people have simply because they are people. The rights belong to each person, man women and children. They are the rights to life, liberty, including all the political, civil, social, economic and cultural rights necessary for people to live dignified lives. Human Rights are those rights that are necessary in order for to live a human being.

The origin of human rights can be traced to the principle of human rights can be traced to the principle of natural law. These rights must be recognized by the

society. The human rights are inalienable. It is enjoyed in whole by the individual. The study of human rights occupies a very important place in the discipline of public administration and political science in the international level also human rights occupies every individual at the national and international level human rights are essential. It must be preserved and protected. The underlying principles of global human rights struggle: the recognition of the equality and dignity of all individuals recognition of cultural diversity as a fundamental human value and the recognition and guarantee of the fundamental equality of a person in human rights without discrimination with regard to race, creed, colour, nationality, ancestry, language, gender, place or other status. So human rights are either related with fundamental freedom (of speech, religion, and assembly) legal rights, egalitarian rights (regarding employment, education housing and service without discrimination.) or economic rights (adequate living standard with adequate food, clothing shelter, gaining a living by working, having own property, to contact with others etc.)

Human rights commission emerging concept and has assumed eminence and special significance in order to ensure success of democracy socialism and secularism trough out the world. There are several rights and duties of Indian citizens. The individual social commitment includes the engagement of each person's towards the community where lives, which can be expressed as an interest towards the community what's happening in the community as well as in the active participation in solving of some of the local members. Under community we understand the village, the small town or the residential complex in the big city where lives every one of us. Each community lives its own life that under goes a process of development all the time and every one of us could take part in that development in different ways. Today students social commitment mentality vastly decreased. Human rights awareness should be help students social commitment attitude. These variables may influence the achievement in all subjects. The investigator confined the study as a study on relationship between awareness in human rights and attitude towards social commitment among prospective teachers in Kerala.

Objectives

The following objectives were set for the present study:

1. To find out the level of awareness of human rights among prospective teachers in Kerala for the whole sample.
2. To find out the level of attitude of prospective teachers in Kerala towards social commitment.
3. To find out the significant relationship between awareness in human rights and attitude towards social commitment among prospective teachers in Kerala.

Hypotheses

There exist different levels of awareness in Human Right among prospective teachers in Kerala.

There exist different levels of attitude towards social commitment among prospective teachers in Kerala.

There exists a significant relationship between awareness in human rights and attitude towards social commitment among prospective teachers in Kerala.

Method

Survey method was used for collecting the data for the study.

Tools Used

1 Human rights awareness test

2 Social Commitment Scale

Human Rights Awareness Test

Human Rights Awareness Test is developed and standardized by the investigator. During the planning stage, the investigator conducted an extensive review on measurement of awareness of Human Rights from literature such as books, journals, published paper and from the details of available tools in similar areas. Before preparing the research plan, it may be useful to try out the proposed procedure on a few subjects. This trial run or pilot study wills first of all, help the researcher to decide on the feasibility of the study and whether or not it is worthwhile to continue. It permits a preliminary testing of hypotheses, which may give some indication of its tenability or whether further refinement is needed. It also demonstrates the adequacy of research procedure and the measures that have been selected for the variables, unanticipated problems that appear may be solved at this stage, hereby saving time and effort. Scoring key was prepared and used for scoring the answer sheet. Each question is presented with four alternatives. One mark is awarded to each correct response and zero mark for wrong response. The score on "awareness of Human rights Test" is sum of the scores of the correct responses. The maximum possible score on the draft tool is 48.

Social Commitment Scale

Social Commitment Scale is developed and standardized by the investigator. The investigator constructed the scale based on the thorough discussion with experts and on the basis of theoretical overview. Different sources used for the item development were different books of philosophy and sociology for post graduate students, written by different authors. The items were edited on the basis of discussion with experts. There are 45 statements in the final scale. The responses were recorded along a five-point scale and the scoring adopted for the scale is as follows. For the positive statements scores 5,4,3,2 and 1 were given

for marking responses viz, strongly agree, agree, undecided, disagree and strongly disagree respectively. Reverse scoring procedure was adopted in the case of negative statements.

Sample

The present study was conducted on a sample of 400 prospective teachers in Kerala.

The present study has its focus on prospective teachers. For the selection of the sample the investigator sub divided the population into different categories in order to minimize the error in sampling. The following factors were taken into account for the stratification of the population.

1) Gender (Boys and Girls)

The gender of the pupil has an important role in the selection of a sample because in many of the studies it has been found that gender exists in differences human rights awareness and social commitment.

2) Type of management

In this study, types of management of schools are based on government and aided management

3) Locale of the sample (Urban and Rural)

On the basis of the locality, where the colleges can be divided in to two categories rural and urban colleges, the colleges that come under panchayath were considered rural colleges and the colleges that come under municipality were considered as urban colleges.

Analysis and Results

The data collected from a sample of 400 prospective teachers in Kerala. from various colleges of education were consisting of the sub samples classified based on the sub samples gender, locality and type of college management. The data were cleaned, compiled, and coded for statistical analysis. The data were used for descriptive as well as relevant inferential statistics leading to the testing of hypotheses. Summary of the basic statistical details for the variables are presented in Table1

Table.1 Summary of the basic statistical details of the variables

Statistics	Attitude towards Social Commitment	Awareness in Human Rights
Mean	129.46	15.61
Median	129	15.50
Mode	122	15

Standard Deviation	10.87	4.17
Skewness	0.13	0.12
Kurtosis	0.11	0.86

The table shows that the maximum score in the attitude towards social commitment was 165, with 33 items. The mean value of attitude towards social commitment test was 129.46. The median and mode values were 129 and 122, which indicated that 50% of the students scored more than 129 and the most repeated score was 122. The standard deviation value was 10.87 which indicated that the scores were spread across the mean. The skewness value 0.13 indicated that the distribution was positively skewed. The distribution was having a kurtosis value 0.11, which indicated the lepto -kurtic nature of the distribution, showed the distribution of the scores. The maximum score in the awareness in Human Rights was 35 with 35 items. The mean value of awareness in Human Rights test was 15.61. The median and mode values were 15.5 and 15, which indicated that 50% of the students scored more than 15.5 and the most repeated score was 15. The standard deviation value was 4.17 which indicated that the scores were spread across the mean. The skewness value 0.12 indicated that the distribution was positively skewed. The distribution was having a kurtosis value 0.86, which indicated the lepto -kurtic nature of the distribution, showed the spread out of the scores.

The data from the whole sample and even sub samples were used to categorize the students into three groups such as High awareness, Moderate awareness and Low awareness group, with a criteria for high group those who have scored more than Mean + SD; for low group those who scored below Mean –SD and those who scored in between these two in Moderate awareness group was used. The details of the analysis are given in table 2.

Table 2 Number and percentage of prospective teachers in different level of awareness in Human Rights

Group	Awareness in Human Rights	N	%
High		46	11.5
Moderate		314	78.5
Low		40	10

From the table it is evident that 11.5% of the prospective teachers fall into high awareness in human rights group. 78.5% of prospective teachers have shown awareness in human rights. 10% of prospective teachers were in low awareness human rights group.

The data from the whole sample were used to categorize the prospective teachers into three groups such as High attitude, Moderate attitude and Low attitude group,

with a criterion for high group those who have scored more than (Mean + SD); for low group those who scored below (Mean –SD) and those who scored in between these two in Moderate attitude group was used. The details of the analysis are given in table 3.

Table: 3 Number and percentage of prospective teachers in different level of Attitude towards social commitment

Group	Attitude towards Social Commitment	N	%
High		64	16
Moderate		217	67.8
Low		65	16.2

From the table it is evident that 16% of the prospective teachers fall into high attitude towards social commitment. 67.8% of prospective teachers have shown moderate attitude towards social commitment. 16.2% of prospective teachers were showing low attitude towards social commitment

There exists a significant relationship between awareness in human rights and attitude towards social commitment among prospective teachers

In order to test the above hypothesis, Pearson's product moment correlation test was used and the details are given in Table 4

Table4: Correlation coefficient for awareness in human rights and attitude towards social commitment.

Variables	Correlation Coefficient	Significance Level
Awareness in Human Rights	0.042	P>0.05
Attitude towards Social Commitment		

From the table 4, it is evident that the correlation coefficient 0.042 is not significant even at 0.05 level. Thus, it indicates that there is no significant relationship between awareness in human rights and attitude towards social commitment.

Major findings of the Study

It was found that 11.5% of the prospective teachers show high awareness in human rights 78.5% of the prospective teachers have shown average awareness in Human Rights and 10% of prospective teachers falling into low awareness in human rights group

It was found that 16% of the prospective teachers fall into high attitude towards social commitment. 67.8% of prospective teachers have shown moderate attitude towards social commitment and 16.2% of prospective teachers were showing low attitude towards social commitment

Correlation coefficient for awareness in Human Rights and attitude towards social Commitment for the whole sample there is no significant relationship between awareness in Human rights and attitude towards Social Commitment. The critical ratio (0.042) obtained shows that it is not significant even at 0.05 level.

Educational Implications

The present study revealed that there exists significant difference in Human Rights Awareness among prospective teachers. Therefore, necessary steps should be taken to provide Human Right Education to prospective teachers because these prospective teachers are the teachers of tomorrow.

The Human Rights Awareness will help to promote the optimal level of global peace by protecting and preserving human rights. To attain the optimum level of global peace there should be drastic change in curriculum, for this, the human rights education should be included at all levels of the curriculum. The very concept of unity in diversity has been playing a vital role in the Indian situation. We all know that India is multi religious multilingual and multicast state but above all these we are all human being. To attain this beautiful concept that we are all human beings, curriculum should prepare according to that concept in short, these concepts can be attained only through human rights education.

Social Commitment not only influenced by Human Rights Awareness but also many other factors. This may be the reasons that in this study the relation between Human Rights Awareness and Attitude towards Social Commitment was not significant.

There can be further improvement in the human rights awareness of students in all types of institutions based on academic merit. Another important fact is that, in the era of privatization and commercialization of education the criteria for selecting content of human rights education are determined by its objectives or the basis of the overall objectives of human rights education.

Conclusion

Human rights education may raise awareness about the human rights protects from any kinds of discrimination unfair treatment and provide democratic structure values as well as individual freedom. The human rights education can both help to reduce human rights and contribute to building free and peaceful societies. Human rights should be a subject to all levels of education. Social Commitment is an ethical ideology or theory that an entity be it an organization or individual has an obligation to act to benefit society at large .social Commitment is a duty every individual or organization has to perform so as to maintain a balance between the

economy and the ecosystem .social commitment means sustaining the equilibrium between the two students responsibility or school students Commitment is the responsibility of every student for his/her actions .it is morally binding on every one to act in such a way that the people immediately around them are not adversely affected. It is a commitment everyone has towards the society contributing towards social, cultural, and ecological causes. A school student responsibility is based on individual ethics is developing an international standard to provide guidelines for adopting and disseminating social Commitment. The Human Rights Awareness will help to promote the optimal level of global peace by protecting and preserving human rights. To attain the optimum level of global peace there should be dramatic change in curriculum, for this, the human rights education should be included at all levels of the curriculum.

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Language Policy: A Case of Indian Linguistic Minorities

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Abstract

International agreements, regional treaties, and charters along with the Right to protection of language of minority language speakers from both developed and developing countries have led to the growth and expansion of the domain regarding the language rights. The emergence of the linguistic paradigm of human rights has served as a vital theoretical viewpoint in language policy and planning as well as in the promotion of language rights. Consequently, several liberal democratic nations promulgated decrees in their constitutions and other legal instruments, in order to safeguard the linguistic minorities. Multilingualism has become a norm for modern progressive democratic countries like India where language rights are rendered to the majority and minority language speakers and are treated as the ideals of equality, integration, empowerment and inclusion. Linguistic minorities form a very crucial part of India's polyglot situation since they speak languages that may be scheduled, not scheduled, tribal or non-tribal. Linguistic minorities need affirmative action from the State where they belong to, in order to safeguard their constitutional and legal privileges; thereby enabling them to maintain and promote their linguistic in international covenants. In India, there exists approximately 400 minority languages and one or more of the twenty-two languages classified as scheduled languages are dominant, which is widely used in public domains. The Constitution of India guarantees every freedom to the linguistic minorities. As it protects its 'demo-ratio' character by conferring special rights and freedoms on linguistic minorities, which is in turn incorporated in international instruments and covenants. The present study aims to examine the concept of language policy and the working of Multilingualism in India.

Key words: - *Language policies, Language planning, Language policy in India, Language and Indian Constitution, Language policy and states.*

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Introduction

Every language is multidimensional and works with respect to certain policies. The language policies are generally framed to encourage the diversity of languages and more often define the use in various fields such as education, government, and the media. Language policy is therefore a very elaborative concept that includes language habits, beliefs, cultural norms, folklore and language attitudes. Democracy can be an experiential reality only when the administration and education are executed in the language people understand. For those belong to linguistic minorities, the use of a minority language in public administration is very critical as it allows them to understand policies that affect them, express their opinions, and participate actively in civil society. In this context proper planning is imperative in the formulation of language policies for both majority and minority languages in a multilingual State like India.

Language Planning

An innovative preparation of the language is necessary to formulate a successful language policy. Contextually, Fettes(1997) describes the link between language planning and language policy as follows: "Language planning must be linked to a critical evaluation of language policy: the former sets standards for rationality and effectiveness, the latter testing these ideas against actual practice in order to promote the development of the former. It would better describe such an area as "Language Policy and Language Preparation, LPP" (Ricento, 2009).

As a whole, the formulation of an appropriate language policy must strike a proper balance between linguistic diversity, national unity and the limited resources (Hernard, 2001).

In his study “Language Conflict and the Case of Modern Norwegian” Einar Haugen (1966) observes several forms, artifacts, and stages in linguistic preparations. The key forms were called "language status planning" and "language corpus planning"(17), which relates to the principle of "action" and "type" adopted by Haugen.

Language Status Planning:

Status policy planning of language refers to the language chosen for the different functional realms within a society and is usually determined by the administrators (Annamalai, 2001). Dialect and language differentiation is indeed a part of status planning. The status planning includes adopting an official or working language or an instructional language, policies formulated for minority dialect speakers, and setting linguistic prerequisites for admission into academic domains, careers, or franchise (Pool, 1976).

Language Corpus Planning: Language corpus planning deals with one or more languages' substance and structure. Language Planning influences the vocabulary, sound systems, word forms, grammatical constructions, writing structures and stylistic language repertoires. It does not observe in which

language a person uses for communication, but how the way he uses it. Most policies cover all forms of planning. For instance, in India, government policy is not to make Hindi replace English gradually, as the domestic lingua franca, but it also aims to promote Sanskrit as the main source of Hindi lexical enrichment instead of adopting new vocabulary from English, Russian, or other Indian languages (Pool, 1976)

Acquisition Planning: Cooper (1989) finds acquisition planning as a new form of planning (157-63), distinct from status planning. Acquisition planning is about users rather than the use of language, but the same token has more in common with status planning rather than the corpus planning. As far as acquisition planning is concerned, six objectives define the identification of language users with respect to learning and opportunities: community, education / school, literature, religion, mass media and employment status (Ricento, 2009). Maintenance of languages is on the basis of acquisition and function.

Language Policy Typologies

Linguistic policies may be classified into various groups. There are many researchers who focus on linguistic policies across the world. Schiffman explain in detail the typologies of language policies provided by Kloss (1966) in his book Linguistic Culture and Language Policy (1996) (Kloss, H 1966) (Schiffman, H., & Ricento, T 2006), which fall into four categories as follows:

Overt and Covert Language Policy: Covert policies do not tag any language in any lawful document or elsewhere. The agenda is veiled in a covert language policy. Its use is implied. At the other hand, overt policies are open ended and explicitly define a language's role in an institution. The domains of its status and usage are explicitly specified.

De jure and De facto Language Policies: De jure policy supports any language in any area, but de facto policy favours the use of a certain language is permitted by law, but any other language is often used in reality.

Tolerance and Promotive Policies: A Promotive policy directly or indirectly facilitates legitimate practice of a language(s) and has legal assurances as in the case of Hindi language in India. While considering tolerance policy, the usage of certain language is allowed but not given any kind of guarantee and no domains are reserved.

Restricted and Egalitarian Policies: A policy that preserves every languages on the same platform, i.e., fair representation of all languages in that society, is an egalitarian policy; for example, the language policy of Lenin in the Soviet Union (Naheed, 2011). On the other hand, restricted policies are made only in restricted domains that tolerate only certain languages, others are not. The rights are limited to the usage of certain languages, which other languages are excluded.

Language policy can also be taken in terms of the number of languages that are recognised as national or official languages (s). This doesn’t indicate that

language policies are relevant only to multilingual systems and civilisations; but they are also vital for monolingual systems and communities.

Countries may be divided generally into three categories, on the basis of the number of officially recognised languages: Monolingual, Dyadic / Triadic, Mosaic/Multilingual States. As a heteroglossic entity, India can be entitled as a Mosaic / Multilingual State.

Language policy in India

Recognition of language rights and the willingness of majority and minority communities to preserve their identity gradually led to the formulation of a language policy in India. In India, language planning was initiated in the early 20th century. A recurrent trend in the post-independence era had been a topic of debate and controversies over the implementation of a national link language, official languages in the states, constitutional provisions with respect to the languages and special regulations for linguistic minorities.

Later on, many legislations and judicial rulings contributed to the retention, conservation, and promotion of all recognised languages. India's national language strategywasdeveloped in the 1950s, inspiredfromformer USSR and had a major impact on India's Marxist politics and economy which before 1990. Suniti Kumar Chattergee, one of the representatives of the Official Language Commission (1956), laid down the necessity of primary objectives in language policy for India or for every other nation that are multilingual in nature (Kishore1987). The objectives identified are:

1) preservation of national unity;

2) preservation of efficient administration;

3) advancement of information among all sections of the population;

4) preservation of fair opportunity for all people, without granting any special privilege to any person.

Official Language / Union Language: The leaders of Post-independence advocated the need of a lingua franca that is largely intelligible and easy to communicate in. According to them, the administrative language should be the same, which led to Hindi's locus standi as the official tongue. While under the colonial rule, English was used for administrative and educational purposes, which gradually turned out to be the dialectal of the aristocracy and developed as one of the two official languages.

The English language has no power of its own; however, people with particular interests are invested with it. Tolleson and Tsui (2004) write: "A key finding is that language policies are always linked to broader social, economic, and political agendas that usually take precedence over educational and pedagogical concerns" (262). Even in situations where English is the norm this is has been witnessed.

The effort to make Hindi into a national language faced with fierce controversy. The Constitution subsequently dropped the term ‘National’ in preference to

official.

To appease them, provisions were formulated for English language to continue as long as they wished. The tense situation surrounding the matter still continues to simmer.

Language and Indian Constitution: The nation's language policy was illustrated and implemented through executive orders and judicial statements issued since 1950. The usage of languages in various domains is determined by the aforementioned.

The Indian Constitution, which came into effect on January 26, 1950, is more detailed than any other national constitutions. The official language of the new nation was declared as Hindi, written in the Devanagari script, under Articles 343-344, with English as an additional official language whose status would be reassessed in 15 years. The Constitution of India permits the adoption of respective official language in all the Indian States that are part of the Indian Union as demanded by non-Hindi speaking states in particular. Article 345 allows the States and territories of the Union have their own official language which may be used for all official purposes. The language used in the state should, however, be the one that is spoken by 15 per cent of the population the least (Sarangi, 2009).

The study also states that "the English language shall continue to be used for those official purposes in the State for which it was used immediately previous to the adoption of Indian Constitution, until the Legislature of the State provides differently by law”. Otherwise, Article 346 states that 'if two or more states agree that Hindi should be the official language of communication between them, that language may be used for such communication'.

The Parliament enacted Section-3 of the Official Languages Act, 1963 that permits the continued use of English language along with Hindi even after 1965. The Constitution's Chapter XVII (Article 343 to 351) provides a detailed account on the official languages of the Union and the State. The Union's official language policy is fully described in accordance with Articles 120 (Part 5), 210 (Part 6), 343, 344 and 348 to 357 of the Constitution.

In 1973, Parliament enacted and authorised Translations (Central Laws) Act for translations into regional languages other than Hindi under the President's authority. Any other language may be recognised for official use in a state or in any part of the state where there is a significant popular demand for it and representation under Article 347.

VIII Schedule: On 26 Nov1949, The Constitution of India issued official status to fourteen languages as an initiative to preserve India's multilingual ethos adopted by the Constituent Assembly; This Schedule emerged as the most important declaration with respect to national integration.

In due course of time the number of official languages increased to 22 and more languages are likely to find official status in the Eighth Schedule in the years ahead. All the 22 languages enlisted are depicted in India's Official Languages

Commission and requires measures to be taken by the state to develop the enlisted languages. However, this hindered the growth of numerous languages other than the 22 languages that gained state and legislators' patronage. The remaining 400-odd minority languages had to face the dominance of one or more of these 22 languages in terms of usage in daily life, in administration, and in the education system (Rao, 2008).

Text Laws and Language of the Judiciary: Articles 346-349 of the Constitution observes the language used by the Judicial System of India and the mode of communication between the states and the federal government.

As for proceedings before the judiciary, authoritative texts of bills or amendments introduced in any legislature- parliamentary or state legislatures, orders, ordinances and bylaws issued under the Constitution shall be in English.

Language Policy in States — State Official Language Acts

There is no definitive constraints on the State governments, its legislature and judicial system to make their respective language for administration. The powers of the Centre and State are precisely specified in the various list annexed to the Constitution. Nonetheless, the power of Centre predominates over the federal units more often than root. Though, the provisions for the languages to be used in laws at the provincial level reflect those official languages at the centre, over small variations. State assemblies may perform their functions for a specified period in their official language, or in Hindi or English. Members unable to use any of the aforementioned languages have the right to communicate in the vernacular tongue with the consent of the Speaker. The authorised version of all laws shall be in English as long as the parliament passes a law allowing the State to use a different language. An official translation of laws enacted should be made available in English if the original is in a different language (Benedikter, 2013). State legislatures may require that bills, acts and ordinances, orders, rules and regulations, statutes or by-laws be written in their own regional language (other than English), but the translations must be published in English. "There are no constitutional provisions on the use of the language of linguistic minorities in central or state courts" (Kant, 2013). "Candidates should be permitted to communicate in English or Hindi as an alternative to the official language of the State as a medium of examination for State Services" (Koul, 2005).

Recognising that only a common language could bridge the gap between the elite and the masses, many Indian leaders focused more on their own (regional) languages. Consequently, National Official Language Acts were passed between 1950 and 1987 in the various states.

Kerala State and Language Options: Typically, each State recognises just one regional language for official correspondences, which is in direct opposition to the States' multilingual nature. In practise, most states have allowed more than one language for administrative correspondences in order to accommodate the

needs of their linguistic minority.

The Kerala government declared Malayalam, the official language for administration in Panchayats, Municipalities, and offices on November 1, 1965. The status of Malayalam as an official language was later upgraded to the offices of Prison, Education, Survey, and Land Records on May 1, 1966.

Kerala's official languages are Malayalam and English, according to the Kerala Official Languages (Legislation) Act 1969. They are the languages to be utilised for all or any official correspondences and communications of the Kerala state. Two Kerala linguistic minority have special privileges in the Act, but the remaining minorities must use either English or the state's official language. Namely,

(a) The Tamil and Kannada minority people in the State are permitted to use their respective languages for their correspondence with the State Government in the Secretariat and the Heads of Departments and also with all the local offices of the State Government located in those regions which are recognised by the Government to be linguistic minority areas for the purpose and the replies sent in such cases shall also be in their respective minority languages (Kerala Official Languages (Legislation) Act, 1969).

(b) Other than Tamil and Kannada, linguistic minorities in the state may use the English language in their correspondences with state government departments, and in such circumstances, the reply delivered to them will be in English (Kerala Official Languages (Legislation) Act, 1969).

Schiffman (1996) examines how India's language policy changed post-independence. Along with Hindi and English, the newly constituted government aimed to promote regional Indian languages too. This three-language formula acknowledged the indispensable role played by the Hindi language in the nationalist struggle while it also acknowledged English's historical role as a colonial language. The aforementioned formula also appreciated the importance of regional languages (Mooney, et al". 2011).

The provisions of India's official language can be classified into nine categories:

1. The Union's official language

2. The States' official languages.

3. Intercommunication language

4. Designation of a number of prominent languages as national languages

5. Establishment of a language commission

6. The language that will be used in both the Union Parliament and State legislatures

7.Safeguards for Linguistic Minorities

8. Provisions for the promotion, development, and use of the Hindi language in general

9. The Supreme Court's language (Chaklader, 1990).

The following are some of the criteria for languages to be included in the Eighth Schedule:

1. The language should possess its own literary traditions and scripts.
2. As the dominant language of specific places, it should be spoken by the greatest number of people in vast contiguous geographical zones.
3. Political acquiescence (Sindhi, Nepali).
4. In newly constituted states, languages are being recognised as official languages (Manipuri, Konkani).
5. Being a classic language of culture and tradition, as well as a resource language in the modernisation of major literary languages (Sanskrit).
6. A language spoken by a huge population that is geographically diverse and has its own script and literature. E.g., Urdu (Krishnamurthi, 2015).

In this context, it's worth mentioning that in Indian public law, there's a clear distinction between 'Official Language' and 'Languages utilised in administration'. The Government of India, along with the States and the Union territories have declared one or two languages as the official languages of the State, but only a few languages have been declared as official languages at district or taluk or local level, whereas some additional languages may have been declared 'Languages used in public administration' (Benedikter, 2013). It is in keeping with the Constitution Article 347.

Provisions for the Protection of the 'Rights of Linguistic Minorities' in India

The Indian Constitution and its preamble specifically highlight the unity of the people and the dignity of all citizens. In Paragraph 846 of its report, the SRC pointed out two fundamental facts: "First, states are and will continue to be integral parts of the Indian Union and are the basis of our nationhood. Second, India's constitution recognizes only one citizenship, a collective citizenship for the entire Indian people, with equal rights and opportunities across the Country."

Political reconstruction along linguistic lines is not ruled out because at least 120 million Indians belongs to linguistic minority with regard to their state of domicile. It is critical to acknowledge that many areas inhabited by linguistic minorities are linguistically heterogeneous and, rather than redrawing state borders, minority language legislation and rights are to be conserved. The architects of Indian Constitution anticipated some of these issues and sought to incorporate certain measures with regard to regional language. The stated purpose of the language policy is to promote all languages into appropriate

communication means in their defined areas, irrespective of majority or minority status (Mallikarjun, 2004).

Long before states were reorganised on the basis of languages, the constituent assembly sought to fulfil the minority's hope, expectations and desire by safeguarding the minority's educational rights in the constitution. While addressing at the fifth session of India's Constituent Assembly, The Honourable ChairmanDr Rajendra Prasad stated:

"To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. Their religion, their culture, and their language are safe and they will enjoy all the rights and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and its constitution. To all we give the assurance that it will be our endeavour to end poverty, squalor, hunger and disease, to abolish distinction and exploitation and to ensure decent condition of living" (Deb, 1950).

The reports on the debates and discussions that occurred while framing the Indian Constitution indicates that constitution-makers have given serious consideration in safeguarding the rights of linguistic minorities, but they have different views on the issue. Finally, Dr Ambedkar succeeded in integrating the rights of linguistic minorities in the broadest sense and furnishing them the legislative status of fundamental rights.

"The Indian constitution acknowledges two kinds of minorities, i.e. religious and linguistic, and without distinction respects their rights. Many constitutional articles effectively protect the minorities. There are two opposing patterns in this respect: 'equality' and special 'preference.' In the chapter on fundamental rights, at the beginning, there are general rights enshrined in Articles 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 which extend to all people, including minorities. They confer equality to all "(Srivastava Jan, 38). In addition, the minorities are given special privileges.

Initially, the special status of 'minorities' in the Indian Constitution can be seen in the rights granted to minorities, within the scope of the fundamental rights of Indian people in general (Articles 29 and 30) (SRC Report 1955), and Articles 347,350, along with Articles 32 and 226, with their integrated institutional structures.

In the post- Independence era Language became an essential basis for regional division, which developed the consciousness of identity among linguistic minorities. Subsequently, through the 7th Amendment Act 1956 on SRC's recommendation, 'special directives' were added to the Constitution of India under 350A and 350B. There are 'consensual safeguards' in addition to the constitutional safeguards, and in order to turn the safeguards into practical measures, it is further put under the 'combined safeguards system.'

Constitutional Safeguards for the Protection of the Rights of Linguistic Minorities:

"The legal protections for the linguistic minorities in India derive their authority from three sources: the Constitution of India; the scheme of safeguards agreed to from time to time; and judicial decisions" (Srivastava, 2008).

Linguistic protection in the Constitution of India includes the specific fundamental rights in 29, 30 and 'special directives' for 'linguistic minorities' (Article347, 350, 350 A, 350 B). These articles together constitute the constitutional safeguards meant specially for linguistic minorities.

Specific Fundamental Rights Relating to Protection of Interest of Minorities:

Given the great diversity within India, an assurance that the rights of all people would be guaranteed a moral and pragmatic imperative for uniting all people under a democratic polity. Article 29 contains this provision which is specified below.

(1) "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same".

(2) "No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, language or any of them".

"Having stated the right of minority people to maintain their own language and culture, the Constitution adds on the explicit protection of the rights of minorities to provide education in their own language, which is certainly an important part of language maintenance" (Groff, 2007).

Article 30 Right of minorities to establish and administer educational institutions:

(1) "All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". (1A) In formulating any law providing for the compulsory acquisition of any property or an educational institution established and administered by a minority, referred to in clause (1) "The State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause". (2) "The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language" (Mallikarjun, 2012).

These provisions, does not exclude the state from enacting educational policies. However, the government does not have the authority to impose restrictions on the medium of teaching. The judiciary have consistently affirmed this protection

for minorities. Article 30 is known as the Magna Carta of minorities because it ensures the survival of their language and cultural identities.

Articles 29 and 30 may appear to be identical in some cases as they deal with two distinct rights. The provisions of Article 29 cannot, however, limit the scope of Article 30. (1). As a result, Articles 29 and 30 are complimentary in terms of minority rights and institutions.

"If one puts these articles together, it would infer that the constitutional interests of the three different categories of minorities are protected. These are minorities based on language, religion and culture too. It may not be out of place to mention here that difference on culture is difficult to understand since it is difficult to define culture, the term connoting a very wide meaning" (Srivastava, 2008).

Despite the fact that the government has the ability to impose restrictions that it deems necessary for minority institutions to function properly, it lacks constitutional locus standi to interfere with their minority status.

In the event of a violation of rights, Article 226 and Article 32 offer for constitutional remedies, much like any other violation of rights provided by the Constitution. The former is concerned with seeking relief from the High Court, whereas the latter is concerned with the Supreme Court.

Special Directives in the Constitution for Linguistic Minorities:

Article 347, Article 350, Article 350 A, and Article 350 B are special directives with respect to language and education, which are to be treated from a more sublime position, in addition to the general safeguards for religious, linguistic, and cultural minorities.

Article 347

As per Article 347, minorities can enjoy every rights in official usage of minority languages in any province with presidential consent.

According to Article 347, "Special provisions can be made by the President, if he is satisfied that substantial proportion of the population of a State desire the use of the language spoken by them to be recognised by the State and direct that the language shall be officially recognised throughout the State or any part thereof for such purposes as the President chooses to specify. This rule thereby allows other minority languages for official correspondences in any province" (Sarangi, 2009).

Article 350

Representations for Redress of Grievances:

Article 350 guarantees the right of linguistic minorities to petition in their own language for the redressal of their grievances. "Any individual shall be entitled to submit a representation for the redressal of any grievance to any official or authority of the Union or a State, as the case may be, in any of the languages

spoken in the Union or the State, as the case may be."

SRC recommended that Constitutional recognition should be given to the rights of linguistic minorities to have the mother tongue as the medium of instruction at the primary school stage, provided a sufficient number of students are on the rolls. The recommendations of the States Reorganisation Commission (SRC) dated 30thSeptember 1955 led to the seventh amendment of the Constitution in 1956 inserting Articles 350A and 350 B.

Article 350 A

Article 350 A states that every state must provide the necessary facilities for students from linguistic minority groups to receive primary school education in their mother tongue. To guarantee this, the President has the authority to issue necessary instructions as he sees fit. They are: (a) regulations, general orders, notifications, administrative or other reports or press communications issued by the central government (b) administrative and other reports and official papers laid before the Parliament: and (c) contracts and agreements executed, licenses, permits, notices etc, issued by the Central government or by a corporation or a company owned by the Central government.

Article 350B

"Article 350B provides for the creation of the Special Commissioner for Linguistic Minorities (CLM) in India. It came into existence from 30 July 1957. According to Article 350 B, it is the responsibility of the CLM to investigate all matters relating to the constitutional protection of linguistic minorities and report to the President at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament and sent to the Governments of the States concerned" (NCLM. 35th Report, 1996).

The Office of Commissioner, Linguistic Minorities was created by the constitution to monitor the implementation of these rights. The institution has been monitoring the ever-occurring changes in the linguistic field in all the Indian states and Union Territories.

The Scheme of Safeguards Agreed to at the All-India Level or Consensual Safeguards

They refer to the safeguards unanimously arrived at, at the meetings represented by chief ministers and the Central and the State governments.

The scheme of safeguards that has evolved and been agreed to at the all-India level from time to time is contained in the decisions reached at various conferences/memoranda such as Provincial Education Ministers Conference 1949, Government of India Memorandum 1956, Statement of languages 1958, Southern Zonal Council Decisions 1959, Chief Ministers Conference 1961 and meeting of the Committee of Vice Chairman of Zonal Councils 1961. The following are the directions that have been kept in mind for the Safeguards

schemes:

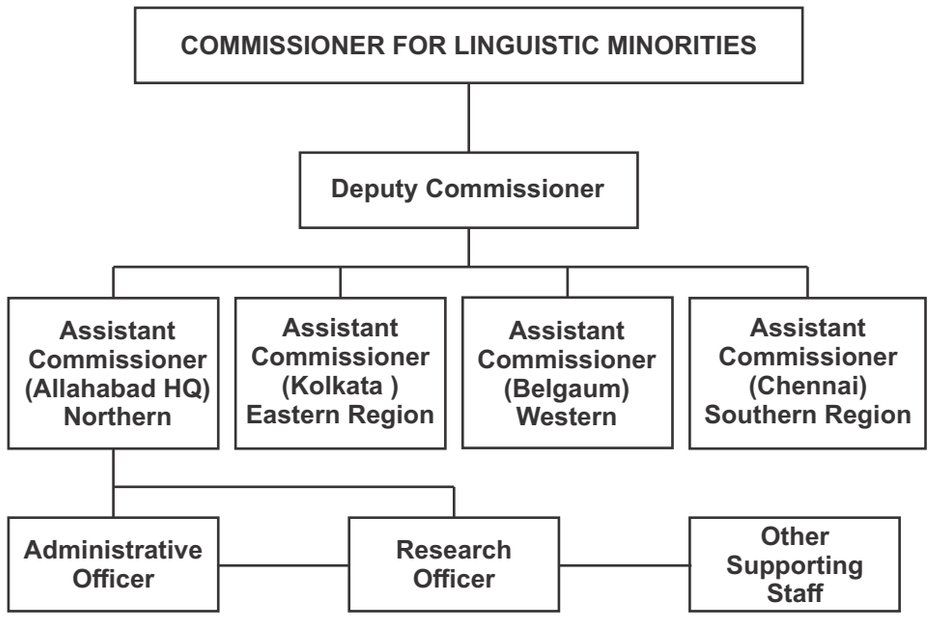
The Combined Scheme of Safeguards:

Notification of areas with 15 percent or more Linguistic Minorities population (CMC 1961 &CVCZC 1961).

- Translation and publication of important rules, regulations, notices, etc., into all languages, which are spoken by at least 15 percent of the total population at district or sub-district level (SZCD 1959 & CMC 1961).
- Declaration of minority languages as second official language in districts where people speaking such languages constitute at least 60 percent of the population (GOIM 1956, SZCD 1959, CMC 1961 & CVCZC 1961).
- Receipt of, and reply to, representations in minority languages (CVCZC 1961).
- Instructions through mother tongues/ minority languages at the primary stage of education (SZCD 1959 & CMC 1961).
- Instructions through minority languages at the secondary stage of education provided there are 15 pupils in one class and minimum 60 pupils in the last four classes (SZCD 1959 & CMC 1961).
- Advance registration of linguistic preference of linguistic minority pupils and inter school adjustments (CVCZD 1961).
- Provision for text books and teachers in minority languages (CMC 1961 & CVCZC 1961).
- Implementation of the Three-language Formula (CMC 1961 & CVCZC 1961) and provision for text books in minority languages (CMC 1961 & CVCZC 1961).
- Availability of teachers in minority languages and training facility for them (CVCZC 1961).
- Place of minority languages in recruitment to public services (GOIM 1956, SZCD 1959 & CMC 1961).
- Setting up of a proper machinery for implementation of linguistic minority safeguards at the Zonal, state and district and district levels
- No insistence upon knowledge of State's Official Language at the time of recruitment. Test of proficiency in the State's Official Language to be held before completion of probation;
- Issue of pamphlets in minority languages detailing safeguards available to linguistic minorities;
- Instructions through minority languages at the Secondary stage of education; (Government of India, Ministry of Welfare 1995, 8-9)

Organisational Set up

"The CLM organisation came into existence on 30th July, 1957 and till 1985, this constitutional office was a part of the Union Ministry of Home Affairs. The official languages, the Zonal council of states and the centre state relations council continues to be a part of the Ministry of Home Affairs. However, the nodal agency for this office is the Ministry of Minority Affairs, Government of India, New Delhi, with its Headquarters located at Allahabad. The Headquarter office which was previously located in Delhi was shifted to Allahabad at the request of the first CLM. It has continued at Allahabad since then. The headquarters also has a very large library, Research Establishment and finance plus accounts wings of the organisation (Thripathi, 2008). The organisational set up of the NCLM as exists today is depicted below.



(Source: Government of India, Ministry of Welfare. 1995)

The Stipulated Policies and Actual Conditions: The Case of Urdu Linguistic Minorities

Despite the protections afforded to minorities for the preservation of their languages and the ability to establish and operate educational institutions of their own, linguistic minorities' languages continue to struggle for survival — The finest example is Urdu, a language that previously dominated Indian literature. Many believe it has failed to get official favour since it is primarily perceived as a Muslim language, highlighting the grounds on which it is discriminated against in India's well-proclaimed multilingual milieu.

Urdu occupies the sixth position among the Scheduled Languages after Hindi, Bengali, Telugu, Marathi and Tamil but above Gujarati, Kannada, Malayalam, Oriya, Punjabi and Assamese. In terms of percentage of national population, Urdu forms 5.01 per cent of the total population, a decline since 1991. An overwhelming proportion of the Urdu speaking population lives in the six States of Uttar Pradesh, Bihar, Maharashtra, Andhra Pradesh, Karnataka and Jharkhand (85.8 per cent of national Urdu speaking population).Between 1991 and 2001, Urdu has declined from 5.2 to 5.0 per cent while Hindi has risen from 39.3 to 41.0 per cent. Urdu's ratio of growth is lower than that of the national population or Muslim population .A major reason is the deliberate recording of Urdu speakers as Hindi speakers, taking advantage of the close similarity between Hindi and Urdu at the level of common speech. But it is an evidence of the fact that the Muslim community in Hindi-speaking States is under coercive pressure for cultural assimilation. Thus, Urdu faces the prospect of becoming an ethnic language as far as Hindi-speaking States are concerned (Shahabuddin, 2008).

Hasnain (2007) creates a Conflict Paradigm to explain the situation of Urdu minorities. He analyses the causes from both structural and ideological views from the perspective of a conflict paradigm, and describes them as follows:

(a) Structural: It could be a state, an institution (e.g., schools), laws and legislations, directives and issuance of certain orders, which cover linguistic rights or the position of different languages on time-table in schools, budget allotted for teacher-training or material production in minority languages, and a whole range of other facilities like getting government publications, advertisements, etc (Hasnain,2007).

(b) Ideological: It is norms and values ascribed to different languages and their speakers which bring about certain positive or negative identification with the mother tongue and the sense of utility and worth of the minority language and its speakers. (Hasnain, 2007).

Both structural and ideological aspects should be favourable to minority languages in order to protect their identity and rights.

As far as structural dimensions are concerned, the language policy in India is overtly non-discriminatory and maintenance-oriented. But Urdu, has suffered greatly as a result of the state's covert policy of discouraging the use of Urdu as a medium of instruction and examination. The usage of a language in the realm of education has a significant impact on its growth and development. Despite the fact that the Constitution mandates instruction in one's mother tongue, a shortage of educational facilities, teachers, textbooks, and teaching materials, as well as the state's discouraging and intimidating attitude, have forced children to learn in Hindi rather than Urdu. This has been particularly so in case of Uttar Pradesh and Delhi, but not so much in Bihar. Only 16.47% of the Muslim literates were educated through the Urdu medium in Uttar Pradesh as against 84% in Bihar and 34.17% in Delhi (Hasnain, 2007).

The covert practices of the states in the implementation of linguistic rights are

biased and judgemental. As long as the implementing agency is prejudiced, ideas and strategies that do not achieve the declared goals will be rejected. In Delhi, opening new schools in Urdu neighbourhoods or adding new Urdu sections, for example, has met with fierce opposition. Despite all current stipulations protecting linguistic rights, it is difficult to obtain authorisation and recognition from the government when it comes to building Urdu medium schools or obtaining registration for Muslim educational institutions. Although the situation in other states may not be as dire, Uttar Pradesh is the Urdu heartland, home to one-third of the country's Urdu population. The deceptive operation of the three-language formula stated a clear commitment to following the official three-language formula, but Urdu-speaking minority students have been denied their right to learn Urdu in schools despite this pledge. In Uttar Pradesh, there has been a sham operation in which an Urdu speaker must forego his right to study English effectively if he chooses Urdu as his mother tongue. Although the declared objective has been to foster and facilitate the use of Urdu, especially in Uttar Pradesh, Bihar, and Delhi, it is in these states, particularly in Uttar Pradesh and Delhi, that the most incidents of denial of Urdu's legitimate place in education and administration have occurred.

While describing the ideological dimension of the cause of decline of minority languages, there is yet another negative connotation associated with the term “minority”. It invariably invokes a sense of discrimination and stigmatisation, perhaps also suppression. The moment one describes oneself as a member of a minority, one admits to belonging to a group which is discriminated against. It enhances the syndrome of linguicism where not only minority children negatively identify themselves with their mother tongue and culture, and consequently devalue their linguistic resources, but also the society looks down upon the children studying in minority language medium schools (Hasnain,2007).

Language Choice :Rational and Utilitarian perspective

The rationality of linguistic minority' attitudes and behaviour is particularly important in this regard, as they are the beneficiaries of the linguistic choice, they make in a given situation. The administrative language of the area where they reside is frequently considered preferable to minority language by linguistic minorities from a pragmatic and utilitarian standpoint because of the socio-economic mobility, scope of better education, and chances of work opportunities it provides. Monolinguals among linguistic minorities, on the other hand, cling to their mother tongue with fervour, selecting their mother tongue as the medium of instruction for their children.

Urdu speakers are now faced with an impossible culturally schizophrenic situation. While on the one hand they are aware of the decline in Urdu and hence clamor to learn it, on the other hand the compulsions of market forces and highly competitive world of schooling have left hardly any incentive for the child to learn Urdu. It is the social disadvantage and deprivation coupled with

linguicism that brings about an invisible ideology, which makes an appeal to learn a single dominant language. The belief that education is hardly providing any significant returns Lack of facilities to teach through mother tongue made them more rationalistic in their choice of language for instruction (Hasnain, 2007).

Language Rights: The Unseen Realities

Language and culture are critical components of the preservation of identity of all communities. Institutional structures have a key role in the preservation of their language in public spaces, which would promote their identity. This is achievable only if their linguistic rights are protected in all functional domains through appropriate language regulations and equitable implementation.

The Kerala government's language policies strongly indicate the State's initiatives for the promotion and protection of minority languages such as Kannada and Tamil, as well as integrating linguistic minorities into society (Kuriyakose, 2019). However, clear orders from most ministries for its execution are all but non-existent, in practise, with the exception of the educational sector. Furthermore, at the national, zonal, state, and district levels, there had been no effective monitoring of its implementation, or a lack thereof, through institutional procedures. The government's responsibility in publicising various constitutional and legal measures aimed at promoting and defending minority rights must be emphasised in this context. There is no denying that the intended beneficiaries of the authorised provisions must take efforts to ensure that they are really implemented. Even though they are aware of some general provisions, they are unaware of many of their rights on a micro level. Because they are unaware of legislative safeguards, they are denied benefits in the areas of education, administration, and recruitment to state-run services. Only a strong sense of belonging to one's linguistic and cultural identity would enable them to engage in such constructive activity.

Recommendations

There is a need for statutory action at the federal level to fully execute various state-funded minority-related initiatives and extra powers must be granted to the CLM to enforce its recommendations. Since children have a fundamental right to education, the 86th Amendment to the Indian Constitution must be used to grant minority languages the status of first language for ages 6-14.All Indian languages, whether or not they are listed in the Eighth Schedule of the Constitution, must be given equal chance and access to development and learning.

The core notion of identity has been reinforced as a result of the communalisation of politics. This essentialist view of identity, as well as the polarisation of language in relation to a specific group, is a step backwards. Unfortunately, it is being cultivated— Punjabi as a Sikh's preserve, Hindi as a

Hindu conserve, and Urdu as a Muslim preserve—resulting in the degradation of shared language use and the loss of a person's multilingual identity (Hasnain, 2007). It is the federal and state governments' responsibility to ensure that essentialism does not triumph over multilingualism, and that language does not belong to any one religious community. India, as a secular and democratic nation, can escape the polarisation.

On "One nation- One language"

It is true that Hindi is spoken by a large number of people in India, but it is not spoken by a majority of Indians. Our hatred towards English is ironic since it blinds us to the fact that the concept of a single nation: one nation, one language, is a European concept, but India has always believed in unity in diversity. India, being a multilingual nation, the concept is out of step with our history, culture, and civilisation.

In India 2011 Census listed 1,369 regional dialects in the country. Hindi is just one among those. The Indian Constitution does not recognise any of the languages as an official language. The multilingual policy is upheld by the Constitution, which includes 22 languages in the Eighth Schedule. Despite the fact that Hindi has been designated as an optional language, the central government has not mandated Hindi in states where people speak other languages. The idea of a single connection language, whether Hindi or English, will not be a good idea considering India's economy. It will pace down the migration and make financial flow more difficult. Imposing a particular language to the population doesn't reflect or build national unity.

Conclusion

Language policies formulated around the world have its own shortcomings. Domestic legislations on this score in many countries are not adequate enough to cope with the issue of rights the linguistic minorities deserve. In this respect, India is a sublime model which may be emulated by other countries as the Constituent Assembly, while framing the Constitution, incorporated necessary provisions to protect their identity with sufficient safeguards. However, despite the sublime principles the constitution espouses, we have miles to go before ideologies are turned into realities.

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Tracing The Victim of Sexual Harassment at Work Place: A Review in India

Surja Kanta Baladhikari*

Abstract

Sexual harassment at the workplace is prevalent, and a shameful act both for the organization and for the victim. Globalization has created more jobs and has treated women at par with men but acts such as touching, groping, sexual comments, and other inappropriate behaviors by the employees at the workplace. The legislation in India of Prevention of Sexual Harassment at Workplace Act, 2013 and the Criminal Law Amendment act of 2013 have empowered women. A case of sexual harassment depends on the way the internal complaints committee deals; it instead investigates it; however, the law remains silent upon the inclusion of legal personnel in the committee though it mandates for a person working towards the cause of women. At times women are interested in an amicable settlement, though the option of mediation remains, but how far is it practicable? It is important to note that a victim of sexual harassment is not compensated by the employer when she passes through this ordeal in the workplace, where keeping the workplace free from sexual harassment is the duty of the employer. Sexual harassment is often regarded as inconsequential and harmless for the women. Still, its impacts are never analyzed, having a negative effect on job performance, concentration, absenteeism, and low confidence at work. The author analyses whether sexual harassment is a result of abuse of power and leave a woman in fear, despair, alone, or does the victim have information about the policy along with social awareness.

Key words: - *Compensation, Impact on victim, Myths, Role of community, Victim status.*

SEXUAL HARASSMENT AND ITS REALITY

Sexual harassment is not something new; it has been an age-old concern. It not only attacks personally, i.e. on a woman's mind, body by setting in fear but also

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affects a woman's integrity, freedom, and education. It is often seen in the survey reports that sexual harassment is used as a tool to intimidate her and portray her as subordinate in society. The UN Declaration on Elimination of Violence Against Women 1993[1] as also referred to sexual harassment as a tool to cause violence against women affecting her right to a dignified way of life within the meaning Article 21 but also curtailing her to avail equal opportunities in terms of employment causing economic hardships for living her life.

General Recommendation[2] 23 relating to Article 11 of CEDAW has incorporated the meaning of sexual harassment to include physical contact and advances; a demand or request for sexual favours; remarks which are sexually colored; showing of pornography; and any other unwelcome physical behavior which includes verbal or non-verbal conduct of sexual nature.

The landmark case of Vishakaha v. State of Rajasthan[3] revealed a gruesome act of revenge that took place upon a lady who was working as a social rights activist in one of the villages in Rajasthan to eradicate child marriage. The campaign of her program reached to such a level that child marriage was about to be stopped. The same was not seen as a good initiative by the people in the locality where one day, she was raped by five men of the village in front of her husband. The local doctor also did not treat her where she was taken to Jaipur for further confirmation of her age. The police also raised objections in her being raped and addressed her in an undignified manner, she was asked to leave her lehenga with the police for evidence and was only left with the dhoti of her husband to cover her body. The trial court had also discharged the accused, where the High Court termed it as an act due to revenge. Subsequently, a Public Interest Litigation was filed by an NGO in the Supreme Court of India. The court declared that the people have a fundamental right to work in a workplace free from sexual harassment and described the case as a violation of fundamental rights under Article 14,15,19(1)(g) and 21 of the Indian Constitution. The constitutional analysis was that it was differential treatment within the meaning of Article 14, with respect to Article 15, she was discriminated Discriminated on the basis of 'sex' i.e. being a female. Regarding Article 19(1)(g), which remarked a fundamental right to carry on trade, profession, and business was again infringed as she was discriminated against the constitutional liberty to carry out her work freely. With the infringement of

1. 'General Assembly resolution 48/104 of 20' (1993) <https://www.ohchr.org/Documents/ProfessionalInterest/eliminationvaw.pdf> accessed 23rd June 2020.
2. 'General recommendations made by the Committee on the Elimination of All Forms Discrimination against Women <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> accessed 25th June 2020.
3. AIR (1997) SC 3011 (India).

all these rights, the court attempted to interpret whether it is possible for a human being to lead a life of dignity and personal privacy.

An act of sexual harassment[4] is also closely linked with the age-old definition under section 354 of IPC which required three ingredients for the constitution of the offence such as the person assaulted must be women; the accused must have used criminal force; the criminal force applied in such a manner which would outrage the modesty concerned. The concept of 'outraging of modesty' cannot bear a strict definition, and the judiciary must have the hand to define it from time to time, depending upon the facts and circumstances of each case. The Supreme Court in Ramkripal vs. State of Madhya Pradesh[5] said that "an act will amount to outraging of modesty if it is such which could be perceived as one capable of shocking the sense of decency of a women … modesty of a woman is her sex; it is a virtue which attaches to a female owing to her sex… Modesty is the quality of being modest, and concerning a woman, it is womanly propriety of behavior, scrupulous chastity of thought, speech, and conduct". This can be reflected as anti-feminist approach, as it focuses on the fact that a woman must be 'modest' which is the concern in today's time. Situations like forcing forcing a woman to undress or to remove clothes and urge for sexual intercourse would amount to outraging the modesty of a woman. Acts of slapping a woman in public would not only come within the concept[6] of feminist rights, but also it is an act against humanity[7]. In another case of State of Punjab vs. Major Singh the Supreme Court, the court held that no strict definition of modesty could be applied to all situations. The Supreme Court, with three judges, said that "The essence of a women's modesty is her sex. The modesty of an adult female is writ large-on her body. Young or old, intelligent or imbecile, awake or sleeping the woman possesses modesty capable of being outraged" while answering the question that whether a seven and half years old girl child has possession of 'modesty.' Besides, the Kerala High Court in the case of State of Kerala vs. Hamsa[8] said that the offense under section 354 is not legislated by keeping in mind the interest of the women but also public morality. It depends upon the customs and habits of people where no universal practice can be followed for measuring the extent of the modesty as it would vary from people to people. In a regressive stance, the Supreme Court of India proclaimed that in the case of a tribal girl, attired in torn clothes is capable of being attacked at her modesty;

4. G S Bajpai, *Living on the edge: As study of women vicitmization & legal control*, (Mohan Law House 2019).
5. (2006) 10 SCC 725 (India).
6. Feminism is not women rights, feminism is also not giving men more importance to the masculine power of men. It is the concept of equality between men and women considering the fact that there can special circumstances where both men and women may require that support to bridge that gap of inequality.
7. n 4.
8. (1988) 3 Crimes 161 (India).

thereby showcasing the double marginalization of the victim. Tribals being considered inferior among the race of human beings is one of the most backward ideologies in a developed India[9].

The difference between 'modesty' and 'sexual harassment' was explained in the case of Pappu Vs. Chhattisgarh[10], where the accused was charged with section 354 of IPC. The victim was riding on her bicycle, the accused tried to stop her, pull her towards him thereafter touching her limbs and breasts. The court pointed out that the use of force or assault is essential for proving the guilt under section 354 IPC, whereas the same is not required under section 354A IPC. The court turned the sentence to section 354A IPC as the use of criminal force was not proved only physical advances that were sexual in nature and unwelcomed and accused could only be charged for sexual harassment and not modesty.

VICTIMIZATION OF THE WOMEN

Victimization occurs when the victim of sexual harassment occurs[11] through a variety of social, economic, legal, and psychological forms of behavioral change shown against the women. Despite being in the 69th year of Indian independence, constant subordination and suppression of women continues in our society. In the institution of marriage, women are often considered to be the 'second' sex and despite legal and social securities being promise d, they are still being emotionally and sexually exploited[12]. The problem of sexual harassment seemed a prevalent one where a study[13] conducted by working women united institute were out of a sample of fifty-five food service workers, and hundered different women who attended a meeting on sexual harassment. Those fifty-fuve women were also members of union. The report revealed that 70% of the totat 155 women reported "repeated and unwanted suxual comments, looks, suggestions, or physical contact" which are "objectionable or offensive, and caused discomfort to their jobs".

Though the study was done with a limited sample but the findings on those 70% of women cannot be denied. The victim of sexual harassment needs to show that there exist sexual harassment to argue that it is severe for those afflicted. Various studies have shown that sexual harassment shows that it is prevalent among the

9. Kailas vs. State of Maharashtra, (2011) 1 SCC 793 (India).
10. (2015) Cr LJ 351 (India).
11. Laura J. Evans, *The Victimization of Women 08, Ed, Jane Roberts Chapman and Margret Gates* (Vol. 3, Sage Publications 1978).
12. Simone De Beauvoir, The Second Sex, (Knopf Doubleday Publishing Group 2012).
13. 'Edna Jean Young Clinton on Sexual harassment on the job' <https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=17771&context=rtd> accessed 28th June 2020.

diverse population of women and the common characteristic, which is the reason is 'sex.' Here comes the discussion about if sexual harassment is said to be so prevalent in existence why there is a shortage for analysis of this problem or why the protests are not targeted towards solution orientation. Sexual subjects are generally sensitive and considered to be private; women feel embarrassed, demeaned, and are intimidated by these events. Events of sexual harassment makes women feel dejected, psychologically scarred and they continue to suffer from Post Traumatic Stress Disorder for a very long time. The trauma persists to such an extent that victims tend to isolate themselves personally and socially, which in turn may affect their roles in the family, career prospects and just as a social self. This resulted in non-complaints by the women, or sexual harassment was never realized as a crime. However, mere silence cannot be thought of as the non-existence of sexual harassment at the workplace. The victim of sexual harassment is unable to express and articulate the pain which she has been through, and the same is treated as non-existent due to the fear of proving the same later.

Victimization occurs by the practice of sexual harassment as in present times. It takes place through the lines of age, marital status, physical appearance, race, class, occupation, pays ranger, and any other factor that distinguishes a woman from the other. The incidence of the incident may vary with specific vulnerabilities of the woman or about the qualities of the job, employer, situation, or workplace. In such a circumstance, it is found that the perpetrators are the persons who are superior to the victim, co-workers, or clients. Sexual harassment occurs in both verbal and physical forms. Verbal sexual harassment amounts to the passing of comments on a women's body[14] or her physical features. It may range of asking the victim about her sexual experience with her partner, or it may amount to a showing of pornography. In contrast, the physical form of sexual harassment includes the physical element of touch referred to most often as 'touch.'

Issues involved in assessing sexual harassment at the workplace include the concepts of three things the advance, the response, and the employment consequence. Sometimes it becomes difficult to conclude the line between a sexual advance and a friendly gesture.

14. (Becker and Gene G. Abel) n 12.

Law is an instrument where it takes immense time for any change to take effect for accepting feminine ideologies and also remained a silent observer since long to address the cause of victimization in the hands of the 'protectors'. The fight for feminism started to reach towards a place where women are considered as equal social actors compared to men. Legally it is crucial to concern women now as full persons who are able enough to take responsibility and not considered only for growing up children or remain unfit to bear their guilt.

The approach should begin with a formality equality concept where men and women are considered as part of the same law without discrimination to their sex. The principle of consistency must be used in the law, which would treat likes as like. Some of the concerns which come while applying the principle of equity are:

a) Law must be not only procedurally implemented but also be concerned about the consequences for those to whom the law is being applied.

b) It is essential to have a minimum of two groups, which can be compared to the other for identification, whether there is equality. This makes it evident to come up with two categories as male and female, which question the gender-sensitive perspective as laws, policies cannot be similar for both the genders.

c) There can be a situation where the groups are not assured of a beneficial result when both he groups (men and women) are maltreated. This would worse both the group where either of them would lose the privileges.

It can be said that treating men and women would not guarantee a favorable outcome. There should be a situation where when they are treated as equals before the courts without taking into account other circumstances and gender-based problems that shapes individuals.

A liberal reformist[16] is with the view that the present legal process is ready to accept the changes which are required for a woman, whereas, from the fundamental point of view, it is suggested to eradicate the favoritism in the legal system to bring changes. Catherine MacKinnon in 1983 puts forward her view that certain practices are already based on the patriarchal notion. Notions like that women are vulnerable where they need protection from State or family, and as they are different from men, they would require a different standard of

15. Karen Evans, *Gender responsive justice: A critical appraisal* 48 (Routledge 2018).
16. ibid, 49.

security and rights, which cannot be equal for both the genders. These differences must be de-emphasized, and similar things must be re-emphasized, and those grounds which are the same must form the basis of the justice system. The same must be done without curtailing them morally and giving them an independent thinking process.

Quid pro quo in sexual harassment

This has been a major concern at the workplace as the concept requires in-return of sexual favors. Certain employment benefits will be extended to women or get forfeited from employment. A situation of quid pro quo makes[17] women not accept the advances and turns down the employable prospect; in the second instance, the woman complies and does not receive a job benefit, which targets to find out that whether the job benefits is part of sexual involvement? When the employment is dependent upon sex which is an injury in itself or does compliance of the sexual act mean the woman has given consent or shall the woman do away with the job opportunity as a recourse. Lastly when the woman have agreed to the sexual support in return the woman, has she lost the right of the complaint also there can be one more situation where the woman has been sexually harassed but again has never being harassed still. Another aspect of the quid pro quo approach where decisions are taken on hiring, termination, promotion, or pay is made based on employees respond to the demand for sexual favors. This takes place when the employer has certain leverage upon the employment status of the employee.

Sexual harassment and its impact

The form of sexual harassment when results in retaliation due to the woman's refusal to sexual favors the man retaliates by using his power over her job or career. The form of revenge can be through threatening the lady with demotions and paying less salary, derogatory papers may be placed in her personal file which may be again demining for her future career prospects, or the work which is allocated after the denial of sexual favors will be of derogatory nature. For instance, when the man cuts down the working hours of the lady, which now

17. Catharine A. Mackinnon, *Sexual Harassment of Working Women: A Case of Sex Determination* 32 (New Haven and London, Yale University Press 1979).

yields less pay for the lady after that when she requests for extra working hours, jobs are assigned which are considered to be below in the hierarchy of assigned work in comparison to the concerned woman's qualification and intellectual abilities.

A woman who has gone through the odd experience[18] of sexual harassment also seems to be affected by the approach which the employer takes in handling these cases. At times even when the employer who is in a position to rectify the same does not wish to solve rather ignore it, leading to tolerance of sexual harassment at the workplace. The employer is liable for creating a workplace free from sexual harassment, which interpreted as a right within the meaning of Article 21 of the Indian Constitution in the case of Vishaka vs. State of Rajasthan. Holding the employer liable for the acts of his employees by adopting the principle of vicarious liability is essential when the approach to curb sexual harassment at the workplace is thought from the perspective of the victim as the incident occurred on the premises of the workplace.[19] Why not holding him responsible for better implementation of prevention of sexual harassment policy, which again becomes the duty of the employer where the knowledge about the incident cannot be ignored because it was the duty of the employer to know about it. The process of the blame[20] game is another aspect of a conflict at a workplace where there is too much concentration upon the victim and less upon the offender. Considering the incident to be the result of the victim's contribution instead of adopting a person-concentrated approach that can solve the problem, the method of situation-centered where the examination of the problem using the social variables which lead to the incident instead blaming the entire class, here the woman. Sexual harassment is sometimes viewed as something which woman can handle where men do not take responsibility for their harassment of a woman. With the acceptance of this myth, the blame is further shifted on the woman/victim. Woman are found responsible to control the acts of the harasser and in this patriarchal notion, the perpetrators (men) are not found responsible to control their actions. A victim[21] of sexual harassment often goes through emotional trauma and ailments such as weight loss, stomach aches, headaches,

18. ibid, *Sexual Harassment Cases* 57.
19. Section 2(o) "Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer, Covers organised and unorganised sector, Govt organisations, Pvt sector organisations, Hospitals/nursing homes, Sports institutes, facilities, Dwelling or house which also includes Office parties, Off sites, Out bound trainings, Client meetings, Training sessions, Travel for office purpose Any place where one visits in the course of due to employment".
20. N. 15, 125.
21. Dr. Vandana, *Sexual Violence Against Women: Penal Law and Human Perspectives* (2009).

nausea, muscle disorders, hypertension, and other medical diseases. The problem of sexual harassment takes a profound toll on the female students as it interferes with the thinking process, creates confusion, uncertain thoughts about the future, lower self-confidence, and constant suspect upon the male faculties.

Sexual harassment at the workplace also lowers productivity at work, the efficiency of workers, and decline in the entire work morale of employees because the employees feel they are being discriminated often, which leads to poor reputation and fails in attracting skilled employees to the workplace. The result of sexual harassment leads to staff turnovers, resignation from jobs, which again results in incurring expenditure for training costs of new employees. The impact of sexual harassment is not only upon the victims but also upon their co-workers, seniors, and others with whom the victim interacts at the workplace. The problem of under-reporting of sexual harassment cases is another aspect to look into where women sometimes feel awkward to describe the problem. Catherine Mackinnon speaks about how unnamed incidents do not happen without pain and degradation. The other issue of sexual harassment is the stigma attached to it. The victims feel alone, afraid, and involved because of the retaliation of the harasser.

CRIMINAL LAW AND VICTIM OF SEXUAL HARRASSMENT

"Section 354 of Indian Penal Code: Assault or criminal force to woman with intent to outrage her modesty: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."[22]

"Section 354A of Indian Penal Code: Physical contact and advances involving unwelcome and explicit sexual overtures or demand of request for sexual favors; Showing pornography against the will of a woman or Making sexually colored remarks have imprisonment for up to 5 years or fine or both"[23].

22. Criminal Law Amendment Act, 2013.
23. ibid.

National Crime Records Bureau of India:

Year -	2018[24]	2017[25]	2016[26]	2015[27]	2014[28]
Incidence	20962 (Total) 401 (at work of office premises[29])	20948 (Total) 479 (at work or office promises)	26494	22833	4593
Victims	21260 (Total) 402 (at work or office promises)	21512 (Total) 485 (at work or office promises)	26570	22911	4617
Rate	3.3 (Total) 0.1 (at work or office promises)	0.1 (at work or office promises)	4.4	3.8	1

Table 1:The incidence of crime seems to increase at an alarming rate with around six times more from the year 2014 to that in 2018.

Analysis of data:

- India saw a total of 96870 as number of victims of sexual harassment between 2014-2018. The victims are being deprived of the rights under section 357A of Cr.P.C.,1973 relating to victim compensation. The right also forms part in the schedule and the eligibility criteria of the victim compensation schemes legislated by the States and the NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018. The NALSA guidelines in guideline no. 5. Stating "procedure for making application before the SLSA or DLSA" of the Scheme recognizes the offence under section 354A as an injury and qualifies as an criteria of compensation. The right of compensation is two-fold interim and final. It also fixes the time of enquiry by the DLSA or SLSA as two months by which the application is to be heard and decided. Subsequently in the 'schedule' it recognizes "grievous physical injury or any mental injury requiring rehabilitation" with minimum of Rs. 1 lakh to a mximum of Rs. 2 lakh compensation.
- In the year 2018, 3021 cases of sexual harassment were on trial out of which 87 cases were convicted, 21 cases were discharged and 138 cases acquitted, a total of 246 cases only trial were completed having pendency of 91.8 % and conviction rate of 35.4 %.

24. National Crime Records Bureau of India (NCRB) Data 2018.
25. NCRB Data 2017.
26. NCRB Data 2016.
27. NCRB Data 2015.
28. NCRB Data 2014.
29. Introduced by NCRB in 2017 and 2018.

- In the year 2017, 2652 cases of sexual harassment were on trial out of which 78 cases were convicted, 11 cases were discharged and 136 cases acquitted, a total of 225 cases only trial were completed having pendency of 91 % and conviction rate of 34.7 %.
- In the year 2016, 73774 cases of sexual harassment were on trial out of which 2295 cases were convicted, 5370 cases were discharged or acquitted, a total of 8436 cases only trial were completed having pendency of 88.6 % and conviction rate of 29.9 %.

	Kerala[30]	Andhra Pradesh[31]	Tamil Nadu[32]	Karnataka[33]	West Bengal[34]	Nalsa[35]
354 A	As "sexual assault (excluding rape)" Rs. 50000	As "Grievous physical injury or any mental injury requiring rehabilitation" - Min. 1 lakh – 2 lakhs max.	As "Grievous physical injury or any mental injury requiring rehabilitation" - Min. 1 lakh – 2 lakhs max.	As "grieveous physical injury or any mental injury requiring rehabilitation" – Min. 1 lakh – 2 lakhs max.	A "sexual assault other than rape: - Rs. 50000	As "Grievous physical injury or any mental injury requiring rehabilitation" – Rs. Min. 1 lakh – 2 lakhs max.

Table 2: Victim Compensation Scheme Across states on victims of 'sexual harassment'.

30. Government of Kerala Home (C) Department G.O. (Ms). No. 224/2017/Home dated 5th Nov. 2017 <http://kelsa.gov.in/downloads/KVC_Scheme_2014.pdf> accessed 25th June 2021.
31. Andhra Pradesh have implemented the Supreme Court directions in Nipun Saxena and NALSA guidelines vide Roc. No./APSLSA/LSW/2018 dated 12th Sept. 2018 <https://districts.ecourts.gov.in/sites/default/files/VictimcompensationSchemeGuidelines_0.pdf> accessed 25th June 2021.
32. Tamil Nadu Government Gazette Home Department dated 3rd Oct. 2018 <http://www.stationeryprinting.tn.gov.in/gazette/2018/40_III_1a.pdf> accessed 25th June 2021.
33. Karnataka Government Order No. HD 42 PCB 2018, Bengaluru dated 25th Sept. 2018 <https://kslsa.kar.nic.in/pdfs/vcs/vcs_2018.pdf> accessed 25th June 2021.
34. West Bengal Victim Compensation Scheme, 2017 dated 15th Feb. 2017.
35. NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018 <https://wcd.nic.in/sites/default/files/Final%20VC%20Sheme_0.pdf> accessed 25th June 2021.

PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE 2013

One of the first definitions of sexual harassment explained by Farley and Working Women United stated that "any repeated and unwanted sexual comments, looks, suggestions or physical contact that you find objectionable or offensive and causes you to discomfort on your job." The existing definition[36] of sexual harassment under section 354A of IPC includes acts which are as follows:

- can be either implied or explicit with a promise of preferential or detrimental treatment;
- use of any kind of threat in the course of employment about her present or future prospects in the employment;
- interference with the work allocated to her or use of intimidation or defensive or hostile[37] work culture for the victim or any other;
- in-human treatment which would likely affect her health or safety

The above two definitions show that in earlier times also the objective which is there in the definition of human behavior, which is 'unwanted' or 'unwelcome', was included from the very first. The evolution of the meaning of sexual harassment can be explained in a way that it has evolved that conduct must be repeated to be counted as sexual harassment. The definition of sexual harassment must also be able to take into consideration the severity of an incident of sexual harassment when there is an absence of repeting the conduct. The second area of concern is the term 'sexual' in the definition of 'sexual harassment' whether the term denotes 'sexuality' or 'gender' or includes both? This is also an emerging concern of the law in India when Section 377 IPC is scrapped now treating LGBT as the third gender whether the present Prevention of Sexual Harassment Law at Workplace is adequate with LGBT's joining the workplace? The time has far come that an environment where LGBT employees can feel safe and proud to work with dignity, which must be the critical goal for all organizations. Having the policy to curb sexual harassment is not enough nowadays. Still, it must be intolerant of abuse, discrimination, and exploitation towards sexual harassment through the exchange of words, training, and awareness. New avenues of same sex harassment possibilities where women harasses the women, protection of mae employees are important to reflect upon. There can be situation soon due to frivolous cases filed by

36. Section 3, Prevention of Sexual Harassment Act, 2013.
37. Margaret A. Crouch, *Thinking about Sexual Harassment: A guide for the perplexed* 55 (Oxford University Press 2001).

women, men tend to be scared to give them opporinutiy or think twice during employment. The present Act does not state anything regarding this and these are the grey areas of the law.

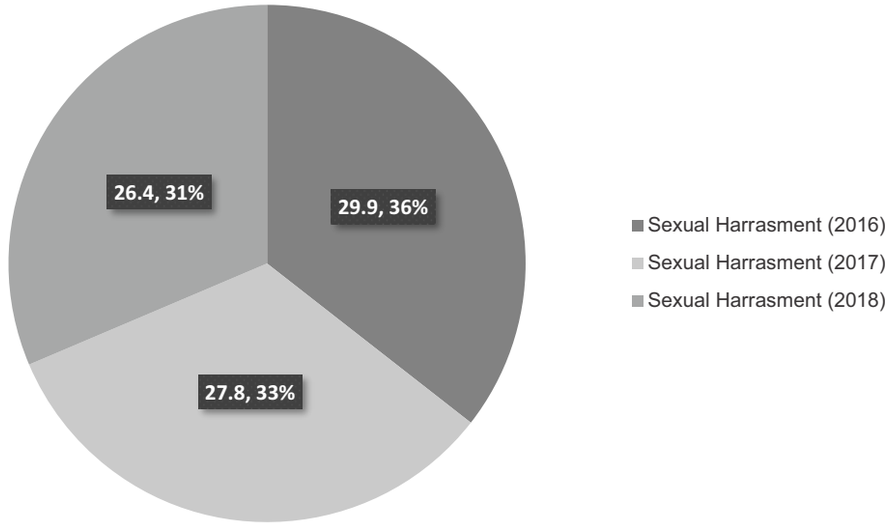

Figure 1: Conviction rate (Assault on Women with Intent to Outrage her Modesty)

Organizations[38] only covering sexual orientation[39] in their policies when employees are recruited and also in their employee handbook would convey a total non-discrimination policy that lays the ground for building an inclusive organizational culture at the workplace. However, tt is important to consider more about 'sex' specific law than 'sexual orientation'. 'Sexual orientation' is gay, lesbian, bisexual, asexual, bicurious and various other types. That has nothing to do with the law. That is extremely personal and employees cannot ask them to reveal it. A diversified workplace will definitely give representation to the LGBT community and enforce

38. n. 16, 108.
39. 'Section 377: LGBT Rights and HR Policy in the Indian Workplace' <https://www.india-briefing.com/news/section-377-india-lgbt-rights-hr-policy-indian-workplace-17804.html/> accessed 24th June 2020.

in implementing the judgment of the Supreme Court[40] held in Navtej Singh Johar vs Union Of India that it is a fundamental right of the homosexual persons to live with dignity, without the stigma attached to their sexual orientation having similar rights envisaged in the Indian Constitution under Article 14. An LGBT friendly policy anlong with recognizing men as potential victims will ensure an inclusive, safe, and harassment-free. This workplace would also be able to curb down frivolous cases and blatant misuse of the law.

Sexual harassment can also be best described as an undesirable nonreciprocal male behavior that relates to the women's sexual orientation over being a worker. There is a direct relationship between the superiority of male status at the workplace which is supported by Catherine MacKinnon's view that when a woman is subject to explicit sexual demands from her employer or co-workers and who quits her job due to this is in a similar position which is subject to precise sexual demands by her employer, when refused is faced with the loss of employment, demotion or etc.

Duties of Employer from the victim lens:

1. A place[41] of work that is free from sexual harassment. This may include restrictions upon the employees at the workplace when they come in contact.
2. All organizations would follow the practice, which protects employees from harassment. This is not possible without spreading awareness of the nature of the crime as it may not be aware that the acts, for instance, sexually colored remarks may also be harassment. When the Calcutta High Court[42] in the case of Mahendra Kumar Singh vs. Linda Eastwood refused to quash the complaint though did not allow the implementation of the 2013 Act as it would have been the retrospective application of penal laws, hence barred. Finally, also informing about the constitution of ICC.
3. The employer must also assist the ICC in completion of the proceedings along with securing the presence of the respondent and witnesses
4. Aid the victim properly in case she wishes to file a regular lawsuit under the criminal law

40. AIR (2018) SC 4321 (India).
41. n. 27, Section 19.
42. (2015) 2 Cal LT 357 (H.C.) (India).

5. Take adequate steps when the victim is vulnerable when the perpetrator is not an employee – this would certainly indicate lodging of a formal police complaint against the perpetrator.
6. Treating sexual harassment as misconduct considering the service laws of the organization where a separate disciplinary action can be initiated
7. Ensure time compliance as indicated below:

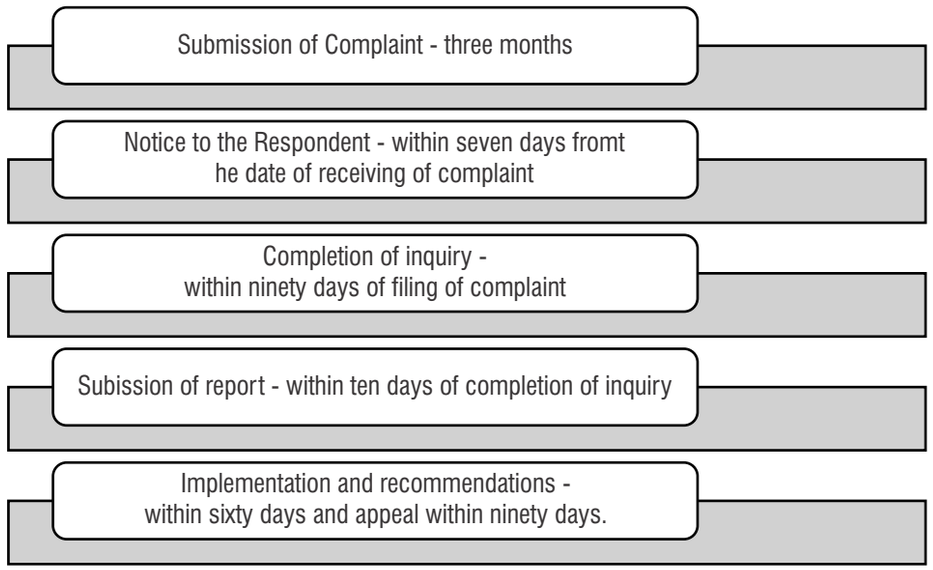

Figure 2: How are the compliances met from to time must also be within the domain of employer responsibility and a right for the victim

Validity of in-house committee and the present law

The procedure[43] which is adopted by the in-house committee is for dealing with misconduct committed by the sitting judges of the court. The constitution of the 'in-house' committee requires the Chief Justice of India (CHI) to constitute a three-member panel of Supreme Court judges for enquiring into the complaint of

43. 'Procedure for in-house inquiry into complaints made against a High Court judge' <https://tilakmarg.com/opinion/procedure-for-in-house-inquiry-into-complaints-made-against-a-high-court-judge/> accessed 24th June 2020.

misconduct received by the CJI against the sitting judge, CJI acts as the supervisor to the committee. It is essential to mention that the procedure which needs to be adopted does not mention the method when the compliant is against the CJI himself. It is considered that he is equal amongst equals. This notion clarifies the truth that he is also a judge of the Supreme Court, so why the procedure will not be followed in a similar manner? In Addl. District & Sessions Judge 'x' v. High Court of Madhya Pradesh that is depending upon facts and circumstances of a given case to ensure the process of investigation followed without the possibility of favoritism, prejudice, or bias. This makes it utmost necessary that a fair inquiry is conducted. When the incident as alleged to have been committed within the organization itself, having an external member to prevent any undue pressure or influence from members of senior management to ensure a safe environment for the complainant and the witnesses said in Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University[44]. The position of administrative law has made it clear that in case of any prior relationship between the adjudicatory committee and the party/victim can lead to the possibility of 'bias'. Going by the settled principle that even in case there is an apprehension of bias and may lead to vitiate any proceeding, mere perception is enough to defeat proceedings. Where the sitting judges are sitting in the committee to enquire into a complainant against the CJI, it is understood that those sitting judges are in close interaction to each other in day to day functioning of the Supreme Court. To deal with such a situation, retired judges, along with external members from civil society, are necessary. There are several instances when inquiries completed by ICC, which were quashed due to the biasness which was present in the composition of ICC who were subordinate in rank or were under the supervision of the person against whom the complaint is received. It is also essential in such incidents that there is an appointment of a women chairperson of the ICC due to the power dynamics which are involved where the aggrieved person can face hostility and risk during the time of filing the complainant. A woman may also face fear and anxiety due to the continued victimization of the already victimized lady. It is the need of the hour to strick a balance and place an appropriate procedure which must be adhered to.

CONCLUSION AND SUGGESTIONS

Sexual harassment is oppression, victimization, and intimidation of the employee, which is based upon the equation of power and authority. It exploits an employee making her vulnerable to economic and social injustices.

It is also a myth that women can handle sexual harassment at the workplace, definitely but not without hurting themselves. Any kind of acceptance or tolerance

44. (2014) SCC online Bom 814 (India).

towards sexual harassment is detrimental not only to the present victim, workplace, employer, society but also about the perception about future work culture where a qualified woman would think twice before applying for any position. The approach towards dealing with sexual harassment is a person-oriented – blame game; instead, it fails to investigate the social elements which lead to this.

SUGGESTIONS

1. The Act prescribes for issuing a warning, holding back promotion or increment, undergoing counseling sessions, community service in case the organization does not have service laws. In this scenario, it should be indicated in the annual report of the organization what kind of community service was taken and whether the service was completed in the scheduled time.
2. Granting leave to the aggrieved woman up to a period of three months in addition to her regular statutory/ contractual leave entitlement so that she doesn't feel re-victimized during the inquiry by seeing the perpetrator every day to by her side working at the same workspace.
3. Victim Compensation Scheme u/s 357A of Cr.P.C. must be amended to include the offence of 354A to be eligible for compensation. Presently the NALSA[45] guidelines under point no. '5' recognizes 354A eligible for compensation, but legislatively and administratively, the provision is not enabling though it achieves the purpose of social justice because the State legislated victim compensation scheme schedules do not recognize the rule eligible for compensation. They are thus preventing procedurally to apply the regulation.
4. The definition of a victim under section 2(wa) of Cr.P.C., which recognizes her relatives or immediate family, must be deemed to be considered as a victim of sexual harassment. This would further substantiate as a rights-based approach.
5. What if any objectionable/derogatory document is kept in the ACR of the employee when they have refused sexual favors, which can be later used against her during the ICC inquiry? - Restraining the perpetrator to analyze the work performance of the victim or writing her confidential report, which would have an impact on her present and future professional life, should be encouraged at all organizations.
6. The Act talks about conciliation on how to draw the line between the rights of the victim and her consent - during a situation of amicable settlement by the aggrieved women. There must be explicit consent taken from the aggrieved victim. Along with this, the following must be considered:

45. 'Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018 <https://nalsa.gov.in/acts-rules/guidelines/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018> accessed 27th June 2020.

- mental trauma, anxiety and emotional drain suffered by the victim
- the loss suffered in her professional career because of the sexual harassment
- medical expenses incurred for physical injury or psychiatric help
- assessment of the financial status of the perpetrator, in case, fails to pay as a lump sum or installments the receipts are to be forwarded to the land revenue department for attachment of property
- ensuring privacy to any fact which may be the personal information of the victim or an express statement in case the victim doesn't wish to be made certain public information

Situations remain unanswered:

- What if the employer decreases the working hours of a female employee, and now when she requests for new work, differential treatment in work allocation is shown?
- How does the workplace ensure assisting the lady in the pre-complaint filing stage with ICC or if she wants to approach the regular Criminal justice system?
- Whether in a situation of an amicable situation puts away the right to make a former police complaint? Even if a claim is preferred, the amicable resolution will weaken her case in case of re-victimization? Here the police would also need to contextualize the situation and then submit any report as any hurried decision would forever damage the reputation of the victim.
- In case the victim rejects sexual favors in the first instance, would it mean she also forgoes her job?

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Online Resources

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- Procedure for in-house inquiry into complaints made against a High Court judge <https://tilakmarg.com/opinion/procedure-for-in-house-inquiry-into-complaints-made-against-a-high-court-judge/> accessed 24th June 2020.
- Section 377: LGBT Rights and HR Policy in the Indian Workplace <https://www.india-briefing.com/news/section-377-india-lgbt-rights-hr-policy-indian-workplace-17804.html accessed 25th June 2020.
- Tamil Nadu Government Gazette Home Department dated 3rd Oct. 2018 http://www.stationeryprinting.tn.gov.in/gazette/2018/40_III_1a.pdf accessed 25th June 2021

Urgent Need for Police Reforms in India: A Human Rights Concern

Baidya Nath Mukherjee* and Bhupinder Singh**

Abstract

Police is one of the important pillars of the criminal justice administration and if it is not improved the other organs may collapse. So, it needs to be reformed, restructured, and revamped. As India have gone through transition from a colonial state to independent nation, it needs to get rid of the age-old legislation regulating the police force of the country. The Indian Police Act 1861 was enacted by the Britishers with intent to demur every protest or revolution parturient in British India. Thus, the act does not satisfy the best interest of today's democratic society. Through this paper the author has tried to identify the reason behind the failure to implement the recommendations and directives of the commissions and the apex court. It is high time to understand that police reforms are directly linked with the political stability and economic progress of the country. A weak law and order hinders the economic growth of the country. Police reforms have always been at lime light, as where it comes to delivery of service and its image, the police have always been at the receiving end. Further, through this paper an effort has also been made to analyze the instances of human rights violations by the police force and suggested ways to put a check on it.

Key words: - *Authority, Commission, Human Right, Internal Security, Police Reform.*

Introduction

"… Serious internal security challenges remain. Threats from terrorism, left wing extremism, religious fundamentalism, and ethnic violence persist in our country. These challenges demand constant vigilance on our part. They need to be tackled firmly but with sensitivity[1]. (PM's Speech at the Conference of CMs on Internal Security, 2012)".

In 1902 the Fraser commission[2], led by Donald M Fraser recorded that "the police force is far from efficient, it is defective in training and organization, it is inadequately supervised, it is generally regarded as corrupt and oppressive, and it has utterly failed to secure the confidence and cordial cooperation of the people" [3]. Shockingly, the 115 years old observation stands true even today for the Indian police.

Police is one of the most important and largest state agencies responsible for protecting the human rights and enforcement of laws. But this image of the protector of Human Rights takes a beating when the protectors themselves are accused of violating them. The incident of 2nd July 2020, where eight policemen of Uttar Pradesh cadre were shot dead by an associate of a leading criminal of that state, have brought into lime light the linkages between police, politician, and criminals[4]. Similar instances have manifested a clear structural interaction between police, politician, and criminal, which in a way or the other affects the socio-legal rights of the ordinary people. The alarming rise of the human rights violation demands an urgent police reform. The clamors of police reform are not recent, but its origin can be traced decades back. Several notable committees and commissions like the National Police Commission[5], Ribeiro Committee[6], Padmanabhaiah Committee[7] did came up with numerous observations and recommendations and even after the notable observations of the apex court in the Prakash Singh case[8] the police reform remains a distant dream. In the past years the crime rate has also witnessed a notable hike. As per the statistics of National Crime Records Bureau, Ministry of Home Affairs the crime rate in metropolitan and non-metropolitan cities are gradually increasing.

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1. Press Information Bureau, Government of India, Prime Minister's Speech at the Conference of CMs on Internal Security dated 16 April 2012, 10:51 IST URL https://pib.gov.in/newsite/PrintRelease.aspx?relid=82276 last accessed 10-02-2021
2. The police commission established for police reforms under Sir Andrew Frazer and Lord Curzon.
3. Indian Police Commission., Fraser, A. H. L. (Andrew Henderson Leith). (1965). *Fraser report: report of the Indian Police Commission, 1902-03*. Karachi: National Institute of Public Administration.
4. Prakash Singh, 'Thoothukudi to Kanpur: The police are in the dock. Reforms must start with the political system' https://indianexpress.com/article/opinion/columns/tamil-nadu-custodial-deaths-up-vikas-dubey-encounter-police-brutality-6504199 ; last accessed 12-02-2021
5. Duration of the commission: 1979-1981
6. Duration of the committee: 1998- 1999
7. The committee established in 2000
8. Prakash Singh and Ors V. Union of India and Ors [(2006) 8 SCC 1: (2006) 3 SCC (Cri) 417]

The recent happenings in Hathras Case[9] as well as death of Father and Son due to police torture in Tamil Nadu[10] are also worthy to mention. Police malfunctioning seems to have become a daily episode. Moreover, accusation against a single individual is understandable because no organization is free from its scapegrace, and departmental actions could be taken against them. But, at times the entire police organization is painted with the same black brush and this harsh reality needs to be faced and rectified.

Even after Independence, the Indian Police System is being governed by the archaic and colonial legislation. The Police Act 1861[11] is a British legislation and it was the aftermath of the 1857 mutiny. Through this legislation the Britishers proposed to establish a police force that would help in crushing every demur in the colonized nation. Police structure of almost all the Indian States is being regulated by this age-old legislation. Despite policing being a state subject[12] of the Indian Constitution, most of the Indian states have not passed a new regulation act, and those passed are heavily influenced by the old legislation. Today's India, which has undergone a transition from being a colonized nation to a sovereign nation, needs new legislation to regulate policing. The need for police Reform in India is not new and have been recognized long back. There have been debates and discussions for over decades and numerous high-power commissions have given the directions for police reforms but India remains encumbered by the outworn laws.

LEGAL MATERIAL AND METHODS

The paper strives to highlight the dire need to bring reform in the Indian Police System. This paper also emphasizes on the lacunas of the state and central authorities in implementing the recommendations of the commissions. This article draws upon two kinds of doctrinal research as legal methodology:

1. Analysis of different reports of commissions on Police reforms, constitutional provisions, penal provisions, and other related academic documents constituting the role of police officers as protectors of human rights.
2. Analyzing the records on crime rates with special emphasis on Human Rights violation by police personnel.

9. B.L. Vohra, 'Killing Vikas Dubey doesn't end crime. For that, parties must let go of control over police' https://theprint.in/opinion/killing-vikas-dubey-doesnt-end-crime-for-that-parties-must-let-go-of-control-over-police/458597/ last accessed 15-02-2021
10. Arun Janardhanan, 'Explained: How Tamil Nadu Police's brutal act of revenge claimed lives of a father and son' https://indianexpress.com/article/explained/explained-tamil-nadu-police-custodial-torture-father-son-killed-thoothukudi-6479190/ last accessed 20-02-2021
11. Enactment date: 22-03-1861.
12. Under 7th Schedule, List II, Entry II.

The stimulant role played by the apex judiciary has highlighted the covert prejudice prevailing on the society due to unreformed police structure. The paper further aims to identify the reasons behind non implementation of the recommendation and directives as well suggests further necessary changes needed to strengthen the Indian Police System.

RESULT AND DISCUSSION

Efforts for Reform: Post Independence

After Independence the Government has adopted several initiatives to uphold the integrity, accountability, and transparency of the police system of India[13]. Post-Independence the nation has witnessed several committees and commissions to inspect the various aspects of police administration and suggested several remedial measures. The first committee that is the Gore committee, appointed in November 1971, under the chairmanship of Prof. M. S. Gore, a renowned social scientist, to assess the existing police reforms program and recommend the possible ways to improve the effectiveness of police personnel. The committee made notable recommendations on aspects of training and mentioned that training is necessary to inculcate necessary knowledge and skills, develop appropriate attitude and help to evolve effective decision-making ability among the police personnel[14].

The next commission i.e., the National Police Commission (NPC) appointed in 1977 by Government of India, in the wake of flagrant misuse of police power by the political superiors during the 1975 emergency. The Commission tabled eight reports during 1979 to 1981 and suggested wide ranging reforms in the existing police structure and recommended a new police Act[15]. Thereafter, the Shah Commission of Enquiry in 1978 published its report in three volumes totaling 525 pages on police atrocities and excesses committed during the period of

13. PRS Legislative Research, Policy discussion paper, Police Reforms in India https://www.prsindia.org/policy/discussion-papers/police-reforms-india last accessed 22-02-2021
14. The Gore Committee Report on police training, Ministry of Home Affairs, Government of India https://police.py.gov.in/Police%20Commission%20reports/THE%20GORE%20COMMITTEE%20REPORT%20ON.pdf last accessed 25-02-2021.
15. The Report National Police Commission, https://police.py.gov.in/Police%20Commission%20reports/3rd%20Police%20Commission%20report.pdf last accessed 01-03-2021.

emergency[16]. In 1996, following the PIL filed before the apex court[17] against non-implementation of the significant recommendations from the Nation Police Commission, the government set up the Ribeiro Committee[18] under the leadership of J.F. Ribeiro, Former Chief of Police. The committee placed two reports. The first Report released in October 1998 addressed the apex court's specific concerns like the procedures on recommendations on State Security Commissions, Appointment of Police Chiefs and separation of Investigation and Law and order functions of the police. The second report was more general and addressed other related concerns. In January 2000 the Government of India appointed another committee under the Chairmanship of Shri. K. Padmanabhaiah to examine the challenges and thereby suggest changes in the police setup to meet those challenges in the new millennium. Malimath Committee on Reforms in the Criminal Justice System[19] appointed to examine the fundamental principles of Criminal Law and restore confidence in the criminal Justice System. The committee placed few recommendations on police reforms like suggesting separating the investigation and Law and Order branch, establishment of National Security Commission and State Security Commission and quality investigation. In August 2005, the Government of India for the purpose of revamping the public administrative system, appointed a commission for enquiry called the Second Administrative Commission[20]. The 4th Chapter of the report submitted by the committee dealt with the core principles of Police Reforms since police reforms is the fundamental requirements of a democratic state. The commission aimed to outline the overarching principle of reforms in police administration and the criminal justice system and thereby creating a linkage between the two facets which will further help to evolve the reforms in an integrated manner. The commission suggested eight principles as the bedrock of criminal justice and police reforms[21].

16. Report on Shah Commission of Inquiry, https://www.mines.gov.in/ViewData/OldArchives?mid=1333 Last Accessed 03-03-2021.
17. Prakash Singh and Ors V. Union of India and Ors [(2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417]
18. 1998-1999.
19. 2002-2003.
20. Second Administrative Reforms Commission Report, https://darpg.gov.in/arc-reports Last accessed 04-03-2021.
21. Second Administrative Reforms Commission Report, https://darpg.gov.in/arc-reports

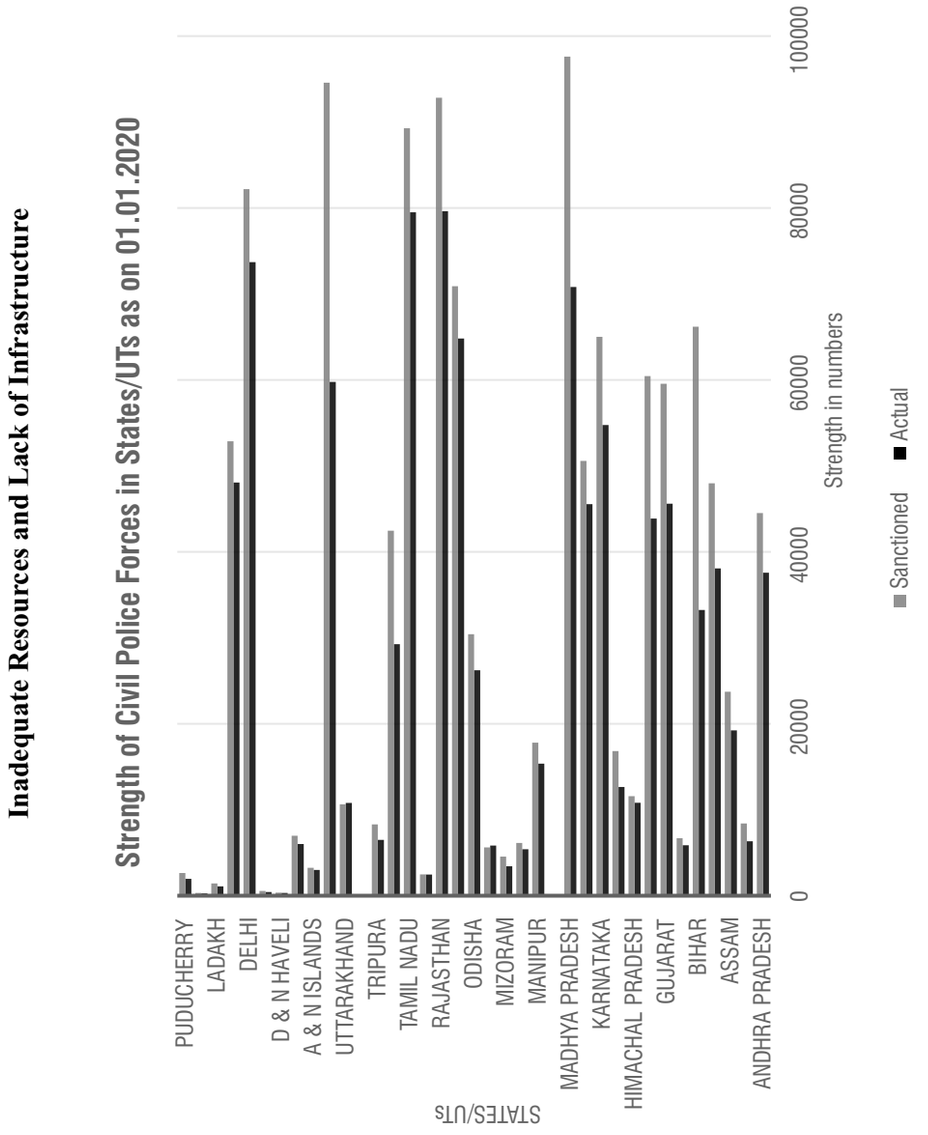


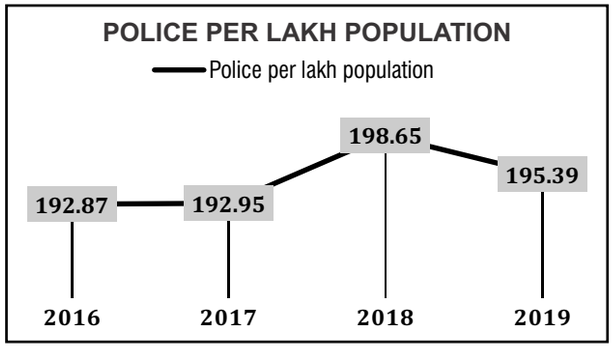
Figure 1: Data on Strength of Civil Police Forces in States and UTs from Bureau of Police Research and Development 2020

Data on Police organization 2020 published by the Bureau of Police Research and Development (BPR&D) clearly shows that the actual strength of Police force in the country is less by almost 20 per cent as compared to the sanctioned strength. Data reveals that the sanctioned strength of state police force is 26.23 Lakhs whereas the actual strength is 20.91 Lakhs i.e., state police forces have

around 20% vacancies as in January 2020[22]. The United Nations recommended standard of police per lakh person is 222, whereas the India's strength of police per lakh person in the year 2019 is 195.39, making it as one of the weakest police forces in the world[23]. The states with police force which meet the international standards are that of insurgency affected states i.e., North-east and Punjab[24]. The major reason behind the resource crunch being the decreased spending on police in recent years. Research shows that the expenditure on police accounts for only about 3% of the state and central government budgets[25]. An overburdened and under resourced police force means a weak police structure[26], and thereby compromising in both core police activities (enforcing daily law and order) and exorbitant delay in criminal investigations[27]. Exacerbating this as the biggest issue of accountability and responsiveness within the police force. A survey conducted by a team at Centre for the study of Developing Societies (CSDS) revealed that less than 25% of the Indians trust the police as compared to 54% for the army[28] (CSDS, 2019). Main reason behind this distrust being the unwelcoming attitude of the police, which may be the result of overburdened police force. The rule of law is the cornerstone of a civilized democratic state. It needs an effective and fair criminal justice system, where police have a central role to play. Police stations are the first stop for every citizen at time of crisis. People need a strong police system which is competent enough to protect their life,

rights, and liberties and maintain law and order in the society. For the effective performance of these duties the police force requires both contemporary and adequate infrastructure as well as sensitive and well-trained personnel[29]. The capacities of the police personnel need to be built for not only upholding the law but also for compassionately handling the crisis involving among all section of the citizens.

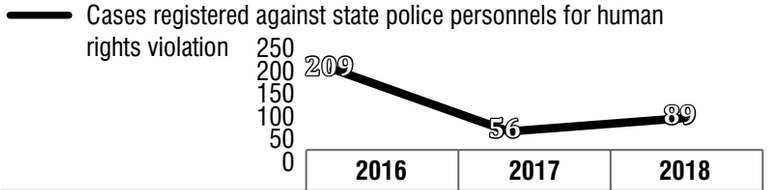
22. Data on Police Organizations, Ministry of Home Affairs, Government of India, https://bprd.nic.in/WriteReadData/userfiles/file/20210101120101164836 4DOPO01012020.pdf last accessed 05-03-2021.
23. Ibid.
24. Sriharsha Devulapalli, Vishnu Padmanabhan, 'India's Police Force among the world's weakest' (2019), Mint https://www.livemint.com/news/india/india-s-police-force-among-the-world-s-weakest-1560925355383.html Last Accessed 06-03-2021.
25. PRS Legislative Research, Government of India, https://www.prsindia.org/policy/discussion-papers/police-reforms-india Last accessed 07-03-2021.
26. ibid
27. Sriharsha Devulapalli, Vishnu Padmanabhan, 'India's Police Force among the world's weakest' (2019), Mint https://www.livemint.com/news/india/india-s-police-force-among-the-world-s-weakest-1560925355383.html Last accessed 07-03-2021
28. Common Cause and CSDS 2019, Status of Policing in India Report 2019
29. Kushwah Vikrant Singh, Why 'India Needs Urgent Police Reforms' (2018), Observer Research Foundation https://www.orfonline.org/expert-speak/why-india-needs-urgent-police-reforms-46003/ Last accessed 08-03-2021.



Police Torture and Abuse: Human Rights Violation

Police torture and atrocities are recognized reality, so much so, that any confession made to a police officer is not admissible before the court of law under Indian Evidence act[30]. Recently we are witnessing an exponential increase in incidences of police torture and atrocities across the country. The brutal custodial torture and killings of father and son (Jeyaraj and Bennix) in Thoothukudi, Tamil Nadu[31] in June 2020 have once again thrown light on the impunity with which the police system works across the country. The brutality in any way, or by any stretch of imagination, does not seems proportionate to the proposed crime in this case. While many instances of police brutality take place regularly, some of them are highlighted in media or witness public outrage. Another such instances of police malfunction and irregularity can be witnessed in

Cases registered against state police personnels for human rights violation
Source: Ministry of Home Affairs, Government of India (on1621)



	2016	2017	2018
Cases registered against state police personnels for human rightsviolation	209	56	89

30. Section 24,25 and 26 of the Indian Evidence Act 1872
31. Arjun Janardhanan, 'How Tamil Nadu Police's brutal act of revenge claimed lives of a father and son', The Indian Express, 2021 1.

2020 Hathras gang rape and murder case, where a 19-year-old Dalit woman was alleged gang-raped by four upper caste men. This case witnessed an unusual reaction from the Uttar Pradesh Police and administration. Initially the police denied any incident of rape and allegedly forcibly cremated the death body of the victim without the consent of her family[32]. Later, on 19th December 2020, CBI in its charge sheet filed mentioned severe lapses on part of Uttar Pradesh Police. The number of cases registered against state police personnel for human rights violation in India is considerably rising[33]. The highest number of cases of human rights violation registered during 2016-2018 is 209 in the year 2016, of which only 50 police personnel were charge sheeted and no police personnel convicted (Indiastat, 2021). Even the instances of police brutality which comes in lime light or witness public outrages, ones the initial phase of public outrage tides over – alleviate through enquiries, investigation and arrest – very rarely the police personnel are prosecuted or punished for the heinous act of violence. This flagrant human rights violation cannot be allowed to happen in any civilized society. Study reveals that, Indian police force use violence as a shortcut to justice. It is the marginalized section of the society who bears the scar. Lack of manpower along with insufficient modern amenities, woeful training and political pressure altogether means confession under compulsion and torture and often the only way to resolve crime cases.

Apex Court on Police Reforms

Two former police officers Prakash Singh and NK Singh, joined by an NGO, in 1996 approached the honorable apex court of the country urging police reform, stating about the police abuse and misuse of powers. The demand was to bring the police in line with the needs of the democratic society governed by rule of law, alleging non-enforcement or discriminatory and biased application of laws. After 10 years in 2006 the Hon'ble Court passed the judgement, issuing various directions to the center and state. The court inter alia states that there is a convergent view on need to have[34] (Prakash Singh & Ors vs Union Of India And Ors, 2006):

(I) State Security commission at state level,

(ii) Police Establishment Board at state level to decide on transfer, posting and promotion of officers below the rank of DSP and recommendations on the above stated matters to the state government for officials of higher rank,

32. Anuj Kumar, 'Hathras gang rape: Victim cremated without consent, says family', The Hindu, 2020 1.
33. As per report of NCRB.
34. Prakash Singh and Ors V. Union of India and Ors [(2006) 8 SCC 1: (2006) 3 SCC (Cri) 417]

(iii) Police Complaint Authorities at state and district level,

(iv) Transparent appointment procedure for DGP and other key officers and desirability of giving minimum fixed tenure,

(v) Separating the investigating police from law-and-order police,

(vi) A new police act which will reflect the demands of the modern democratic society.

The court directed the State government, Central government, and Union Territories to comply with the directives latest by 2006 and file the compliance affidavit by January 2007. However, the period for compliance was extended by couple of weeks, though apparently that was of no use. Considering the reluctant approach of the government, the apex court on May 16, 2008, set up a Monitoring committee to evaluate upon the compliance of the directives by the governments[35]. The committee in 2010 tabled its finding stating that particularly no state has fully complied with the court's directives[36]. The monitoring committee expressed its dismay over total indifference to the issues of reforms in the functioning of police personnel being exhibited. Again, after two years in 2012 the apex court again asked the governments to file an affidavit stating how far the directives of the 2006 Prakash Singh case have been complied with. In August 2013, three states raised objection against the Supreme Court's interference claiming that the whole matter is within the executive powers and functions alone[37]. Today when we are again about to observe the 15th police reforms day on 22nd September 2021, the apex court's directives are yet to be implemented in letters and spirit.

Compliance to the Supreme Court Decision on Police Reforms: A Reality Check

Research by the International Non-profit Common Health Human Right initiative have found that no states in India have fully complied with the Supreme Court directives for police reforms. The set of seven directives passed by the apex court, which initiated reforms in the Indian police structure, was the result of the PIL filed in 1996. Only two states, namely Andhra Pradesh and Arunachal Pradesh have

35. The Hon'ble Apex court in May 2008 set up a three-member Monitoring Committee, headed by Justice K. T. Thomas- retired judge Supreme Court of India.
36. Common Wealth Human Rights Initiative, Compliance with Supreme Court Directives on Police Reforms, https://www.humanrightsinitiative.org/publication/police-accountability-too-important-to-neglect-too-urgent-to-delay-supreme-court-directives-on-police-reforms Last accessed 10-03-2021.
37. Mahapatra Dhananjay, 'SC pushes for police reforms', The Times of India, 2010 1.

complied with highest number of directives i.e., three and four out of five[38]. The data reveled clearly reflects the inadequacy and ineffectiveness on the part of the state governments. This analysis graded the States and Union Territories on compliance of the five directives. Directive four and directive seven have not been considered as because, assessing the compliance of separation of investigation and law and order function under directive four will require an empirical study whereas directive seven i.e., set up of National Security Commission falls within the purview of the center.

STATISTICS ON COMPLIANCE WITH SUPREME COURT DIRECTIVES ON POLICE REFORMS[1]

Non-compliant, partially compliant **and** compliant

←Directives→

	1	2	3	5	6a	6b
	State Security Commission	S&T of DGP[2]	S&T of other officers[3]	Police Establishment Board	SPC Authority[4]	DPC Authority[5]
Andhra Pradesh	Partial	Partial	Compliant	Partial	Compliant	Compliant
Arunachal Pradesh	**Non-compliant**	Compliant	Compliant	Compliant	Compliant	**Non-compliant**
Assam	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	**Non-compliant**
Bihar	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Chhattisgarh	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	**Non-compliant**
Goa	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	**Non-compliant**
Gujarat	**Non-compliant**	**Non-compliant**	Compliant	**Non-compliant**	**Non-compliant**	**Non-compliant**
Haryana	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	Partial
Himachal Pradesh	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Jharkhand	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	**Non-compliant**	**Non-compliant**
Karnataka	Partial	**Non-compliant**	**Non-compliant**	Compliant	**Non-compliant**	**Non-compliant**
Kerala	**Non-compliant**	**Non-compliant**	Compliant	**Non-compliant**	**Non-compliant**	**Non-compliant**
Madhya Pradesh	**Non-compliant**	**Non-compliant**	Compliant	Partial	**Non-compliant**	**Non-compliant**
Maharashtra	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Manipur	**Non-compliant**	**Non-compliant**	Compliant	Partial	**Non-compliant**	**Non-compliant**
Meghalaya	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	**Non-compliant**
Mizoram	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	Partial
Nagaland	**Non-compliant**	Compliant	Compliant	**Non-compliant**	Partial	**Non-compliant**
Odisha	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Punjab	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Rajasthan	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Sikkim	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Tamil Nadu	**Non-compliant**	Partial	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Telangana	**Non-compliant**	**Non-compliant**	**Non-compliant**	No information	**Non-compliant**	**Non-compliant**
Tripura	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Uttar Pradesh	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**
Uttarakhand	**Non-compliant**	**Non-compliant**	**Non-compliant**	Partial	Partial	Partial
West Bengal	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**	**Non-compliant**

[1] Source: Commonwealth Human Rights Initiative url: https://www.humanrightsinitiative.org/publication/assessment-of-compliance-with-supreme-court-directives-on-police-reforms-state-compliance-note (Last Accessed: 16/01/2021)
[2] Selection and tenure of Director General of Police
[3] Selection and Tenure of other officers
[4] State Police Complaints Authority
[5] District Police Complaints Authority

State Security Commission (SSC): Directive one recommends for the establishment of state security commission and the states which have not complied with the norms have been marked as non-compliant. Out of 28 states only Andhra Pradesh and Karnataka have made the composition of state security commission binding. The commission serves the purpose of ensuring unwarranted ascendancy or impact on state police personnel by the state government. In India 1:3 police personnel experience political pressure during investigations and noncompliance to the pressure leads to transfer[39].

38. Commonwealth Human Rights Initiative, Government Compliance with Supreme Court Directives on Police Reforms: An Assessment (2020) https://www.humanrightsinitiative.org/publication/assessment-of-compliance-with-supreme-court-directives-on-police-reforms-state-compliance-note Last accessed 11-03-2021.
39. CSDS, C. C. (2019). *Status of Policing in India Report 2019*. New Delhi: Common Cause & Lokniti – Centre for the Study Developing Societies (CSDS).

Selection and Tenure of Director General of Police: 93% of states do not comply with the directive mandating minimum tenure for DGP. Only Arunachal Pradesh and Nagaland fully comply with the directive. In a recent case before the apex court Senior Advocate Raju Ramachandran mentioned that states are taking advantage of the court's direction to favor officers of their choice. Senior Advocate KK Venugopal further pointed out that in some cases officers are appointed as DGP on interim basis and on the last day of their service they are made permanent and thereby extending their service for additional two years. The court then upheld that the DGP must have two-year tenure irrespective of the retirement age. The apex court further noted that the police officers empaneled for the post of DGP shall a residual period of retirement of at least six months[40].

Selection and Tenure of Other officers: Most of the Indian states have complied with directive 3 which deals with minimum tenure of two years for Inspector General of police and other officers[41]. The minimum tenure of two years has been introduced to ascertain operational autonomy and limit political interference.

Police Establishment Boards (PEB): Police establishment boards is to decide on transfers, postings, promotions, and other service-related matters of police offices. All states except Telangana have constituted PEB but Arunachal Pradesh and Karnataka fulfil the criteria of composition, function, and power of board[42].

Police Complaints Authority (PCA): PCA at state level and district level inquiries into public complaints against police officers. Ten states have made PCA recommendations binding of which Andhra Pradesh and Arunachal Pradesh fulfils the criteria of composition, function and power of the authority. Eight states have specified a selection panel for the selection of independent members of PCA. The recent incidents of police torture and abuse have forced us to rethink on the role and importance of PCA in India.

40. Times, H. (2019, March 01). 'Minimum 6-month residual period of retirement a must': Supreme Court. Hinduatan Times. Retrieved January 17, 2021 from https://www.hindustantimes.com/india-news/minimum-6-month-residual-period-of-retirement-a-must-supreme-court/story-MwsYzaakRZUEYcORxBYnsO.html Last accessed 13-03-2021.
41. CSDS, C. C. (2019). *Status of Policing in India Report 2019*. New Delhi: Common Cause & Lokniti – Centre for the Study Developing Societies (CSDS).
42. ibid

The Union Territories, except Delhi have non-complied with most of the directives. The Ministry of Home Affairs have constituted one state security commission for Delhi and another separate for all the Union Territories. Furthermore, since the abrogation of Article 370 in 2019 the center has not issued any order for the implementations of the directive of the apex court[43].

CONCLUSION AND SUGGESTIONS

Internal Security of the country and protection of rights of the people are of utmost importance and cannot be compromised with. An effective police force is needed to tackle all such threat. And for that, the police force needs to be efficient, effective and technologically well-equipped. Contemporary progressive egalitarian society also demands an independent police force. While it cannot be denied that political interference is the bane of independent police functioning. The panacea to this problem is the "Police Reforms", which have been debated without any effective results. Despite recommendations of several committees, no substantial change can be noticed. This reflects the lack of political will and adamancy on the part of the bureaucracy in implementing the directives. Neither the bureaucrat nor the politicians want to do away with the control over the police. The lack of clarity in control over the police under the Police Act 1861, enables the politicians to use the police force for their vested interest. This concern needs an immediate address by both the state and central government. We all need to understand that this ramshackle condition of the police force may have a severe impact on the security and integrity of India. This is the high time to transform from "Ruler's Police to People's Police".[44]

43. CSDS, C. C. (2019). *Status of Policing in India Report 2019*. New Delhi: Common Cause & Lokniti – Centre for the Study Developing Societies (CSDS).
44. Singh Prakash, 'Listen to Supreme Court: Police Reforms are necessary to change it from a colonial to people-friendly force', Times of India, September 19, 2018.

Changing Political Scenario: A Look into Women's Development and Empowerment in Jammu and Kashmir

Tanveer Ahmad Lone*

Abstract

Women are increasingly becoming victims of violence, social practices, conflict, and gender inequality in Jammu and Kashmir. They are suffering from psychological conditions that have left them mentally ill due to the penetrating humiliation and harassment. Their rights have been taken away, and as a result, they face hardships. Women who become widows are supposed to raise children in the absence of their male guardian. This paper attempts to look at the changing political scenario in Kashmir and its impact on women's development and empowerment. It shows how violence is unleashed on people and how the amount of oppression varies among various groups of people. Both men and women, younger or elder, have been the victims of a long-lasting conflict in Kashmir. Women and children are vulnerable and prone to violence. Women have been the victims of violence for the last three decades due to changing political scenarios, domestic and social violence etc. The current circumstances limit the choices for women in Jammu and Kashmir. This paper is based on both primary and secondary data and the study has been carried out with the help of systematic qualitative and quantitative method. The researcher examined both internal and external sufferings of women from 2001 to 2019 in Jammu and Kashmir. This study aims to shed light on the political instability in Kashmir and its impact on women's development and empowerment.

Key words: - *Challenges, Conflict, Development, Empowerment, Violence, Vulnerable.*

Introduction

Looking at the social status of women in the present era, we come to know that even if society is moving towards equality, we still realize that in many fields

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there are social, educational, economic and political differences in the form of gender and inequality. From old ages to the present world, we don't see too many differences in the miseries of women folk. Indeed, crimes against women have taken multidimensional changes. In a patriarchal society, there exists gender discrimination as well as inequality many times, women experience an inferior status in our society and are considered weak which itself shows the prevailing inequality and immorality of our society. This work is an effort to explore the impact changing political scenario of Kashmir on women's development and empowerment.

Women lag behind men at the national and global levels in Kashmir. In the era of science and technology, women still lag behind men at the global, national or state level in Kashmir. Women often receive ill-treatment in society and are considered a weak gender. Concerning Kashmiri society, women face a lot of challenges and issues due to the changing political scenario. On the one hand, they face sexual assaults and on the other, they face violence. As a result, the social life of women in Kashmir has become a burden, as they have to deal with several issues related to education, employment, mental illness, and politics.

Objectives of the Study

- To address the issue of violence against women in Jammu and Kashmir.
- To highlight the impact of changing political scenario on women's empowerment and development in Jammu and Kashmir.

Research Methodology

The present study focuses on the changing political scenarios and its impact on women's development and empowerment in the State of Jammu and Kashmir which has now been bifurcated into two Union territories i.e., Jammu and Kashmir and Ladakh, on 05 August 2019. The research is purely qualitative and quantitative in nature. The present study shows the various types of violence faced by the women in the backdrop of Kashmir conflict. The sources of the information are collected from newspaper articles and opinion pieces from a local daily of Jammu and Kashmir. The data have been collected from the published information of State Crime Record Bureau (SCRB), Ministry of Home Affairs (GOI), and Jammu and Kashmir State Commission for Women from 2001 to 2019.

Women empowerment of Jammu and Kashmir

Women Empowerment is a process that assigns power or authority to women to challenge certain situations may be termed as "Women Empowerment". As far as women's development is concerned, women empowerment is a process that has been nourished by policies and programs for development that enable women to get strong enough to challenge their passive or submissive social status or condition. The UNDP (1995) in their definition of empowerment includes the choice expansion for women and increased capacity to exercise that

choice. Access to economic opportunities would increase their choices and programs related to health and education would enhance their ability to make these choices advantageous to themselves. Thus, women empowerment means expansion in the ability of women to expand their choices in those areas of strategic life where it was previously denied to them.

Women Empowerment may refer to a process through which women are given an authority to alter certain conditions whereby they are considered a weak gender. The empowerment of women is an important alternative to get women out of difficulties in Kashmir. Certainly, it is a slogan that aims at empowering women in diverse fields of her life. There are two broad ways to define "Women Empowerment ", general and specific. A general definition of women's empowerment is to give them access to all opportunities and choices which are denied to them just by virtue of their gender. Particularly, it refers to enhanced power concerning the social structure.

Women empowerment is a key aspect of gender equality. Women should be given more freedom, as well as the capability to organise their lives and reduce power imbalances, to achieve this. A dynamic process of empowerment is considered the act of fighting against the forces that subordinate and suppress women. It emphasizes the need for reorganizing resources at all levels of society, whether social, economic, political, intellectual or cultural. The current economic, political and social circumstances in Kashmir result in gender discrimination. Despite the lack of participation by women in socio-economic and political processes, women are still marginalized, and their voices are not heard. Their access to education and employment opportunities has also been affected. As a result of such circumstances, women in Kashmir are forced to be silent spectators. Kashmir's changing social and political situation causes women to suffer from identity crises. People suffering from psychic trauma due to conflict become mentally and emotionally ill. As a result of militancy and militarisation, Kashmir's women are among its most vulnerable groups. Furthermore, they experience harassment and humiliation that leave them depressed all the time. They become mentally ill as a result. Women have been stripped of their rights, be they socio economic and political in nature. A good number of women have become widows and half-widows. Women's empowerment is possible when they are allowed to participate equally with men in governance and with the end of political crises. By being empowered, the marginalized women become independent to make to take the decisions concerning their education, marriage and livelihood. It is incumbent to mention that there is a need to re-examine the domination coded in patriarchy. A patriarchal society is prone to violence against women during times of political crisis, so it is imperative that the root cause need to be addressed.

Challenges to Women Empowerment in Jammu and Kashmir

By offering several programmes to women will improve their status in the society. Both federal and the state governments have made tangible efforts in

empowering women such as the Training for Employment Program, Empower skilled women programme, Development of Vocational Skills, MGNREGA and National mission for empowerment of women. However, these programs lack effectiveness due to the current political crisis with a huge unemployed women population and a significant number of widows and half-widows. Kashmir's women face significant challenges to their empowerment process.

1. Violence against women
2. Lack of authority to make decisions
3. Unemployment and illiteracy in large numbers
4. Cultural practices and customs.
5. Women participate in politics at a low level.
6. Poverty caused by unemployment.

Even though the State government has launched numerous schemes aimed at empowering women, none have had any notable effects, and it became necessary for organizations such as these to mitigate the atrocities committed against women in Kashmir and provide them with the means to escape their predicament by providing them with the means and skills they need.

Women and children in Kashmir have often been the victims of political changes. Most often, they are vulnerable and the most prone to damage. Many of these women living through these atrocities have to bear the haunting memories of physical assaults, war, and death for the rest of their lives. Some of them are subject to sexually transmitted diseases as well as stigmatization and unwanted pregnancies. It is a daunting task to provide food, clothing, and shelter for their children and their families after displacements, with most of the infrastructure having been destroyed. A large number of women are widowed. As a result of the on-going conflict and changing political environment in Kashmir, women's lives are being impacted on every level, including education, overall development, social life, and health.

Impact of Political Scenario on women's development and empowerment

Over the last three decades, Kashmir has been caught up in a political crisis that began as an independent militant movement fighting for self-determination, which, in turn, has evolved into a battle between a hundred different groups, who are fighting against Indian security forces. Violence is used by all sides in this conflict, which has a profound impact on the lives of the people of Kashmir. Due to the changing political scenario in Kashmir, there has been a political backdrop which stopped women's development and empowerment. Those who suffer the most from the political crisis of state and non-state actors are women. Since 1989, women continue to suffer from rape, molestation and enforced disappearances. Physically, psychologically, socially and economically, violence has severely hindered their development and empowerment. They are also threatened by economic deprivation in addition to the prolonged threat from political scenarios. Financial difficulties seem to overshadow women's voices. Numerous negative factors affect the smooth conduct of women's lives,

including domestic violence, aggressive treatment of trivial matters, and an increased crime against them. The Kashmiri women have been victimized by rape by security forces since the start of the political crisis in Kashmir. In a changing political scenario, violence against women takes on a whole new dimension when the circumstances pressurize women psychologically and they develop stress-related diseases. Psychological abuse of women could be classified as such. In this political climate, women of Kashmir are experiencing a variety of situations that are not conducive to their mental health. Women of Kashmir have been dealing with the loss of partners, children or relatives, destruction of the house and hearth, no guarantee of a future income, harassment outside the house and even in the house, and the general environment of fear and uncertainty. Traumatic events have led to a rise in a lot of psychological cases among Kashmiris.

Women's development and empowerment have been negatively affected by the political situation, as they have a large number of widows and half-widows. Several thousand people have disappeared since the beginning of the Kashmiri political crisis. In Kashmir, there has been an estimate of thousands of disappeared persons based on reports provided by the Association of Parents of Disappeared Persons (APDP) around eight thousand to ten thousand cases of disappearances. There are two types of victims in the phenomenon of enforced disappearances, first the victims themselves, and second their families. No matter their age, these women facing the loss of husbands in Kashmir have encountered enormous challenges and grown increasingly burdened to survive in society. Widows face a variety of challenges, including economic, social, and psychological. The fact that one is a widow naturally carries with it an element of stigma. A family that is without an earning member of the family or a male member of the family is at risk of experiencing havoc, especially the women. In addition to the widows, there are a large number of half-widows. A Half Widow is a woman whose husband disappeared during the conflict and remains unknown till date. Many missing persons are attributed to the armed forces since they were taken away for questioning and later disappeared. These disappearances are attributed to crossing over to the other side of the border. A half widow experience is far more traumatic than a widow experience since these women live in a state of uncertainty between being married and widowed due to the lack of any clue about the men in their lives. Women are essentially viewed as victims in Kashmir's changing political scenario. There has been a lot of attention paid to the gender dimension of the conflict in the region due to the number of women raped, killed, and subjected to other human rights violations. There has been attention paid to the impact that the loss of a husband has on a woman. Widows and half widows are left to manage the role of raising their children and household without any financial assistance. These women lament over the disappearance of their sons during the political crisis. In Kashmir, the entire discourse focuses on the victimization of women.

The rise of domestic and societal violence against women has been directly correlated with the changing political scenario. In Kashmiri society, women

have never suffered violence regularly. According to Kashmiri tradition, women should be treated with proper respect and dignity. The violence against women has increased over the last three decades. An increase in unemployment, the militarization of the military; restrictions on movement, strike and curfew; and fear and suspicion overall have contributed to increased frustration among the people.

Violence against women in Jammu and Kashmir

Human rights violations against women and girls have persisted for decades. Due to the armed conflict, militant groups, domestic violence, etc., women have been victimized over the years. Their choices have been hampered by domestic violence. They have experienced an increase in violence as a result of militancy and armed conflict. "There can be no two opinions that the women of Kashmir during the past two decades have been in the vanguard and have been fighting battles against all kinds of injustice and crimes against humanity committed by the state and by some dubious non-state actors." Violence against women is also found in Jammu & Kashmir police reports which contend that women are controlled by male members of the family and are maltreated. It leaves them economically dependent. It also includes those women who are educated. However, according to Banday and Ganesan (2016), women fear to travel alone and, in some cases, continue their education because of social customs and codes. According to Goswami (1993), the root cause of violence against women in India is the lifestyle of male person. Among the factors that lead men to commit domestic violence against women are alcohol, drugs, smoking, extramarital affairs, bad company, and poverty. The same findings were given out by two studies (Bhatt, 1998), and Mc Kenry, et al. (1995). They maintained that drugs, alcoholism, smoking, extramarital affairs, bad company, and poverty are the causes of domestic violence. The number of family members, type of marriage, and husband's educational qualifications also play a part in domestic violence, as reported by Liz; (2012). Gerstein (2000) argued that low educational background and poverty are the main reasons for domestic violence. Women are at risk of domestic violence when they get married too early.

Women that live in conflict situations face a whole host of stress-related diseases, which intensify the violence against them. Women in Jammu & Kashmir have experienced numerous situations that are not conducive to their mental wellbeing during the conflict. As a result of the conflict in Kashmir, women have experienced many various situations which are harmful to their mental wellness. Losing a child or family member or partner, the destruction of their home and hearth, and being without definite earnings, all of these factors have become more anxious and stressed to them.

The present study focuses on the state of Jammu and Kashmir, which has now been divided into two Union territories on August 5, 2019. An area with a distinct geographical identity, socioeconomic status, cultural practices, and traditions. Currently the areas of India, Pakistan, and China cover over 22.2 lacs

square kilometres, making it one of the world's most politically sensitive ecological zones, the effect of which has been evident on people in this region for over decades. The literacy rate for the Jammu and Kashmir stands at 67.1%, with 56% of the population being female and the sex ratio is 889 females for every thousand males. Women in Jammu and Kashmir, particularly in the Kashmir division, have been targeted with violence. As a result of political turmoil, women have suffered violence throughout the region, especially in Kashmir. Due to changing political scenarios, Jammu and Kashmir was selected to assess the prevalence of violence against women in a region.

Table 1: Crime Head wise Number of Cases Registered under Crime against Women in Jammu and Kashmir (2001 - 2015)

Crime head	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Rape	169	192	211	218	201	250	288	219	237	245	277	303	378	331	296
Attempt to commit rape	0	0	0	0	0	0	0	0	0	0	0	0	0	20	21
Kidnapping & abduction	504	596	615	632	658	723	707	756	825	840	1023	1041	949	813	1071
Dowry death	13	18	10	9	5	10	9	21	12	9	11	8	7	5	6
Assault on women with intent to outrage her modesty	622	785	875	990	830	960	986	935	972	1038	1194	1322	1389	1421	1343
Insult to the modesty of women	288	368	376	264	371	347	353	296	371	262	350	347	354	237	175
Cruelty by husband or relatives	50	54	71	82	76	135	176	162	196	211	286	301	428	467	400
Importation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Suicide	0	0	0	0	0	0	0	0	0	0	0	0	0	25	50
Dowry prohibition act 1961	3	0	4	2	0	2	1	2	3	2	3	3	3	1	1
Immoral Traffic Act	7	3	2	11	3	5	1	4	6	4	2	3	1	1	0
Total	1656	2006	2164	2208	2144	2432	2521	2295	2624	2611	3146	3328	3509	3321	3363

Source: Ministry of Home Affairs, Govt. of India

The organised and increased cases of violation of women's human rights are now more prevalent than ever. The gendered social structures in the society pave a way to violence against women. Violence affects every society and is a major hindrance to end gender inequality and discrimination against women. The United Nations maintains that violence against women is "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life".

Women are often oppressed by men who use violence against them. Women are subordinated by men's violence. Jammu and Kashmir is experiencing an increase in domestic violence against women. According to police data, even educated and economically independent women are victimized. The situation has gotten tenser because of militancy and the effects of armed conflict in the past two decades. In the state, domestic violence is practised against both urban and rural women, and women of all economic, educational, cultural, social, and age groups. Dabla (2009), estimates that "15% of married women are physically and mentally abused. Crime aimed at women is on the rise in Jammu and Kashmir, including female rape, kidnapping, dowry, smuggling, and suicide".

Table 2: Incidence and temporal analysis of violence against women (2016–2018)

Crime	2016	2017	2018	Total
Abetment of suicide	286	291	313	890
Cruelty of husband/relatives	572	619	566	1757
Dowry death case	8	12	12	32
Dowry	1	2	4	7
Eye teasing	228	202	154	584
Gang rape	1	0	0	1
Kidnaping	1257	1468	1612	4337
Molestation	1481	1844	2128	5453
Rape case	406	471	546	1423
Immoral trafficking in women/girls	2	2	2	6
Total	4242	4911	5337	14490

Source: State Crime Record Bureau (SCRB); Ministry of Home Affairs (GOI)

The above table shows high cases of crime cases, i.e., molestation (5453) and kidnapping (4337), were recorded, followed by cruelty from husband/relatives (1757), and rape cases (1423) of the total cases registered during 2016–2018 in the study area, while as low crime cases such as immoral trafficking of women and girls with (6), dowry cases (7), and cases related to dowry death cases (32) show the least incidence in the given period. The analysis from 2016 to 2018 shows an increasing trend in molestation cases, followed by the cruelty of husbands and their relatives, rape cases, and kidnapping in Jammu and Kashmir. Crime related cases such as immoral trafficking against women/girls show a decreasing trend, followed by cases of eve-teasing, and dowry related cases.

Violence against women in the state has risen rapidly over the years. Sexual violence cases are also on the rise, though gradually. In both Jammu and Kashmir, incidents of this type have been reported. According to State Commission for Women data in 2015, approximately 500 complaints of violence against women were received. Data shows that domestic violence and harassment were among the most commonly reported cases from Kashmir.

According to the Jammu and Kashmir State Commission for Women, which was established to protect women and children's rights and ensure swift prosecutions, domestic violence and general violence against women surged tenfold to more than 3,000 a year during a previous Lockdown in 2016 and 2017. The state government has revealed in the legislative assembly that over 4714 cases of crime against women have been reported in Jammu and Kashmir during 2017 alone. Over 2850 cases of kidnapping and abduction of women were recorded, while 5399 cases of molestation were reported in the state. As the military lockdown and the pandemic intensify today, Kashmir's women face no end to the violence they have faced. However, limited support is available to survivors of gender-based violence.

In Jammu and Kashmir, with high social, cultural, economic, and political differentiation, women have been subjugated and discriminated. They have been subjected to oppression and discrimination both inside and outside their home environments. As stated above, Violence against Women is still occurring, despite various national laws and acts implemented to make women's safety and security a priority nationwide, and women's rights should be realized universally, rather than focusing on the rights of particular regions. There should be a national uniform law that enforces women's rights regardless of their ethnicity, religion, or status.

Conclusion

Changing political scenario in Jammu and Kashmir has led to women's status being further eroded. The political situation in Jammu and Kashmir has resulted in innumerable suffering for women. The gender structure correlates bias and prejudice against women in the society. Most of the discourse in Jammu and Kashmir about women is one of victimization at the hands of armed and other forces due to their vulnerability. Human rights violations affect women in many ways: death or disappearance of male members in the family, loss of livelihood, disruptions of social order, and other concerns. In the absence of the male guardian,

women are left to manage their households and raise children without any financial aid. It has been documented by a number of agencies, including international agencies, that innocent daughters, mothers, sisters, and wives are subjected to sexual abuse, torture, and rape. They are victims of harassment, abuses, and social stigmas which makes their life vulnerable. Women's mobility and freedom are often restricted at the pretext of physical insecurity. So, restrictions on them have increased in the changing political scenario of Kashmir. The excessive militarization of Kashmiri society has left women more vulnerable to abuses in the society. Governments and other stakeholders should commit strongly and sustainably to empowering women in Jammu and Kashmir. Education and awareness campaigns can contribute to women's empowerment and long-term achievement. Streamlining gender equality policies and promoting an environment favourable to women can lead to significant progress in the short term by strengthening and expanding mass awareness of gender equality. Although the government has taken many positive steps for women's development and empowerment, but they are still discriminated against at the grassroots level.

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A Study of the Public Awareness on Child Rights and Child Education

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Abstract

Protection and promotion of child rights and child education play a significant role for achieving greater social equity, justice, and development. Public awareness on child rights and child education is a key factor in the context of protecting and promoting child rights and child education. In many cases, it is observed that the children are victimized in the form of child labour, child abuse and child sexual offence and so on. In many cases also they are failed to attain their rights and achieve their education because of many factors including the significant factor like the lack of proper public awareness on the child rights and child education. Review of studies in the areas of child rights and child education states that hardly study has been conducted to study the public awareness on child rights and child education. Hence, in the present study a significant attempt was made to study the public awareness on child rights and child education. The study mainly focused to compare the public awareness on child rights and child education on the basis of their personal variables (age, gender, economic status, sector of job, and education) and socio-ethnic variables (community and caste). The descriptive survey method of research was used to conduct this study. A sample of 120 public (community people) from the Cachar district of Assam, India constituted the participant of the study. Stratified random sampling technique was used to select the participants of the study. Two self-developed tools i.e., 'Awareness Test for assessing the Awareness on Child Rights' and 'Awareness Test for assessing the Awareness on Child Education' were used for collection of data for the study. The quantitative techniques of data analysis were employed for analyzing the collected data of the study. The study mainly revealed that the gender, economic status, and education of the public are the determinants of their awareness on child rights, and education of the public is the determinant of their awareness on child education.

Key words: - *Child education, Child rights, Human rights, Public awareness*

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Introduction

It is universally accepted truth that a nation's destiny depends upon its children, and the quality of life of future citizens of a nation depends on the upbringing of its children. Children of any country are treated as its assets and resources. The health of a nation is gauged through the health of its children (Gautam, 2006). Progress of a nation, therefore, is directly linked to the development and proper care of children of the nation. Children should be treated in an appropriate manner so that there would be an all-round development in them. It means that the children need to be provided an environment which would help them to fulfill their physical, social, emotional, and cognitive needs. Education is one of the significant means through which a child can protect himself/herself from any kind of exploitation and danger. Education plays a significant role for accelerating the growth and development of a nation. Further, it eradicates the miseries of darkness of the socially and economically marginalized adults and children and helps them to participate effectively as variable assets for their nation (Kaur, 2014). Education helps for proper living. It is used mostly for gaining knowledge, skill, and values. It helps to distinguish between the right and wrong (Selvam, 2018). India is the home of a large number of children of the world, but, in India many of its children are educationally deprived. Children are misused in several ways like child labour, child labour is defined by Swami Agnivesh as "any child who is out of school is a child labour" (Jani, 2006). The infants and children face high risk of emerging diseases because of child poverty, and a generation of children is being trapped in a cycle of malnutrition and long-term health consequences because of climate change (Caplan and Hotez, 2018). Children with disabilities (CWDs) are treated as the most marginalized and stigmatized children among all the children of the world. Though all children are one way or other at the risk of being victims of violence but the children with disabilities are at significantly increased risk of being victims of violence because of negative traditional beliefs, ignorance, and stigma (Desai and Goel, 2018).

At the international as well as national level, the children of our society have been given so many rights like right to equality, right to education, right against exploitation, right to food, etc. All these rights are for the self-development of the children. But, the violations of child rights have been distinctly visible in three spheres of child development process, i.e., Child Labour and Child Education, Child Health and Child Abuse that severely affect the future of their adulthood (Roy, 2013). The four columns of child rights which need to be strengthened by formulating appropriate laws as deemed suitable are survival, protection, development, and participation (Mishra, 2012). The demand of the children's liberation movement in 1970s was that the children should be granted all basic civil rights and they should have right to assert these rights

independently (Imanian, 2016). One of the most important matters of consideration in present world is the protection of a child and his/her rights. The consideration of the child as social being and 'the child does not have the power of self-protection' have propounded the significance of child rights (Faiz and Kamer, 2017). There are also different views regarding whether the rights of the children are the same as general rights or there is a difference between rights of the children and general rights. One kind of expression in this context is that the children's rights are a separate set of rights which can be found in the vocabulary that is very often used to discuss and describe children's rights. In research on children's rights, the children's rights categories are frequently conceptualised as "provision", "protection" and "participation" rights (Quennerstedt, 2010). In comparison, human rights are sometimes categorised as "civil", "political" and "economic, social and cultural" rights. It is claimed here that, in spite of wide de jure recognition of eligibility of a child to human rights, there is need of legal recognition of an individualized identity which is necessary to reaffirm the commitment of society to the child as a human being in his/her own right (Ronen, 2004).

The different rights of the children need to be protected or it must be ensured that such rights are availed by them. So, the general public must be aware on the different child rights and work for the better protection and practice of the child rights for the healthy development of children. Better knowledge on child rights contributes to achieve the better life of children, and it is important that general public of the society including parents and teachers must know about this issue. Now child rights are laws, but it should be understood that these rights are treated as social laws, not penal laws– in other words one can infer that these rights can only be effectively implemented by people by changing their approach but not by punishment or coercion. A child is a future citizen of the country. Child rights are treated as fundamental freedoms and the inherent rights of all human beings below the age of 18 (Sathiyaraj and Jayaraman, 2013). It may be judicious to postulate that greater knowledge of child rights in legal instruments, along with more positive attitudes towards those rights and to children's welfare generally contribute a lot for generating a more positive societal culture for children. And this in turn helps to promote child rights in lived experience, and reduce abusive behaviour (Deb, Sun, Gireesan, Kumar and Majumdar, 2016). The need of the hour for all of us is to ensure that laws, schemes and programmes for protection and promotion of child rights are implemented by them at the field level in the 'right' perspective (Bhakhry, 2006).

Emphasizing on the above perspectives relating to child rights, an attempt was made in this present study to study public awareness on child right and child education. Though child education is a significant component of child right, but, in the present study, public awareness on child right and public awareness on child education are studied separately. Child in this study is understood as a human being below the age of 18 years. Child right in this study is understood as the standards and rights guaranteed to all people under the age of 18 years by

the laws that govern India and the international legal instruments that have been accepted in India, by ratifying them. Child education in this study is understood as education of child below the age of 18 years. Public awareness on child rights and child education in this study is understood as knowledge, understanding and concern of public on child rights and child education. The study was concerned with two objectives:

1. To compare the public awareness on child rights on the basis of their personal variables (age, gender, economic status, sector of job and education) and socio-ethnic variables (community and caste), and
2. To compare the public awareness on child education on the basis of their personal variables (age, gender, economic status, sector of job and education) and socio-ethnic variables (community and caste).

Hypotheses of the Study

The following hypotheses were formulated in the study:

1. There is no difference in public awareness on child rights on the basis of their personal variables (age, gender, economic status, sector of job and education) and socio-ethnic variables (community and caste), and
2. There is no difference in public awareness on child education on the basis of their personal variables (age, gender, economic status, sector of job and education) and socio-ethnic variables (community and caste).

Methodology of the Study

Descriptive research describes and interprets existing relationships, practices, and processes among the variables. Since the present study aimed to study the relationship among the variables, so, descriptive method of research was adopted in this present study. In this study the data referring to the public awareness on child rights and child education were collected through descriptive survey method from a large sampling area of the participants and such data were analysed on the basis of their personal and socio-ethnic variables.

Participants of the Study

A sample of 120 public (community people) from the Cachar district of Assam, India constituted the participant of this study. All the 120 participants were selected by adopting the stratified random sampling techniques. Stratification of the participants was made on the basis of their personal and socio-ethnic variables. The detail categorization of the participants is given in table 1.

Table 1
Categorization of the Participants

Socio-ethnic variable wise division of Participants	Socio-ethnic variable wise division of Participants												
Community	Caste	Age	Gender	Economic Status	Sector of job	Education							
Hindu	60	Reserved caste	30	High Aged	30	Male	41	Above Poverty Line	30	Govt. job holder	30	Illiterate	20
												School Educated	20
		Unreserved caste	30	Low Aged	30	Female	19	Below Poverty Line	30	Private job holder	30		
												University Educated	20
Muslim	60	-	High Aged	30	Male	42	Above Poverty Line	30	Govt. job holder	30	Illiterate	20	
											School Educated	20	
		-	Low Aged	30	Female	18	Below Poverty Line	30	Private job holder	30			
											University Educated	20	

Definition of the variables:

Hindu (People belonging to Hindu religion)
Muslim (People belonging to Muslim religion)
Reserved caste (People who are given reservation by Government on the basis of their caste)
Unreserved caste (People who are not given reservation by Government on the basis of their caste)
High Aged (People having age 40 or above 40 years)
Low Aged (People having age less than 40 years)
Male (Man)
Female (Woman)
Above Poverty Line (People who remain above poverty line or recognized as people of Above Poverty Line by Government)
Below Poverty Line (People who remain below poverty line or recognized as people of Below Poverty Line by Government)
Private (People who are working under the private sector or who are self-employed)
Government (People who are working under the Government sector)
Illiterate (People who are uneducated)
School Educated (People who have studied up to secondary or higher secondary school level)
University Educated (People who have studied up to university level)

Tools used

In this study two different awareness tests were used. For assessing public awareness on child rights, an awareness test titled 'Awareness Test for assessing the Awareness on Child Rights', and for assessing public awareness on child education an awareness tests titled 'Awareness Test for assessing the Awareness on Child Education' were used in the study. Both the tests contain introductory part for the respondents. In the introductory part, a respondent has to fill up some basic personal information such as name, age, gender, economic status, sector of job, level of education, community, and caste (if applicable), etc. The Awareness Test for assessing the Awareness on Child Rights contains 20 items on the child rights covering various rights and laws related to child at national and international levels. The Awareness Test for assessing the Awareness on Child Education contains 20 items on different aspects of the child education like educational rights of the child, educational programmes/policies, /schemes for the child and so on. Each item in both the tests has four options, out of which only one option is correct/appropriate. A respondent has to tick only one option out of the four options of each item of both the tests according to his/her knowledge/understanding/perceptions. If the item is correctly responded by the respondent then the respondent will achieve the score '1' for the item and if the item is incorrectly responded by the respondent then the respondent will achieve the score '0'. Therefore, the range of scores of a participant for each of the tests is from 0 to 20. The reliability coefficient of the Awareness Test for assessing the Awareness on Child Rights is 0.78 and the reliability coefficient of the Awareness Test for assessing the Awareness on Child Education is 0.81. Content validity of both the tests was established. Though there is no specific time limit for administration of both the tests, but each of the tests normally takes around half an hour to be completed by a respondent. While Awareness Test for assessing the Awareness on Child Rights was used to achieve the first objective of this study, Awareness Test for assessing the Awareness on Child Education' was used to achieve the second objective of this study.

Process of Collection and Analysis of Data

With the help of both the tools, i.e., 'Awareness Test for assessing the awareness on Child Rights' and 'Awareness Test for assessing the Awareness on Child Education' the data were collected from the participants of the study personally for achieving both the objectives of the study. The researchers collected the data from the participants by creating a conducive and natural setting for collection of data. The data of the study were analysed mainly with the help of quantitative techniques of data analysis. The quantitative techniques of data analysis like mean, Standard Deviation, "t" test, etc. were used for analyzing the results of the study.

Analysis of Data and Interpretation of Results

The details of the analysis of data and interpretation of results of the study are given under the following heads:

1. Comparison of public awareness on child rights on the basis of their personal and socio-ethnic variables

Table 2

Table indicating the comparison of public awareness on child rights in relation to their personal variables

Level of personal variables	Categories of variables in each level	N	M	SD	Calculated "t" value	DF	Table value of "t" at 0.05 level	Sig. level of α
Age	High Aged	52	7.461	1.984	0.097	118	1.98	■
	Low Aged	68	7.5	2.404				
Gender	Male	83	7.481	2.065	6.925	118	1.98	*
	Female	37	4.432	2.296				
Economic status	Above Poverty Line	60	8.233	2.485	4.014	118	1.98	*
	Below Poverty Line	60	6.7	1.605				
Sector of job	Government job holder	25	8.2	3.174	1.678	118	1.98	■
	Private job holder	95	7.084	1.939				
Education	Illiterate	40	6.55	1.532	2.273	78	1.99	*
	School Educated	40	7.3	1.417				
	School Educated	40	7.3	1.416	2.689	78	1.99	*
	University Educated	40	8.65	2.842				
	Illiterate	40	6.55	1.532	4.114	78	1.99	*
	University Educated	40	8.65	2.842				

α is significant at 0.05 level ***■ α is not significant at 0.05 level***

The table 2 displays the data relating to comparison of public awareness on child rights in relation to their personal variables. From the age level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 0.097 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is accepted at 0.05 level of significance. Therefore, it is safely concluded that there is no significant difference between high aged public and low aged public regarding their awareness on child rights. In other words, it is concluded that age difference among the public does not affect on their awareness on child rights. From the gender level data of the table, it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 6.925 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is safely concluded that there is significant difference between male public and female public regarding their awareness on child rights. Since the mean score of male publics is more than the mean score of female publics regarding their awareness on child rights, so, it is decided that male public have more awareness on child rights than female public. In other words, it is summarized that gender difference among the public effects on their awareness on child rights. From economic status level data of the table, it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 4.014 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is safely concluded that there is significant difference between above poverty line public and below poverty line public regarding their awareness on child rights.

As the mean score of above poverty line public is more than the mean score of below poverty line public regarding their awareness on child rights, so, it is finalized that above poverty line public have more awareness on child rights than below poverty line public. In a different way, it is summarized that economic difference among the public effects on their awareness on child rights. From the sector of job level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 1.678 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Since the calculated "t" value is less than the table value of "t", so, the null hypothesis is accepted at 0.05 level of significance. Therefore, it is concluded there is no significant difference between government job holder public and private job holder public regarding their awareness on child rights. In other way, it is concluded that the sector of job difference among the public does not affect on their awareness on child rights. From the education level (illiterate and school educated) data of the table, it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 78 DF. The calculated value of "t" is 2.273 and the table value of "t" is 1.99 at 0.5 level of significance for 78 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is undoubtedly concluded that there is significant difference between illiterate public and school educated public regarding their awareness on child rights. Since the mean score of

school educated public is more than the mean score of illiterate publics regarding their awareness on child rights, so, it is decided that school educated public have better awareness on child rights than illiterate public. In other words, it is inferred that education level (illiterate and school educated) difference among the public effects on their awareness on child rights. From the education level (school educated and university educated) data of the table, it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 78 DF. The calculated "t" value is 2.689 and the table value of "t" is 1.99 at 0.5 level of significance for 78 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is finalized that there is significant difference between school educated public and university educated public regarding their awareness on child rights. Since the mean score of university educated public is more than the mean score of school educated public regarding their awareness on child rights, so, it is inferred that university educated public have more awareness on child rights than school educated public. In brief, it is summarized that education level (school educated and university educated) difference among the public effects on their awareness on child rights.

From the education level (illiterate and university educated) data of the table it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 78 DF. The calculated value of "t" is 2.689 and the table value of "t" is 1.99 at 0.5 level of significance for 78 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is inferred that there is significant difference between illiterate public and university educated public regarding their awareness on child rights. Since the mean score of university educated public is more than the mean score of illiterate publics regarding their awareness on child rights, so, it is finalized that university educated public have more awareness on child rights than illiterate public. In other words, it is summarized that education level (illiterate and university educated) difference among the public effects on their awareness on child rights.

Table 3

Table indicating the comparison of public awareness on child rights in relation to their socio-ethnic variables

Level of personal variables	Categories of variables in each level	N	M	SD	Calculated "t" value	DF	Table value of "t" at 0.05 level	Sig. level of α
Community	Hindu	60	7.983	2.085	0.030	118	1.98	
	Muslim	60	7.95	8.49				
Caste	Unreserved	30	8.333	2.342	1.319	58	2.00	■
	Reserved	30	7.633	1.722				

Table 3 states about the comparison of public awareness on child rights on the basis of their socio-ethnic variables. From the community level data of the table, it is

found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 0.030 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is accepted at 0.05 level of significance. Therefore, it is concluded there is no significant difference between Hindu community public and Muslim community public regarding their awareness on child rights. In other way, it is inferred that the community difference among the public does not affect on their awareness on child rights. From the caste level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 58 DF. The calculated value of "t" is 1.319 and the table value of "t" is 2.00 at 0.5 level of significance for 58 DF. Hence, the null hypothesis is accepted at 0.05 level of significance. Therefore, it is inferred that there is no significant difference between unreserved caste public and reserved caste public regarding their awareness on child rights. In different way, it is summarized that caste difference among the public does not effects on their awareness on child rights.

2. Comparison of public awareness on child education on the basis of their personal and socio-ethnic variables

Table 4

Table indicating the comparison of public awareness on child education in relation to their personal variables

Level of personal variables	Categories of variables in each level	N	M	SD	Calculated "t" value	DF	Table value of "t" at 0.05 level	Sig. level of α
Age	High Aged	52	7.384	2.134	0.562	118	1.98	■
	Low Aged	68	7.206	2.066				
Gender	Male	83	7.457	2.043	0.256	118	1.98	■
	Female	37	7.567	2.224				
Economic status	Above Poverty Line	60	8	2.160	0.109	118	1.98	■
	Below Poverty Line	60	7.9	6.786				
Sector of job	Government job holder	25	8.08	2.331	1.460	118	1.98	■
	Private job holder	95	7.336	2.008				
Education	Illiterate	40	6.40	1.716	2.03	78	1.99	*
	School Educated	40	7.225	1.916				
	School Educated	40	7.225	1.916	2.39	78	1.99	*
	University Educated	40	8.45	2.224				
	Illiterate	40	6.45	1.716	4.53	78	1.99	*
	University Educated	40	8.45	2.224				

Table 4 states about the comparison of public awareness on child education on the basis of their personal variables. From the age level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 0.562 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is accepted at 0.05 level of significance.

Therefore, it is concluded there is no significant difference between high aged public and low aged public regarding their awareness on child education. In different way, it is safely concluded that age difference among the public does not affect their awareness on child education. From the gender level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 0.256 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is accepted at 0.05 level of significance. Therefore, it is concluded that there is no significant difference between male public and female public regarding their awareness on child education. In other words, it is finalized that gender difference among the public does not affect on their awareness on child education. From the economic status level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 0.109 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is accepted at 0.05 level of significance. Therefore, it is concluded there is no significant difference between above poverty line public and below poverty line public regarding their awareness on child education. In different way, it is inferred that economic status of the public does not affect on their awareness on child education. From the sector of job level data of the table it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 1.460 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is accepted at 0.05 level of significance.

Therefore, it is concluded that there is no significant difference between government job holder public and private job holder public regarding their awareness on child education. In other way, it is finalized that the difference in sector of job among the public does not affect on their awareness on child education. From the education level (illiterate and school educated) data of the table, it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 78 DF. The calculated value of "t" is 2.03 and the table value of "t" is 1.99 at 0.5 level of significance for 78 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is concluded that there is significant difference between illiterate public and school educated public regarding their awareness on child rights. Since the mean score of school educated public is more than the mean score of illiterate public regarding their awareness on child education, so, it is inferred that school educated public have more awareness on child education than illiterate public. In other way it may be told that the difference in education level (illiterate and school educated) among the public does affect their awareness on child education. From the education level (school

educated and university educated) data of the table, it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 78 DF. The calculated value of "t" is 2.39 and the table value of "t" is 1.99 at 0.5 level of significance for 78 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is inferred that there is significant difference between school educated public and university educated public regarding their awareness on child education. Since the mean score of university educated public is more than the mean score of illiterate public regarding their awareness on child education, so, it is inferred that university educated public have more awareness on child education than illiterate public. In other way, it is told that education level (school educated and university educated) difference among the public affects on their awareness on child education. From the education level (illiterate and university educated) data of the table, it is found that the calculated "t" value is more than the table value of "t" at 0.05 level of significance for 78 DF. The calculated value of "t" value 4.53 and the table value of "t" is 1.99 at 0.5 level of significance for 78 DF. Hence, the null hypothesis is rejected at 0.05 level of significance. Therefore, it is concluded that there is significant difference between illiterate public and university educated public regarding their awareness on child education. Since the mean score of university educated public is more than the mean score of illiterate public regarding their awareness on child education, so, it is decided that university educated public have better awareness on child education than illiterate public. In other words, it is inferred that education level (illiterate and university educated) difference among the public affects on their awareness on child education.

Table 5

Table indicating the comparison of public awareness on child education in relation to their socio-ethnic variables

Level of personal variables	Categories of variables in each level	N	M	SD	Calculated "t" value	DF	Table value of "t" at 0.05 level	Sig. level of α
Community	Hindu	60	7.95	8.249	0.817	118	1.98	■
	Muslim	60	7.05	2.201				
Caste	Unreserved	30	8.133	2.012	0.696	58	2.00	■
	Reserved	30	7.633	1.722				

Table 5 states about the comparison of public awareness on child education on the basis of their socio-ethnic variables. From the community level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 118 DF. The calculated value of "t" is 0.817 and the table value of "t" is 1.98 at 0.5 level of significance for 118 DF. Hence, the null hypothesis is accepted at 0.05 level of significance. Therefore, it is concluded there is no significant difference between Hindu community public and Muslim community

public regarding their awareness on child education. In a different way, it is stated that the community difference among the public does not affect on their awareness on child education. From the caste level data of the table, it is found that the calculated "t" value is less than the table value of "t" at 0.05 level of significance for 58 DF. The calculated value of "t" is 0.696 and the table value of "t" is 2.00 at 0.5 level of significance for 58 DF. Hence the null hypothesis is accepted at 0.05 level of significance. Therefore, it is concluded that there is no significant difference between unreserved caste public and reserved caste public regarding their awareness on child education. In other words, it is summarized that caste difference among the public does not affect on their awareness on child education.

Discussion of the Results

An attempt was made in this study to study the public awareness on the child rights and child education. The study has great importance in the present time for bringing social and educational change in society by focusing on issues related to child rights and child education. The awareness on the child rights and child education among public including parents and teachers has immense importance for the welfare of the society as well as nation at a large. From the study, it was found that the personal variables of the public like age and sector of job do not affect their awareness on child rights, but the personal variables of the public like gender, economic status and education are considered as the determinants of their awareness on the child rights. From the study, it was found that the personal variables of the public like age, gender, economic status and sector of job do not affect their awareness on child education, but the personal variable of the public like education is considered as the determinant of their awareness on the child education. From the study, it was also found that the socio-ethnic variables of the public like community and caste affect neither their awareness on child rights and nor their awareness on child education.

Some other researches were also conducted previously by the other researchers based on this present area of study. In different ways the results of such researches are related with the results of the present study. The results of some of such researches directly support the results of the present study whereas the results of some of such researches differ from the results of present study in one way or other. The thematic relation of the results of some of such researches with the results of present study is given below.

The results of the researches of Nithya (2013); Kansra and Kansra (2014); Kaur (2014); Deb, Sun, Gireesan, Kumar and Majumdar (2016); and Mishal, Rizwan, Iram, and Raja (2018) are closely related with the results of the present study. From the present study it is found that the variables like gender, economic status and education of the public are considered as the determinants of their awareness on child rights whereas the variable like education of the public is considered as a determinant of their awareness on the child education. Nithya (2013) from the research on 'A study on the awareness of Right to Education Act (2009) among the B.Ed. student teachers in Coimbatore District' found that there is significant

difference among the B.Ed. student teachers regarding their awareness of Right to Education Act (2009) on the basis of gender and education. From the study it is found that the male student teachers are more aware of Right to Education act (2009) than those of the female student teachers. In the same way, the student teachers with PG qualification are more aware about the RTE Act 2009 than those of with low qualification. Kansra and Kansra (2014) and Kaur (2014) conducted researches on 'Awareness of right to education among elementary school teachers: An empirical analysis' and 'Awareness of right to education among secondary school teachers' respectively and reported that male and female school teachers differ significantly in their awareness of Right to Education Act as the calculated mean score of male school teachers is higher as compared to the female school teachers. They also found that the government and private school teachers do not differ significantly in their awareness of Right to Education. Results of the research of Deb, Sun, Gireesan, Kumar and Majumdar (2016) on 'Child rights as perceived by the community members in India' have similarities with the present study because they also found that the people of low educational background in the rural and urban areas differ significantly from those of high educational backgrounds in the rural and urban areas regarding their level of knowledge on awareness towards child rights and education. The research of Mishal, Rizwan, Iram and Raja (2018) on 'Assessment of child rights awareness among pediatric doctors and nurses in tertiary hospitals, Lahore' has similar results as they found that the graduates or post graduates participants had more knowledge on child rights awareness as compared to diploma holders. The research further revealed that participants with age more than 30 years had more knowledge as compared to the participants that had age less than 30 years. But it was not statistically significant.

The results of the researches conducted by Okoye (2011); Shanmugam, Ramachandra and Kantharaj (2013); Mondal (2014) are matching with results of the present study in respect of some variables and differing in respect of some other variables. Okoye (2011) from the research on 'Knowledge and awareness of the child's rights act among residents of a university town in Enugu state, Nigeria' found that public differ among themselves in respect of knowledge and awareness of the child rights on the basis of their gender and age. From the research it was also reported that there is significant difference between the public with high education and those of low education regarding their awareness of child rights. Shanmugam, Ramachandra and Kantharaj (2013) in their research on 'Parental knowledge and attitude towards child's rights – An Indian perspective' found that parents differ among themselves on the awareness towards child rights on the basis of their gender and do not differ on the basis of their age, education and religion. Mondal (2014) conducted a research on 'Primary school teachers' awareness of Right to Education Act 2009: A study of south district of Andaman and Nicobar Islands' and reported that there is no significant difference among the primary school teachers' awareness of Right to Education Act 2009 on the basis of age, gender, job in government and private sector except Education.

The results of the researches of Sathiyaraj and Jayaraman (2013); Sandhu and Singh (2016); and Gafoor and Rajan (2008) are different from the results of the

present study in different ways as given below. In the present study it is found that there is significant difference among the public regarding their awareness towards child rights on the basis of their gender. Sathiyaraj and Jayaraman (2013), and Sandhu and Singh (2016) conducted their researches on 'A study on child rights awareness among the primary school teachers in Tiruchirappalli district of Tamilnadu' and 'Right to education awareness among adults in relation to gender and residential area of district Sangrur' respectively and from their studies it was clearly predicted that the teachers do not differ among themselves on the basis of gender regarding their awareness towards child rights. In this way, results of both the researches differ from the results of the present study. In the same way the results of the research conducted by Gafoor and Rajan (2008) on 'Child rights: Need for better awareness among student teachers' differ from the results of the present study because they found from their study that there is no significant gender difference in the child rights awareness among the Teachers Training Institutions students and the students belonging to government and private managed institutions.

Conclusion

Today's child is the tomorrow's adult. The responsibility of development of any nation ultimately comes to its children. So, for the wholesome development of a child, the different rights of the child including his/her educational right need to be protected and it must be ensured that the child enjoys his/her all rights including educational rights without any hindrances. Child rights and child education are two significant determinants of achieving social parity and social development of any nation. For the inclusive development of any society, its child rights as well as child education contribute a lot. Hence, in a society all sorts of arrangements must be made for providing its children the opportunity to enjoy their different rights and most importantly their education or educational right. For effective discharge of child rights and education, public including the parent and teachers must be aware about the different aspects of child rights and child education. The major findings of the present study revealed that male public are more aware on child rights than female public, above poverty line public are more aware on child rights than below poverty line public and highly educated public are more aware on child rights than less educated or illiterate public. Hence, there is need to take steps to familiarize the female public on child rights, familiarize the below poverty line public on child rights and increase the level of education of the public in order to increase their awareness on child rights. Further, the major findings of the study indicated that highly educated public is more aware on child education than less educated or illiterate public. Therefore, steps must be taken to enhance the level of education of the public in order to increase their awareness on child education. The study indicated that the variables like age, sector of job, community and caste of the public have little impact on determining the child rights and the variables like age, gender, economic status, sector of job, community and caste of the public have little impact on determining the child education. The study has implications for educational planners, administrators, teachers, parents and above all the society

itself for taking appropriate steps for strengthening the child rights and child education. The findings and suggestions of the study may be useful for the people who fight for protecting and providing child rights and child education. The study would be a reference point for the organizations which works on child rights and child education. The study is a suggestive means for educational institutions, NGOs and other such organizations to take steps to enhance and popularize the child rights and child education among the students, teachers and common public. The study has the implications to devise the different mechanisms and plans by the various government and non-government organizations and implement the same mechanisms and plans for better protection and promotion of child rights and child education. The study has direct or indirect implication for reducing child labour and other offences against children. Ultimately, the study has relevance for providing a justified place to the child in the society.

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Protection of Children Against Cyber Crimes During Outbreak of Covid-19: Human Right Perspective

Sanjeev Kumar* and Anupam Manhas**

Abstract

With the current advances in cyber space, we are seeing more and more human rights abuses and the privacy of a person is being jeopardised every day. There is a genuine attempt made to concentrate on the "presumed boundlessness" of cyber space in order to analyse how and to what extent the activities are focused on it. Before we go into the details of the topic, it is acceptable and essential to first grasp the meaning and breadth of cyberspace itself. The primary goal of this article is to educate not only academics but also non-tech aware laypeople about the newest electronic devices, such as the internet, mobile phones, laptop computers, and phones, as well as their relationship to human rights throughout the globe. This article serves as a litmus test for the proper and improper usage of cyber space during covid, a new technical term that is proving to be very useful in a variety of fields. The internet has now grown to be all-encompassing, affecting the life of every human being on the planet. We often downplay the advantages of the internet, but the fact that it is anonymous enables criminals to engage in a wide range of cybercrime activities. As a result of the COVID19 epidemic, cybercrime is changing and becoming more prevalent. Internet fraud, extortion, and online child sexual abuse all target individuals, whereas ransomware mostly targets computer systems, especially those in hospitals. Government organisations will continue to be targeted by malware. The propagation of misinformation and deception will continue to confound the public and weaken the scientific response in the face of growing public pressure. Working from home has increased the number of people who may become victims of cybercrime. Online dangers are higher at home, putting business information technology at risk of being compromised by hackers. Criminals and other sophisticated actors will continue to be able to get harmful access to key systems via the use of phishing emails. The number of specialised law enforcement counter-cybercrime personnel will be reduced by a third in the first half of 2020. Cybercrime will very definitely increase in the foreseeable future, and victims will almost certainly face delays in receiving justice. Cybercriminals will take advantage of operational flaws that are believed to exist. Contrary to popular belief, this will open up tactical and strategic law-enforcement possibilities for officers.

Key words: - *Administration, Children, Cybercrime, Law, Pandemic, Women.*

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Introduction

International human rights legislation states that everyone has the right to the greatest possible health. When governments identify public health risks, they must act to protect the public and provide medical treatment to those who need it. Human rights legislation acknowledges that some rights may be restricted if required for the protection of public health or in response to a national emergency, so long as these limitations are lawful, absolutely necessary, founded on scientific evidence, and not arbitrary or discriminatory in application.

The extreme impact of the COVID-19 pandemic indicates that it is a public health problem, which justifies limitations on the freedoms of movement brought on by quarantines and isolation. The respect for human dignity, human rights principles, and non-discrimination will all assist in finding a more effective response to the unavoidable confusion and turmoil of crises. To further reduce the damage that may be caused by overbroad regulations that do not satisfy the aforementioned requirements, human rights considerations may also be helpful.

During the global reaction to the COVID-19 pandemic, Human Rights Watch has been monitoring and fighting for human rights abuses in several countries. In April, a group of academics agreed to talk about their work and contemporary issues in a virtual roundtable.

Human Rights and Cyberspace

With the current advances in cyber space, we are seeing more and more human rights abuses and the privacy of a person is being jeopardised every day. There is a genuine attempt made to concentrate on the "presumed boundlessness" of cyber space in order to analyse how and to what extent the activities are focused on it. Before we go into the details of the topic, it is acceptable and essential to first grasp the meaning and breadth of cyberspace itself.

The advent of technology has brought in numerous benefits as well as challenges to the mankind. On the one hand, the life of the man is made easy by the use of technology, the world has come closer with the invention of the internet, however, on the other hand, the technology has almost made man it's

slave! The dependency, rather the existence, of humans on the technology has immensely increased in the twenty-first century. The information is now on the fingertips of the individual with the invention of 4G enabled smart mobile phones and other devices. The interaction of humans with the electronic devices has increased considerably than any communications between the human beings inter se. The concepts like 'virtual identity' and 'virtual presence' has gained significance in everyone's life. Virtually various platforms are now available for communicating, shopping, sharing and receiving information etc. to cater the needs of human lives. The indiscriminate use of this 'cyberspace' thus, poses a threat to the safety of the individuals, especially the children, as they are most susceptible and vulnerable to the cyber-attacks.[1]

The world, at this point of time, is witnessing an unprecedented situation with the outbreak of Covid-19 pandemic. It is fighting against an invisible enemy that has threatened his very existence, that has already locked him down indoors, that has forced him to change his lifestyle entirely and is potential enough to amend the future as well. And, in the given situation, the use of internet enabled devices like computers, mobile phones, laptops, tablets etc., have tremendously increased like never before as everyone is working from their homes. The schools are engaging the lectures online on different platforms by making optimum use of ICT. Though, this is the useful method to communicate and connect, yet it involves lot of risks. The children may fall prey to cyber bullying and online predators. They may get exposed to an inappropriate content for their age or inappropriate contact. So, without understanding the consequences of their acts in the virtual world, they may end up damaging their physical and mental health due to the said internet exposure. Therefore, the rights and safety of children during this crucial time cannot be ignored and requires fresh retrieval, recognition and enforcement against cyber threats guaranteed under the international conventions like "United Nations Convention on the Rights of the Child and state laws."

CYBER SECURITY

Practically speaking, information security relates to the procedure of protecting computers, mobile devices, and networks against harmful assaults on the internet. Network, application, information, and operational security are some of the types of security that are available. The online protection of children via

1. Joseph J. Amon and Margaret Wurth, A Virtual Roundtable on COVID-19 and Human Rights with Human Rights Watch Researchers, https://www.hhrjournal.org/2020/04/a-virtual-roundtable-on-covid-19-and-human-rights-with-human-rights-watch-staff/accessed 27 July 2021

cyber security is a comprehensive strategy to safeguarding kids against possible dangers and assaults that they may face when browsing the internet. This necessitates the establishment of a robust cyber security system, as well as the establishment of a specialised organisation to receive, investigate, and act on complaints. In order to safeguard people from possible assaults, the organisation needs have enforcement authority as well as technical development.. Parents and instructors should be aware of some fundamental rights and safety practices, and they should make their children aware of these rights and practices as well, in order to fend against possible dangers to their children. When children are online, parents should be involved in their activities, be aware of the online services that they are using, assist the children in understanding and managing their personal information, and educate them on the risks of meeting strangers, among other things. The significance of cyber security should be stressed in schools and classrooms, as well as raising awareness about the value of leaving a digital imprint. Schools and instructors should also take proactive measures to report any crimes that they see to the proper authorities.[2]

As estimated by UNICEF, about 71 percent of the world's entire youthful population is connected to the Internet. Furthermore, one out of every three active internet users is a kid, according to statistics. It is easy to dismiss cyber-attacks as a non-event due to the fact that, unlike physically committed crimes, they have no concrete consequences for us. Cybercrimes, on the other hand, may have a negative impact on one's mental, psychological, and emotional health. That means that learning about cyber security is important for everyone, particularly for those who are most susceptible to it, such as youngsters and the handicapped. Cyber security enables us to make proper use of the Internet for learning and interacting with other people by protecting our personal information. It is also necessary since it includes everything related to protecting our personal data, including sensitive information like protected health information, bank account information, intellectual property, and a variety of other kinds of data we entrust to others. Similarly, if youngsters are unaware of the need of maintaining their privacy and confidentiality, they are more inclined to share personal photographs and videos. Such information may get into the wrong hands at times, even resulting in unwanted actions such as crimes performed either online or in a physical location. As a result, it is a source of worry.[3]

2. Ibid.
3. https://www.unicef.org/media/48601/fileaccessed 28 July 2021.

Cyber Space and Cyber Crimes

Cyberspace doesn't have a single definition and is considerably complex when comes to agreeing on a single sense. However, we can have a look at some of the standard as well as accepted definitions of the term.

"The communication space created by the worldwide interconnection of automated digital data processing equipment." [4]

"Cyberspace is an interactive domain made up of digital networks that is used to store, modify and communicate information. It includes the internet, but also the other information systems that support our businesses, infrastructure and services."[5]

"Cyber space encompasses all forms of networked, digital activities; this includes the content of and actions conducted through digital networks." [6]

"A global domain within the information environment consisting of the interdependent network of information technology infrastructures and resident data, including the Internet, telecommunications networks, computer systems, and embedded processors and controllers." [7]

We may describe cyberspace as the worldwide realm of interdependent and interactive networks, including the internet and other telecommunication networks, in general, without attempting a comprehensive description. In layman's terms, cyberspace refers to the internet in its broadest meaning. Cyberspace encompasses anything that is linked to the internet. The vast digital body of information and material exchanged across different networks around the world falls under the realm of cyberspace. Every piece of digital information exchanged across such networks, whether it is our home Wi-Fi connection or our workplace phone connection, adds to the growth of the cyber-domain. [8]

The following are some examples of cyber-crime activities:

1. Hacking
2. Cyber Stalking
3. Phishing
4. Information Warfare

4. France, Information Systems Defense and Security: France's Strategy, 21 (2011).
5. United Kingdom, The UK Cyber Security Strategy,: Protecting and promoting the UK in a digital world, 11 (2011).
6. United Kingdom, Cyber Security Strategy of the United Kingdom: Safety, Security and resilience in Cyberspace, 9 (2009).
7. United States of America, Department of Defense Dictionary of Military and associated terms, 2014, p. 64 (JP 3-12)
8. Sahoo, Anshuman. (2016). CHILDREN'S RIGHTS IN THE CYBERSPACE. International Journal of Research and Analysis 2347-3185. 4.

5. Data Theft
6. Dissemination of Malicious Software (Malware)
7. Denial of Service
8. Phishing
9. Child Pornography
10. Identity Theft
11. Email Spoofing
12. Network Related Wrongs. [9]

Child Cyber Grooming: Child cyber grooming is a cyber-threat that affects children all over the world, and it is not limited to children in India. Essentially, this is a threat in which a person attempts to establish an emotional connection with a kid via the use of the internet and other technological methods. Individuals engage in this activity via a variety of cyber-based platforms such as social media, online gaming websites, and so on. The person pretends to be a kid, and as a result, the youngsters come to trust them over time. After a period of time, as the trust between the kid and the impostor grows, the imposter has the power to take advantage of the youngster and use the child in the manner in which he or she want to be used.

Online Gaming: Online gaming has now become a commonplace part of a child's everyday routine all around the world. Furthermore, online gaming is no longer limited to simply playing games; as a result of technical advances and accessibility, it has evolved into a means for individuals from all over the world to communicate with one another while playing. In some respects, it has developed as a kind of social media platform, similar to Facebook and Twitter. However, there is a propensity to be careless while interacting with other people via online gaming, which may result in harm to oneself or others. Furthermore, there is a danger of being infected by spams and viruses when installing the software in question. This may result in cyberbullying via the use of harsh language, a violation of children's privacy since a large amount of personal information is posted and can be abused, and it can also result in online transaction frauds, among other things. [10]

In addition to cyberbullying, there are other significant aspects of cyber dangers

9. Manjeet Singh, Jacob Anwar Husain, Navneet Kumar Vishwas, A Comprehensive Study of Cyber Law and Cyber Crimes, International Journal of IT, Engineering and Applied Sciences Research (IJIEASR) (2014) ISSN: 2319-4413 Volume 3, No. 2.
10. https://www.unicef.org/india/media/3381/file/COVID19-online-safety-tips accessed 28 July 2021.

that must be addressed today. A basic definition of cyberbullying is "harassing other youngsters via the use of vulgar, abusive words." This may be accomplished by sending harmful material to young children. It may, on the other hand, have a negative impact on a child's self-confidence. The importance of understanding that if cyber bullying of a kid is not recognised and addressed at an early level, it may have far-reaching effects cannot be overstated. Some of the ramifications include a detrimental effect on a child's mental and emotional health, among other things. As a result, their development may be significantly hampered. [11]

Although the majority of the youngsters do not have their own bank accounts, online transaction fraud is a serious problem. They do, however, often use their parents' accounts to conduct online transactions for gaming, shopping, and other purposes. Criminals employ a variety of deceptive methods, such as phoning and offering you advantages while using a fictitious name, to steal money from bank accounts. [12]

Email Scams: How to Avoid Being Scammed by Email Today, it is impossible to envision any kind of job or activity without communication. Communication is the lifeblood of today's society. Communication is done mainly via the mail, and as a result, it has become a necessary component of society's infrastructure. To participate in any online activity, whether it be gaming or social media, we usually need an email address. However, when data breaches occur in such organisations, the email address may end up in a lot of unauthorised hands. Anyone in the nation may send emails with viruses, malware, and bugs attached to them since they can be sent from anywhere in the country.

Websites that is not legitimate

The Cyber Division of the New Delhi Police Department has issued a public warning to the public regarding dangerous coronavirus-related websites. They made public the URLs of the website and advised people to avoid gaining access to the pages via them. The following is a list of websites that have been identified as malicious:

11. Ibid.
12. Ibid.

Sr. No.	Fake websites
1	coronavirusstatus.space
2	coronavirus-map.com
3	canalcero.digital
4	coronavirus.sector
5	coronavirus-realtime.com
6	coronavirus.app
7	coronavirusaware.xyz
8	coronavirus.healthcare
9	survive coronavirus.org (survive the coronavirus)
10	vaccine-coronavirus.com
11	coronavirus.cc
12	Coronavirus Protect.tk is the best Coronavirus Protect.tk.
13	coronavirus update.tkc (Coronavirus Update)

Many fraudsters have set up bogus e-trade websites to offer masks and hand sanitizers in order to take advantage of the shortage of these goods during the lockdown. For the COVID-19, these crooks are playing on the public's fear of the unknown. After some time has passed, the devices have not been launched, and the internet site has been taken down.[13]

Considering the fact that the children today are using internet and given the threats that are likely to take place due to increased exposure to the internet, it becomes pertinent to adopt some measures to make proper use and keep a check on the use of internet. To understand the protection afforded to the children, Livingstone and O'Neill[14] has explained it through the following:

13. https://www.ndtv.com/india-news/significant-increase-in-cyber-crimes-against-women-during-lockdown-experts-2222352 accessed 7 July 2021
14. Livingstone, S., & O'Neill, B. (2014). Children's rights online: Challenges, dilemmas and emerging directions. In S. van der Hof, B. van den Berg, & B. Schermer (Eds.), Minding minors wandering the web: Regulating online child safety (pp. 19–38). Berlin: Springer.

Articles	Digital-age specific interpretation
"Protection against all forms of abuse and neglect (Article 19), including sexual exploitation and sexual abuse (Article 34), and other forms of exploitation prejudicial to child's welfare (Article 36)"	Effort to prevent creation and distribution of online child abuse images, sexual grooming, online dimension of child trafficking
"Protection against all forms of abuse and neglect (Article 19), including sexual exploitation and sexual abuse (Article 34), and other forms of exploitation prejudicial to child's welfare (Article 36)"	Effort to prevent creation and distribution of online child abuse images, sexual grooming, online dimension of child trafficking
"Protection from "material injurious to the child's well-being" (Article 17e), "arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation" (Article 16) and right of child to preserve his or her identity (Article 8)"	Effort to prevent, manage and raise awareness of reputational risks, privacy intrusions, cyberbullying, pornography, personal data misuse (including identifying, location-based and financial information)
"Provision to support children's rights to recreation and leisure as appropriate to their age (Article 31), an education that will support the development of their full potential (Article 28) and prepare them 'for responsible life in a free society' (Article 29)"	Effort to provide educational technology, online information and creative resources, and promote digital skills in an equitable way (taking into account relevant languages, difficulties of access or conditions of disability or disadvantage)
"Recognising "the important function performed by the mass media" encourages provision of diverse material of social and cultural benefit to the child (including minorities) to promote children's well-being (Article 17)"	Effort to provide public and commercial educational, civic, science, cultural and heritage content online in an equitable way (as above)
"Participation rights: "In all actions concerning children . . . the best interests of the child shall be a primary consideration" (Article 3), including the right of children to be consulted in all matters affecting them (Article 12); see also child's freedom of expression (Article 13) and freedom of association (Article 15)"	Effort to include all children in diverse societal processes, including consulting them on matters of education, research and ICT governance

INDIA'S CURRENT SITUATION

Due to the Indian government shutdown in April 2020, calls to CHILDLINE 1098, a helpline for children in distress, increased by 50 percent. India's Supreme Court recognised the severity of the problem and, even without being asked to do so, took action to protect children, especially those in state care, from the potentially dangerous position in which they found themselves.

The rise in internet use has created a dangerous situation for children's safety in India, since young people account for 60% of all Indian internet users. Cyberbullying is known as this. A study released by the National Center for Missing & Exploited Children (NCMEC) and the National Crime Records Bureau (NCRB) says that, in the two months of September and October 2019, at least 25,000 child sexual abuse photos were posted to Indian social media sites. An NGO called the India Child Protection Fund said that child pornography searches had spiked in March, according to a study done by the Indian government. The closure

was announced and was followed by this event. The consumption of child sexual abuse materials and images in India increased by 95 percent as a result of the shutdown. [15]

In light of these worrisome numbers, there is cause for significant concern, particularly given the fact that the majority of education is now conducted online and that "having continuous parental supervision is not a realistic option in households with two working parents." Furthermore, in many instances, schools explicitly request that parents leave their children alone during class time in order to prevent helicopter parenting, putting children at greater risk of online sexual abuse. [16].

THE CURRENT SITUATION IN THE WORLD

The rise in the number of reported cases of internet child abuse is not only happening in India. The overwhelming majority of countries that have adopted similar lockdowns are likewise having problems. There has been an upsurge in complaints of online sexual exploitation of Canadian children during the COVID-19 pandemic. Abusers may take advantage of the fact that children are spending more time online by engaging in "live remote child abuse," also known as on-demand child sexual abuse or cybersex trafficking, which enables offenders to conduct abuse in real time. Another element of the increasing commercialization of child sexual exploitation is the rise in the number of businesses that target children.[17]

In fact, the director of the EU's law enforcement agency, Europol, has issued a warning to its members, noting that it has become easier for paedophiles to contact minors and locate other like-minded criminals in recent years. A similar worry was expressed by Jamie Strauss, a police commander in Australia, who cautioned that criminals would exploit the second wave of COVID-19 as a chance to identify additional prospective child victims, given the growing amount of time that young people spend online with little adult supervision. Even in nations such as Thailand and the Philippines, the situation continues to deteriorate, indicating a rising concern for the protection of children across the world. [18]

15. https://www.humanrightspulse.com/mastercontentblog/rise-in-online-child-sexual-abuse-cases-amidst-covid-19-pandemic accessed 08 July 2021.
16. Ibid.
17. https://www.humanrightspulse.com/mastercontentblog/rise-in-online-child-sexual-abuse-cases-amidst-covid-19-pandemic accessed 17 July 2021
18. Ibid.

Child Rights and Outbreak of Covid-19 in India

Although, the rights of the children are protected by the international conventions and domestic laws, yet the present scenario in India depicts a disturbing picture.

As the reports suggests,

Millions of children across the globe are at greater danger of online sexual exploitation, assault, and cyberbullying as a result of schools shutting due to COVID-19 lockdown, according to the United Nations. More than 1.5 billion children and young people have been impacted by school closures across the globe, and many are now attending courses and socialising online, according to UNICEF, the UN's children's agency. "As predators seek to exploit the COVID-19 epidemic, spending more time on virtual platforms may expose youngsters to online sexual exploitation and grooming. "A lack of face-to-face contact with friends and partners may lead to increased risk-taking, such as sending sexualized images, while increased and unstructured online time may expose children to potentially harmful and violent content, as well as a higher risk of cyberbullying," according to UNICEF. According to Howard Taylor, Executive Director of the Global Partnership to End Violence, the coronavirus epidemic has resulted in an unprecedented increase in screen time. "With school closures and tight confinement measures, more and more families are turning to technology and digital solutions to keep their children educated, amused, and connected to the outside world, but not all youngsters have the knowledge, skills, or resources to be safe online." The UNICEF together with its partners, Global Partnership to End Violence Against Children, International Telecommunication Union, United Nations Educational, Scientific and Cultural Organisation and World Health Organisation among others is releasing a new technical note aimed at urging governments, educators and parents to be alert and ensure children's online experiences are safe and positive during COVID-19. [19]

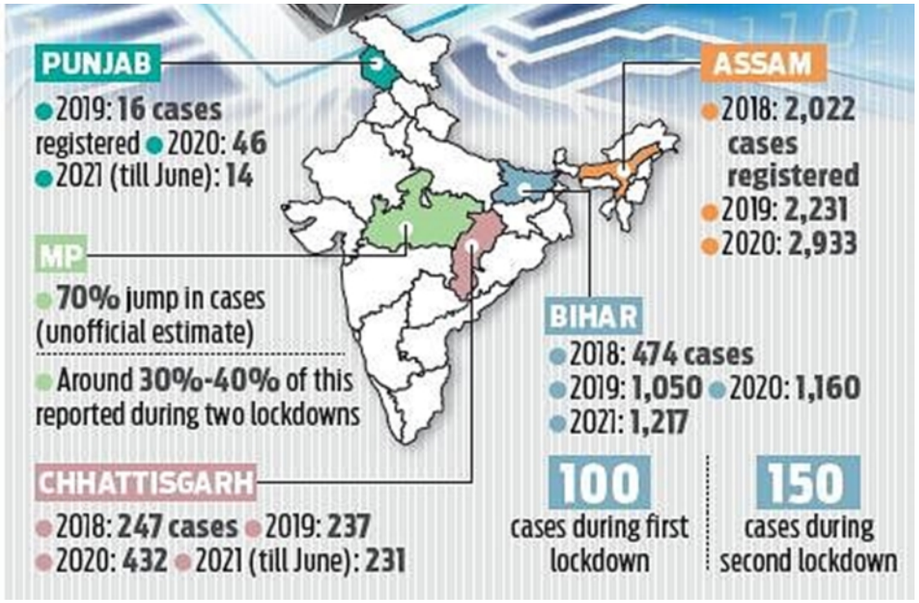
Another report reveals that, India topped the list in a worldwide collection of complaints of child sexual abuse material discovered online, accounting for 11.7 percent of the total 19.87 lakh reports. According to Akancha Srivastava, who heads the Akancha Against Harassment foundation, an online forum that teaches people about the risks of cybercrime, she has received 38 similar instances from throughout India. "27 of these instances are aimed at young people between the ages of 14 and 18, while 11 are aimed at minors under the age of 14," she told the

19. https://economictimes.indiatimes.com/magazines/panache/beware-parents-your-child-may-be-at-risk-of-online-sexual-exploitation accessed 17 July 2021.

Free Press Journal. [20]

Cybercrimes comprising pre and post covid in India

States With Cyber Crimes	Number of cybercrimes in COVID-19 lockdown
Karnataka	12,007
Uttar Pradesh	9,353
Assam	1,989
Telangana	1,990
Maharashtra	1,991



(Source: https://www.newindianexpress.com)

20. Internet crimes see manifold rise during lockdown; children are the biggest targets, Jayadev Calamur, https://www.freepressjournal.in/india/internet-crimes-see-manifold-rise-during-lockdown-children-are-the-biggest-targets accessed 27 July 2021.

Cybercrime increased in several states while they were under Covid-19 lockdowns. The number of cases has been on the rise for two years and the pattern continued in 2019. It was found that recorded cases in the two states rose by approximately 100 percent. A 20 percent increase was observed in Bihar. The rise in cybercrime in Madhya Pradesh, according to unofficial estimates, was 70 percent in this time. The situation in West Bengal, Chhattisgarh, and Assam is similar.

The criminal nature has a pattern. The groups are split into four major categories. Supplying food, medication, oxygen, and other necessities to consumers under the guise of nonexistent agencies and trickery. enticing individuals into online transactions with the intent of hacking their accounts/stealing their account information 3. Creating fictitious social media profiles for top-ranking civil servants, such as IPS and IAS officials, and defrauding the public by impersonating them. To blackmail women, filming and distributing obscene footage online.

In response to a significant increase in cybercrime in Chhattisgarh, the government has created five new cyber police stations in each range headquarters, according to RK Vij, the Special DGP (planning & management, telecommunication, cyber section). Bihar's Economic Offence Units (EOUs) instructed officers to learn how to identify and prevent these crimes, according to NH Khan, ADG of Bihar. Additionally, some governments have worked to improve their infrastructure to better prepare for this.

Covid's existence has seen a rise in cybercrime. Crooks use lottery scams to get victims' banking information. We noted numerous instances and were able to collect money in some of them. Rakesh Agarwal, Police Commissioner of Ludhiana, advised people not to give bank information with unknown persons.

A merchant sailor from Indore, India, got an email last year from someone claiming to represent the Customs department, requesting a staggering Rs. 62 lakhs for the processing of a refund on Customs tax for a large amount of money. The money was paid, but the reimbursement was not received. Police learned from their investigations that a Nigerian living in Delhi utilised his connections in Indore and Gwalior to get bank accounts from jobless or impoverished individuals. Cyber-fraud money was stashed away in these accounts. At least 15 accounts like these were identified in MP.

A NALCO official in Bihar was tricked out of 40 lakhs. In a similar instance, a former DRDO scientist was swindled out of Rs 5 lakh. UP, Delhi, and Bengaluru police have arrested cyber criminals from these networks, which are widely distributed. In addition to former Bihar Minister Vinod Jha, a Patna police superintendent and an IAS official have all been victims of fake social media profiles. Four complaints were filed in Bengal by film and TV stars who claimed their photos had been tampered with and distributed with offensive material on social media.

Those who worry believe that the blackout led to increased internet use, individuals using the internet for work and businesses, and joblessness because of the epidemic. “The activities are being done on computer platforms.” People who have been made unemployed by the epidemic have had to join the online realm to hunt

for victims. Many people are utilising online platforms for exploration without restraint. ‘‘The number of financial fraud cases is on the rise," Amitesh Mukhopadhyay, a professor of sociology at Kolkata's Jadavpur University, says. ‘‘The incidents of crimes against women have also increased."

Digital dependence is also known as another condition. A total communication blackout led to increased use of the internet and mobile phones. All of their necessities — purchasing necessities, medication needs, and even travel services — were completed via the internet method. The advancement of digital payments increased cyber-risk by magnitudes. Cybercrime in the state of Madhya Pradesh, especially during the lockdown, increased significantly as a result of this, according to Jitendra Singh, the superintendent of the MP Police's cyber cell in Indore.

The problems associated with COVID-19 (and their related cyber fraud and online scams) are not limited to a certain location. In the year after its publication, the Norton Cyber Safety Insights Report found that 330 million individuals in 10 countries had been victims of cybercrime, with more than 55 million people experiencing identity theft. Because these numbers are worrisome, we must work together to limit the spread of cybercrime. In the short term, however, India, which is rapidly becoming one of the largest centres for cybercrime, must implement important and urgent steps in the fields of law, technology, and public policy. [21]

The steps that have been implemented

1. To deal with online crime in India, the Indian Cyber Crime Coordination Center (I4C) was established in 2020, and it comprises seven different organisations, including the National Cybercrime Reporting Portal, the Forensic Laboratory, and the Threat Analytics Unit. The issue was plainly shown by 3,17,439 cybercrime event reports and 5,771 FIRs on the I4C reporting site (www.cybercrime.gov.in) as of February 28, 2021.
2. Additionally, the site includes a Citizen Financial Cyber Frauds Reporting and Management System to protect citizens from losing money, and a hotline number — 155260 for assistance. The Bengaluru Police has introduced a new cybercrime reporting system this year, allowing victims of financial theft to submit their case on a specific phone number and have the police log it as a Cybercrime Incident Report (CIR). A specific control room known to as the CIR is associated with the Reserve Bank of India (RBI), which will coordinate with the beneficiary's bank accounts to be frozen within two hours.

21. https://www.newindianexpress.com/thesundaystandard/2021/aug/01/cyber-crimes-rise-in-several-states-during-lockdown-2338361.html accessed 09 August 2021.

3. Police departments and other regulatory agencies have also conducted awareness training for their officers to better address the most common online frauds, such as those that have become more prevalent since COVID-19 began, including dedicated meetings on the examination of Internet Protocol Detail Record (IPDR) records and cryptocurrency fraud. The government has issued public warnings to people to be wary of counterfeit goods, phishing schemes, and the propagation of disinformation.
4. Though the government is taking steps to address the issue, the remedies are being applied in a disjointed and fragmented manner. The lack of subtlety within both the legislative and political framework has prevented sufficient progress in cyber security infrastructure, as well as deterrence against fraudulent elements.
5. The courts also recognise the pressing necessity for vigorous action. Recently, when the Supreme Court considered an SLP filed in a case of theft of software and unlawful copying of database and source code, it noted that in instances of hacking and data theft, Indian Penal Code (IPC) crimes were applicable in addition to the ITC 2000's penalties (IT Act).
6. While listening to a Public Interest Litigation (PIL) that is aimed at reducing cybercrime in the state, the Jharkhand High Court also requested that the RBI create a method for tracking and recovering bogus money. The Delhi High Court denied an accused individual's anticipatory bail plea earlier this month, saying, "The whole plot and the method in which different data of the victims were gathered and the money trail are needed to be uncovered."
7. Despite a significant rise in the severity of punishments against criminals, the current punishments do not appear to be strong enough to discourage crime because of low fines in relation to the magnitude of the crime and the issues with enforcement and prosecution against anonymous offenders.
8. The challenges the country faces today are a chance to create a robust international system to battle cybercrime. To secure India's vital information infrastructure and protect people from the dangers of digitization, specific changes to legislation and enforcement are needed. The NCSS, 2021 will be critical to the government's efforts to keep up with the pace of technology and bring the country's out-of-date cybercrime policy in line with that.
9. However, the new Cyber Security Strategy (NCSS) 2021 must be proactive, not reactive, in reducing vulnerabilities and minimising damage from cybercrime incidents. It is important to guarantee that state authorities can easily coordinate with one another, as well as provide victims quick access to resources. Indian authorities must be held more accountable when it comes to following up on complaints and converting more FIRs in order to better address the country's poor cybercrime complaint-to-FIR conversion rates.
10. Legal frameworks do not do enough to delegitimize online crimes, which is part of why cybercrime rates have skyrocketed. Cybercrime has seen significant changes in its image in recent years. This means we should give the

Information Technology Act, 2000 another chance to address cyber security and address the challenges presented by quantum computing and artificial intelligence.

11. Neither can the critical role that the business sector plays in preventing and mitigating cybercrime. Businesses must safeguard their data and property by putting data security at the top of their list of priorities. To counter these problems, urgent attention must be given to fixing security rules, in order to reduce the chance of future breaches. Additionally, investments in anti-fraud technology must be increased. Businesses must evaluate their potential security risks regularly and share their knowledge of the most recent security procedures with their employees. As cyber security ventures/start-ups have become more prevalent in India, cooperation with these digital companies is essential in the battle against cybercrime.
12. Pandemic affects the globe in many ways. One of the most important things to do in order to address the underlying issues before they become intractable is to get ahead of the digital transformation curve. During the last year, the increase in cyber-criminal activity has highlighted the weaknesses of our digital infrastructure and framework, offering the ideal storm to take focused action to protect tomorrow. [22]

CONCLUSION AND SUGGESTION

Therefore, from the above it is evident that it is necessary to protect the children from these novel threats to mental and physical health of children while they are spending most of the times indoors during the outbreak of this pandemic. In order to protect the children, the role of the parents is most crucial. Some of the guidelines laid down by UNICEF for the parents to properly tackle this novel situation, they are follows: -

Age Limits: Each app and platform has its own set of age restrictions. Make sure your kid only utilises those that are age appropriate. You may use parental settings to prevent them from downloading or seeing unsuitable applications or material.

Understand the Rules: If your kid uses any social media site, sit down with them and go through the platform's community standards and rules. This will assist them in determining what material and behaviour are permitted and prohibited on a platform. Encourage them to report anything they think is unsuitable.

22. https://www.barandbench.com/columns/pre-empting-cyber-pandemic-reminder-revisit-digital-security-covid-19-era accessed 10 August 2021.

Thus, it is necessary for the parents to be extra cautious and make sure that the safety of the child shall be ensured. In case, anything wrong takes place then the parents must not shy away and must also take help of the law enforcement authorities to check the wrongs done to their wards.

Cooperation among authorities is often motivated by a desire to maintain sovereignty and pride. In addition, the development of efficient monitoring systems, which are intended to close any existing gaps, is required for the enhancement of the role of multinational corporations. The Internet is one of the most powerful instruments available in the twenty-first century for increasing transparency in the administration of strong access to information and allowing active citizen participation in the development of democratic societies. The internet provides unrivalled opportunities for the advancement and improvement of human rights, especially the freedom to seek, receive, and transmit information. This is especially true for the right to information. People may (and do) post abusive or discriminatory remarks on the internet, intimidate and harass others, and otherwise violate the Human Rights of those who are targeted via the use of the internet. The problems of consent, governance, privacy, and surveillance, as well as technology, must be considered in conjunction with an examination of ethical views, as well as legal attitudes and practices, in order to be comprehensive. Only in this manner will there be a possibility of preserving fundamental Human Rights and instilling a sense of responsibility in this digital era, without which no amount of technological progress would be of use.

Measures Suggested to Curb Such Crimes

To control the cybercrime especially among the youth there are certain steps which must be taken. It is very important to instill among the youth and teens, the feeling of respect for each other and their privacy. They must be given the correct education on appropriate time. In order to decrease the cybercrime most important role will be played by the teachers and parents. Teachers should teach each and every student about the crime in detail and should guide them the steps which they should take if they struck in any situation. Each and every knowledge about this must be given by mentors and teachers in the class. They must show the presentation about this so that students will know these things better and also must guide them that no one should go against law and make them aware of the punishments regarding that. Parents must also play an important role as in guiding their ward in right direction and encouraging them to be a better person. They must install the idea in their wards mind that committing crime is wrong and these things should not be taken lightly, parents must have an active eye on the activities of their ward. Young people must be guided as to which games are good and what precautions they should take while using social media platforms and while surfing on the internet. There is another suggestion which reduce the cybercrime is that NGO's should come in schools and colleges and provide them with helpline numbers and what they should do to prevent themselves from being the victim. They must spread awareness in general as awareness of cybercrime among teenagers is very important to bring down the crime. Then very importantly it is also suggested that whether the cybercrimes is of

grave nature or not, it must be reported with the cyber cell. Crimes such as cyber harassment, stalking, frauds, bullying must be brought within the knowledge of the concerned authorities. The individual must be taught about the laws relating to cybercrimes so that they are aware of the legal action and procedures to be followed in case they suffer from any such bad activities. Lawyer and other legal person must also play their part and provide aid in these crimes.

Every individual has to play his part in order to curb this disease and initiation towards change must come from the mentality itself. We need to understand the dignity and rights of others as well. The solution is in our hands and if we stand together against such heinous and grave crimes, it could surely be brought to its nadir.

Surrogacy and the LGBTQIA+

Saif Rasul Khan*

Abstract

Assisted forms of reproduction, such as surrogacy and embryo freezing, provide an alternative to the traditional method of procreation of children. In such cases, there is intervention by medical specialists, technicians and other such third parties that facilitate the process through targeted medical processes. In case of surrogacy, i.e., gestational surrogacy, there is a third party involved in the process, who acts as an intermediary. Surrogate mothers undergo the process of pregnancy and at the end of the term, give the child to the intended parents. Though the process was intended with a positive standard, over time, it has altered its form into a more commercial nature. Consequently, instances of abuse, human rights violation, trafficking, and exploitation of surrogate mothers etc., came to the forefront, thereby, enveloping it in an ethical debate.

One section that has benefitted from surrogacy is the LGBTQIA+. LGBTQIA is a collective term used for gender identities and sexual orientations, different, from the gender binary of male and female and heterosexuality. Procreation of genetically related children was possible only due to these medical advancements for such same-sex couples. This resulted in the development of surrogacy markets in a major way, particularly in nations of the global south. India, Thailand, Cambodia, Indonesia etc., expanded with commercial surrogacy markets, thereby creating circumstances wherein the economic incentive became more prominent and rewarding than the social and medical objective of surrogacy.

Specifically, in India, over time, it was realised that the commercial transactions of surrogacy should be addressed with clear legislative regulations and thus, many different versions of a bill on surrogacy were introduced in the Parliament. However, these proposed laws have clearly excluded same-sex couples from the scope and ambit of legal surrogacy. Consequently, they are deprived from using surrogacy as an alternative for conceiving a genetically related child, and the only option for having a child is via adoption.

In light of the above, the researcher shall undertake a study on the LGBTQIA+ perspective of surrogacy in some prominent nations globally, while primarily focussing on the United Kingdom, India, and Thailand. The main focus shall be to analyse the varied factors, including social and religious factors that determine the nature of proposed law in India.

Key words: - *Human rights, LGBTQIA, Surrogacy, Surrogacy (Regulation) Bill.*

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Introduction

The queer community, often referred to by the acronym LGBTQIA+ is a collective of persons who do not conform to the heteronormative understanding of sexuality and have a different spectrum. The heteronormative standards do not apply to them, rather act as a hindrance to their emancipation as a part of the community. Globally, this community has struggled and advocated for their legal recognition and social acceptance. Many nations resisted the change, but eventually recognised the universal human values of dignity, respect, and non-discrimination; particularly observed in nations of global north wherein liberal ideas and broad interpretations of the judiciary have facilitated in their advancement and liberation. At every stage, resistance has been fought with by social and legal advocacy and subsequently, many rights were extended to the community based on the principles of fundamental human rights. This change is not uniform and in many conservative nations, the community continues to live in the shadows of abuse, violence, and criminal persecution. In many nations, homosexuality is a crime punishable by law. Apart from legal and civil recognition, social, cultural and economic rights of the collective have been at the forefront of discussion and with the global expansion of assisted methods of reproduction, the right to a family and reproduction of the community has been recognised. Surrogacy has developed as one of the most popular methods of assisted form of reproduction among the LGBTQIA+ community, specifically among gay men couples. This had resulted in a global expansion of transnational exchanges, particularly of a commercial nature. India, Thailand, Cambodia, etc., became prominent hubs for such couples. However, in time, with the increasing concerns and judicial interjections on such matters, including abandonment, refusal to deliver the child, surrogate mother's exploitation etc.; most of these nations curbed such transnational transactions and have also prohibited same-sex couples from adopting surrogacy within their domestic laws. In India, the same conditions apply under the proposed law and even though same-sex consensual relations have been decriminalised and the third gender recognised by law, conditions remain the same. The community continues to be excluded

from basic rights, including marriage rights which are currently under judicial review. Surrogacy can be effectively used, within the altruistic model, for such couples but owing to the nature of social interpretation and acceptance, the community continues to face numerous hurdles.

SEXUAL ORIENTATION AND GENDER IDENTITY

Sexual orientation and gender identity are key terms to understand and acknowledge the concept of queer identity. Both these aspects are at the core of their determination as a queer person. A queer person is one whose sexual orientation, gender identity, or sexual characteristics is different from the presumed majority of the population, who are heterosexual, cisgender, and non-intersex individuals. In public spaces, it's a term used collectively for all persons who are not heterosexual, and thus, there are variations to the term, including LGBTQIA+. This includes gay men (men/man-aligned people who are only attracted to people of the same/similar gender), lesbians (women-aligned people who are solely attracted to people of similar genders), and bisexuals (people of any gender attracted to people of all genders). The term also includes transgender individuals—people who identify as a different gender than the one associated with the sex they were assigned at birth. Transgender people socially transition by changing their names, their pronouns, and their gender expression. Some trans people also medically transition by taking hormones and/or undergoing gender affirmation surgeries.

Another sexually minoritized group is intersex people, who are born with or develop anatomical sexual characteristics that are neither typically male nor typically female, or who have a combination of male and female characteristics. Additionally, asexual persons are also included into this terminology. Thus, it is a developing term, one that is being defined as there is increased understanding of sexuality and gender identity.

Technically, the Yogyakarta principles define sexual orientation as, 'understood to refer to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender'.[1] Additionally, gender identity is defined as follows:

"Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve,

1. "Introduction to the Yogyakarta Principles – Yogyakartaprinciples.Org" <http://yogyakartaprinciples.org/introduction/> accessed July 31, 2021.

if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms."[2]

HUMAN RIGHTS & REPRODUCTIVE RIGHTS

The international human rights law standards do not provide for any specific convention with regard to queer rights. However, the normative standards are based on certain core principles, which includes dignity, equality, and non-discrimination. The Universal Declaration of Human Rights in Article 1 states that 'All human beings are born free and equal in dignity and rights.' Article 2 of the Declaration clearly prohibits discriminatory attitude on a wide range of aspects and includes 'other status', which is interpreted as including the queer. Specifically, Articles 3, 5, 6, 7, 12, 16 are critical for a dignified life. While the Declaration is not obligatory in nature, it provides the robust ground for all subsequent legal frameworks. Every state is required to conform to, as far as possible, to these standards to ensure that human rights are preserved, protected, and implemented for all.

Right to reproduction

Reproductive rights have been acknowledged as a human right in international legal framework. The formal recognition of this right was made in the World Conference on Population in 1994[3]. 'Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number and spacing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion, and violence. The Cairo Conference stated that these rights are already 'embraced by national laws, international human rights documents and other consensus documents.'

The right to reproduction is one the key rights afforded by the international human rights law. The Universal Declaration of Human Rights, the twin Conventions, and other international conventions provide the normative standards for states to follow and implement in their domestic jurisdictions. Most notably, the 1994 International Conference on Population and

2. Id.
3. Barbara Stark, "Transnational Surrogacy and International Human Rights Law" (*Scholarly Commons at Hofstra Law*, 2011) <https://scholarlycommons.law.hofstra.edu/faculty_scholarship/630/> accessed July 31, 2021.

Development (ICPD) had obligated states to uphold and safeguard reproductive rights.

"Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents." [4]

The Yogyakarta Principles

The Yogyakarta Principles are a set of non-binding international standards which was prepared by a consortium of experts, to determine the problems relating to the LGBTQIA+ community.[5] From 6 to 9 November 2006, 29 experts form 25 countries discussed and drafted this set of Principles, in meetings held in Yogyakarta in Indonesia. Finally, after much deliberation, it was adopted by group as the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

Necessity for such a document was felt owing to the scattered developments in the world regarding sexual minorities and gender identity and therefore there was a need to draft internationally universal principles in light of the numerous reported cases of abuse, violence and continued discrimination. Gender identity and sexual orientation in light of international human rights law were the main focus areas of the meeting. The experts contemplated upon the matter and that ensued the Yogyakarta Principles: a universal handbook to human rights which affirm binding international legal standards with which all States must comply.

The principles are designed and drafted carefully keeping in mind the vulnerable nature of sexual minorities and the vast differences in the world around its acceptance. The core of the principles lies in the fact that every person is born free and equal in dignity which reflects the Universal Declaration of Human Rights. These principles are accompanied with clear and detailed recommendations to States. This was one of the most definite measures undertaken in the path towards safeguarding vital human rights of the

4. United Nations, "International Conference on Population and Development" (*United Nations*, September 1994) <https://www.un.org/en/conferences/population/cairo1994> accessed July 31, 2021.
5. "Overview – Yogyakartaprinciples.Org" <http://yogyakartaprinciples.org/principles-en/about-the-yogyakarta-principles-2/> accessed July 31, 2021.

LGBTQIA+ population by establishing universal norms for their protection.

These principles cover significant matters including the universal enjoyment of Human Rights and non-discrimination with the fundamental right to being accepted and recognised before the law. Further owing to the cases of violence and abuse, the right to human and person security has also been granted in the Principles. Further, many other rights akin to the rights provided in the three core human rights documents have been provided herein as well, such as economic, social and cultural rights; right to speech and expression and forming and sharing of opinions and freedom to form associations towards the cause of protecting sexual minorities; right to a family and equal participation in cultural and social life; freedom of movement and the right to seek asylum in cases of abuse in nations that welcome sexual minorities, etc. among others. It is a cohesive document that provides a strong foundation for a universal document that may be developed by the United Nations if it deems necessary.

The issue with these Principles is that they are not recognized worldwide and owing to its discretionary spirit, several countries would rather ignore this relevant document. The principles identify a right and at the same time, confers duties and obligations to safeguard that right. The Yogyakarta Principles covers a broad range of human rights standards in context of sexual orientation and gender identity. The Principles endorse the main obligation of States to implement human rights which is supplemented by comprehensive recommendations to States. It also offers guidance to the United Nations, regional human rights bodies, national institutions, and other stakeholders regarding the manner and means to realize these rights. Though it is not an official United Nations document, it is a breakthrough for the global recognition of fundamental rights of sexual minorities.[6] This document may be used as a foundation for preparing a universal document regarding the protection of sexual minorities and the same should ideally be of a binding character within the authority of the United Nations. The state parties should be called upon to draft local legislation akin to these principles and maybe then, such a negative approach towards sexual minorities may diminish with time.

The Yogyakarta Principles Plus 10

The YP Plus 10 was adopted on November 10, 2017, to enhance the Yogyakarta Principles[7]. The YP plus 10 was a result of the crossing point of the

6. "'Yogyakarta Principles' a Milestone for Lesbian, Gay, Bisexual, and Transgender Rights" (*Human Rights Watch*, March 27, 2007) <https://www.hrw.org/news/2007/03/26/yogyakarta-principles-milestone-lesbian-gay-bisexual-and-transgender-rights> accessed July 31, 2021.
7. "The Yogyakarta Principles – Yogyakartaprinciples.Org" <http://yogyakartaprinciples.org/principles-en/> accessed July 31, 2021.

advancements in worldwide human rights law with the rising comprehension of infringement endured by people on grounds of sexual direction and sex personality and the acknowledgment of the unmistakable and intersectional grounds of sex articulation and sex attributes.

The Yogyakarta plus 10 covers important areas which were previously not included in the original document. Some of the prominent areas provided in this document are right to state protection, legal recognition, bodily and mental integrity, freedom from criminalisation, right to sanitation, to truth and to revive cultural diversity etc., among others. It also addresses questions of privacy and use of information technology in light of protection from harassment and abuse in the virtual world. Further, the document makes additional obligations in the previously existing Principles in this document.

This document is a much-needed advancement to the existing Principles. These additional principles cover prominent areas, particularly in relation to the virtual world and criminalisation. It further strengthens the existing set of Principles by supplementing them thereby making the existing ones furthermore effective.

SOCIO-LEGAL CONTEXT OF LGBTQIA+ RIGHTS

India is inherently a conservative nation. The queer in India have battled a prolonged battle and are quite vulnerable in nature[8]. The battle for recognition and basic dignity has been prolonged for ages. Many continue to live a closeted life within the confines of what is considered to be socially acceptable[9]. There is a palpable fear of possible repercussions from family and society as the condemnatory attitude and discernment has still not declined in India[10]. A major factor that hinders this is religion and customary practices. Religion is a key aspect of personal life which yields great influence on perceptions and values. Most religions do not accept the LGBTQIA+ spectrum and question the morality and afterlife of such people who do not fall within the definition of

8. Kyle Knight, "Section 377 Is History but Young LGBT Indians Need Concrete Policies to Protect Them from Bullying" (*Human Rights Watch*, June 24, 2019) <https://www.hrw.org/news/2019/06/24/section-377-history-young-lgbt-indians-need-concrete-policies-protect-them-bullying> accessed July 31, 2021.
9. Shefali Anand, "India's LGBTQ Activists Raise Their Voices" *U.S. News & World Report* (December 31, 2019) <https://www.usnews.com/news/best-countries/articles/2019-12-31/indias-gay-activists-grow-in-numbers-but-acceptance-remains-elusive> accessed July 31, 2021.
10. Rohit K Dasgupta, "Coronavirus Lockdown: LGBTQ People Face Hostility and Loneliness" (*The Conversation*, April 16, 2020) <https://theconversation.com/coronavirus-lockdown-lgbtq-people-face-hostility-and-loneliness-135974> accessed July 31, 2021.

what is considered to be normal according to their interpretation and standards.

The queer movement has gained traction in the last decade, with active advocacy and legal interjections, specifically with reference to Section 377 of the Indian Penal Code. The Indian criminal code which owes its origin to the British legal system had criminalised sexual relations between same-sex couples by virtue of Section 377. A law drafted in 1860's, this is the primary law in India even though the drafting nation, i.e., United Kingdom, has removed this offence from their own law in 1976. India refrained from changing the Section until the intervention by the court in the landmark decision of Navtej Johar in 2018 [11]

Section 377 has been at the centre of a legal debate since the early 2000s. Portions of the section were first struck down as unconstitutional with respect to gay sex by the Delhi High Court in July 2009. That judgement was overturned by the Supreme Court of India (SC) on 11 December 2013 in Suresh Kumar Koushal vs. Naz Foundation[12]. The Court held that amending or repealing section 377 should be a matter left to Parliament, not the judiciary. On 6 February 2016, a three-member bench of the Court reviewed curative petitions submitted by the Naz Foundation and others and decided that they would be reviewed by a five-member constitutional bench.

On 6 September 2018, the Court ruled unanimously in Navtej Singh Johar v. Union of India[13] that Section 377 was unconstitutional in so far as it criminalises consensual sexual conduct between adults of the same sex. This gave an impetus to the queer movement in India, providing a legal footing for many to accept their identity and be protected from criminal prosecution. Hitherto, even after this decision, India refrained from voting in a crucial deliberation on the mandate to establish an independent expert for the protection of LGBTQIA+ rights in the United Nations [14].

Socially, the country is in the path towards understanding and accepting queer people as a part of society, though active discourse on the subject is restricted to intellectual and academic circles. Sex and sex related topics are generally not

11. BBC News, "India Court Legalises Gay Sex in Landmark Ruling" (*BBC News*, September 6, 2018) <https://www.bbc.com/news/world-asia-india-45429664> accessed July 31, 2021.
12. (2014) 1 SCC 1.
13. (2018) 10 SCC 1. Navtej Singh Johar & Ors. versus Union of India thr. Secretary Ministry of Law and Justice, 6 September 2018, W. P. (Crl.) No. 76 of 2016, D. No. 14961/2016.
14. Devirupa Mitra, "Despite SC Ruling, India Abstains Again on Vote on LGBT Rights at UN" (*The Wire*, July 13, 2019) <https://thewire.in/diplomacy/india-abstains-again-on-vote-expert-lgbt-rights-at-un> accessed July 31, 2021. 27 countries voted in favour to extend the mandate of the Special Rapporteur (SR) for protection against violence and discrimination based on sexual orientation and gender identity (SOGI). India did not change its position.

openly discussed within families, more so confined to discussions between friends and colleagues. There have been advances made, in particular, in cultural aspects and in social media, the LGBTQIA+ representation has marginally improved. Though it is encouraging to see the changes, there are rudimentary changes required at the grassroot levels for it to be normalised or accepted.

The Transgender community has been at the forefront, with both legal recognition as the third gender by the judiciary and a legal enactment in the form of a concrete law; yet they are living in the trenches and struggle to live a normal life. Few examples may be cited of those within the trans community who have achieved a position of influence and power, yet most continue to live in the dark, abused and discriminated. Further, there are cases of abuse, sexual and psychological wherein such homosexuals are treated in a manner that is outright degrading and amount to rape or sexual violence. Prior to the repeal of Section 377, they did not have any remedy to such a situation. Even now, it is difficult to file a case or report as the police mistreat them and derive sadistic pleasure by maltreating them. Many families do not accept this and consider recourses that affect the health of the person. Many still consider it to be a mental health issue and send them to camps and religious groups to get rid of their sexual feelings for the same sex. There are also cases wherein a gay man or woman is forced to marry someone from the opposite sex, thereby creating further issues of marital relations and sexual engagement.

These are socio-cultural issues that cannot be resolved overnight. It requires definitive counselling, clear understanding, and acceptance as a whole in any given society. Changes in such situations are slow, and often at every stage there are barriers which have to be surmounted and conquered. Though the legal development in the form of repeal of Section 377 is much appreciated and was needed in India; there is a lot more that needs to be done for this community.

The Transgender Act, 2019 has been criticised for its lack of understanding the nuances of the trans community and for failing to take any concrete action as per the decision of NALSA v. Union of India[15]. The requirement of certification with a psychologist report, requirement of determining correctness of gender reassignment by the District Magistrate, and the punishment for sexual crimes

15. Ajita Banerjie, "Why India's Transgender People Are Protesting against a Bill That Claims to Protect Their Rights" Scroll.in (November 26, 2019) <https://scroll.in/article/944882/why-indias-transgender-people-are-protesting-against-a-bill-that-claims-to-protect-their-rights> accessed July 31, 2021.

against transgenders (extending to six months to two years, as against the statutory provision of life imprisonment and death under the Indian Penal Code) are problematic. [16]

There is no law extending protection for the other members of the LGBTQIA+ collective and till legal provisions are not in place, it may be difficult for the community to fully become a part of the broader society [17]. The next apparent question that arises is of political, civil, economic, social, and cultural rights, particularly in relation to same sex marriages, financial rights[18], the right to reproduction and adoption, the right to work[19] and non-discrimination in workplace, protection from abuse and violence by police forces and others, criminal penalty as define under the Indian Penal Code particularly in relation to sexual harassment and rape etc., among others. A legal enactment will support this social engagement by providing a solid base of protection and an avenue by which conditions of abuse, discrimination and prejudice may be questioned and discussed in a court of law. Both these aspects should work together to engage entirely with the LGBTQIA+ community and thereby safeguard that an organisation is created which is supportive of the community.

Social research on social acceptability of LGBTQ+

As a part of understanding the social acceptability of the LGBTQIA+ community, empirical social research was undertaken by the researcher. The aim of the social research was to learn specific issues pertaining to privacy, marriage, family, and reproduction rights of this collective and gauge the public perception within the broader section of society.

Method: A questionnaire in the form of multiple-choice questions was circulated among the participants. The questionnaire included closed-ended question which gave the respondents a predetermined set of answers to select from. The data collected reflects only a section of society and does not represent the broader community. It is a limited sample and thus, there exists limitations to

16. Shruti Jain, "Pride Month 2020: Evaluating the Transgender Persons Act, 2019" *Observer Research Foundation* (July 2, 2020) <https://www.orfonline.org/expert-speak/pride-month-2020-68965/> accessed July 31, 2021.
17. Angana Chakrabarti, "Queer Freedom? A Year After Section 377 Verdict, LGBT Community Still Don't Have These Rights" News18 (September 6, 2019) <https://www.news18.com/news/buzz/queer-freedom-a-year-after-section-377-verdict-lgbt-community-still-dont-have-these-rights-2299373.html> accessed July 31, 2021.
18. Rajat Mishra, "LGBTQ People On Going Fight For Financial Rights In India" (*https://www.outlookindia.com/outlookmoney/*, September 8, 2019) <https://www.outlookindia.com/outlookmoney/talking-money/lgbtq-people-on-going-fight-for-financial-rights-in-india-3530> accessed July 31, 2021.
19. K Sunil Thomas, "Reliance, Tata, Mahindra on Global List of LGBT+ Inclusive Companies" *The Week* (November 19, 2019) <https://www.theweek.in/news/biz-tech/2019/11/19/reliance-tata-mahindra-on-global-list-of-lgbt-inclusive-companies.html> accessed July 31, 2021.

the applicability of the data and the conclusions. Information was obtained on: (i) the knowledge and awareness of the LGBTQIA+ spectrum; (ii) the public perception and acceptance; (iii) specific rights of privacy, freedoms and (iv) specifically about the right to reproduction and family.

Participants: Total of 89 responses were received from persons aged 18 years and above. The majority of the responses received were from female participants (74.2 per cent), followed by male participants, 22 out of 89, i.e., 24.7 per cent. One participant was a transgender. With regard to age of the respondents, 65 out of 89 participants, were of 20-30 years of age. 10 participants in the 18-20 years bracket. Thus, approximately 84.2 per cent of the responses received were from participants of 18-30 years of age.

Measures: A standard closed-ended questionnaire was administered for the survey with multiple choice-based answers.

Results and analysis: 95.5 per cent of respondents knew what the term 'LGBTQIA+' stood for and what is denoted, while 73 per cent (65 respondents) knew someone personally who identifies as a LGBTQIA+. 82 per cent of the respondents acknowledged that being a LGBTQIA+ is a natural phenomenon and that such persons should be accepted for who they are equally as any other human being. It is interesting to note that 9 out of the 89 participants believed that it was a social choice by young adults. 4 respondents stated that it was an abomination which should be condemned. However, 97.8 per cent respondents agreed that such persons should be given equal respect and acceptance as any other human being, while 2 respondents disagreed with it. There were a wide variety of responses to a scenario of personal acceptance. 64 per cent (57 respondents) stated that they will have difficulty at first but will accept him/her/them for who he/she/they are eventually. 3 out of the 89 respondents completely disagreed with it and stated that they will never accept such conditions under any circumstances.

With regard to the question of the Indian society and its approach, a question was asked to the respondents regarding the possible acceptability in India. 67.4 per cent of the respondents believed that if there is sufficient education and awareness raised, India might potentially develop a society which could recognize and welcome LGBTQIA+ openly in public spaces. 14.6 per cent believed that India is already matured enough as a state and its people are ready to accept them, while 18 per cent stated that this will remain a utopian thought and India will never accept them as the majority thinking is not favourable to the LGBTQIA+ community.

In reference to the specific questions of rights, 94.4 per cent agreed that the collective should have the right to privacy and be granted the freedom to live freely and 83.1 per cent respondents stated that same-sex couples should be recognized and accepted as any other heterosexual couple. Thus, divergence can be observed contextualized by the right in question. While privacy is acknowledged as being pertinent, there is a reduction in acceptability of the idea of same-sex couples. 5 respondents, however, believed that LGBTQIA+ should

be deprived of privacy and 3 respondents denounced the idea of same-sex couples. Right to family had a similar response as recognition of same-sex couples, with approximately 82 per cent recognizing that they should be safeguarded the right to form a family. 85.4 per cent (76 respondents) responded in favour of marriage rights for same-sex couples. It is interesting to note that with regard to surrogacy, as a method of reproduction, the favourability dipped further to 71.9 per cent (64 respondents). Approximately 6.7 per cent reacted unfavourably to the idea of surrogacy for same-sex couples while 21.3 per cent stated that it could be a possibility, without taking a clear position.

Discussion: It was found that a majority of the responded agreed to the idea of emancipation of the community and preserving their rights, including that of a family and reproduction. An overwhelming majority of the responded agreed that the community deserves basic respect and dignity and with education and awareness, India specifically, can accommodate the community as a part of the mainstream.

Surrogacy laws

The Latin term for surrogacy is "Surrogatus", which means a substitute i.e., a person appointed to act in the place of another.[20]. The Merriam Webster Dictionary defines it as, 'the practice by which a woman (called a surrogate mother) becomes pregnant and gives birth to a baby in order to give it to someone who cannot have children.'[21] 'The action of a woman having a baby for another woman who is unable to do so herself' is the definition given by Cambridge Dictionary [22].

The Surrogacy Regulation Bill, 2020 defines the term as "surrogacy means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth." [23]

In India, a concrete legal development around surrogacy commenced with the 228th Law Commission Report[24] which reviewed the socio-legal conditions of

20. "Surrogate" <https://www.etymonline.com/word/surrogate> accessed July 31, 2021.
21. "Definition of Surrogacy" (*Merriam Webster*) <https://www.merriam-webster.com/dictionary/surrogacy> accessed July 31, 2021.
22. Cambridge Dictionary, "Surrogacy" <https://dictionary.cambridge.org/dictionary/english/surrogacy?q=surrogacy.> accessed July 31, 2021.
23. The Surrogacy (Regulation) Bill, 2020, s. 2(zb).
24. 228th Report of the Law Commission of India (2009). On August 5, 2009, the Law Commission of India submitted the 228th Law Commission Report titled "*Need for Legislation to regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of parties to a Surrogacy*". The Report discussed the issue of assisted reproduction, and its increasing demand in India. It also highlighted the social, moral and legal issues assisted reproduction. Furthermore, references were made to the Indian Baby M case and the case of the gay Israeli couple.

surrogacy and forwarded many recommendations, one of which was for prohibiting commercial surrogacy. The first legal proposition specifically aimed at surrogacy was the Surrogacy (Regulation) Bill, 2016. Prior to 2016, the Assisted Reproductive Technologies Bill, 2014 was introduced but without it being passed by the Parliament.[25] This was a general law which provided the framework for all different types of assisted reproductive technologies, including gamete donations, embryo freezing, medical processes like IVF, artificial insemination, and general conditions for surrogacy. Meanwhile, to address the absence of legal provisions, certain guidelines were provided by the Indian Council of Medical Research called the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India in 2005. [26]

In India, the case of Baby Manji [27] highlighted the issues surrounding surrogacy and specifically transnational surrogacy. In this case, an Indian surrogate was contracted by a Japanese couple. However, the child was born out of the intended father but a donor egg. Thus, the intended mother had no genetic relationship to the child. The baby was born in 2008 and the couple had divorced by then.[28] As per the contractual agreement, the father was to care for the child. Having no legal mother, baby Manji was left in an indeterminate state due to the conflict of laws as Japanese laws determine citizenship based on mother's nationality. [29] Thus, the father, who was genetically related to the baby, was unable to take the child. Ultimately, the matter was brought before the court and the court, even though it dismissed the petition filed by the grandmother of the baby, advised the passport agency to expedite the application and permit the baby to leave for Japan.[30] Finally, the baby left for Japan and the Japanese authorities permitted the father to adopt the child, subject to a genetic test. Interestingly, in this case, the Hon'ble Supreme Court observed, "the intended

25. The proposed legislation aims at proper regulation and supervision of Assisted Reproductive Technologies (A.R.T.) clinics and banks in the country, and for prevention of misuse of this technology, including surrogacy, and for safe and ethical practice of A.R.T. services.
26. *National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India*, ICMR, <https://main.icmr.nic.in/sites/default/files/art/ART_Pdf.pdf.> accessed July 30, 2021.
27. Baby Manji Yamada vs. Union of India and Another (2008) 13 SCC 518.
28. Dhananjay Mahapatra, "Baby Manji's Case Throws up Need for Law on Surrogacy" Times Of India (August 25, 2008) <https://timesofindia.indiatimes.com/india/baby-manjis-case-throws-up-need-for-law-on-surrogacy/articleshow/3400842.cms> accessed September 7, 2021.
29. Shruti Saxena, "Baby Manji's Wait May End Soon" DNA India (August 8, 2008) <https://www.dnaindia.com/india/report-baby-manji-s-wait-may-end-soon-1182152> accessed September 7, 2021.
30. Supra note 27.

parent (of a surrogate pregnancy) may be a single male or a male homosexual couple." [31] This was a major aspect of the judgement which recongised that a homosexual couple may adopt surrogacy as a means to conceive a child; a major aspect which has been specifically eliminated by the proposed Surrogacy (Regulation) Bill, 2020. [32]

The surrogacy laws have been reviewed and revised and the latest bill, i.e., The Surrogacy (Regulation) Bill, 2020 was introduced in the Parliament after the changes suggested by various stakeholders, including the Select Committee of the Rajya Sabha recommended. The current version of the bill provides for the altruistic model of surrogacy while clearly prohibiting any form of commercial transactions of surrogacy. However, medical expenses and insurance coverage for the surrogate is permitted under the proposed law. With regards to the intended parents, the proposed law requires marriage as a condition precedent, including citizenship and residency in India. However, NRIs, PIOs and OICs have been extended the exception.[33] Furthermore, there is a need to prove medical intervention with two certificates, i.e., Certificate of Eligibility and Certificate of Essentiality to be produced by the intended parents, after undergoing examination with official authorities set up under the law.

This proposed law lays down an elaborate list of conditions, restricting surrogacy only to married heterosexual couples and single women who are either divorced or widowed. Thus, it excludes same-sex couples, live-in partners, and single parents (men and women, other than the divorced and widowed) from using surrogacy for conceiving a child. This raises questions of constitutionality, in particular, in relation to the fundamental right to equality.

Marriage rights for same-sex couples are already before the Courts for their interpretation which will lead to the obvious next question of reproduction. With no alternative other than adoption, such a provision in the surrogacy laws will debar gay couples from having a genetically related child. The proposed law in India is comparatively quite restrictive in context of the legal developments in, with the liberal interpretations of the judiciary and recognition of the right of a

31. Madhavi Rajadhyaksha, "Do India's New Surrogacy Norms Discriminate against Gay Parenting?" Times of India (January 19, 2013) <https://timesofindia.indiatimes.com/blogs/The-Mirage/do-india-s-new-surrogacy-norms-discriminate-against-gay-parenting/> accessed September 7, 2021.
32. Id.
33. Ranjit Malhotra, "Highlights and Brief Analysis of the Surrogacy (Regulation) Bill, 2020 and Suggested Potential Safeguards" <https://www.ibanet.org/article/B5C65969-4901-49A9-82CF-8DC4C8BEB1E2> accessed July 31, 2021.

person to choose their own sexual orientation and gender identity. In K.S. Puttaswamy case,[34] the court went on to say that sexual orientation is an essential attribute of privacy and that discrimination based on sexual orientation is deeply offensive to the dignity and self-worth of the individual. The judges observed that equality demands that sexual orientation of each individual be protected on an even platform. They went even further and held that the right to privacy and "the protection of sexual orientation lies at the core of the fundamental rights guaranteed by Arts 14, 15 and 21". [35]

COMPARATIVE ANALYSIS: THE LGBTQIA+ ANALYSIS

A comparative analysis provides for understanding the variations in normative standards and in human conduct in a given society. Additionally, it also provides insights into the possible course of action that nations can learn from one another to create a more uniform system of human rights protection. A comparison of India with that of the United Kingdom is necessary as the legal provision in the Indian Penal Code, i.e., Section 377 is derived from the British. While the British decriminalised homosexuality in 1967, India did not. Thus, a comparison may provide avenues for India to accommodate the collective, in the aftermath of the Navtej Johar case. Thailand resembles India in terms of the social context and nature of societal standards. Thailand and India are comparatively conservative nations and have followed a similar trajectory in terms of the development of surrogacy and the legal reaction to its increased commercialisation. Both nations were also prominent hubs for transnational surrogacy, in particular, among same-sex couples. Australia is one of the nations from where numerous such couples came to India and Thailand for commercial surrogacy. Australia represents a similar constitutional structure of federalism as that of India though with much greater powers being given to the states than in India. However, the legal structure of surrogacy laws has adopted the British system with its own modifications. This can be a credible legal system for India to analyse and review and implement domestically. Thus, the comparison of these specific nations with that of India.

Surrogacy in the United Kingdom

In the United Kingdom, the Surrogacy Arrangements Act, 1985 provides for the fundamental regulations regarding surrogacy, supplemented by the Human

34. (2017) 10 SCC 1.
35. Id.

Fertilisation and Embryology Act, 1990. These two laws form the framework for the regulation of surrogacy and its allied areas, including embryo freezing, gamete donations, the element of payment and parental orders. The laws have been amended from time to time, with a review of the surrogacy law[36] by the Law Commission and the amendments to the Human Fertilisation and Embryology Ac in 2008.

A brief historical analysis of the conditions in the United Kingdom reveals that the law was passed as a consequence and as an immediate response to the Baby Cotton case. Baby Cotton was born on January 4, 1985, and the law was passed by the Parliament in June 1985. There was mounting pressure to curb the practice before it expands into mainstream medical practice. In reality though, the practice thrived in the UK and expanded swiftly all over the world.

As per the current law and practice, contracts may be signed between the parties, solely with the aim of clarity. Surrogacy contracts and unenforceable [37] and thus, if any surrogate refuses to give the child at the end of pregnancy, the intended parents cannot sue for breach of contract. As far the nature of surrogacy is concerned, only altruistic form of surrogacy is legal.[38] Thus, the surrogate can be paid only a reasonable amount, calculated based on the nature of pregnancy and the expenses incurred during the process. It is limited to only the natural expenses of pregnancy; no other incentive should be given to the surrogate. Additionally, the law makes it a criminal offence to advertise or negotiate a surrogacy arrangement with a commercial motive. However, an exception has been carved for non-governmental organisations, who may, on payment of a moderate fee, assist the parties in navigating surrogacy.

In terms of access, the law provides altruistic arrangements for intended parents who may be heterosexual couples, same-sex couples, and even single parents. However, the law states that the surrogate [39] and her partner [40] shall be presumed to be the legal parents and consequently, the intended parents have to apply for a

36. The Surrogacy (Arrangements) Act, 1985 is being reviewed in context of the present conditions and a new law is expected by the end of 2021 in the United Kingdom.
37. Section 1A, Surrogacy Arrangements Act 1985, U.K.
38. Id. Section 2.
39. Section 33 of the Human Fertilisation and Embryology Act, 2008 defines mother as 'the woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.'.
40. Section 35 provides that the other party to the marriage [or civil partnership] is to be treated as the father of the child unless it is shown that he did not consent to the placing in her of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).

parental order to transfer the parenthood from the surrogate.[41] Parental orders are defined in the HFEA Act, 1998 and such an application for transition of parenthood should be applied for within six months of the birth of the baby.

An interesting and much contended aspect of the law is the indefinite nature and lack of definition of the term 'reasonable expenses'. Consequently, this vagueness in a clear terminology and its nature creates the prospect of payments beyond what is reasonable, thus emulating a commercial surrogacy arrangement.[42] Due to the subjective nature of pregnancy and experience of every mother, it is challenging to identify and stipulate a clear specific amount as being reasonable. This aspect is critical and is a condition precedent to the granting of parental orders. A detailed inventory of expenses needs to be submitted to the Family court for determination of parental order.

Legally, the courts have been liberal in the interpretation of the various aspects and provisions of the law. The primary aim is the best interest of the child and his/her welfare within the arrangement. Accordingly, in relation to the question of payment, judges employ a subjective approach, on a case-by-case basis to determine what is reasonable in a given context. Re L (Commercial Surrogacy)[43], the decision of the Court stated that if an amount, higher than what is reasonable has been paid, the court should keep the welfare and best of interests of the child as its primary concern and should not withhold parental order solely on that condition of excessive payment. Similarly, in Re IJ 2011[44], the same decision was made by the court keeping in mind the best interest of the child [45]. Similarly, the limitation of six-month period for application of parental order is not implemented in a stringent manner and many such orders have been given even past the statutory constraint.

41. Section 54, 54A, 55, Human Fertilisation and Embryology Act, 2008, U.K.
42. Henry Bodkin, "Couples Paying £60,000 for Surrogates despite UK System of 'reasonable Expenses' Only" (*The Telegraph*, July 2, 2018) <https://www.telegraph.co.uk/news/2018/07/01/couples-paying-60000-surrogates-despite-uk-system-reasonable/> accessed July 31, 2021.
43. [2010] EWHC 3146 (Fam), 2010, U.K.
44. [2011] EWHC 921, U.K.
45. A reference was made to Re L in this judgement and it was observed by Justice Hedley that "the conditions in Sections 54(1) - (8) having thus been satisfied, a discretion arose in the court to make a Parental Order. For the reasons explained in RE L [2010] EWHC 3146 (FAM) that discretion is now governed by the provisions of Section 1 of the Adoption & Children Act 2002. Once again, after careful examination by CAFCASS and scrutiny in evidence, it was crystal clear that the best interests of IJ required the making of the Parental Order sought by the applicants. Hence the order made."

Surrogacy in Thailand

Thailand was a major commercial surrogacy hub in the Asian subcontinent. The country was well-known for providing low-cost but high-quality surrogacy services. However, in time, several issues of commercial surrogacy came to the forefront, with prominent legal battles on numerous intricate aspects of surrogacy that resulted in its ban in 2015.

Two prominent cases changed the landscape of commercial surrogacy in Thailand, first the 'Baby Gammy' case [46] and the second, the Mitsutoki Shigeta case[47]. The former involved allegations of desertion of child with Down syndrome by his Australian parents, born to a Thai surrogate mother and the latter was a case of a Japanese businessman Mr. Mitsutoki Shigeta, who had fathered sixteen children, born through surrogacy. After thorough investigations, he was granted custody of only three of his children in 2015. Eventually he fought for custody of the remaining children and was granted the custody of the remaining thirteen children in 2018.

The Thai government adopted a new legislation, i.e., The Protection for Children Born Through Assisted Reproductive Technologies Act (ART Act) calling for a ban on commercial surrogacy for all international intended parents. Exceptions are made for married heterosexual Thai couples; however, the many eligibility requirements make the process a cumbersome one. The Act provides that the couple must be Thai nationals and lawful spouses. If one is not a Thai national, then they should be married for at least three years. {s. 21(1)}. The surrogate mother should be a blood relative of either of the spouses but not the parents or descendant of the couple. {ss. 21(2) & (3)}. Furthermore, she must have undergone pregnancy before, i.e., she must be a mother. {s. 21(4)}. In this case, the consent of the husband of the prospective surrogate is compulsory {s.21(4)}. Using the eggs of the surrogate mother is completely prohibited. {s. 22(2)}. A clear agreement should be made before the pregnancy, clearly stipulating the legal status of the agreement and the future child. (s. 3). The law expressly prohibits same-sex couples, single men, and women from adopting surrogacy for childbirth. Infringement of the provisions of the legislation by engaging in commercial surrogacy may result in, upon conviction imprisonment for up to ten years or a fine of up to 200,000 Baht (s.24, s.48). Further, any agent engaging in such services, upon conviction may be imprisoned for up to five years and/or a fine of up to 100,000 Baht (s. 27, s. 49).

46. Sonia Allan, "Baby Gammy Case Reveals Murky Side of Commercial Surrogacy" (*The Conversation*, August 4, 2014) <https://theconversation.com/baby-gammy-case-reveals-murky-side-of-commercial-surrogacy-30081> accessed July 31, 2021.
47. BBC News, "Mitsutoki Shigeta: 'Baby Factory' Dad Wins Paternity Rights" (*BBC News*, February 20, 2018) <https://www.bbc.com/news/world-asia-43123658> accessed July 31, 2021.

Surrogacy in Australia

The Australian experience of surrogacy reflects the similar trajectory as in most global north countries. The practice developed with the advancement of medical sciences and commercial forms created the possibility of exploitation and human rights violations. Consequently, there develops a need for some form of regulation and thus, Australia being a federal nation, gave that freedom to individual states. Adopting a model similar to that of the United States, each state in Australia has their own laws on the subject.[48] The laws of the state where the intended parents reside will determine the regulatory mechanism and law for a surrogacy arrangement, not on the basis of the residence of the surrogate[49]. A contract may be concluded, but, as in case of the United Kingdom, it is unenforceable. Violation of provisions of surrogacy laws results in criminal consequences in the nature of imprisonments and fines.

Akin to the United Kingdom, surrogacy in its altruistic form is permitted legally in Australia. Commercial surrogacy is prohibited in all states. Thus, no payment in excess of what is needed for a safe pregnancy, is permitted under the law. The question of reasonable payment is based on multiple variables and thus, the expenses may vary according to specific instances and conditions in individual cases. The crux of the law is that the surrogate should not be compensated for the arrangement, except what is needed to give birth to a healthy child. No additional benefit should be provided to the surrogate.

Surrogacy is extended to all couples who have a medical or social need to engage in surrogacy, i.e., single men, same-sex male couples, women and heterosexual couples with medical problems. However, these are not consistent and vary among the individual states. In Western Australia, single men and same-sex male couples cannot pursue surrogacy. With the exception of the Northern Territory, all other states have adopted their own respective laws within the broad concept of altruistic surrogacy. Thus, in the absence of any federal law, there exists variations in the nature of surrogacy and degree of protection, including the nature of contract and the conditions for a legal surrogacy.

There is also a parallel between Australia and the United Kingdom in terms of parenthood. A parentage order is required to transfer the parenthood from the

48. The Parentage Act, 2004 in Australian Capital Territory, Surrogacy Act, 2010 in New South Wales, Surrogacy Act, 2010 in Queensland, Surrogacy Act, 2019 in South Australia, Surrogacy Act, 2021 in Tasmania, Assisted Reproductive Treatment Act, 2008 in Victoria, and the Surrogacy Act, 2008 in Western Australia are the state-based laws on surrogacy in Australia.
49. Sarah Jefford, "Surrogacy Laws in Australia" (*Sarah Jefford*, July 20, 2021) <https://sarahjefford.com/surrogacy-laws-in-australia/> accessed July 31, 2021.

surrogate and her partner to the intended parents.[50] Thus, the parenthood, on birth, is with the surrogate.

CONCLUSIONS AND RECOMMENDATIONS

Surrogacy is a reality in this world and medical sciences should be utilised in a manner that does not harm others. It is definitely a process that has helped many in giving birth to genetically related child and the noble aspect of this medical advancement cannot be questioned. This will be specifically true for same-sex couples who have been given a substantial alternative for childbirth. It should be accepted with its imperfections and regulated in a manner that is constrictive but exploits the medical process for the benefit of society. Surrogacy and its laws should be drafted with a human rights-based approach and the focus needs to shift to averting discernment and exploitation and ensuring that the surrogacy agreements are effectively concluded by the concerned parties. The proposed law in India should also be reviewed in light of the recommendations of the Law Commission report and of the reality that same-sex couples do exist in the community and have a right to be treated equally while being safeguarded the basic human rights. The decriminalisation of Section 377 was a watershed moment and that along with the right to privacy provide a strong base for the community. Mere recognition without providing basic human rights is futile. A more effective strategy should be adopted by the legislation to ensure the inclusion of the community in the mainstream. Additionally, there needs to be more collaboration with different sectors and stakeholders to address many issues of this complex concept. Surrogacy should not be seen from a black and white perspective, it is a grey zone that requires empathetic and practical solutions, not a myopic moralizing legislation. A similar emphatic approach is also needed for the queer community. In light of the above, three pertinent recommendations have been identified, i.e.,

First, that a clear legislative enactment is the need of the hour that addresses the numerous legal rights that should be protected and safeguarded along with clear directions and recommendations to states in India to implement the law. The foundation of this law and the inspiration may be the Yogyakarta Principles and Yogyakarta Plus 10. These twin documents are extremely productive and can facilitate in addressing the concerns of the community from a human rights perspective based on the core notion of equality and freedom.

Second, which is desperately needed in the Indian context, is engagement with

50. Jenni Millbank, 'The New Surrogacy Parentage Laws In Australia: Cautious Regulation Or '25 Brick Walls'?' (2011) 35, Melbourne University Law Review <https://law.unimelb.edu.au/__data/assets/pdf_file/0005/1703507/35_1_5.pdf> accessed July 30, 2021.

the LGBTQIA+ community. This should begin with a more open- and broad-minded discussion on sex and sexuality within families and communities. Participation of the community in the mainstream is critical. There needs to be a dialogue between the various stakeholders for ensuring that the political class and the society at large stand corrected on the many misconceptions and archaic traditions.

Third, specifically in relation to the right to reproduction and family, surrogacy should be extended to same-sex couples within the altruistic model. They should not be completely excluded from utilising the medical advancement for creating a family. While adoption is an alternative, surrogacy is the only process by which they can create a genetically related child. Thus, keeping in mind the fact that change is bound to take place at a point in future, instead of relying on the judiciary for all claims, the legislature can be proactive and address this concern in the legislation at their level. Most mature nations have introduced a wide spectrum of laws for the protection of the community and India should also follow suit.

The State of Jammu and Kashmir after its accession with the Indian Union (1947): Role of Women and an Analytical Study of Media

Firdous Hameed Parey*

Abstract

There have been a number of researches on the pre and post-1947 economic and political history of Kashmir. However, the history of the press as a separate topic has been neglected. After the state's accession with Indian Union (1947), what was the role of the press would be one of concerns in this paper. Furthermore, the present study would briefly highlight how the ground for the public voice was prepared. Apart from it, recent years have witnessed a reinvigoration of violence in most parts of the world and the majority of the victims of violence happen to be marginalized social groups particularly women as portrayed by the press from time to time. The violence against women is transcending boundaries of culture, class, education, income, ethnicity and age. Kashmir is a classic example in this regard. The molestation incidents happening in Kashmir are very common since the 1990s. Women are suffering from physical and psychological problems due to the constant stress. The paper will mainly concentrate on the role of media in portraying suffering of women.

Key words: - *Dogra rulers, Jammu and Kashmir, Molestation, Media, State, Violence, Women.*

Introduction

Before 1947, the state of Jammu and Kashmir was the princely State of British India. Its history of the press was belated as compared to the genesis of the press in the British Indian Empire. Apart from the socio-economic and political struggle against the monarchial rule of Dogras in the first half of the twentieth

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century, the struggle for the freedom of the press was quite prevalent in the state at that time. Having completely lost hope, a thoughtful section of the state of Kashmir formed different socio-religious and political associations. Some of the members of these associations started to publish newspapers which created a platform, where healthy public opinion was made (Ganei, 2000, pp. 1-6). Publication of newspapers was hardly allowed by the agencies of the monarchial government of the state. Even the growth of the press was in advance in the British Indian States. Because of the non-existence of local newspapers, the non-local press played a significant role. Before the growth of local press, the Punjab press materialized the demands of the general masses. The present study portrays the role of the Punjab press in the national awakening of Kashmir. There was a contribution of a large number of newspapers that secretly made their way in the state. Prominent among them were the Tribune, Milap, Pratap, Paisa-i-Akhbar, Akhbar-i-Aam, Zamindar, Inqilab, Kashmiri Gazette, Siyasat and there were other newspapers as well. But, they fail to attain much popularity (Khalid, 2012, pp. 121-122). It seems that the political awakening in the state was partly due to the modern education and consciousness brought up by the press. These newspapers prepared a ground for political activism in the state.

Kashmir before 1947

The state of Kashmir was known for communal harmony, which can be seen after an analytical study of the press. However, the socio-cultural fabric of the state which was famously known for its harmonious nature shifted towards the opposite side due to many causes. The press, sometimes, to achieve selfish goals misused its power of coverage. There was a rich history of communal harmony among the common masses in the state which, unfortunately, was mitigated by one way or the other. Although numerous champions of secularism like Sheikh Muhammad Abdullah, Prem Nath Bazaz etc. emerged to challenge the Mephistophelean ideology of communalism, it can be said that they were not much successful in their political or socio-economic agenda. Furthermore, the present study would examine the diverse reports of the press from a critical perspective. Communal harmony in the state was sometimes disturbed by the diverse reports of the press. Moreover, it seems that there was no freedom of thought and expression in the Kashmir society under the Dogra regime (1846-1947). This irreplaceable birthright was put under strict censure by the monarchial rulers through the Press laws, Ordinances and Notices are under focus here. When this significant right was threatened by the acrimonious forces, the whole social progress was put to a stop. The ideal of freedom and social justice has developed through the centuries. To discuss the concept of freedom vis-a-vis the land of Kashmir was surreal even till the late 19th century, due to the strategic location of the State. It would be interesting to make a comprehensive study of press acts of the different forms of government during the twentieth century.

Besides, during the twentieth century, there was a mass upsurge of 13th July 1931. After this historical event socio-cultural, economic and political scenario of the state changed. Subsequently, the monarchial government under Maharaja Hari Singh (1925-1947) initiated some reforms (due to British pressure) in the state administration. The freedom of the press and platform also seems to be a part of a newly established authority. Subsequent of which, the educated youth under Sheikh Muhammad Abdullah started to lure towards the freedom movement of Kashmir against the Dogra regime. There was unprecedented growth of local newspapers after the Glancy Commission (1932). It was actually during the fourth decade of the twentieth century that there seems a politically charged state of affairs in Jammu and Kashmir. All these changing political narratives of the state are entirely focused on the works of Prem Nath Bazaz (A contemporary journalist). According to various references, journalism got off to its start as back as in the 1930s when a popular 'Glancy Commission (1932)' under B. J. Glancy was appointed to redress the grievances of Muslims. It was only after the recommendations of this commission that freedom of the press, a formation of associations, debates, meetings, and discussions were initiated at different places in Kashmir (Monthly Aaj Kal, 1972, p. 30). However, the position of the press on the eve of the partition was not good. It was a critical period for journalism due to various reasons including the first Indo-Pak war (1948), which subsequently resulted in evoking the political turmoil in Kashmir. The numerous newspapers which started with their publication were immediately stopped in the backlash of the prevailing political developments.

The political scenario of the State of Jammu and Kashmir on the eve of partition will be highlighted in this paper. The Dogra rule (1846-1947) was ended on 27th October 1947. After that, there was the establishment of the people's government in the state. So on the eve of partition, there was political fluctuation, which would be part of this paper. In May 1946, Sheikh Mohammad Abdullah had launched his famous 'Quit Kashmir' movement 1946. He attacked the Maharaja Hari Singh for pursuing a policy that allowed the grant of jagirs to a section of people in the Jammu region; while as in the Kashmir region (Muslim dominated) no such privileges were enjoyed by the subjects. Sheikh had declared to be 'not against the person of the ruler but the autocratic regime'. Such criticism of the Maharaja and the launching of a political movement was a challenge to the state authority so Sheikh was arrested on 20th May 1946. Meantime, District Magistrate, Srinagar, Kishan Dhar did not allow Pandit Nehru to visit Kashmir, who was in favour to defend Sheikh in court. (Saraf, 1967, pp. 61-62).

Subsequently, India was going to be independent (1947) but partitioned between two countries i.e., India (Hindu majority state) and Pakistan (Muslim majority state). There was growing tension between Congress and the Muslim League. At

this critical juncture, Sheikh Mohammad Abdullah[1] (Bazaz, 1950, p. 2) launched a political movement in Kashmir. He had no affection with the Muslim League and its leader Mohammad Ali Jinnah whose bid to personally woo the Kashmiri Leaders had flopped earlier. However, the tensions between the Maharaja and the Kashmiri Leaders made the prospect of Kashmir difficult (Saraf, 1967, p. 63). During this critical time, newspapers had anxious moments, especially for the daily Ranbir. The Ranbir continued to emphasize its twin slogans of 'Release of Sheikh Mohammad Abdullah' and 'Accede with the Indian Union. These secular slogans did catch the popular imagination and at least isolated the Hindu and Muslim communalists for a while (Puri, 1966, p. 16). However, most of the newspapers which propagating Jammu and Kashmir's accession to Pakistan or were in favour of its independence were either stopped or put under the pre-censorship ban. Political or religious leaders and associated workers who were preaching pro-Pakistan views or were opposing accession to India began to be gagged or imprisoned (Bazaz, 1950, p. 2). Mr Kak as Prime Minister, had, however, found powerful allies in Jammu where the prominent Hindu leaders had been given the impression that the Maharaja after the lapse of the British Paramountcy would do well to steer clear of India and Pakistan and even expand his kingdom later on. Maharaja himself was not ready to accede to the Indian Union in August 1947 and was collaborated by the Muslim Conference and Hindu Sabha in this decision. Also, the Muslim Conference president Chaudhry Hameed Ullah Khan, who later presided over the Azad Kashmir, declared that he would himself take up arms against Pakistan's possible attack on Kashmiri's independence (Puri, 1966, p. 16).

As a result, newspaper daily Ranbir had to face considerable resistance from these Hindu leaders. The copies of Ranbir were burned by some angry Hindu young men. The national as well as the entire local press harshly criticized this reaction of communal forces. Even the pro-Pakistan newspapers like the Inqilab (Lahore), point out the Government for supporting communalism. On August 26, the District Magistrate, Jammu issued an order directing the editor of the Ranbir ', not printing or publishing the daily Ranbir'. However, this ban was later removed (Saraf, 1967, pp. 63-65). One of the prominent national newspapers, the Amrita Bazar Patrika, had reported an interview with the Maharaja of Kashmir asserting that he could sign a decree for the union of the State with Pakistan with his lifeblood only. Nevertheless, he carried on parleys with the Shimla hill chiefs and other princes presumably to carve out an

1. Sheikh Abdullah was then in jail as a result of his unsuccessful 'Quit Kashmir' adventure. The trend of public opinion outside made him worried and restless. He wrote a letter to a friend in Jammu which was published in the Congress Press praying to the Maharaja that he should neither remain independent nor join Pakistan but declare the State's accession to Indian for with. Sheikh Abdullah offered the unequivocal support of his National Conference to such a declaration. For more details see, Bazaz, Prem Nath. (1950). 'Truth about Kashmir,' Kashmir Kisan Mazdoor Conference, New Delhi, 2.

extended independent kingdom for himself. It is also believed that he was to be constantly in contact with Delhi, London and Karachi to keep himself adequately informed about their reactions to his motive. Even independent Pakistan had accepted the offer by the Jammu and Kashmir government of the 'Stand Still Agreement'. On the other hand, India true to its declared policy of thrashing out matters with the popular leaders of the various states rather than their hereditary rulers made explicit its reluctance to enter into any such agreement[2] (Bhat, 2014, pp. 28-67). According to Christopher Snedden, "Jinnah (falsely) believed that state of Jammu and Kashmir would fall into Pakistan's 'lap like a ripe fruit' once the Maharaja realized his and the people's interests, and acceded to Pakistan, and although he was prepared to allow the Maharaja's 'autocratic government' to continue support for" (Snedden, 2013, p. 26). It can be said that the two independent countries had a different approach towards the princely state of Jammu and Kashmir.

Kashmir on the eve of Partition

Sheikh Mohammad Abdullah was released from jail on 29th September 1947. He stated at the same time that first of all, he wanted to have a fully responsible government in the state which could choose then between India and Pakistan. He, however, more than once showed his inclination towards what he called 'India of Gandhi and Nehru.' He had already interacted with these prominent leaders at different sessions. Also, he was influenced by their liberal, secular and democratic mindset up (Saraf, 1967, p. 67). Sheikh, who was set free from a trial, had according to The Times (London) of 10th October 1947, possibly lost popular support from the Muslim Conference, the effective political organization in the state. During his detention, the Muslim Conference's rallying cry of 'Islamic India' (as recorded in the report in The Times, which surely meant 'Islamic Pakistan') had become so popular that it might have defeated him if a plebiscite would have been held (Snedden, 2013, p. 24). It can be observed that after the state's accession with the Indian Union political narrative of the state of Kashmir has changed. They became sandwiched between three countries i.e., India, Pakistan, and China. Also, Kashmir came into the eyes of the world media. Especially, after the insurgency-1989 common masses in the state suffered because of conflict. It seems that with the development of the press

2. This agreement stands for trade relations between the government of Maharaja and Pakistan. Most of the parts of the State of Jammu and Kashmir have geographical proximity with Pakistan; therefore, it had trade relations mostly with it. See Bhat, Sanaullah. (2014). Kashmir (1947-1977), Ali Mohammad and Sons, Srinagar, 28-67.

during these circumstances the local government of state-supported the freedom of the press. They have issued policies and speeches in favour of the press, but practically they failed to fulfil. Many newspapers were banned, fined or some of the journalists were humiliated. It can be said that the promises of authorities remain daydreams for the journalists. Kashmir press faced continuously troubles due to non-state actors. (Srinagar Times,18th March 1988). Ironically, many journalists lose their life for the survival of journalism in Kashmir. Even true news was not acceptable to the non-state actors. Under such heroic conditions, a true story for journalism cannot be expected. Despite, these worst conditions any incident that happens journalists make immediate coverage to update the public. But what was happening suppose any civilian was killed, most often it is said he has been killed by an unknown gunman. On such an occasion what a journalist can do, he makes the story as it for the press of its survival of journalism in the state. The reality is nobody knows who is killer. These questions have not been yet answered because of the unknown gunman. Kashmiri's are waiting for a long time to know and unveil this covered face man.

Another thing is disappeared persons; they are almost 10000, so these stories make it very tough for journalists to find out the actual culprits. In these circumstances to expect the existence of a free press is a daydream. Therefore, they always appeal to the authorities for cooperation. Only they can create a plate form, where freedom of speech and expression can imagine. If the gun would have been a solution two world wars have been great examples, but what lesson we have taken from wars, is human loss and destruction of property. The value of humans is precious; no one can buy a human soul, so every individual has the responsibility, especially the world community must think about how to save humans. Here it is irony that in the era of postmodernism, world community has failed to save humans, despite calling themselves, civilized people.

The media is an important institution in polishing public opinion in front of the world. Kashmir, the conflict zone in the world, there is a need for freedom of media to highlight the grievances of the common masses. The non-existence of critical media makes it extremely difficult if not altogether impossible to create an informed and critical public opinion regarding the situation in Kashmir. There is a continuality restriction on media, denial of liberty due to which justice in Kashmir is a subject of debate or analysis in India. An analysis on Press reporting on Kashmir concluded that:

"In the context of Kashmir, the Press has failed to play its role as the watchdog of democracy, as it has by-and-large collaborated with the government in not revealing actual occurrences in the Valley…by its continued reiteration of the official version of events in Kashmir, the Indian Press has helped only to increase the sense of alienation among the people of Kashmir, and to keep the general public ignorant of what is happening in the Valley " (Joseph, 2000, p. 54).

Kashmir insurgency-1989 and the role of women

The Kashmir insurgency-1989 was supported equally by men and women from Jammu and Kashmir. While the men crossed the border to receive training in arms and came back to struggle against security forces. The women have had their share, were at the forefront to protest rallies and provided psychological support to the male gender. Till the year 1990, most of the women in Kashmir used to be busy with domestic work. But after the 1990s culmination of anger reached its climax. The women have collaborated with men and they played a significant role in the insurgency movement in Jammu and Kashmir. However, due to lack of education, they have no certain roadmap to follow (Sobhrajni, 2008, p. 1).

To substantiate the above-mentioned statement, it is better to quote the Chief Minister of Jammu and Kashmir, Mehbooba Mufti. She mentions that the 2016 unrest in Kashmir was not as serious as being portrayed by media, as the valley has seen much worse days in the 1990s. She also appealed to the media to report responsibly from the state. Mufti, even request national media to not show discussions on television that spread hatred against the people of Jammu and Kashmir. Also suggested to national media not to add fuel in Kashmir instead work on how to restore peace (India Today, 8th May 2017).

It was especially after 1989-insurgency the narrative of Indian media blame Kashmiris as anti-national. The armed struggle of Kashmiris became a tool to the dehumanization of civilians particularly Kashmiri Muslim women. However, newly introduced social media became abuzz with these overwhelming new expressions which challenged the national media's narrative on Kashmir. Especially stories regarding Kashmir women have been reframed (Malik, 2018, p. 4). It seems that national media remains contrary to local media that didn't portray the actual situation. Here in Kashmir local media too failed made coverage of events properly due to some unwanted restrictions.

The media which is deemed as the fourth pillar of democracy became propaganda machinery. It had thrown light on the victims of insurgency which were helpless; there was no constructive support to them from the elected representatives or respective civil administration. The image of Kashmiri women was depicted by media and came in front of people from the different corners of the world. Kashmiri women became the forefront of protests; it was on this backdrop that women became the main icon in lines of media. It has can be seen that local and national papers were filled with such photographs. (Sobhrajni, 2008, p. 5). The media has highlighted the role played by women in the insurgency in Jammu and Kashmir. It has covered this 1990s dreaded situation in Kashmir. Whether, it was the question of missing sons, husbands or providing food and shelter to militants in their homes. Mention statement can be

made more valid by a report published by the Asia Watch and PHR[3] (Reports of Asian Watch, 1985 and PHR-Physicians for Human Rights, 1986). The Asia Watch and PHR teams visit Kashmir, where they have collected fifteen cases of reported rape by non-state actors. One of the dreadful investigations made by Asia Watch and Physician for Human Rights (PHR) has taken inquirers. They have interviewed a gynecologist at Shopian District Hospital, who had examined seven women all were raped, their hymens were torn and the vaginal area was tendered (Report of Asian Watch: Rape in Kashmir, 2005, pp. 5-11) Asia Watch and PHR made some suggestions which seem very valuable that there should be no search operation at night. On the occasion of any specific information of the presence of militants in the area, women officials should be part and parcel of search operation and cordon at any time. It seems that non-state actors use rape as a weapon against women to take revenge from them because of their affiliation with militants.

A story was displayed by the English Language Daily, Kashmir Times October 14, 1992, the Kashmir police of Shopian registered a criminal case of gang rape in 13thOctomber. The answer to this case had been transferred to the Crime Branch. Later, an order was issued by authorities in which no action was taken against the culprits (Daily Kashmir Times October 14, 1992). In response to the above-mentioned cases Lt. General D.S.R. Sahni, commanding in chief of the Northern command was made answerable of charges of rape by an unknown gunman in Kashmir. In reply, he told the Asia Watch and PHR "Rape" to the most official, is a rare but regrettable excess, those who committed should be punished (Report of Asian Watch: Rape in Kashmir, 2005, p. 19). To make the above statement stronger there is a clear reference of political activism of women in the 1990s; like Dukhtaran-e-Millat [Daughters of the Faith] was organized (Dukhtaran-e-Millat was formed in 1981. For more details see references at end of paper)[4] This group organized different protests as it gave a call for women to march to the United Nations on March 14, the first curfew-free day after the Channpora rape incident. There was the huge mass

3. Asia Watch was founded in 1985 to monitor and promote internationally recognized human rights in Asia) and PHR (Physicians for Human Rights (PHR) is an organization of physicians and other health professionals that brings the knowledge and skills of the medical sciences to the investigation and prevention of violations of international human rights and humanitarian law. Since its founding in 1986, it has conducted over forty missions concerning over twenty-five countries.
4. The Dukhtaran-e-Millat (DeM) was formed in 1981. In 1987, the 'women activists' of the organization came on the streets, fought for reservation of seats for women in buses, took action against families that demanded dowry, and arranged marriages for girls who belonged to economically backward families. Manoj Joshi, "The lost rebellion", Penguin Books, 1999, 490.

participation of women who made a protest march from the Maulana Azad Road to Lal Chowk at the city centre to Gupkar, where the UN office is situated (Sobhrajni, 2008, p. 9). This group works for the protection of women from social discrimination, molestation, and to protect their dignity. The political activism of this group was also highlighted by local media through stories and photographs (Malik, 2018, p. 65). A photographer and artist namely Sheba Chhachhi, has covered a small number of photographs of women marches from the 1990-91 files. Mass media documented that there was a growing continues participation of women in the late 20th century (Sobhrajni, 2008, pp. 1-17).

The most harrowing, unforgettable and regrettable event of the 1990s is the Kunan Poshpora mass rape, which is all times headline in the media. This event is still in debate in the newspapers, editorials, articles, electronic media, social media, youtube etc. The victims of this incident were not granted justice even a long time has passed. A search operation was launched in a village Kunan Poshpora, in the Kupwara district of Jammu and Kashmir by the non-state actors. During this search operation, it is said that fifty three women allegedly gang-raped (Joshi, Manoj, 1999, p. 490). Later on, an interview of victims and eyewitnesses was documented into a short film Ocean of Tears which was prevented from its broadcast (Jan, Bilal. A documentary, 2012). Due to media coverage, media man has been attributed as primary position in the public sphere in causalities and that has offered women as below status. However, the depiction of women given by media as victims of violence in Kashmir has sometimes overwhelmed in certain cases. The examples are mass rape of Kunan Poshpora, the Asia-Neelofer rape and murder etc (Bakaya, Priyanka and Sumeet Bhatti, 2018).

Here a question arises that 'what is the role of the media during armed conflict?' Are journalists writing a balanced story? Or they attempting to write a sensational story to attract more readers popularly called yellow journalism? Are they trying to find solutions to conflict, or in some cases, are they paid by state actors to either portray a story different from the reality or do they want to exploit the suffering of people in their favour? While authorities has been rather successful in the suppression of media attention on Kashmir and on the other hand Pakistan does not hesitate to take advantage of position. Whatever the intention of various media outlets may be, based on mere moral grounds, the main objective of the media is to inform people all-around the world by publishing a balanced version of the actual ground affairs. If the media avoid yellow journalism and show objectivity in its coverage, it will benefit common masses living in conflict zones. To protect national interests, no country wants to have any such atrocities being highlighted by media which will affect on its reputation. In context of Kashmir role of media is very significant especially highlighting Kashmir Muslim Women is challenge. There is need of balanced coverage. However, it has been observed that the national and international media has either made wrong coverage regarding Kashmir or has neglected it. Balanced reporting is a prime requirement to bring about the true story of the sufferings of ordinary people throughout the world, who otherwise have no

voice to speak and who, therefore, become easy targets by non-state actors.

Recent years have seen a reinvigoration of violence in most parts of the world and most victims happen to be marginalised social groups, particularly women. Violence against women is transcending cultures, classes, castes, ethnicity and nations. Insha Malik, the author of the book, "Muslim Women, Agency and Resistance Politics: The Case of Kashmir", interviewed almost 30 urban women, mainly from Srinagar, Baramulla and Anantnag, as well as some rural women, to make her work noteworthy. The interviewees were political leaders, community leaders, social workers and writers. To understand the role of Muslim women in Kashmir's resistance movement, she used comparative analysis to make a comprehensive study of war conflict zones and victimisation of Palestinian and Syrian women, while the main focus is on Kashmiri women and their role in politics. As a Kashmiri, Being Kashmiri, she has personal experience of different gender-related challenges faced by Kashmiri Muslim women. In the context of the complicated history of resistance in Kashmir, which has created a space for Kashmiri women to become part of the political dispensation, she raises some eye-opening questions on the identity, representation and existence of women.

There is also a debate among feminists regarding Muslim women as victims of war. Feminists consider Islam a categorically patriarchal religion. In addition, first colonial, then orientalist and finally Islamophobic tendencies ensued after 9/11 to portray Muslim women as victims of their religion Consequently, in Kashmir as a Muslim majority state, they lost their right to self-determination, their struggle was given the Muslim colour and their political resistance was seen in the light of the conflict between Muslims and Hindus. It has been seen through the study of different newspaper reports that Kashmiri Muslim women during resistance were at the forefront in protest rallies and provided psychological support to their men. Thus, they became victims under two sorts of patriarchy, state authorities and non-state actors. Women were not 'accidental victims', but became 'conscientious resisters' (Malik, 2018, pp-1-10) Also traces the existence, operation and politics of armed groups in Kashmir after the state acceded to the India Union in 1947 when Kashmiris were promised a plebiscite to choose their future. Subsequently, however, tribal men from Pakistan invaded Kashmir and many Kashmiri women were raped. In response, authorities of the state established a Women's Self Defence Corps. This Women Militia aimed to defend the honour of women. Members of this group were comprised of different communities, which showed an example of local unity, but this initiative shows as fulfilling administrative interests (Snedden, 2013, pp. 20-26).

As it has been seen that the national awakening during the early twentieth century, when Kashmiri Muslims under the Hindu Dogra rulers faced multiple atrocities which led to mass protests in July 1931, politicising men and women. After this historical event, increased women participation in the resistance was witnessed, but only during the Quit Kashmir Movement (1946) did some elite Muslim women take part in the freedom struggle Malik argues that there is a need to revisit the role of Kashmiri Muslim women in the early decades of the

20th century, as the male-centric historical accounts have hardly covered their role so far. The same goes, later on, for the role of women after Kashmir accedes to India in 1947. In due course, a mass resistance movement encouraged mothers, sisters and wives to become its members, and many women from various classes wholeheartedly participated in this. However, there arises a question about how Islamophobia was mixed with Kashmir politics. Instead of perceiving the movement as their political resistance, it was seen as religious resistance. It seems that the main design behind this policy was to defame Kashmiri Muslim women's political consciousness. Kashmiri women were well-acquainted with how to challenge both patriarchy and misuse of power by the administration. While there was a lack of space in politics for women in the early decades of the 20th century, the insurgency from 1989 onwards was a turning point in women's political activism, as now Kashmiri Muslim women took an active role in Kashmir politics. They formed different political organisations to work for the upliftment of women and started to demand their rights. They challenged the counterinsurgency of the administration and became vital energy of the resistance movement in Kashmir. Various women-centric organisations like Dukhtaran-e-Millat (the daughters of the nation), aiming to educate women about their rights and duties according to Islam also believed in the merger of Kashmir with Pakistan. Other organisations, such as Muslim Khawateen Markaz had the objective of an independent Kashmir (Malik, 2018, pp. 27-57).

There have been various references that also brought not only the facts to light hitherto unknown but has put to fore that how women have been victimized in the conflict zones like Kashmir. That is how the presence of non-state forces has steeled the charm, beauty of the land on both sides (i.e., Indian administrated Kashmir and Pakistan administrated Kashmir) and to large extent, the dreams of freedom have been shattered. The present study further describes that especially after the 1989 insurgency, violence against women in Kashmir, especially molestation, has been used by non-state actors as a weapon to punish them. Prominent incidents of rapes and molestations in Kunan Poshpora, Trehgam and other places in the valley are live examples. The murder of two Muslim women in Shopian in May 2009 represents the culmination of such violence against women. The culprits have never been held guilty for their heinous activities. How the victimisation of women resulted in expressions of their grievances through writings, starting a new way of feminist notions of liberation. Kashmiri women portrayed violations of their human rights, and those of their men, through poems, photographs and writings. Particularly, social media became an important platform to share their pain. Feminist notions to describe the status of Kashmiri Muslim women as caught between the patriarchies of state and non-state actors have continued. Yet despite numerous challenges, Kashmiri women's political consciousness responded boldly against these crimes, forming a political platform to express their rights. However, the authorities should focus on education, because educated women can change society. (Para, 2019, pp. 77-81).

To conclude, Muslim Kashmiri women's role in politics after the accession of state with the Indian Union (1947) was not accidental, but historical. While they fight against the patriarchal society, their role in political resistance regarding the right to self-determination cannot be ignored. However, to strengthen Kashmiri Muslim women, the governing bodies should give more impetus to education, which will allow women to play a greater role in the transformation of society. There is a need for a comparative and comprehensive study of the history of Kashmir after its accession with the Indian union. So that socio-political history, history of press and condition and political activism of Kashmiri women can be seen. It makes one passionate, attentive and sometimes it makes you cry within. The collective feeling comes to one mind with the urge to be always with a humanitarian look to address the problems surrounding us while reading the references on Kashmir insurgency, which are absorbed with the presentation of alienation, atrocities and longing for loved ones. The most important feature of the decades of the twentieth century is bringing women to the limelight. Most of the literature produced in the conflict zones highlights focused much on the role of women, their problems, sufferings, longings, alienation and courage.

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Linguistic Minorities and Legal Safeguards: An Analysis with Special Reference to India

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Abstract

The Constitution of India being written constitutes the fundamental law of the land. This has several significant implications. It has provided special protections to the minorities as they are considered vulnerable. The protections mentioned in the Constitution are available to religious as well as linguistic minorities, but generally the importance is given to the religious minorities only. To protect the interests of minorities the special law has been enacted which is known as the National Commission of Minority Act, 1992. Under this Act the National Commission of Minority has been established. However, this also has not given much emphasis on the rights of linguistic minorities. The Constitution of India as well as the National Commission of Minority Act,1992 provided certain safeguards to the minorities but till now the word 'minority' itself has not been defined anywhere. It is also not clear that minority should be decided on State wise or on the basis of pan India. As far as linguistic minority is concerned it may be in the majority in one State but in other State they may be in minority. Even the Supreme Court of India in its pronouncement has said that minority should be decided on state basis. So, Government should take step to make the position clear.

Key words: - *Discrimination, Equality, Linguistic Minority, Predominant, Safeguards.*

Introduction

The principle of Equality and non-discrimination are the main pillar of Human Rights. This principle applies to everyone irrespective of their race, color, religion, language, nationality, and ethnicity, or working descent. Through respect for these two principles, the enjoyment of many other human rights can be secured. Minority rights have been recognized as an integral part of the United Nation's work for the promotion and protection of human rights, but sometimes it is found that there is a lack of effective participation of minorities and they face multiple forms of discrimination resulting in marginalization and exclusion. Minorities in all regions of the world continue to face serious threats, discrimination, and racism and are frequently excluded from participating in the economic, political, and social life of their countries. In some regions of the world, they are facing religious persecution also. To address the issues of minority's attempts were going on both at the National and International levels. The United Nations Human Rights Office of the Human Rights Commissioner has a leading role within the United Nations (UN) system in this respect. In India, the forefather of the Constitution realized that all kinds of minorities including linguistic minorities should be given protection and they tried to mention the provisions in the Constitution. At the time of framing of the Constitution, every State was multilingual. Therefore, the problem of linguistic minorities loomed large on the horizon as there were linguistic minorities in every State.[1] In 1956 when States were formed on a linguistic basis and many unilingual States were formed, even then almost all the States were having linguistic minorities. It causes another type of problem for linguistic minorities because in every State there was a dominant language group and many small language groups were different from the dominant group. There are many problems faced by the linguistic minorities, such as imparting education to the linguistic minority children in their mother tongue, use of minority languages in the administration, and Central/State services. This paper aims to discuss the issues related to minorities especially linguistic minorities. For the above task, both International and Indian provisions have been taken into consideration. The role of the Judiciary regarding the safeguarding of linguistic minorities has also been highlighted. The methodology that has been adopted in discussion is doctrinal which is based on primary and secondary sources.

Meaning and Concept of Minorities

The term minority has not been defined in any national or international document. However, the inclusive meaning of it has been accepted as it said that minority is a question of fact and that must include both objective factors as well as subjective factors. Objective factors like the existence of shared ethnicity, language, or religion. The subjective factors here mean that individuals must identify themselves as members of a minority. According to New International Webster's Comprehensive Dictionary, the term minority means "a group of comprising less than half of the population and differing from the others and

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1. Jain, M.P. *Indian Constitutional Law*, Lexis Nexis,2008, p. 1414.

especially from the larger predominant as in a race, religion political affiliation, etc." [2] The term minority as used in the United Nations Minorities Declaration, 1992, usually refers to national or ethnic, religious and linguistic minorities. All States have one or more minority groups within their national territories, characterized by their own national, ethnic, linguistic, or religious identity. According to a definition offered in 1977 by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, "a minority is a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language". [3]

In the Indian Constitution, the word minority has been used in four places but has not been defined in a single place. To define the minority generally a test is followed that is numerical inferiority test, which means minorities are those who are less than 50% in number. But this test sometimes created a problem because in many States not a single community is having 50% of the total population. That is why to determine the concept of minority another test is required to be fulfilled. It says that those are covered in the ambit of the minority who do not have representation in the power structure of the State and are powerless. As far as the meaning of linguistic minority is concerned it is a group of people having a mother tongue different from that of the majority in a State or a part thereof.[4] The Minority Commission treats those groups as linguistic minorities which have a separate language and which constitute a numerically smaller section of the people in State.[5] A linguistic minority is one that at least has separate spoken language, however, it is not necessary that such language have distinct scripts.[6]

Protection of Linguistic Minorities

(a) International Provisions

Linguistic rights are those rights that not only protect individual rights but collective rights also. It empowers the linguistic minorities to choose their language or languages for communication. These rights include the right to act

2. Basu, D.D. *Commentary on the Constitution of India*, LexisNexis, 2008 Vol.3, p.3582.
3. E/CN.4/Sub.2/384/Rev.1, para. 568 cite in 'Minorities under international law' https://www.ohchr.org/, visited on 24-07-2020 at 6.30.a.m.
4. Supra note 1 p.1414.
5. Ibid.
6. St Xavier College v State of Gujarat AIR 1974 Sc1702.

in their languages that include the right to speak their language and the right to receive education in one's language also. The International Covenant on Civil and Political Rights (ICCPR) 1966 in its Article 27 confers on the persons belonging to minorities including linguistic minorities which exist in that State Party. These persons need not be permanent residents of that State. Even migrant workers are also entitled to get the benefit of Article 27 of ICCPR.[7] These minority rights are individual rights to engage in particular activities in the community with others. The Convention on Rights of Child, 1989 which came into force on 2nd September 1990 makes provision regarding the protection of languages and cultures of minorities. The Convention prescribes that the States must protect the rights of the children who are belonging to ethnic, religious, or linguistic minorities or persons of indigenous origin. It should be assured that they would not be denied the right, in community with other members of his or her group, to enjoy his or their own culture, to profess and practice his or their religion, or to use his or her language. [8]

Apart from the above, the United Nations General Assembly on 18th December 1992 adopted a declaration known as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This Declaration protects not only ethnic or religious minorities but linguistic minorities also. The Declaration dictates the States to protect as well as safeguard the existence and identity of minorities within their own countries. Also, it enjoins the States to encourage the conditions for the promotion of the identity of the persons belonging to minorities. And also, the Declaration imposes obligations on the States to ensure the persons belonging to minorities, fully and effectively exercise human rights and fundamental freedoms without any discrimination.[9] From the day of the adoption of this Declaration, the 18th of December is celebrated as International Minorities Day. The rights that are mentioned in the Declaration contribute to the social and political stability of the states. These rights are integral to develop society as a whole. The Declaration talks about the protection as well as promotion of the existence of the identities of minorities. Under Article 1 of such Declaration, State parties have been obligated to adopt appropriate legislative and other measures to achieve the

7. V.K. Ahuja, *Public International Law*, 2016, LexisNexis, Gurgaon, p.370.
8. Article 30 of the Convention on Rights of Child,1989.
9. Article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.

goals of the Declaration.[10] Besides the above, the Declaration protects the cultural rights of linguistic minorities also. It says that States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions, and customs. Clause (3) of Article 4 of the Declaration imposes liability on the States to take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or get instruction in their mother tongue. Also, clause (4) enjoins States to take measures in the field of education, to encourage knowledge of the history, traditions, language, and culture of the minorities existing within their territory, and the persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.[11] However, this Declaration is not legally binding as it is merely a Declaration. Article 27 of ICCPR is thus of great importance for members of minorities, even if it may take an indirect route to protect their rights, such as through provisions of non-discrimination.

(b) Indian Scenario

(i) Constitutional Provisions

At the time of framing the Constitution the States were not unilingual rather they were multilingual, so there were linguistic minorities in every State. The Constitution makers had anticipated the problems of linguistic minorities that is why they tried to safeguard their interest by making provisions in the Constitution. However, before providing safeguards to minorities in the constitution huge debate took place in the Constituent Assembly.

Shri Damodar Swarup Seth who was one of the members of the Constituent Assembly raised the question and said "sub-clause (a) of clause (3) of Article 23 of the Draft Constitution (presently Article 30) talks about all kinds of minorities, whereas in secular state minorities based on religion or community should not be recognized".[12] He also said that if they were given recognition then we could not claim that ours was a secular state.[13] According to him

10. Article 1(2) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992.
11. Article 4 (2) and (3) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities,1992.
12. Constituent Assembly of India Debates (Proceeding) Vol. VII, Wednesday,8thDecember,1948, http://loksabhaph.nic.in/ visited on 27-07-2020.
13. Ibid.

recognition of minorities based on religion or community was against secularism. He said, "if these minorities are recognized and granted the right to establish and administer educational institutions of their own, it will not only block the way of national unity but will also promote communalism, and narrow anti-national outlook with disastrous results". His opinion was that only 'linguistic minorities' should be given protection in the Constitution, though his view was not accepted by the Constituent Assembly.

Dr. B. R Ambedkar moved an Amendment in the Constituent Assembly regarding clause (i) of Article 23 (presently Article 29). He said that in place of the words, "script and culture" the words "script or culture" should be substituted.". This amendment was accepted by the Constituent Assembly. [14]

Prof. K. T. Shah moved an amendment in Article 23(1)(now Article 29) and said that in clause (1) of Article 23, after the word "conserve" the word "develop" be added." Which would be, "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve and develop the same." But this motion was negative by the Assembly saying that the word conserve covers wider meaning.[15]

When the Constituent Assembly adopted Article 23 in the Draft Constitution its clause (1) and (2) got a place in Article 29of the Constitution of India, whereas clauses (3) & (4) of Article 23 are placed in Article 30 of the present Constitution.

Although Article 29of the Constitution is wider than Article 30 but Article 29 does not impose any positive obligation on State to conserve any culture or language rather it merely enables linguistic minorities to conserve their own languages or culture.[16] Article 29(1) protects linguistic minorities to maintain their languages, culture, and scripts. It confers the rights not only upon the minority as understood in a technical sense but also upon a section of citizens who are residents of India which may not be a minority in the technical sense but if they are having a distinct language, culture or scripts have right to

14. Ibid.
15. Ibid.
16. Article 29 provides;(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

conserve them. Under Article 29(1) word 'conserve' not the word 'preserve' has been used. The right to 'preserve' is merely a passive right. It connotes a right to maintain its existence in fact it is merely a passive form of the attitude adopted in defense.[17] On the other hand, the right to conserve is wider than the right to preserve. It includes 'development' also in its purview. It is not limited to the literal meaning to retain or preserving. Also, it includes the right to impart instruction and the right to adopt any lawful measures to preserve culture. These linguistic minorities might establish an educational institution for conserving the same. Even they have the right to agitation for the protection of their languages and culture. Also, Article 30 of the Constitution does not impose any obligation on State to provide facilities for education in minorities, it simply provides the minorities the rights to establish and administer their own educational institutions.[18] It protects a minority based on religion or language.[19] The Article provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.[20] It means to get the benefit of Article 30(1) the person must be either religious or linguistic minority. As per Article 30(1), these religious or linguistic minorities have the fundamental right to establish and administer educational institutions of their choice.[21] Article 30(1) enables them to establish educational institutions to solve the problems. So, it can be said that these two Articles(29and30) confer rights on linguistic minorities to conserve their culture and language.

Apart from the above, there are some other provisions to safeguard the interest of linguistic minorities. Article 347 of the Constitution says that if a substantial portion of the population desires to use any language spoken by them to be recognized by the State and they demand to the President who after being satisfied may direct the State to recognize such language.

As per Article 29 of the Constitution the people who migrated from one State to another State and become a linguistic minority, have the right to conserve their culture and language, but sometimes the situation may be that these linguistic minorities do not have resources to establish their own institution to impart education in their own language. This problem was realized by the State Re-

17. Ibid.
18. Article 30(1) of the Constitution of India.
19. Supra note 2 p.3562.
20. Supra note 18.
21. *Jagdeo Singh Sindhanti v Pratap Singh Daulta* AIR 1965 SC 183.

organization Commission which suggested to amend the Constitution and impose an obligation on the States to impart education to the children of such minorities in their mother tongue. Accordingly, Article 350A [22] has been added to the Constitution which supplements Articles 29 and 30. And also, it directs every State of India to provide facilities in the schools so that at the primary stage of education to the children of a linguistic minority can be imparted in their own mother tongue. Article 350A together with Article 45 provides an important policy direction to the State for the preservation of the language of linguistic minorities.[23] Thus, it appears that Article 350A is an expansion of the cultural and educational rights guaranteed under Article 29(1) and Article 30(1) of the Constitution. Besides the above, there is a provision of the appointment of the Commissioner of Linguistic Minorities under Article 350B of the Constitution of India, who will be appointed by the President of India. He plays an investigative role regarding the implementation of the safeguards available to linguistic minorities, but he is not responsible for the implementing of safeguards rather he only reports the matter to the President of India.

(ii) Provision under the National Commission of Minorities Act,1992

To protect national integrity and avoid inequality and discrimination the Government of India appointed Minority Commission in 1978 through administrative resolution. In 1992 Parliament made legislation known as the National Commission for Minorities Act, 1992 through which the National Commission for Minority was established. This Act does not define the word minority and it has been left on the Central Government to notify those who are covered under the minorities. The National Commission for Minorities Act, 1992 says that for the purpose of the Act, only those communities will be covered under the minority who are notified as such by the Central Government. Acting under this provision on 23-10- 1993, the Central Government notified the Muslim, Christian, Sikh, Buddhist, and Parsi (Zoroastrian) communities to be regarded as "minorities" for the purpose of this Act. On 20th January 2014, the government of India awarded minority status to 'Jains' as per section 2© of the National Commission of Minorities Act, 1992. From the above discussion, it appears that the Government focuses on religious minorities rather than

22. Article 350A of the Constitution of India provides; "It shall be the endeavor of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities".
23. Report of the National Commission for Religious and Linguistic Minorities, Vol.1,2007 p.31.

linguistic minorities because Sindhis are a linguistic minority in almost all the States of India and are also having distinct languages but they did not get a place in the ambit of minorities under this Act. However, whatever protections are available to religious minorities are equally available to linguistic minorities under the Constitution. In the Constitution wherever minority word is used the linguistic minorities are also mentioned with religious minorities. As for as the role of the National Commission for Minorities is concerned it evaluates the progress of the development of minorities. And also, it monitors the working of safeguards provided in the Constitution, looks into the complaints, and suggests appropriate measures that are required to be undertaken by the Government.

Linguistic Minority and the Judiciary

As for as status of the minority is concerned Supreme Court of India in case of DAV College etc. v/s State of Punjab and others [24] held that to cover a person under the purview of linguistic minority for the purpose of Article 30(1) of the Constitution, he should have at least have a separate spoken language. However, the court categorically said that such language need not have a distinct script.

The 11 Judge Bench of the Supreme Court of India in case of TMA Pai Foundation and Others v. the State of Karnataka[25] decided the question of the scope of Article 30(1) read with Article 29(2) of the Constitution regarding rights of minorities for the establishment and administration of educational institutions of their choice. The Court on the basis of majority opinion held that only the State could determine the status of a religious or linguistic minority. And also, these religious and linguistic minorities have to be ascertained State-wise. The Court clarified that the right mentioned under Article 30(1) could not override the national interest or prevent the Central Government from framing regulations in this regard. Any regulation framed in the national interest would be applicable to all the educational institutions, whether run by the majority or the minority.

In the case of Bal Patil v Union of India,[26] the Supreme Court refused to grant the status of the minority to Jain. The Court said that Constitution framers while framing the Constitution did not intend to add the list of religious minorities. Although, this decision can be criticized on the ground that religion is a dynamic

24. AIR 1971 SC 1737.
25. AIR,2003 SC 355.
26. (2005) 6 SCC3172.

term and new religions take place after the regular interval and it cannot be said that only those religion which is in existence will remain intact and its list cannot be extended.

In the case of State of Karnataka v. Associated Management of English Medium Primary & Secondary Schools,[27] the State Government compulsorily imposed Kannada or one's mother tongue as the medium of instruction at the level of primary education. In this case, the petitioners raised issues that infringe individual's rights to choose their own medium of instruction. The Court said that issuing Kannada or one's mother tongue in primary education could be considered valid if taken independently. Compelling to choose any language for medium of instruction was seen as unconstitutional. The Court said that mother-tongue is a language with which the child is comfortable, and it is up to the parents or guardian of the child to decide their mother tongue.

In the case of Aswani Kumar Upadhyayvs Union of India[28] Public Interest Litigation (PIL) filed by Aswani Kumar Upadhyay a Supreme Court Lawyer seeking minority status of Hindus in eight States (Lakshadweep, Mizoram, Nagaland, Meghalaya), Jammu and Kashmir, Arunachal Pradesh, Manipur, and Punjab) where Hindus are in minority. It was argued by the petitioner that the protection of the interests of minorities and the right of minorities to administer educational institutions as provided under Articles 29 and 30 of the Constitution respectively, the religious and linguistic minorities should be determined State-wise on the basis of the numeric proportions of various communities in each State. The petitioner requested the Court to frame guidelines to identify and define religious minorities in every State, especially where Hindus are in a minority so that their culture and interests are protected. It was argued that Hindus in many States are in minority even then they are considered as majority whereas those who are in majority are considered minority But the Supreme Court of India rejected the petition and said that the minority status must be determined on a pan India basis and not on a state basis. The Bench consists of Chief Justice S A Bobde, Justice B R Gavai, and Justice Suryakant said that the States have been carved language-wise but religion is beyond all borders. So, it has to be taken on the basis of pan-India.[29] Although, it has already been decided by 11 judges Bench of the Supreme Court of India in TMA Pai case that minority status should be decided based on state-wise so this judgment will not have much effect on status.

27. (2014) 9 SCC 485.
28. Writ petition(s) (Civil) No.(s).876/2019.
29. https://www.thehindu.com, visited on 13-08-2020 at 1.30.p.m.

Conclusion

From the above discussion it is reflected that the Union Government set up the National Commission for Minorities (NCM) under the National Commission for Minorities Act, 1992, and Union Government constituted National Commission for Minorities, New Delhi and State Government constituted State Minorities Commissions in their respective State Capitals for the protection and promotion of the welfare of the minorities, but the word minority has not been defined anywhere in India, further, the word 'minority has not been given a clear sense of the term in any of these commissions meant for so-called minorities, such an ambiguity in the meaning of the term invites numerous litigations Not only this the National Commission of Minority which does not have Constitutional status is emphasizing only on religious minority whereas in Articles 29 and 30 of the Constitution provides protection to both religious as well as linguistic minorities. Now the time has come to give a proper definition of the minority to avoid litigation. Special provisions should be made to protect the interest of linguistic minorities as many languages are either in the category of endangered languages or on the verge of extinction. And also, the Commissioner for the Linguistic Minorities who only plays an only investigative role regarding the implementation of the safeguards should be given more power to implement the safeguards available to linguistic minorities.

National Human Rights Institutions and Their Relevance Today: A Review

Mudassir Fatah* and Aparna Srivastava**

Abstract

The idea of forming National Human Rights Institutions (NHRIs) was first devised at the end of World War II. It was for the first time in 1946, when Economic and Social Council (ECOSOC) considered over the creation of national human rights institutions, two years before the Universal Declaration of Human Rights became the achievement and common standard for all societies and all states on December 10, 1948. National Human Rights Institutions are non-judicial as well as impartial institutions established by states through their constitution. The common mandate(s) for these kinds of institutions is to defend, promote and protect human rights of their citizens.

The 1993 World Conference on Human Rights in Vienna strengthened the Network of National Human Rights Institutions, already founded in Paris in 1991. It set the foundation for its successor, the International Coordinating Committee (ICC) of National Institutions for the Protection as well as promotion of Human Rights. It was the first instance wherein National Human Rights Institutions in compliance with the Paris Principles were officially recognized as vital and constructive actors towards the promotion and protection of human rights. Also, their formation and strengthening was formally encouraged.

Presently there are more than 100 NHRIs globally, GANHRI (Global Alliance for National Human Rights Institutions) has accredited 84 of them, as they are in full compliance with the Paris Principles. Among the Asian countries, Malaysia had its NHRI constituted in the year 1999, while Sri Lanka set up its NHRI in the year 1996. In India NHRI was set up in 1993.

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Key words: - *GANHRI, Human Rights, NHRIs, Paris Principles, Relevance of NHRIs.*

Structure of NHRIs

The Paris Principles do not prescribe a standard structure for NHRIs. Since the mid-nineties though, human rights commissions and ombudsmen have become recognised as the most prevalent types of NHRIs. So, in Europe, in accordance with the Paris Principles, the most common models are ombudsman institutions, hybrid institutions, human rights commissions, and human rights institutes as well as centres while Asia Pacific Countries mostly and India in particular has adopted the quasi-judicial type of model popularly known as the National Human Rights Commission.

Mandate of NHRIs

The Paris Principles has put out six key principles or criteria that National Human Rights Institutions need to fulfill, which are as; "Mandate and competence, autonomy from Government, independence guaranteed by statute or Constitution, pluralism, adequate resources and adequate powers of investigation."

National Human Rights Institutions are uniquely placed to keep watch on the governments and make them accountable and promote human rights and their advancement also. As state-created and state-funded institutions, NHRIs enjoy unusual legitimacy and also access to the policy makers of the country. These institutions are authorized and mandated to co-operate closely with the civil society. In this way these institutions act as a bridge between the authorities and the civil society. However, it must be noted that they are independent from both.

It is expected that the NHRIs will be having a deep understanding and must be aware of the domestic context(s), so that they can persistently advocate for the change needed. They can assess and take up any situation of human rights violation. The NHRIs prepare reports on the situation(s) concerning human rights both generally as well as specifically. These institutions draw the attention of the Government towards the situation(s) in any part of the state where human rights violations are reported and formulate the proposals for initiatives to be taken to put an end to these situations and is necessary, they also express an opinion on the positions and reactions taken by the Government. Like, NHRC of India for e.g., is mandated to take suo motu cognizance of cases pertaining to human rights violations in the country.

More specific mandate of NHRIs includes:

1. To promote and ensure an effective implementation & practices pertaining to international human rights instruments to which the State is a party.
2. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to

their treaty obligations and, where necessary, to (UN UPR) express an opinion on the subject, with due respect for their independence.

3. To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.
4. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities, and professional circles (e.g., NHRC India).
5. To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and highlighting it through their Information & Press.

Expansion and Contribution of NHRIs

- Strong and independent National Human Rights Institutions are a pillar of any democracy and rule of law and it also helps in creating respect for the human rights of the citizens.
- The contribution of NHRIs towards the promotion as well as protection of the human rights in Asia Pacific over the past two decades has been immense
- The contribution of NHRIs extends from promoting the ratification of international treaties, to monitoring their implementation, in addition to encouraging countries to address their systemic human rights violations.

Accreditation of NHRIs

Sub Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions reviews as well as accredits NHRIs in compliance with Paris Principles. As of January 20, 2021, 127 NHRIs were accredited by the GANHRI, divided into following levels of accreditation:

- A status: the institutions which are in full compliance of the Paris Principles (84 institutions).
- B status: the institutions which are not fully in compliance with the Paris Principles (33 institutions).
- C status: the institutions which are not in compliance with the Paris Principles (10 institutions).

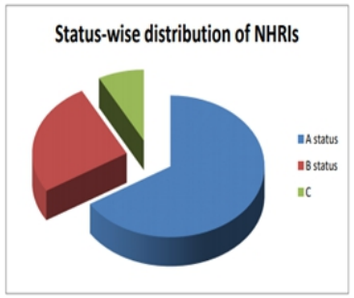
Explanation of the Levels of Accreditation

A status institutions are those who are in full compliance with the Paris Principles. These institutions as voting members can take part fully in the

international as well as regional work and the meetings of the national institutions, also they can hold office in the Bureau of the International Coordinating Committee, or any sub-committee established by the Bureau. They can also participate in the sessions of the Human Rights Council and take the floor under any agenda item. They can submit documentation, and also take up separate seating.

Summary

Classification	Number of reviewed institutions
A - status	84
B - status	33
C - no status	10
Total	127



Source: Global Alliance for National Human Rights Institutions (GANHRI), Chart of the Status of National Institutions, accreditation status as on January 20, 2021.

B status institutions are those who partially comply with the Paris Principles. They can participate as observers in the international and regional work and in the meetings of the NHRIs but does not have a vote and cannot hold office with the Bureau or its sub-committees.

C status institutions have no rights or privileges with the International Coordinating Committee or in the United Nations rights forums because these institutions are not in compliance with the Paris Principles. However, they may, at the intervention of the Chair of the Bureau, attend meetings of the ICC.

Open hearing & Camp Sittings to reach out to people

There are NHRIs who conduct outreach programmes to reach out to the people directly, like the National Human Rights Commission of India often organises Open Hearing and Camp Sittings in different states and considers the pending cases and discusses important human rights issues. The sittings are followed by meetings with NGO's, Chief Secretaries, DGPs, Senior Civil and Police Officers. Recent Open Hearings took place in Hyderabad, Shimla, Chhattisgarh etc. Such camp sittings facilitate speedy disposal of cases, wider interactions with the diverse stakeholders who help understand the key concerns of the people from the marginalized sections of society. Apart from monetary compensation for violation of human rights and action against the perpetrators, the camp sittings help strengthening of partnership between the Commission, State, Civil Society and media towards promotion and protection of human rights.

Process of Universal Review and NHRIs

The Universal Periodic Review (UPR) was created by the General Assembly in 2006 and is carried out by an inter-governmental working group of the UN Human Rights Council. The objective of the UPR is to review through submission of 5 years report - the fulfilment of the human rights commitments and obligations of all 193 UN member states as noted in "the UN Charter, the Universal Declaration of Human Rights (UDHR), human rights instruments to which the State is party (human rights treaties ratified by the State concerned), voluntary pledges and commitments made by the State (e.g., national human rights policies and/or programmes implemented); and, applicable international humanitarian law."

NHRIs have a very wide role in the UPR process, they act as a bridge between the national and international human rights systems. They also provides independent and authoritative information on national situations. NHRIs shares the best practice examples and lessons learned. It also provides advice to Government on the implementation of UPR recommendations, and monitoring follow-up; and raising UPR awareness at the national level and encouraging domestic actors.

Monitoring the Implementation of UPR Recommendations

NHRIs can play an important role by acting as watchdog to assess the extent to which their governments have implemented their pledges and recommendations made during the UPR mechanism. They may wish to consider using their annual reports as a tool for publicizing their monitoring of implementation. Their assessments should also be reflected in their next independent report to the OHCHR & may be included in their reporting to the HRC and treaty bodies.

NHRIs and the Sustainable Development Goals (SDGs)

Human rights provide guidance and a legally-binding framework for tackling the multidimensional goals of the 2030 Agenda while the SDGs can serve as a results-oriented roadmap for the realization of human rights. The Sustainable Development Goals pursue for the human rights of all. The 2030 Agenda explicitly references human rights throughout its the 17 SDGs and the related 169 targets directly or indirectly reflect human rights standards. The goals are designed to "leave no one behind" in pursuit of sustainable development, and the Agenda integrate crosscutting human rights principles such as participation, accountability, and non-discrimination. The NHRIs can facilitate the achievement of SDGs by taking these steps: systematised qualitative analysis and data through institutionalised reporting and monitoring mechanisms, recommendations and guidance for national SDG implementation, facilitation of access to justice, redress, and remedy.

Limitations and independence of NHRIs

At times composition(s) are carefully designed in such a way that members are close or are affiliated to the ruling political parties in many cases Sometimes amendments done by the Government(s) are intended to dilute the composition so that it may favour the government policies and decisions. In India the Protection of Human Rights (Amendment) Bill 2019 amends the Protection of Human Rights Act, 1993. From appointing the Retd. Chief Justice of India as the CP of NHRC, the Bill amends to provide that a person who has served as the Chief Justice of the Supreme Court, or a Judge of the Supreme Court can be the chairperson of the NHRC. Further, the term of five year for the Chairperson has reduced to-three year tenure. The powers of the Secretary-General NHRC would be subject to the respective Chairperson's control. These measures are being considered as threatening to the independence & autonomy of NHRI by the members of civil society. Many a times, Civil Society members are not represented properly. It is alleged that NHRC India does not represent communities like SC/ST/LGBTQ which are most vulnerable to human rights violations which adversely impacts the factor pertaining to diversity and plurality of the Institution.

In MENA region (Middle East and North Africa region) years after their creation, national institutions have not succeeded in securing the funds necessary for them to fulfil their obligations as per the Paris Principles.

Scarce funds make it difficult if not impossible for these institutions to discharge their tasks in dealing with complaints, monitoring the human rights situation, and responding to violations of human rights.

Recommendatory Role of NHRIs

NHRIs have recommendatory role and their decisions are not binding even if their constitution is quasi-judicial in nature. NHRI India is one of the examples in this regard. Having said that the NHRC India has played a strong role in the promotion and protection of the human rights of people and most of its recommendations are accepted by the GOI whether it is pertaining to Civil & Political Rights or Socio – economic and Cultural Rights. So, a lot depends on the image and credentials of the NHRI in question both nationally & internationally.

Relevance & Conclusion

NHRIs are essential component of the various political systems today as they are one of the key mechanisms through which human rights are achieved. They are independent of the Government and Civil Society hence are crucial in their own capacity. They also play an important role in implementing international obligations of specific nations.

What is basically essential is that the independence of NHRIs should be in

practice rather than being mere theoretical and must be ensured at all cost to enable them to their to fulfill their mandate. NHRIs should establish and facilitate transparent accountability arrangements by themselves through periodic communication with all stakeholders.

The Global Network of National Human Rights Institutions should maintain its rigorous procedure in its accreditation and review processes, so that it will uphold National Human Rights Institutions to the standards of independence and make them answerable and accountable for the betterment and upliftment of the people.

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Displaced Faces, Ageism and Human Rights: Understanding the Elderly Workforce in India's Informal Economy

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Abstract

Over several decades, collective commitments among several institutional partners have directed the ways for reforming institutional policies and regulatory mechanisms. This vision has sustained principles of democratic governance and human rights within the context of India's social, political, and economic horizon. But the implementation and disbursal of human rights remain essentially problematic across the tangent of age, class and work environment. Human rights not merely lie within individual embodiment but are also shaped through larger structural or macro dispositions such as the institution-centric meanings and classification. Often, classificatory portrayals destroy inert forms of social experiences and meanings of work, space, and time. This has been starkly appropriated through mere economic measurements which universalises suffering and marginalisation. Similarly, several pitfalls are also evident in tampering with the visualisation of the poor elderly workforce working in India's informal economic sector. Ageism, non-visibility, stigmatisation, and sufferings remain unattended when the subjects are the unskilled or semi-skilled elderly workforce working within India's informal economic sector. The elderly workforce is not a homogenous group but remains highly dissected across socio-economic criteria and nature of work, which unlocks different spaces of rights attainment and constraints. Lack of social security measures and protective nets in the unorganised sectors often exposes the poor elderly workers to vulnerability and perennial marginality. Besides, the historico-structural model of Hindu Ashramas or life-stages has been produced and reproduced across varying domains with renewed emphasis. The composition of the model asserts not only the valorisation of caste-based stratification but also legitimisation of class-based life-course. Drawing from such concerns, the present study adopts a foresight of comprehensive review while analysing the complexities of the

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Ashrama system of work and retirement, which entails different implications for the elderly belonging to different social locations. It primarily attempts to analyse the status of the elderly workforce working within the informal economic domains and their relationship to human rights, ageism and suffering. Lastly, it explores the paradoxical nature of policies catering to the elderly workforce, while suggesting key reorganisations necessary for recognizing the rights of the poor elderly workers.

Key words: - *Ageing, Ageism, Elderly, Rights, Suffering*

Introduction

Rights and freedoms are the master frameworks which structures human life into a formal arrangement of thought and practice. On a broader notion, it is often mediatised as a political and social philosophy consubstantiated within a disciplinary horizon. But an evaluation of the deep-down quality of rights would settle the score for an existential dimension of human experiences, values, morals, ends and means. More than a maxim set by the Constitution of India, it is a prescription of human conduct and interaction, such as the patterns of balanced communication and unity of the society as a whole. But this existential appeal of being a responsible citizen with one's own and general will often create limiting experiences for some sections or groups who are placed at a lower end of Indian socio-cultural and economic hierarchy. The limiting experiences are often mobilised by the larger structural conditions which distort one's sense of liberty and contributions to society and culture. Lack of accessibility of one's fundamental rights realisation might induce several forms of suffering. Stretching to such concerns, the rights of the marginalised elderly workers who are working in the unorganised or informal economic sector of India could be evaluated for a larger discussion on social suffering and ageism. These two conceptual frames of reference can reveal more troubling pictures revolving around the status of rights of the poor elderly workers. A more in-depth explanation can also be rooted around linkages of the socio-cultural Ashrama model of aging and its complex residues in the contemporary processes of non-homogeneous aging. As these forms of address suggest, the word 'poor' has not been defined and appropriated to produce a static image of victimisation upon elderly labourers. But rather, the word 'poor' reflects their silent journeys, social suffering, unfulfilled expectations, vulnerable socio-economic status and the acknowledgment of life led differently from the elderly belonging to higher socio-economic status. This also indicates the lack of adequate institutional social security mechanisms at their disposal.

These connotations can embody more critical junctures of understanding aging. In a generalised implication, aging is a process rather than a fixed state of senility. Often, aging is valorised as a process of disengagement from social and economic activities as well as the larger material existence per se. This perception has been reinstated and ingrained through the idealisation of the elderly across the Eastern model of Ashramas and the socio-structural context of

India. The Ashrama[1] model epitomises moral and social prescriptions of life-stages while laying down rules of retirement – Vanaprastha and Sanyasa. While these stages represent the disenfranchisement of the material world, it also signifies a stage of reflexivity, knowledge-attainment, and salvation. But the monolithic rules present within this model do not discharge responses for the elderly belonging to the marginalised caste, class, race, and ethnic backgrounds.

Marginalisation of lower caste and class groups have been historically interpreted through ascription of status, either stereotyped or stigmatised. Several existing research explores the notions of successful aging with lifestyle modifications, such as physical activities, volunteering, community participation, gardening, and other investments in creative integrities. But as we turn around, a more alarming picture emerges of the poor elderly workers working in the informal economies with unsustainable social security infrastructures. The undervaluation of the poor elderly worker ranges from micro-layers of socio-cultural experiences to macro models of incoherent regulations. Besides, the predicament looms large with the lack of relevant, reliable, and accurate data on the elderly workforce of the informal economy. Various opportunities arrive to set a discomposure between the elderly and their ability to 'work' within the capitalist work culture of production, distribution, and consumption. While this remains a zone of contention, a section of the poor-elderly often performs hard labour to sustain their families irrespective of the deplorable conditions of work and the non-availability of potent social support systems.

The elderly workforce remains bounded within the stratified system of the Indian economy. Firstly, the governmental reports often highlight the socio-economic incongruences and challenges of young workers migrating outside the source states for employment and familial responsibilities. Secondly, the elderly workers fail to receive secured benefits or provisions of pensions, which pushes them towards psycho-social vulnerability, abject poverty, exploitation, strained health, and unsustainable livelihoods. Age-based stratification often works with the non-availability of viable coping strategies. While on one hand debates about successful post-retirement jobs suffices for the elderly belonging to the middle and high-income groups, the informal economy and the poor elderly workers often endure different stakes. A deep–rooted structural discrimination works with a lack of choice and social safety nets for the elderly labourers. Drawing from such considerations, this study unravels the complex socio-economic location and the uncertain status of rights of the poor elderly workforce within

1. The *Ashrama* model implicates a double valorisation of *Dvija* (twice-born upper caste) castes and class. While caste-based stratification and the concept of purity/pollution of castes generated long-term implications on the Indian social structure, the present study drags conceptualisations of *Ashrama* within aging and class-based socio-economic analysis. The *Ashrama* turns into a 'discordant *Ashrama*' for the poor elderly workers working within India's informal economic sector.

the Indian informal economy.

Besides unstable policy frameworks, a sense of underlying ageism is also prevalent in constructing and re-constructing elderly workers' identities through populist discourses of work organisation. The work culture dissects and (de)equalises the relationships between the young and old workforce across different sectors of the Indian economy. So, a narrative review expanded the scope of problematising the issue reflectively. It would broaden the focal lens while providing an opportunity to critique and analyse the existing body of work and narratives. It can also be constructed as a 'comprehensive review' in an area where existing research have been negligible such as that of the elderly workforce in India's informal economy.

Hence, firstly a critical analysis of the historico-structural Ashrama model in India has been traced to analyse the complex undertones of hegemonic modes of life-transitions and its implications in the twenty-first century and secondly, the existing status of the poor elderly workers working within the Indian informal economic sector has been explored in relation to human rights. These arguments have been placed within the conceptual framework of suffering and ageism. It also caters to the analytical extrapolations in suggesting reforms necessary for the realisation of the basic human rights for the elderly workers and their access to secured systems of work.

The Ashrama Model: Aging Perspectives and the 'Non-Existent'

In a populist narrative, the phrase 'age is just a number' is evoked to negate the progression and development of the aged body and identity. This reflects a paradoxical discourse, where gerontophobia[2] and overt de-stigmatisation works together. While on one hand, paranoia over the progression of age and declining functionality persists, on the other hand, a delimitation of the aged body and wisdom is cultured. A more potent elaboration can be made from the Vedic historical discourse of the Hindu life-stage model which propagates the praxis of retirement and valuable aging. In this model, the life-course of an individual has been normatively and dominantly produced across four stages or Ashramas. The first stage is the Brahmacharya (life of a Vedic Student), the second stage is the Grihasthya (life of a married householder in a conjugal relationship), the third stage is the Vanaprastha (married man turning into a forest hermit after discharging his primary responsibilities) and the last stage is that of the Sanyasa (an ascetic renouncing the world). Vanaprastha and Sanyasa clearly resemble the

2. Gerontophobia is a term used in reference to excessive fear and hatred over getting old. Since aging itself has been stereotyped as the end-of-life stage, the fear often looms larger and has implications in the direction of policy address.

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stages of aging and end-of-life practices (Ghosh & Dey, 2008). The dualism between body and soul has been debated as an ontological reality consisting of socio-moral practices, but it has been selectively curated for specific groups. The four stages or Ashramas are directly proportional to a caste-based model, where the bodily and embodied self of the higher-caste group individuals are placed akin to a valorised legacy. It produces, reproduces, and excludes groups lying within the lower rungs of the hierarchy while legitimising their life movements as 'non-existent'. It is inherently mired in an ideology where caste, class and gender intermeshes across multiple lines to generate social power and its resultant residues (Davis, 2008). These complex interactions formulate Ashrama-model as the contour of social power which disperses and releases its empirical connotations through various groups located within the Indian social structure. While the underlying notions of morality, ethics, Vedic principles, and spiritual living cannot be mapped within the scope of the present study, the Ashrama-model can be explored as a broader frame of reference to place the structural matrixes of socio-economic marginalised groups and their relationship to the non-normative dispositions of aging.

It would be perplexing to analyse where poor old workers would locate themselves in relation to the Ashrama-model. Ashramas might connote differential meanings in terms of social integration and action. The diffusion of hegemonic models throughout the courses of textual, literary and oral discourses can be placed within the complex interlinkages of social experiences. Arthur Kleinman and Joan Kleinman (1997) meaningfully express that 'social experience its collective mode and intersubjective processes can be shown to be reshaped by the distinctive cultural meanings of time and place. Cultural representations, authorized [sic] by a moral community and its institutions, elaborate different modes of suffering' (p. 2).

If social experiences can be informed by cultural representations, then the Ashrama-model presses social suffering for the poor elderly workers working in the Indian informal economic sector. Social suffering cannot be merely produced as a notion equivalent to the ordinary experiences of abject poverty and vulnerability. Such forms of vulnerability revolve around a structured realm of generation such as lack of mobilisation, reforms, and legislations. Metaphorically, as a 'non-existent' category within the life-stage model, the poor elderly workers have no recourse of realising Vanaprastha or Sanyasa. Instead, the deviation in the life-stages due to varying barriers and sufferings have been attributed to bad and unworthy karma (deeds). In some cases, few sects propagate that sufferings are inevitable and can be compressed through prayers to God (Gurumurthy, 1998). This can be observed in some cases where religion suffices as a coping strategy for adapting to the old-age crisis. But, if the complexity of the Ashrama-model can be considered or witnessed throughout the dispositions of class-based inequalities, then should we accommodate lower-class elderly people, who work with vulnerable means, at the dead-end of bad karma? While this might prove to be an abstract question in the era of post-liberalisation, the cyclic structural discriminations might be comprehended with

karma-creation, which is not necessarily intrinsic to one's action but perpetuated from the above, such as macro-institutions.

Nevertheless, it is crucial to assert that the socio-economic, cultural, environmental, and political positions push poor elderly workers into practicing a different mode of Ashrama which is non-universal, volatile and even generates constraints in human rights realisation. The poor elderly workers often work in unsustainable working conditions, after a stage of their bodily retirement. Referring to bodily retirement apart from death, chronic conditions and its delayed treatment often constrain the poor elderly workers within the spirals of symbolic immobility. The integration of biographical and historical influences throughout their life-courses further reconstructs and stabilises such positions within the occupational hierarchy, social suffering, and ageism. Ghosh and Dey in analysing the attitudes of dying and aging among the elderly in Kolkata, observe that 'with old age come physical problems owing to prolonged wear and tear of the body. In a developing country like India, malnutrition also brings in health problems' (Ghosh & Dey, 2008, p. 187).

So, it can be intended that malnutrition and physical health problems cannot be narrowed down as stable criteria present merely among the poor elderly. It might be an equally existent condition for the elderly belonging to the middle and higher-income groups. But the well-off elderly have faster and effective access to insurance schemes and retirement health benefits, which processes their paths to healthy aging differently from that of the lower-income groups. In hindsight, renunciation of material pursuits might not be encouraged for the poor elderly when diversification of sustainable resources is required across the family. They primarily fix themselves and revolves around the Grihasthya Ashrama until and unless they experience permanent functional disability. Such experiences can be thinned out by evaluating the conditions of the informal sector in general and the specific implications it entails for the poor elderly workers at the backdrop of suffering.

Elderly Workforce: Status and Concerns

With many front-ranking issues, especially the COVID-19 pandemic, the need for clear-cut systematic interventions into the informal economic sector has been sufficiently pressed for. In recent headlines, several media personnel notes that the dearth of data in understanding the 'depth, complexity and distribution' of unskilled and semi-skilled workforce epitomises an uncomfortable irony (Sinha & Pai, 2020, p.1). In a more serious concern, the livelihoods of the informal economic workforce have been at a stake during the COVID-19 pandemic. The dearth of employment opportunities, the abrupt end of their jobs or forced resignation and the lack of alternatives in the rural economy presents a threat not only in terms of human existence but also social sustainability and identity. It also cripples the prospects and human rights of the elderly workforce who work as earners of livelihood. Arendt (1973) assigns that rights entailing equality is not a given value but exists as a result of human organisation, guided by the

principle of justice. This evaluation can be a potent indicator of thought raising pertinent questions on how rights and the capability of realising it can be structurally guaranteed across relationships between work institutions, status, roles, and agencies. Similar attributions can be provided for the poor elderly workers who perform their work within the potential dangers and opportunities of the informal work environment.

But the immediate relevance of these issues takes a back-seat when holistic configurations of human life is reduced to numbers. It is not surprising that the marginalised sections of the Indian society are often represented under specific words such as percentages, economic profiles, and demographic status structuring it. These numbers might be an overarching guise of containing the crisis and 'social' suffering of the elderly workforce. Analytically referring, suffering is a complex dimension in a diurnal moment that cannot be reduced to numbers and proportions. David Morris enunciates 'suffering encompasses an irreducible nonverbal dimension that we cannot know ~ not at least in any normal mode of knowing ~ because it happens in a realm beyond language' (Morris, 1997, p. 27).

It is understandable that the complex pentagon of interests are shaped differently across different welfare states. But a more potent explanation of quantitative and qualitative indicators might accrue several possibilities for elderly workers and the problematisation of their institutional suffering. It is necessary to consider that waged employment has doubled over the past three decades but without sufficient infrastructure of labour law protection (Adams et al., 2019). Formalisation of economy involves the processes and targets of standardisation, security, and human rights protection with welfare measures. But informalisation often represents contradictory meanings of work. It is not merely about non-standardisation or a convenient apposite gush to wage employment. Every form of employment involves the element of wages and profit, depending upon the nature of work. But the duration and accessibility of 'just' wages for labour and surplus-labour, entail different implications for different classes and age groups. While Marxist thinkers would have interpreted this as class-based discrimination, the present study infers it as a combined intersectional effect of age-stratification and socio-economic inequality.

Consequently, the hierarchy and stratification of work is pronounced clearer with the ICLS[3] defining informal work, as focussing on the nature of employment in addition to the characteristics of the employment (ICLS, 2003). Later, a revised version of the definition came into force to focus on enterprises that have 'a low level of organisation, little or no division between capital and labour as factors of production, and labour relations underwritten by informal social relationships rather than formal contracts' (ICLS, 2003 cited in Deakin et

3. The 15th International Conference of Labour Statisticians (ICLS) has inferred this definition for the informal work sector of developing economies.

al., 2020, p.3). While this is pertinent and acceptable, a subtle hierarchical arrangement is observed between young and elderly workers through the legitimisation of body productivity within capitalist work ethos. The continuum of Ashrama-model is disrupted when conditions of leisurely Vanaprastha is not operable for the elderly belonging to lower socio-economic status.

The constant thought of earning livelihood for other family members propels them to take up any job without much concern over safety. Their position often turns them into a voiceless agent of articulating social suffering, where 'uncommunicative isolation is constructed in response to an environment where effective help and concern have all but vanished' (Morris, 1997, p. 28). The dearth of age-specific social protectionism and the elderly's marginalised structural position reveals this predicament. Besides marginalisation, empirical studies might reveal more intricacies of situations where poor elderly workers might assert their choices and authority as seniors. But, a comparative estimation of the structural account reveals a more constraining picture of the poor elderly workers, rather them as being absolute powerful agents of 'rights' achievement.

The genesis of social suffering is explicable in most cases, where the first stage of Brahmacharya hardly takes place. This dents their opportunities to move up the class ladder or partake in vertical mobility. The socio-economic boundaries often produce non-negotiable barriers which develop over their life-stages, culminating individual development within time and social structure. George (1993) positioned life-course as the intersection of socio-historical factors and personal biography. The problems and crisis which develops across one's initial life-stages have significant correlations in determining the quality of life in later stages. This reflects a possibility where participation in low-paid jobs and work in harsh environments performed by the elderly workers at their younger ages might entail significant physiological, psychological and social implications. However, they never experience transmutations due to a sense of being trapped across a structural construct and partly, with respect to their own habitus of forming social relationships with others from similar backgrounds.

So far in this discussion, the focal point of attention has been the poor elderly workers, their complex patterns of living and constraints towards accessing rights. As per the NSSO[4] data from the 68th round of Employment and Unemployment Survey, the combined labour force participation of elderly men and women was 42 per cent in 1983, which increased to 37.1 per cent in 2011-12. 39 per cent of the elderly females are engaged in unskilled elementary occupations compared to 26 per cent of the elderly males (NSSO, 2013). This

4. NSSO refers to the National Sample Survey Organisation. It operates under the Ministry of Statistics and Programme Implementation, Government of India and conducts periodic socio-economic surveys.

trend can be attributed without exaggeration, as financial insecurity is more traceable among the rural elderly, female elderly, and the aged residing in nuclear families alone or suffering from certain health conditions (Rajan & Kumar, 2003). Negligible support nets of receiving care, outliving their husbands, vulnerability at widowhood and low levels of coping during crisis periods might prompt gendered differentiation in work motivation and healthy aging. Besides, lack of property and assets in the name of a 'girl' child, often dents the awareness of elderly women to prepare for trials and tribulations at older ages.

But a revelation outlining existential dismay has been the small percentage of elderly workers who are engaged in skilled and elite professions. The elderly workers working in the informal economic sectors are not covered by any labour regulations and are often classified as casual workers (NSSO, 2013). The informalisation and casualisation of their work fail to incorporate them within secured retirement packages and pensions. In a developing country like India, where the structure of traditional multi-generational families are changing and constraining its functions to cater to the elderly needs, the risk of poverty and economic vulnerability remains high. So, often these vast ranges of inequities and insufficiencies drags the poor elderly workers to work for their own survival.

Although NSS data records the quantitative gradations and gendered sensitivities of the elderly workers working as casual labourers, it provides disproportionate attention to the underlying nuances which promote ageism on one hand and irresoluble social suffering on the other. These two facets combine together to veil human rights realisation for the poor elderly. While cash transfers and some form of social pensions for the poor elderly have been a component within the anti-poverty programmes since 1995, the schemes did not always benefit the intended recipients at ease (HelpAge India, 2009). Even policies like Annapoorna and National Old Age Pension Scheme have been implemented to improve the socio-economic conditions of the economically vulnerable elderly in India. But these policies have been largely ineffective (Purohit, 2008). Besides, the increasing share of aging in India would further exacerbate lags in the social security measures, which would not merely make the elderly economically insecure but also more prone to declining health such as chronic syndromes. It can also be expected that demographic transition would suffice as an impassable thought while structuring adequate and potent social safety nets for the poor elderly workforce. Their life-course is generally shaped across, what may be called 'discordant Ashrama' – no probabilities of attaining asceticism and renunciation, as workability and capitalisation of the material body turns the main driver of earning basic sustainability, even in adverse conditions. So, the transition from ideal stages of Ashrama to practice-oriented implications cannot be promised on an unfaltering ground.

Barricades to Rights and Ageism

Rights and guarantees shape the basic contours of humanitarianism and sustainable living. It enhances and uplifts human actions, principles, morals, values and rightful practices. But, performing all forms of choices without restraint in certain actions cannot be defined as a human right, as it might enforce severe implications into the lives of the other. While restoration and violation of human rights in the Indian context have been settled at the discretion of the Indian citizenship, administrative hurdles and lacunas might also suffice as a catalyst of rights dispensation and curtailment. A tumultuous imbalance often survives when a section of Indian citizens fails to feel the essence of protectionism and security such as that of the poor elderly workers. No specific record exists of the elderly workforce working in the Indian informal economic sector, except that of the National Sample Survey Office. This trend implicates the axiomatic prevalence of ageism, which is pertinent across the disaggregated forces of the globalised world. Stephen J. Cutler in exploring the reciprocal positive and negative influences of ageism and technology in the context of the United States of America, states that the needs of the older people are often neglected 'in the design, development, and marketing of technologies' (Cutler, 2005, p. 70). Drawing from such a proposition, a similar sensibility can be evoked for the policy-making structures in India. While many substantial policies have been put into place for maternity benefits, redistribution, direct benefit transfers, health coverage for BPL (Below Poverty Line) families, several shortcomings in the status of accessibility dents the holistic opportunities for human rights realisation, and most importantly, the Right to Equality. Article 14 of the Indian Constitution states, 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India' and Article 15 of the Indian Constitution 'specifically bars the state from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth, or any of them' (Ramamoorthy, 2020, p.1). While a satisfactory picture has been flashed across redefining public priorities, 'age' ceased to be an explicit consideration for institutional inclusiveness and Constitutional rights.

The elderly workers in the informal economic sector often work without regular remunerations and support services such as pensions. Even if some states have provisions for minimum pensions, the regularity of such payments are often doubtable. Besides, healthcare and housing often appear as distant subjective and objective criteria to be realised with full potentials and institutional interventions. Certainly, a more subjective exploration of rights realisation might readjust complex connotations of one's choice to work and one's compulsion to earn. Compulsion brings with it curtains of denial and un-dynamic experiences, which lie beyond one's immediate cognizance. As a response to the subject assessment of the workers lying at the lower rungs of India's occupational hierarchy, the concept of well-being has been used and re-used to locate their vulnerabilities and abilities to utilise resources. Amartya Sen's framework of capability approach has been a significant development in tracing what people

value. Sen advocates that 'the capability of a person reflects the alternative combinations of functionings the person can achieve and from which he or she can choose one collection' (Sen, 1999, p.31). His broader argument seeks to value how preferences are produced rather than focussing on the preferences which are universally laid out. Drawing from such an approach, it is possible to envisage that for the workers working in the informal economic sector, including elderly workers, earning a basic livelihood remains valuable irrespective of other conditions. But, produced values often entail more complexities, when earning and working at older ages is often constructed as possessing a metaphorical value rather than an absolute one. So, one may not wholly accept the presented arguments. But a helpful corrective might exist if we strive to mould statistical indicators such as Human Development Index (HDI) and Physical Quality of Life Index (PQLI) with indicators of subjective well-being such as emotions, choices, and agency while envisioning human rights for the poor elderly workers.

At the outset, the present study analyses and problematises the status of work and rights for the elderly workforce employed in India's informal economic sector. While the relationship between Ashrama-model and its caste-like life-stages have been deconstructed, an absolute assertion of one's capabilities, functioning, values, and ways of shaping existence, is a challenging comprehension. But, within the scope of an objective evaluation, it can be asserted that governmental policy discourse and its dispensation manifests different forms of Ashrama-model for different sections of the Indian elderly. While Vanaprastha for the elderly belonging to middle and higher socio-economic status is a flexible choice often filled with support structures such as savings and retirement schemes, it entails dissimilar implications for the poor elderly. So, with its deeper roots in social inequities and hierarchical work culture, institutional ageism can be irrevocably placed as a relevant framework while envisaging a wider analysis of human rights and its barricades for the poor elderly.

Institutional ageism perpetuates enough reasons of entailing suffering and basic violations of human rights. Ageism is a process of negative stereotyping against people who are old and institutional ageism refers 'to bias against or in favour of [sic] actions inherent in the operation of any of society's institutions, including schools, hospitals, police, and the workplace' (Wilkinson & Ferraro, 2004 cited in Stypinska & Nikander, 2018, p.93). A more nullified effect can be felt in the form of a lack of substantial reports on institutional ageism practiced in the informal workplace. Several media and developmental organisational reports convey meanings of ageism and its residues across formal economic sectors. It has been proposed and assessed that hiring trends circulate around the power of the youth. The expansion of ageism is utilised across different domains differently. Sunanda Poduwal (2011) proposes that:

Companies dealing with the public sector and government authorities prefer older, experienced professionals. Whereas new age businesses like IT, Telecom, BPOs, financial services go for young blood ... If you [sic] feel you are at the

receiving end of discriminatory employers, there are no codified laws, national or local, for recourse. Your [sic] counterparts in the United States, however, are protected by a strong law: The Age Discrimination in Employment Act of 1967 which protects individuals over 40 years against age discrimination (p.1).

While she analyses the hiring trends of workers belonging to a group of higher socio-economic status[5], the discriminatory practices against elderly workers working in the informal economic sector or unorganised jobs have been largely unchallenged. It might have wide-ranging implications for their health, wellbeing and quality of life. The tragic light is expanded with the fact of ageism. Ageism is intrinsically associated 'with poorer physical and mental health, increased social isolation and loneliness, greater financial insecurity, decreased quality of life and premature death' (WHO, 2021, p.1). Often, these attributes affect the quality of strength for the elderly workers who work in adverse conditions. Rather than structuring a flexible environment for the elderly workers, the regulatory and legal measures often overlook this possibility. It is a paradox that remains robust in such ubiquitous forms of modern economic institutions structuring family and social life. On one hand, labour of the elderly workers is often obtained along with the younger workers to capture the output of the production process, while on the other hand, ageist practices increase the adversity of the elderly workers as burdens. While elderly workers belonging to upper-middle or higher socio-economic status can turn their wisdom into recognitions by displaying experiences of work in reputed firms and producing their curriculum vitae, the workers in the informal economic sector are often pushed at the lower rungs of the hierarchy. Their undervaluation as unskilled or semi-skilled workers often crumbles their recognition, even if they attain rewarding experiences. An interaction between theoretical orientations and practices cannot promise a smoother maxim. It would be no exaggeration to reveal the intensities of paradoxes that repatriates one to the implications of rapid aging in India. Kumar (2000) situates that the aged people are often seen as a burden as they have no sufficient contribution to familial sustainability, rather than being extra mouths to be fed and nurtured. We expect that the 'Activity' theorists of aging would have vehemently criticised the passive substantiation of the elderly, which today culminates into an important debate on human rights. The activity theory is based on the 'supposition that older people remain socially and psychologically fit if they remain actively engaged in life' (Miller, 2009, p. 39). Applying a theory that elicited the interests of Western scholars, the same contours of thought and practice are erupting in

5. Work-based relations and the social environment of the elderly belonging to the middle or higher income group often provides them with more capital and resources to join lucrative and respectable jobs.

India. But the presumed need to define activity and aging remains imperative as aging is not class-neutral. An exploratory horizon would shift our vision towards things which ageism perpetuates and produces as varying world-views. While Vanaprastha and Sanyasa denote disengagement from the productivity performances of the material world, it provides enough opportunities for the elderly belonging to the higher and middle socio-economic groups to engage in self-reflection activities. The same cannot be applied for the poor elderly workers or persons.

Reforms and Recourses

'Loss of livelihood due to circumstances arising out of Covid-19 pandemic is impacting many senior citizens who have no choice but to earn to make both ends meet. Altogether 65% of 5,099 who participated in a survey across 21 states and Union Territories blamed the lockdown caused by the pandemic for causing them loss of work to drastic loss in wages' (Pandit, 2020, p.1).

Here Pandit analyses the HelpAge India survey reports released during the pandemic. It can be instantly differentiated that a larger share of the poor marginalised elderly workers works in several informal sectors with intersecting difficulties. But twisting our focal lens would help us visualise the dual uncertainties when work for the elderly belonging to different class groups symbolises both demand and necessity.

There are several social problems such as poverty, malnutrition, illiteracy, and inequitable healthcare in a developing economy such as India. While developed economies can provide sustainable, equitable and transparent aging policies for the elderly workers and non-workers, it would be a challenging and problematic assertion to adopt similar forms of reforms in a developing country such as India. Unemployment has been a pertinent issue since the decade-long period of post-independence. This complicated assertion can produce parallel asymmetries. On one hand, unemployment among the youth remains a pertinent crisis which often makes it difficult, if not impossible for the well-off elderly workers to bag another job post-retirement, while on the other hand, the elderly in the unorganised sectors often work in no-choice situations to make ends meet. This metric situates two forms of social experiences for two different class groups: self-reflective and transformative Ashrama for the high and middle-class groups and social non-recognition of Ashrama for the elderly marginalised workers.

An absence of a strong legal framework often dents the opportunities of poor elderly in addition to expanding spaces of exploitation and abuse. The larger problem arose with the absolute and rapid increase of the elderly population in India, leading to demographic transitions across some states. It leads to a doubly-stretched tendency of increasing life expectancy and chronic morbidities. Often, disparities and vulnerabilities of the elderly workers are rendered invisible within the media and public discourses. The intricacies of the elderly migrant labourers are often hidden behind enumerations of a holistic migration

picture across global revenues. Workers in the informal economy are constructed and constrained across economic domains such as the number of working hours, share of salaries, remittances and returns. A homogeneous calculation is often pressed upon the workers who often lie as an outlier to the ease means and disposal of state welfare coverage, highlighting the contradiction between the state-defined legitimacy and community-based characteristics.

On a larger picture, the workers in the informal economy have access to disparate social justice and equality. Singh in exploring the brewing crisis of India's informal economic sector asserts that 'over 85 percent of our workforce are unorganised workers, with negligible or non-existent social security. Second, the demographic transition would make India an ageing society by 2040, requiring preparations for stronger social security architecture' (Singh, 2020, p.1). This can be supported with a reflection of subtle differentiation and hierarchisation which exists even within the category of the informal economic sector workers. Within the labour market producing exchange-values, as Karl Marx would have proclaimed, the intra-struggle is hidden, but not absolutely invisible. Ageism and gendered inequalities often intersect across complex forms to render more challenges to sustainability. Bloom et al. (2010) added that women elderly workers are less well-placed than Indian men elderly workers and rely on earnings during their working years to provide support for old-age income security. Even if conditions are precarious, the feminisation of labour is more prominent across the low-paid wage markets. Several care-services such as cooking, and cleaning are often performed by women with no job security and legal contracts. It often turns difficult for the elderly women who require more support services for the protection of their rights˜ the rights to a healthy body, work and sustainable wages, especially in the absence of viable caregivers during their old age.

Often, stark national classification in availing monetary and health schemes creates an anaesthetic effect on the other forms of crisis and risk-based factor impinging on multivalent human experiences. While an objective assessment of the status concerning the poor elderly workforce has a recurring reflection towards the lack of social security measures, several reforms can be envisioned for the protection of their rights. Firstly, infrastructures of public communication and media institutions should direct necessary attention towards unveiling the marginalisation of the elderly workforce in the lower rungs of India's informal economic sector. Rather than sensitising their plight and uncertain social location towards mere victimisation within structural appropriations, a more elaborate action plan should be introduced to explore the agential dimensions of the elderly workers and their conditions of social suffering in their day-to-day lived experiences. Victimisation cannot be attributed as a natural pre-given but can be influenced through varying resultants interacting across the micro and macro constituents. Secondly, a more elaborate and long-drawn plan of action is required, which will not merely revolve around the machinery of social protectionism but devise more potent solutions of capacity building and training programmes for the poor elderly workers and the employers employing them.

The capacity-building programmes should be able to foster a symbiotic and syncretic relationship between the workers, especially the elderly and their employers and would enable the workers to acquire relevant information of various governmental and non-governmental schemes. Programmes such as free health check-ups and recreation networks should be organised for the elderly workers, restoring their psychological health in addition to social health. Thirdly, ageism remains a preoccupation in globalised market economy. The aged bodies are often rendered into a zone of non-productivity or social death, affecting the direction of policies delivered for them. For instance, the elderly is often rendered undervalued as nearing the end of life, so policy-making suiting to their needs is dispersed as a counterproductive act. Their existential relevance is dismantled. So, policy-making consultants and analysts should deviate their attention towards broader principles in developing congenial work environments and grievance redressal mechanisms for the poor elderly workers. Fourthly, standardisation of wages and working hours have been a long pressing demand since the post-Independence period. Age-based discriminations might invite more difficulties for the elderly workers in negotiating regular wages across several hierarchies of work establishments. To prevent disputations, an intensive analysis of poor elderly needs, dependency, familial responsibilities, and nature of their work needs to be conducted by several national and international organisations. Civil societies and volunteering groups can generate an appealing effect in recounting local experiences and situations of immobilisations and unspoken sufferings. And lastly, hassle-free social security infrastructures need to be established with long-term goals and interests such as pension schemes with a minimum number of monetary benefits for the poor elderly facing physical impairments or belonging to an age-group of the older old (beyond 70 years), even if not for the young-old (60 years). Hence, even if the world calls for more equity, freedom, and justice, it cannot be realised in practice until an inclusive and action-based infrastructure is set into place.

Conclusion

As the global community is facing significant wraths of pandemic, crisis and hazards, a number of people exposed to marginalised styles of life and work have been receding more into a state of deplorability. People in their twilight years are more prone to physiological and psychological disability as well as chronic syndromes, which produces enough implications upon their ability to work. Often, the poor elderly population participates in various unskilled jobs and battles with low wages. This remains a stark image of the violation of human rights. Rights are not merely a multi-level realisation of one's agency but remain a crucial domain where human action is produced and reproduced through systemic interaction and discursive formation. It is the discourse of discrimination, inequity, and vulnerability, which interacts on multi-levels to render ways of living differently for the elderly belonging to different classes. So, the rights of the poor elderly spin off to initiate a larger debate on India's socio-cultural model of aging and its reversal implications for the elderly

workers in the unorganised sectors.

More intricate web of existential questions would shift the lens towards aging and its challenges which is often undermined within the larger picturesque of constructing labour market as a 'market for the young'. For instance, while the COVID-19 pandemic emerged as the deadliest crises which upended human lives and livelihood, the public and media discourses bestowed special resonance to the younger workforce, while leaving behind a larger share of old workers who work for their living. This makes the official definition of 'working population' as those between 15-59 years a class-based assertion since people aged 60 years or above are working as well. A clear envisioning would lead to the project of combining age-based discrimination as a criterion within the practices and ideological convictions of the labour economy. Stretching to such concerns, a more potent exploration can be coagulated through the paradigm of aging and its contemporary realisation across India's work culture.

The disorganisation of the informal sector cripples not merely the broader frame of human rights, but also the sense of self of the poor elderly workforce. The right to receive adequate care is often an unfulfilled dream and aspiration for them. In addition, the conceptualisation of the elderly workforce in the informal economic sector or secondary occupations such as manufacturing and construction companies, have been constrained within a paradoxical stratum – pathological aging and labour-intensive work. So, while aging is a universal development that begins at birth, the personal meanings and processes of envisaging aging are complex and might entail different relationships to human rights for different class groups. Intersections of class, caste and age take place variably across several socio-cultural and work contexts, impinging on the social and personal experiences of one's rights and environment of practicing rights.

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Health and Right to Water: Reflections on the water crisis in Rajasthan

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Abstract

Through an ethnographic account, this paper highlights the narratives of locals by documenting their experiences amid a water-cum-health crisis that is unfolding in the village. In the name of 'business' and 'development', Kaladera's vast grazing lands were transformed into an industrial area by Rajasthan State Industrial Development and Investment Corporation (RIICO) in the year 1992. The coming of myriad industrial units has interfered with the ecology of the village and more importantly put the health and water resources of the villagers at risk. The village depends significantly on groundwater for its basic needs such as drinking water and agricultural activities. The latest borewells now being dug as deep as 600-700 feet, the situation is alarming and the erratic rainfall patterns and the absence of any rivers or canal is further generating overwhelming stress on groundwater. The close proximity of the industrial area to the village life; the exploitation of groundwater and fake activities that take place in the names of corporate social responsibility have all contributed significantly to the poor health and well-being of the villagers. The marginalised communities and farmers with small land holdings bear the brunt of such risks as they do not have the purchasing power to buy safety from these risks. In many places, the villagers have no access to safe drinking water, and they have no choice but to drink water with a total dissolved solvents (TDS) level of 4000 and above. The issue of fluoride contamination has further exacerbated the crisis. In the wake of National Action Plan for Human Rights and Business, this paper raises pertinent questions on the state-led development projects in Rajasthan that accumulate profit at the expense of dispossessing the villagers from their basic human rights. With negligible corporate social

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responsibility towards the village, the industrial units are thriving on the village's land and water, generating huge profits by making the situation worse for the villagers with each passing day.

Key words: - *Accumulation by dispossession, Corporate social responsibility, Human rights, Right to water, Risks.*

Introduction

The aggressive extraction of groundwater in kaladera, made possible by an influx of both global and local water intensive industries beginning in the 1990s, has generated a number of conflicts in the village. Kaladera, a village with a population of 13,151 (census, 2011) is situated in Chomu district of Rajasthan which is roughly 40 kms away from main city of Jaipur. It is divided into 21 wards, each with a ward head (called as ward mukhiya) and Sarpanch as the head of the panchayat. Ward distinctions are caste and occupation based. Each ward has one or more caste based dhanis[1]. The village is spread over an area of 1828 hectares and has 2,122 houses, as per the panchayat records of 2018.

The village depends majorly on groundwater for its basic needs and agricultural activities. In the past, people relied only on common wells and handpumps to meet their drinking water needs until all of those ran dry in early 2000s. With erratic rainfall patterns and the absence of any rivers or canals, groundwater as a resource holds enormous value in the lives of locals and for their livelihood. In the last two decades, with issues ranging from lack of access to drinking water, unsafe water, and problems in agriculture, the people in kaladera are now caught up with increasing health risks because of groundwater exploitation and pollution generated by the industrial area.

This research is the result of a four year long association with the village ending with a yearlong stay in the field from 2019 to 2020. When I first visited the village in 2015, I was amazed to find a giant industrial area situated just a road across the main village settlement. Situated just a kilometre away from the centre of the village, the industrial area is home to 266 industrial units (as per 2019) that thrives on the land and water of the village. After a closer observation, I found many of the farmer's houses and their fields embedded in the industrial area itself. The industrial area is home to both global and local business entities. The presence of water-intensive companies like- Coca-Cola, Pernod Ricard, Rajasthan Liquors, Bhagwati Papermills, Keshav Plywood etc constitute Rajasthan State Industrial Development Corporation's (RIICO) major business entities in the village.

1. Dhaani is a cluster of households where people from one caste live. Caste is at times also suggestive of their occupation. As for example, chepon ki dhaani (people who do chipaayi i.e block printing), baagdon ki dhaani (people who do farming).

I argue that the presence of such water-intensive units raises many concerns as Kaladera's watershed comprising of 309 square kilometres, was designated as 'overexploited' – that is, the withdrawal rate exceeds the natural recharge rate- by the Central Ground Water Board (CGWB) in the year 1998 (Karnani, 2012, p. 14). CGWB categorises groundwater resource in four categories namely- 'safe', 'semi-critical', 'critical' and 'over-exploited'. Over-exploited areas require intensive monitoring and evaluation coupled with water conservation measures.

Despite such a declaration, Coca-Cola, together-with other distilleries, and paper-mills that use water as a major raw material were given No Objection Certificates (NOCs) and given a green signal to extract groundwater and carry out business operations. After more than fifteen years of groundwater extraction, it was only in 2015 that Coca-cola stopped its production unit citing 'raw-material' (i.e., groundwater) turning 'non-viable' for carrying out any further production (Karnani, 2012, p. 16).

The story of ways in which groundwater as a resource is owned, managed, and exploited by multinationals via the state-led models of development is not new. The interaction of privatisation and commodification with the resources of rural communities has time and again highlighted the many concerns in the lives of communities. Many thinkers have named this kind of use of natural resources as a 'corporate theft' (Snitow, Kaufman, & Fox, 2007). In this paper, I argue that, in the absence of stringent groundwater laws, the extraction of groundwater by business entities has been made possible by non-adherence of the rules and regulations issued by Rajasthan State Pollution Control Board (RSPCB) and RIICO.

Business and Right to water

The corporate takeover of water and the myriad issues that arise from it are well documented in the past and the case of Kaladera is an addition to the existing literature. When the nature of a public asset changes to a private commodity, it raises unavoidable questions about human rights, fundamental rights, collective rights, rights of the communities, environment impact and local control (Snitow, Kaufman, & Fox, 2007). Referring to Harvey, who defines water privatization by the 'term accumulation by dispossession- the appropriation, for profit, by the private sector of both the natural environmental "commons" and the public goods created and heavily subsidized by the state', Bakker observes that such an involvement for opponents of private companies 'introduces a pernicious logic of the market into water management, which is incompatible with guaranteeing citizen's basic right to water' (Bakker, 2010, p. 137).

Walters ethnographic research in the Karnataka state of India also reveals the ways in which international agencies and a 'handful of multinational companies' undermine the 'national sovereignty and democratic processes' thereby 'conceptualizing water as an economic good rather than a cultural and social good' and had grave implications on the 'already poor and marginalized'

(Walters, 2013, p. 8).

Jaffee & Newman define such kind of accumulation as a 'a strategy, in which hitherto uncommodified or inaccessible assets are released into the market at little or no cost, offering renewed opportunities for profit' (Jaffee & Newman, 2012, p. 319). However various thinkers like Swngedouw elaborate the active role of state in making of such dispossessions possible and he calls the relationship between dispossession and the State as a Faustian pact (Swyngedouw, 2005, p. 84). Similarly, Mariola argues that without a green signal from the state, such accumulations are not possible, pointing that 'the process of commodification is not as straightforward as it is predicted' (Mariola, 2011, p. 236).

Role of state and right to water

As pointed out earlier, groundwater is central to the understanding of social, cultural, political, and ecological issues in kaladera. Lack of access to safe drinking water is directly related to the health and well-being of any individual and so, ensuring that safe drinking water reaches each and every human being becomes state's responsibility. The recognition of it as 'right to water' internationally and 'right to life' constitutionally in India . The corporate use of water and its implications has been contextualised in many cases across the world.

However, human right council did clarify that the resolution was legally binding in international law and each member state, regardless voting for yes or no, was required to 'prepare a Plan of Action for the realization of the Right to Water and Sanitation and report to UN Committee on Economic, Social and Cultural Rights on its performance in this area' (p. xvi) and meet three obligations:

…the Obligation to Respect, whereby the state must refrain from any action or policy that interferes with these rights, such as withholding water and wastewater services because of an inability to pay; the Obligation to Protect, whereby the state is obliged to prevent third parties from interfering with these rights, such as protecting local communities from pollution and inequitable extraction of water by the private sector; and the Obligation to Fulfill, whereby the State is required to adopt any additional measures directed toward the realization of these rights, such as providing water and sanitation services to communities currently without them (Sultana & Loftus, 2012, p. xvi)

In India, Upadhaya has critiqued the right to pollution free water and the right of access to safe drinking water has been read as a part of right to life under article 21 of the constitution of India. However, it has always recognized as a pre-existing right rather than have created a new one (Upadhayay, 2011, p. 56). Furthermore, he notes,

'the right to water is more basic than right to education, right to education of a child from 6-14 years age is judicially evolved right which has been explicitly incorporated as a fundamental right under new Article 21A of the constitution of India. There is no reason why drinking water being more fundamental than even elementary education – and similarly judicially circumstanced as education – should not follow the same route. (Upadhayay, 2011, p. 57)

Mihir Shah, an eminent name in the field of water sector reforms, critiqued the ways in which Central Water Commission (CWC) and the Central Ground Water Board (CGWB) functions in India and argued that 'large, centralized, decaying bureaucracies are charged with administering water through the length and breadth of India' (Shah, 2016, p. 56). He proposed the dire need of reforms in water sector by moving away from an engineer-centered, command-and-control approach to a people centered, sustainable, and equitable demand management of water and 'setting up of a National Water Commission' which can deal with 'water policy, data and governance' efficiently (Shah, 2016, p. 58).

Voices of the marginalised

The marginalised communities, especially the banjara[2] and the bhangi[3] community that mostly lives in the peripheries of the village face a lot of difficulty in establishing access to water. They were earlier used to meet their daily consumptions from wells and handpumps. As the handpumps and common wells have run dry, women and children from the community are forced to cover larger distances to bring drinking water. An eight year old girl from the banjara community who lives with her parents in a jhuggi goes to fill in water everyday narrates,

'I cross the road at least four to five times in a day to bring water from that tap. I get really scared because there are loads of tracks and cars. I wish I had a nal (tap) near my home. Then, I wouldn't have to cross the road and be sacred anymore.'

The village is divided into 21 wards and based on the interactions with the locals, and observations from the field, it can be said that as a household's proximity from the main settlement increases, the chances of getting piped water delivery decrease. Because of this the residents of ward number 1, 2, 3, 4 and 7 who stay farther from the main settlement do not get access of panchayat's piped water supply. In ward no. 7, for a population of nearly 200, there is only one piped connection given by the village panchayat. The ward consists of many scheduled castes and their dhanias (hamlets) clustered within it. In the interview with their Ward Head, I was told that the water that comes from the source gets

2. The banjara community plays music and sings songs in the times of occasions or marriages. These days most of the people are engaged as labourers in the industrial area.
3. Bhangi community picks up waste from and across the village and survives by selling it.

polluted because of leakages underground and although the issue gets fixed temporarily, but the health of the residents is always at risk. A villager from the Bhangi community shares his plight,

'We do not have access to any water in the village. We have to struggle to fill drinking water. Somedays people agree to let us fill in our water bottles, somedays they don't. We are at the mercy of the people. We do not have homes. We don't have electricity and we don't have water.'

Beck informs how 'social risk positions' spring up and how 'some people are more affected than others by the distribution and growth of risks'. In some of their dimensions these follow the inequalities of class and strata positions. Situating it in the context of kaladera, the village now has two kinds of classes; one that can purchase safety from these risks and one that does not have the purchasing power to buy safety from the risks.

The rising concern of water impurities, the presence of fluoride, and the resultant health conditions, have prompted some to install Reverse Osmosis (RO) water purifiers in their homes but not everyone has the purchasing power to install R.O machines. The ones who cannot afford them find it difficult to establish access to safe drinking water and become more prone to health risks.

Beck in his work Risk Society, argues that,

the history of risk distribution shows that, like wealth, risk adhere to the class pattern, only inversely: wealth accumulates at the top, risks at the bottom. To that extent, risks seem to strengthen, not to abolish, class society. Poverty attracts an unfortunate abundance of risks. By contrast, the wealthy can purchase safety and freedom from risk (Beck, 1992, p. 35).

In case of water, Maira notes that in India in early 1950s, 'the sources from which urban drinking water was drawn were barely contaminated with industrial effluents and domestic sewage, and any contamination was easily removed' but later on with the rise of industry and growth of urban populations which began to stress and contaminate the water sources, water born risks and ailments 'began to take their toll' (Maira, 2011, p. 41).

Farmers with small land holdings in the village are forced to sell their lands and pushed to become labourers in the industrial area. They had to sell their lands as they could not afford to dig their borewells deeper or install a new one. While I used to sit in sarpanch office I observed many farmers and locals entering the office on daily basis with the same issues and same needs to help them with allocate water.

Groundwater depletion has also led to increased demand for drinking water that has further given rise to a local market of water that sells drinking water in various ways. Although bottled water has not yet become a dominant commodity, it is nevertheless has an enormous potential as a commodity that will further increase class inequalities. Maliram ji observes,

'Given the acute crisis of potable water, the village as a whole is going to be a potential consumer of bottled water in no time. Coca-cola which paid 14 paisa

per thousand litres of water for the water that was extracted from the land of kaladera, is now going to sell that same water at the rate of 20 rupees per litre in the form of Kinley bottles!'

Business, development, and protests

'Coca-Cola and Pepsi, among other transnational and Indian national corporations, are extracting billions of gallons of groundwater each year throughout rural India and paying virtually nothing for it. This first form of "water privatization," or the commodification and mass commercialization of water, is enabled by colonial-era private property laws and more recently by undemocratic "free-trade" laws set down by the World Trade Organization that give rich landowners and corporate "persons" the "legal right" to extract as much groundwater as they are willing and able to take. With water rights inextricably tied to land rights, Coca-Cola and Pepsi have been able to purchase nearly 100 tracts of land throughout the subcontinent and, using the most advanced water mining technology available, extract hundreds of millions of gallons of water every day from deep within the surface of the earth. Sanctioned by the Indian Government, these corporations use the discourse of bringing "development" and "modernity" to the "backward" Indian countryside. Yet the dry community wells and polluted groundwater and soils that result from their activities add to the already immense burden on small Indian farmers in the 21st century' (Raders, 2009, p. 23).

The above paragraph sums up the state of worrying farmers in kaladera in the year 2005, when they formed a kaladera Sangharsh Samiti and started to march towards Coca-Cola. They had observed an unusually sharp decline in groundwater levels with the coming of the industry and collectively sought to struggle against the company. In an interview with the leader of the struggle, Rameshwar Kudi, a farmer and retired assistant director from the department of agriculture of Jhunjhunu district, I was told how the struggle continued for years but it didn't stop Coca-Cola from extracting water. Kudi ji narrates,

'We were adamant that we will keep protesting and struggling and make sure that our water remains ours. But we didn't realise that we were fighting against a really powerful entity. Coca-Cola bribed our government heads. From sarpanch to local MLAs, they didn't leave anyone and we were thrown in jails. When we began our struggle, we had invited the heads of industrial units to come and debate with us. But no one came and we had to resort to protests. We were not supported by our elected representatives. Had they supported us, we could have won the fight for our water. if you can see, Coca-Cola did not shut down because of the protests we carried for all these years. It has shut down only because of the unavailability of good groundwater. They have fully exploited and exhausted our water. If the water was still good for them, do you think they would have shut their production?'

Quoting TERI report, Mark Thomas in his book argued that Coca-cola plant pays 'virtually nothing for the water it uses'. He writes,

'The plant has four bore wells sunk to a depth of 330 feet that can bring up at least 120,000 litres of water an hour. There is a very small charge for the dumping wastewater: approximately Rs. 0.2 per 1000 litres. The average amount of water extracted in May (peak production month) between 2004-2006 was just under a million litres of water a day, to be specific, 953,333 litres a day. During the eight years that Coke has been operating, the water tables have gone down by more than a metre each year and about three metres in 2003/2004 and on an average it takes 3.8 litres of water to make one litre of pop (Thomas, 2008, p. 38).

The issuing of No Objection Certificate (NOC) over these years raises important questions on how the governing bodies did not consider the depleting groundwater levels of the village and their effect on the life of the villagers.

Rising pollution- Man-made waste water river towards Ghinoi

Choonnkar et al, in their research piece argue that the 'waste water generated by distilleries known as spentwash is nearly generated fifteen times the alcohol production' (Chonnkar, Datta, Joshi, & Pathak, 2000, p. 354). This massive quantity, if left untreated can cause significant stress on the ecosystem in question. A huge waste water that is generated from distilleries and paper mills is discharged on land. On the complaint of locals, one morning I decided to visit the much talked 'man-made waste water river' generated by the industry. I, together with three members of the village started our way to the river and followed its route for straight five kilometres. It was impossible to breathe and covering the nose wasn't making things any better. On our way, I saw dead bodies of cattle lying around the area. We reached Ghinoi, a village five kilometres away from Kaladera. I was told by the locals that such kind of wastewater has had enormous impact on their fields and the foul smell made their lives miserable. A Ghinoi resident narrates,

'things get worse especially when the flow of wind is towards ghinoi. This waste water river has made our life hell… It gets impossible to breathe and the industry must be profiteering for the state but for us, it is a headache. We cannot send our children to go and play in these fields now. Rivers of water give life, this river of poison takes life. Many of our cattle are dead already.'

Many researchers and scientists have written extensively on the impact of industrial effluents on soil health and agriculture in India and have raised concerns over their improper disposal (Chonnkar, Datta, Joshi, & Pathak, 2000). In their paper Chonnkar et al argue,

'A large paper mill on an average generates 220 metre cube of waste water oer tonne of paper made, which contains 168 kg suspended solids 65 kg of BOD (Biological Oxygen Demand) load and 246 kg COD (Chemical Oxygen Demand) load. The high pollution in a small paper mill (SPM) is due to non-recovery of chemicals from black liquor which is reported to be uneconomical. As such each tonne of paper produced in SPM generates 2.65 times the pollution

load discharged per tonne of paper made in LPM. A number of toxic pollutants have been identified in waste water from this industry, particularly from pulp washing and bleasching operations. These include resins, acids, chlorinated lignins and cholor-fatty acids. Other toxic pollutants include tri- and penta-cholorophenols, used in slimicide and biocide formulations in the mills.' (Chonnkar, Datta, Joshi, & Pathak, 2000, p. 356)

Reflecting on the effluents generated by distilleries, they note, 'Distillery effluents generate large volumes of foul smelling and colour waste water known as "spentwash"… The introduction of 'large amounts of organic matter. i.e the material with high BOD and COD, may have adverse effect on soil health by increasing the temperature, and forming organic acids during decomposition which lead to the net immobilisation of plant nutrients' (Chonnkar, Datta, Joshi, & Pathak, 2000, p. 360)

The streams of waste water not just have a negative impact on humans but also animals. I have seen dead cattle and birds lying around close to the waste water sources. The harmful waste is disturbing the flora and fauna of the village and has wide range of consequences on the ecology of kaladera. Beck rates 'radioactivity', 'toxins and pollutants in the air, water and foodstuffs, together with their short and long term effects on plants, animals and people' as those risks which 'induce systematic and often irreversible harm', which also 'generally remain invisible' and are 'based on causal interpretations and thus initially only exist in terms of the knowledge about them' (p. 23).

Rising health issues among locals- Complaints of headache, allergies, and depression

For a year, I stayed with a family whose house is situated on the road just opposite to the industrial area. The family members always complained of mild to severe headaches and allergies. Initially I thought it to be something running in the family but shortly after I started living there, I found out that I was developing similar symptoms. The proximity to the industrial area has brought the rural life in direct contact with air pollution. I interacted with many villagers who told me the same story. After I conducted several interviews with the locals who ran medical shops, my understanding of the health crisis became clearer. Naresh (name changed), age 45, who runs a medical dispensary opposite the kaladera government hospital, narrates,

'Most of the villagers come to take medicines for headache, depression, nausea and various allergies and joint pain. Since a few years, the labourers who work in the factories come here asking medicines for skin rashes, itching and other allergies… The air and water of kaladera is polluted and we have no other option but to live here! Where would we go?'

Many families who live in the industrial area complain of breathing issues and headache. They know that living conditions are getting worse each day but as Maliram ji puts, 'I have been a farmer all my life! I was here before industrial

area came! This was my home! This was my land! Where would I go if I sell my land? I have a moral duty towards my land. My land is my mother. I cannot sell this and go anywhere else'.

Unsafe water- High levels of TDS and fluoride contamination

With the help of a staff member of Nandni foundation that runs a Reverse Osmosis plant in the village in the name of 'ipure' that sells drinking water at affordable prices, I tested the water from various sources in the village in the year 2019. The TDS levels in some places were alarmingly high with a value as high as 4500. The Bureau of Indian Standards define a limit of the total dissolved solvents that is permissible for someone to drink at 500. The document states, 'It is recommended that the acceptable limit is to be implemented. Values in excess of those mentioned under "acceptable" render the water not suitable, but still may be tolerated in the absence of an alternative source but up to the limits indicated under 'permissible limit in the absence of alternate source', above which the sources will have to be rejected (Bureau of Indian Standards, 2012).

In the village, out of the twenty samples taken, twelve of them had a TDS level that was more than 500. The locals living in such locations informed me how this kind of water was killing their livestock and causing grave agricultural problems by devastating their crop production. Many of them who had installed R.O machines saw the inefficacy of those machines to purify water with such high TDS.

The presence of fluoride in groundwater has been documented well in various studies conducted over a period of time in Rajasthan (Hussain, Mohd, & Hussain, 2011). Due to the higher fluoride level in groundwater, several cases of dental and skeletal fluorosis have appeared at a considerable rate in central Rajasthan. In the village, the prevalence of more than five dental clinics in the village and many people complaining of joint pain testify the prevalence of fluoride contamination. Of all the interviews conducted, majority of villagers complained of fluoride in water. There are no records of any water testing that lie with the village panchayat in the last four years regarding this issue. The absence of a mechanism that checks water regularly indicates a collective health crisis in making.

The myth of Corporate social responsibility

Corporate social responsibility (CSR) is important for corporations to exist in a symbiotic relationship with their environments. In the year 2013, CSR activities

of Corporate were made legally compulsory with the enactment of Section 135 of the Companies Act 2013[4]. The Ministry of Corporate Affairs not only mandated the CSR implementation but also made the reporting compulsory. But a critical issue that stems from it is that it was left to the choice of Corporate on which areas the CSR funds will be spent. Another issue with the law is that it has adopted a 'comply-or-explain' approach, with no explicit penalties for non-compliance. Situating this in the context of kaladera, such a gap gets highlighted as it is the particular community's land and water resources that get exploited. Hence the CSR activities should be solely prioritised for the benefit of the communities concerned or on the locations the industries are located.

The modified Schedule VII of the Act in 2017 enlists a list of activities and subjects which can be undertaken as CSR. Ranging from basic life amenities to social and environmental concerns, Corporate are given choices to contribute to poverty eradication, primary health and means of safe drinking water, sanitation. They are also encouraged to invest their CSR funds on forestry, reduced emission, reduced global warming, solid waste management, conservation of natural resources and preservation of quality of soil water and air. They are guided to take initiatives for promoting interest of weaker and backward section of society, rural development and association to nation building during natural calamities. But in kaladera, corporate social responsibility is not carried out in the best of its spirits. Shree Ram Sankhala, the ward mukhiya of ward number 7 narrates,

'the recharge pits that were installed by Coca-Cola were hardly 1-2 feet deep. This depth does not help the water to percolate down inside the earth. You must need at least 8-9 feet deep recharge pits for rain water to percolate. Such recharge pits were mere an eye wash! Even now any company who installs such recharge pits do it only for the heck of it and do not follow proper guidelines as no one is going to come and check the depth of the recharge pit! The same goes with the height of the chimneys of these factories. The factories do not conform to the rules and regulations and fix these chimneys casually without caring about its effect on us. These heads of the units come from Jaipur in the morning and leave back to Jaipur in the morning. It is us who have to stay in the village everyday'

Over the past few years, I have seen such boards put by Bhagwati Paper mills and Keshav paper mills as a display of their CSR activities in the village. Those boards lie there as a show piece and no development has been done in the demarcated areas where the boards have been fixed. There is also lack of awareness among the villagers regarding CSR activities in the village. Villagers

4. Access more about the amendments and nuances of CSR rules and guidelines published online in the ebook of Ministry of Corporate Affairs (MCA) at http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGENAME=17518

do not know if the industrial units have any responsibility towards the village, its ecology, and people. Of all the locals interviewed, many did not know about such mandatory guidelines. This creates a lack of dialogue, and the companies get an easy way to escape accountability. No one from the higher authorities come to monitor or check the authenticity of activities carried out by these units. The lack of awareness to their rights is partially linked with their encounters with Coca-Cola. They informed me that they have a deep fear that if they engage themselves with the industrial giants, they will be harassed and put into jails yet again. They also feel that the local government heads, that is the panchayat, and the MLA are hand in gloves with the industrial area and have profited from its existence more than the village.

Concluding discussion

The consequences of carrying out commercial activities in rural communities raises important questions that challenge us to rethink the use of groundwater. Before the coming of industrial area, the locals believed in the idea of the commons. The understanding of water and land has been in its sharedness. The coming of the industry interfered with this kind of cultural understanding in two ways. Firstly, the common grazing and pastoral lands were converted into an industrial area, and secondly, there understanding of water as a gift was challenged by the coming of privatisation and business enterprises that treated water as a commodity for profit generation. The villagers had started to live with it until the sharp decline in groundwater forced them to fight for their rights by coming on the streets. This resistance on the streets could not garner the support of the state and till date they continue to suffer with acute water shortages and the marginalised are further pushed to peripheries.

The business and development projects in the village need to be made more community-centric given its proximity to the village. The agro-ecology of the village needs to be re-assessed and water-intensive industries should be completely banned from the industrial site and major focus should be on groundwater recharge and rainwater harvesting. The waste and pollution generated needs an urgent check and stringent actions need to be taken against the industrial units that fail to comply to the norms and regulations put forth by RIICO and RSPB. Investigations and monitoring should be done on the various claimed CSR activities that remain only on papers more than elsewhere.

Groundwater has been the most important resource in aiding industrial and agricultural growth in Rajasthan in the last few decades. But it must not be forgotten that it is the only resource for fulfilling the basic need-drinking water for the locals. Taking the right to water for life as one of the guiding principles in groundwater law and management, we need to bring together all the stakeholders, especially business entities and map out mechanisms to check if they are fulfilling their corporate social responsibility by giving back to the communities. For ensuring that businesses in India are responsible, sustainable and value basic human rights, it is imperative for state to bring the much awaited

National Action Plan on Business and Human Rights to enforce a better governance of groundwater and save the many rural communities, like kaladera from further falling prey to further uncalled damages.

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India's policy on Recognition of Climate Refugees

Sincy Wilson*

Abstract

Climate refugees can be understood as people who have been displaced and compelled to move inside or outside of their homeland due to climate change such as extreme temperatures, widespread floods and droughts, rising sea levels, tsunamis, rising sea erosion, desertification, and other natural disasters. Per year, up to 1.5 million people flee to the interior of India because of climate change, according to reports. Furthermore, 19.3 million people are believed to have been relocated globally as a result of the effects of global warming, India is among the most vulnerable countries in the world. Due to a lack of identification of this specific sort of refugee at the national and international levels, calculating the true number of "climate refugees" is challenging. Climate change and environmental disasters are becoming increasingly dangerous, and they must be addressed holistically within the international community with the help of member nations, as this is not a problem unique to any one country. This research outlines the difficulties faced by climate refugees as a result of non-recognition and suggests that India provide some interim protection.

Key words: - *Climate refugees, Climatological factors, Constitution of India, Right to life, Human rights.*

Introduction

Extreme weather events have long been a component in human migration; studies suggest that extreme weather was a major cause of extinction in many societies, and that it is presently a crucial component in climate change, with

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people migrating and being deported. Climate change and its severe implications are already becoming a reality, according to experts and scientists on climate change. The number of people displaced as a result of natural calamities is higher than the percentage of individuals displaced as a result of other circumstances such as conflict and violence around the world. The situation is essentially comparable in India. "Someone who is obliged to escape his country in fear of persecution because of race, religion, nationality, political opinion, or membership in a certain social group" is meant by the legal definition of refugee." Climate refugees are people who were deported or compelled to flee their nation as a result of climate patterns which are unusual such as flooding and tsunamis, ocean erosion, desertification droughts, increasing sea levels, and other natural disasters. According to a report, climate change has a key role in the internal displacement of about 1.5 million people in India each year. Climate change is said to have displaced 19.3 million people worldwide.[1] [2] Due to the lack of identification of this specific sort of refugee on both a global and regional scale, determining the actual number of 'climate refugees' is challenging. As a result, even among academics and policymakers, there is a lack of precision in recognizing climate change or environmental disaster refugees around the world. [3] People in India and its neighboring countries, including Pakistan, Bangladesh, Bhutan, southern Nepal, Myanmar (Burma), and the northern Himalayan Mountain range, are subjected to frequent and severe climate disasters. Large-scale migration occurs both within and beyond borders, but the Himalayan region currently lacks adequate regional and global legal structures to alleviate the effects of disasters caused by climate change. [4]

Reports about climate change and refugees

In fact, the effects of climate change have been predicted for a long time, but no significant steps have been made to address them. The following organisations

1. Rongeet Poddar, The Question of Climate Refugees: Does India Need a Legal Framework? (Jul.28, 2019), https://lawschoolpolicyreview.com/2019/07/28/the-question-of-climate-refugees-does-india-need-a-legal-framework/ Accessed on 21 March 2020).
2. Nandan Sharalaya, Taking India's Climate Migrants Seriously, (Aug.10,2018), https://thediplomat.com/2018/08/taking-indias-climate-migrants-seriously/ Accessed on 25 May 2020.
3. Poddar, Supra note 1.
4. Human mobility in the Context of Climate Change Adaptation, Disaster Risk Reduction, and Sustainable Development Goals in the Hindu Kush Himalayas, PLATFORM ON DISASTER DISPLACEMENT (Sept. 6, 2017), https://disasterdisplacement.org/human- mobility-in-the-context-of-climate-change-adaptation-disaster-risk-reduction-and-sustain able-development-goals-in-the-hindu-kush-himalayas [https://perma.cc/FG9P-ZT6K]. Accessed on 16 March 2020.

and publications, on the other hand, have foreseen the consequences and recommended governments to take the required precautions ahead of time.

To begin, "the most significant effect of climate change could be on human migration, with millions of people displaced owing to coastline erosion, coastal flooding, and agricultural disruption," the Intergovernmental Panel on Climate Change[5] declared in 1990".[6] Other assessments since then have suggested that environmental degradation, notably climate change, is on the verge of becoming a major source of population relocation and an approaching disaster. In the mid-1990s, a variety of serious environmental pressures, including pollution, land degradation, droughts, and natural catastrophes, were widely publicized, causing up to 25 million people to flee their homes and land. At the time, it was stated that these "environmental refugees" surpassed all verified refugees from war and political assassination combined.[7] The Intergovernmental Panel on Climate Change (IPCC) warned in its 2018 report that if the number and intensity of disasters increases, the highest the effects of global warming would be noticeable in people's relocation". [8]

"According to migration statistics such as the World Migration Report (2020), in 2018, there were a total of 28 million new internal displacements across 148 countries with natural disasters accounting for 61 percent, or 17.2 million people, will be affected of these displacements. Every year, plenty more people are displaced by disasters than by conflict and violence, and calamity displacement affects more countries". [9]

"An average of 26.4 million people have been forcibly moved every year since 2008 due to floods, windstorms, earthquakes, or droughts around the world," The Internal Displacement Monitoring Centre (IDMC) says.[10] "By the ending of the year 2018, approximately 1.6 million individuals who had been evacuated by calamities were already living in camps or in regions else than their homes. Because many people are terrified that climate change would drive people to

5. (IPCC), https://www.ipcc.ch/ Accessed on 18 April 2020.
6. Lonergan, S., 1998, "The role of environmental degradation in population displacement", Environmental Change and Security Project Report, Issue 4 (Spring 1998): 5. Accessed on 12 March 2020.
7. Migration and climate change, IOM Migration Research series by International Organization for Migration, https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5866 Accessed on 13 April 2020.
8. Intergovernmental Panel on Climate Change (IPCC) Report 2018.https://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf Accessed on 12 April 2020.
9. Marie McAuliffe and Binod Khadria, IOM World Migration Report 2020, (Nov.27,2019), https://ec.europa.eu/migrant-integration/librarydoc/iom-world-migration-report-2020 Accessed on 11 February 2020.
10. http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/621893/EPRS_BRI(2018)621893_EN.pdf Accessed on 19 October 2020.

escape their native countries and seek asylum in another, the term "climate refugee" is gaining popularity. [11]

According to the 2018 Global Report on Internal Displacement,[12] weather was responsible for 96% of disaster-related internal displacement in 2017. Internal climate migrants are quickly establishing themselves as the human face of climate change. People are forced to leave their own nation owing to regular floods or poor air quality, according to the report. It may be impossible to imagine the predicament that the majority of our people are suffering in their daily lives right now, but it is becoming a reality. It's also not too far away for us.

The 2015 Paris Climate Accord[13] highlighted the issue of climate refugees and established country-specific pledges to reduce emissions and limit future temperature rises, implying that the problems of climate refugees could be addressed by reducing displacements as a result of more stable weather patterns. The twenty-first Summit on climate change in Paris in December 2015 considered, but did not directly address, forced migration. Climate migration will most likely increase through 2050 unless greenhouse gas emissions are reduced and other precautions are made.

As per the World Bank's most recent report, "Groundswell Preparing for Internal Climate Migration," [14] "without immediate national and international climate action, additional 140 million persons could migrate inside their nations' boundaries by 2050 in South Asia, Latin America Sub-Saharan Africa. Another issue is determining the difference between voluntary and forced climate-induced migration; this is particularly difficult to prove in the event of 'slow-onset disasters' [15] such as droughts and agricultural degradation.[16] As per the World Bank, "if no climate action is taken by 2050, there would be more than

11. Hridayesh Joshi, Not Conflict or Violence, Extreme Weather Events Are Causing Most Migration, (Feb.22,2020), https://thewire.in/environment/extreme-weather-events-internal-migration Accessed on 10 May 2020.
12. http://www.internal-displacement.org/global-report/grid2018/. Accessed on 10 May 2020.
13. The Paris Agreement 2015. https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement Accessed on 10 July 2020.
14. https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration Accessed on 14 December 2020.
15. SLOW-ONSET DISASTERS relate to environmental degradation processes such as droughts and desertification, increased salinization, rising sea levels or thawing of permafrost. https://disasterdisplacement.org/the-platform/key-definitions Accessed on 10 April 2020.
16. https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration Accessed on 16 April 2020.

143 million internal climate migrants in just three countries of the world: Sub-Saharan Africa, South Asia, and Latin America."

"The World Migration Report[17] says that "the condition is especially producing disruption for the countries of the Indian subcontinent, particularly the South Asian populace, who are primarily sensitive 'slow-onset'[18] and 'rapid-onset disasters' [19] due to natural hazards and climate change."

The National Disaster Management Authority (NDMA) claims that,[20] most of India's states and union territories are disaster-prone are disaster-prone. Cloud outbursts, floods and landslides threaten places in eastern India's Himalayan region and northern India's highlands. The Aila cyclone in the Bay of Bengal in 2009[21] or the Kedarnath floods in Uttarakhand in 2013[22] are examples of this. Most of these studies suggest that underdeveloped and developing nations are more prone to natural disasters caused by global warming. India would have to invest more money and resources in adaptation as extreme weather events become more often. The fact that the climate problem is producing so many migrants than conflict is obvious. Rather than concentrating on removing unauthorized migrants, the government must engage on ample bigger issue: the long-term destruction to our ecosystem and the increase in climate migrants. In Nepal, Bangladesh, and India, a heavy monsoon season in 2019 resulted in several floods and landslides, displacing millions of people.[23] At the same period, several powerful hurricanes hit the United States and the Caribbean islands[24]. In the aftermath of Hurricane Maria, tens of thousands of Puerto

17. Marie McAuliffe and Binod Khadria, IOM World Migration Report 2020, (Nov.27,2019), https://ec.europa.eu/migrant-integration/librarydoc/iom-world-migration-report-2020 Accessed on 10 May 2020).
18. SLOW-ONSET DISASTERS relate to environmental degradation processes such as droughts and desertification, increased salinization, rising sea levels or thawing of permafrost. https://disasterdisplacement.org/the-platform/key-definitions Accessed on 02 July 2020).
19. SUDDEN-ONSET DISASTERS comprise hydro meteorological hazards such as flooding, windstorms or mudslides, and geophysical hazards including earthquakes, tsunamis or volcano eruptions. https://disasterdisplacement.org/the-platform/key-definitions Accessed on 10 July 2021).
20. https://ndma.gov.in/. Accessed on 19 December 2020).
21. https://www.nasa.gov/mission_pages/hurricanes/archives/2009/h2009_aila.html. Accessed on 18 August 2020).
22. https://www.india.com/news/india/uttarakhand-glacier-burst-from-1991-earthquake-to-2013-kedarnath-floods-a-look-at-major-natural-disasters-that-devastated-the-hill-state-4405094/#:~:text=2013%20Kedarnath%20Floods%3A%20Nearly%206%2C000,were%20destroyed%20in%20the%20mishap Accessed on 10 August 2020).
23. https://www.cbsnews.com/news/monsoon-season-india-nepal-bangladesh-floods-rohingya-refugee-camp-coxs-bazar-today-2019-07-15/. Accessed on 10 May 2020.
24. https://www.bbc.com/future/article/20201014-the-desert-that-gives-birth-to-the-most-powerful-hurricanes Accessed on 12 May 2019.

Ricans fled to the United States mainland.[25]. Floods, windstorms, earthquakes, and droughts have forcefully relocated 26.4 million persons on average per annum since 2008, according to statistics provided by the Internal Displacement Monitoring Centre. [26]

This is the same as displacing one person every second. The total number of individuals displaced fluctuates widely from year to year, as does the frequency, duration, and severity of major natural disasters, however the trend in recent decades has been rising. Many people seek sanctuary in their own nation, but others are compelled to travel overseas. In the future, climate change increases the number of "climate refugees." So far, the national and international reaction to this crisis has been modest, and protection for individuals affected remains inadequate. The absence of accurate description for this category of people as well as their removal from the 1951 refugee Convention added to the protective loophole for the so-called Climate Refugees.[27] Despite the fact that the EU[28] has not formally recognized climate refugees, it has stated rising concern and initiatives taken to promote and improve resilience in countries that may be impacted by climate change. However, there isn't a lot of time to act.

Displacement classifications

Two important aspects to consider when identifying the contributing factors to the displacement that is occurring in India are the following:

1. Displacement caused by the environment and development

As part of its goal of attaining quick economic expansion, India has committed in industrial projects as part of its vision of attaining accelerated economic progress such as roads, mines, power plants, dams, and the construction of fresh towns, which has been made feasible by huge land procurement and displacement of people. "Including displaced dams (16.4 million), mines (2.55 million), industrial development (1.25 million), and wild life sanctuaries and national parks (0.6 million), 21.3 million developments induced Internal Displacements of Persons, according to the Indian Social Institute". [29]

25. https://www.cnn.com/2018/12/19/health/sutter-puerto-rico-census-update/index.html. Accessed on 12 March 2020.
26. http://www.internal-displacement.org/global-report/grid2018/ Accessed on 10 March 2020.
27. The Refugee Convention 1951, https://www.unhcr.org/4ca34be29.pdf. Accessed on June 15, 2020).
28. https://europa.eu/european-union/index_en. Accessed on 17 May 2020.
29. Indian Social Institute, http://www.isidelhi.org.in/ Accessed on 19 November 2020.

2. Displacement caused by natural disasters

Due to India's unique geographical characteristics, natural disaster-induced displacement is unavoidable. In India Floods, cyclones, and landslides have caused massive and recurring displacement. India is, in fact, the world's greatest flood-affected nation after Bangladesh, with more than 30 million people displaced, according to a study conducted by the Center for Science and the Environment in 1991. In the past, the Government tried, but all failed.

India and Climate Refugees

India has no domestic policy or institutional framework for addressing either with migrants or displaced populations. The 1951 Convention and its 1967 Protocol have not been approved in India and most of the refugees have no UNHCR permit. Still political authorities deal with refugee issues especially granting of refugee status in the lack of a long-term institutional framework. Even the Ministry of Rural Development's current Draft National Policy for Rehabilitation of Persons Displaced[30] as a consequence of land purchase does not address any sort of displacement other than that resulting from land acquisition.

There seems to be no worldwide organisations that deal with such situations. In this aspect, the UNHCR's mandate has been both unplanned and unorganized. UNHCR's[31] directive was only recently modified to permit for the addition of IDPs[32]s in specific situations; "since such individuals are involved in or returning to the similar regions as wanting to return migrants; once they are inhabiting a migrant populace and have alike requests for protection and support; when the similar issues have caused both indoors and outside migration of people because there are noble reasons to address those difficulties through some kind of single humanitarian operation".

30. https://dolr.gov.in/sites/default/files/National%20Rehabilitation%20%26%20Resettlement%20Policy%2C%202007.pdf
31. United Nations High Commissioner for Refugees (UNHCR).
32. According to the Guiding Principles on Internal Displacement internally displaced persons (also known as "IDPs") are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence on account of various reasons. Available at, https://www.unhcr.org/internally-displaced-people.html

Indian Constitution on environmental protection

India's constitutional framework and international commitments emphasize the importance of environmental protection and conservation, as well as the sustainable usage of natural assets. Residents of India have a fundamental obligation to maintain and improve the natural environment, including forests, lakes, rivers, and wildlife, as well as to have compassion for living creatures, according to Article 51A[33] of the Indian Constitution.

Furthermore, according to Article 48A[34] the State Governments are responsible for protecting and improving their environment, and for protecting the country's forests and wildlife. The rules on environmental issues, however, do not address the key issue of rehabilitation and acceptance by climate refugees. In the absence of international, national or regional legal and policy frameworks to manage migration, India is anticipated to see a major increase in unplanned migrations by climate migrants.

Indian laws for the migrants

- The Foreigner's Act, 1946.
- Passport Act, India, 1920.
- Passport Act, India, 1967.
- Registration of Foreigner's Act, India, 1939.
- Foreigner's Order, India, 1948.
- Illegal Migrants Act, India, 1983.
- Indian Penal Code, 1860.
- Protection of Human Rights Act, India, 1993.[35]

India's laws on resettlement and displacement

People have been relocated as a result of unanticipated development activities as a result of climate change. Although India's legislative structure for dealing with displacements is insufficient, it is still the sole legal framework in place. Displaced people are traditionally indigenous people who have functioned as traditional conservation agents, as development projects usually occur in remote

33. INDIA CONST. art. 51 A(g) Part IVA
34. INDIA CONST. art. 48A, Part IV (Art 48A-Directive Principles of State Policies)
35. R. Trakroo, A. Bhat & S. Nandi, (2006). Refugees and the Law, New Delhi: Human Rights Law Network, 2006, 68–76. Accessed on 15 September 2020.

areas, hills and woods. Displacement leads to loss of lifetime, habitat and assets, social instability and disorder and dissociation from a previously supported eco-system. Most importantly, these displacements threaten to further impoverish the poor and weak. In the majority of cases, total relocation has occurred, resulting in the loss of house and livelihood. "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act of 2013" [36] is a law that deals with compensation in circumstances where the government acquires land for development purposes in the state. Yet another piece law that deals climate-related rehabilitation is the Disaster Management Act of 2005,[37] which develops disaster recovery plans, minimizes or mitigates disaster damages, and organizes and administers solutions. However, existing laws do not cover the rehabilitation of climate refugees from other nations. Updating the existing laws to accommodate the concerns of climate refugees would be a major accomplishment for India.

Human Rights violations and Climate change

Weather change and human rights are becoming more generally recognized than ever before. The link between human rights and climate change is that with migration and relocation, human rights will challenge the acceptance of several of international agreements on human rights, including the right to life, healthcare, nutrition, water, housing, property, livelihood, and culture. Furthermore, the interconnectedness of climate change and human rights is complicated.[38]

The effects of dislocation on the enjoyment of human rights are widespread, primarily the right to freedom of movement and choice of dwelling. With displacement people lose their homes and livelihoods result in deprivation of their rights to sanitation, health care, education, housing, food, water and property. As a result of being uprooted and cut off from their lands and communities, they were unable to practice their cultural traditions and religion, as well as speak their original language, jeopardizing their cultural and religious rights. People who depend on local natural resources for their livelihoods are disproportionately affected and are more likely to be uprooted. Indigenous peoples and others who rely heavily on ecosystems for their livelihoods are

36. https://legislative.gov.in/sites/default/files/A2013-30.pdf.
37. https://www.indiacode.nic.in/handle/123456789/2045?locale=en
38. Mary Robinson, Introduction: Human Rights and Climate Change, in Human Rights and Climate Change , 1–34 (Stephen Humphreys), Available at https://www.cambridge.org/core/books/human-rights-and-climate-change/introduction-human-rights-and-climate-change/B89D34682C9C05FF50914706A342A275, Accessed on 12 November 2020.

among those who have contributed the least to climate change while suffering the most serious repercussions. [39]

Climate change will have the greatest impact on children and young people as a result of prior generations' historic greenhouse gas emissions. Their ability to adjust to shifting climates is limited because to their young age and limited resources. Kids who continue in the distressed zone are exposed to changing ecological effects and are at danger of calamities, putting them at risk of gradual impoverishment and eventual relocation. Certain households, on the other hand, may elect to send their women and girls to a support camp while their men and boys remain at home to care for their homes, animals, and farms. The risks are different for those who move and those who stay, but they exist in both situations. Women and girls are also more exposed to the negative consequences of climate change and are at a higher risk of violence during displacement due to gender norms and unequal resource allocation.

International law and refugees

The foundation of the United Nations has been hailed as one of the most important humanitarian attainments of the twentieth century. The principle that the refugee crisis is a major concern for the international community and that it must be addressed in a timely manner under international cooperation and burden-sharing framework and after the First World War, the League of Nations was tasked with dealing with recurrent waves of refugees, and this concept was born. It was further expanded and enhanced after WWII as a result of the United Nations' ongoing efforts to resolve countless refugee situations in all parts of the globe. The problem with the Convention is that it was developed in and for a different era. Its focus is the resulting problems that have been identified since the late 1980s with the operation of the Convention in Western countries. Until a suitable and long-term solution is found for them, either by voluntary repatriation or formal integration (naturalization) in their new home, refugees lose their status as refugees. They must be treated in conformity with globally recognized basic minimum standards in their own country. The establishment and ongoing development of these standards, as well as measures to ensure that they are effectively implemented, have been an integral part of the international community's collective reply to the refugee crisis from the start.

39. Norwegian Refugee Council and Alaska Institute for Justice, "Climate change, displacement and community relocation: lessons from Alaska", 2017; and submissions to the Special Rapporteur. Accessed on 24 December 2020.

India and Bangladesh climate refugees

The migration of Bangladeshis to India is not a new occurrence. Because Bangladesh is surrounded on three sides by India in the event of a disaster, such as a cyclone or flooding, it is common for individuals to evacuate to India or another country to be safe.[40] As per the reports of Internal Displacement Monitoring Centre, natural calamities have relocated around 700,000 Bangladeshis every year on average over the previous decade, and a significant number of internally displaced people relocate to other countries, causing at least regional, if not global, concern. The India is erecting a border wall around its territory as a precaution because there are 20 million Bangladeshis residing illegally in India. Although a militarized wall runs across 70% of the 4,000 kilometer frontier, people do find methods to get around the guards by sailing through rivers.[41] According to the World Migration Report 2020 [42], individuals in Southern Asia are increasingly exposed to slow-onset and rapid-onset disasters due to climate change. The majority of dislocations in Southern Asia in 2018[43] were caused by disasters, having 4 million people have been evacuated due to sudden-onset risks, the most of those were in Bangladesh, Afghanistan, Sri Lanka, and India. The most people are at risk of being displaced as a result of sudden-onset disasters in Southern Asia, including Pakistan ,Bangladesh and India having the maximum calamity threat.

India has been affected by calamities in the sub-region, with additional 2 million people displaced due to floods and tropical storms. Afghanistan placed second in the sub-region having 371,000 additional disaster displacements, mostly due to drought. Many people have been forcibly displaced in Sri Lanka and Bangladesh due to rainy season. Whenever disaster hits, people seek refuge in nations in which they have built ethnic or cultural ties, such as Bangladeshis seeking refuge in India or Pakistan, Sumatran Indonesians seeking refuge in Malaysia.[44]. Bangladeshi government authorities want to inspire people to relocate to climate-resilient and migrant-friendly metro areas. To develop these metropolitan zones, bottom-up participative ways to meet local needs and

40. *Climate Displacement in Bangladesh*, Environmental Justice Foundation, June 3, 2021 from https://ejfoundation.org/reports/climate-displacement-in-bangladesh. Accessed on 24 September 2020.
41. Jayasuriya, Dinuk & Sunam, Ramesh. (2016). South Asia: Migrant Smuggling Data and Research. Accessed on 14 September 2020.
42. https://worldmigrationreport.iom.int/.
43. Global Report on Internal Displacement 2019. IDMC, Geneva. Available at www.internal- displacement.org/global-report/grid2019/ Accessed on 2 September 2020.
44. Dupont, A., and G. Pearman, "Heating up the planet: Climate change and security", Lowry Institute for International Policy, Paper 12, Sydney, p. 2006, p. 59. Accessed on 2 December 2019.

problems, as well as top-down planning and aid, are essential. The 7th Five Year Plan,[45] of Bangladesh promotes "transformative adaptation," supports this approach. "Sea levels in India are expected to increase at a rate of 2.4 millimeters per year by 2050, displacing tens of thousands of people, according to the Intergovernmental Panel on Climate Change. India's coastal areas are expected witness increased sea levels rise at a frequency of 2.4 mm per year by 2050, relocating tens of thousands of persons, according to the Intergovernmental Panel on Climate Change". Roughly a quarter of India's population who live near the coast, climate change is a terrifying event. The Norwegian Refugee Council,[46] a very well Norwegian humanitarian organisation working on global refugee concerns, advocated the creation of an international environmental migration fund[47] financed by affluent countries. Another option is a United Nations agreement to compensate sufferers of weather change, which will then be debated at the World Humanitarian Conference.[48] According to some experts, the issue must first be put in the spotlight before discussions concerning the lack of sufficient rules for climate refugees can take place. A comprehensive plan can be devised and included into policy initiatives of the impacted countries for a long-term and viable solution. Although there is much uncertainty about how climate change will affect migration patterns in Asia and the Pacific, there is no doubt that climate change would worsen the region's already high levels and complexity of human mobility. It's difficult to say how significant or insignificant those consequences will be, but they will be significant.[49]

Indian judiciary on Refugee Issues

Despite the fact that there is lack of a domestic legislative policy to address migrant situations, Indian judiciary has accepted the right to non-refoulment. Though, it seems that this only applies to those who have entered India, regardless of whether or not they are refugees. While the Indian judiciary takes a different stance on refugees than the Indian legislature, and legislators have yet

45. Seventh 5-Year Plan 2016–2020, Available at http://www.icccad.net/wp-content/uploads/2018/10/Policy-Brief-on-Climate-Migration-and-Cities.pdf. Accessed on January 20, 2019.
46. https://www.nrc.no/. Accessed on 10 December 2020.
47. https://www.iom.int/migration-and-climate-change.
48. World Humanitarian Summit - Istanbul, 23-24 May 2016 Retrieved June 28,2021 from https://www.un.org/press/en/highlights/WorldHumanitarianSummit, Accessed on 20 December 2020.
49. Climate Change and Migration in Asia and The Pacific Executive Summary, 2009 Asian Development Bank. Retrieved June 3,2021 from https://www.preventionweb.net/files/11673_ClimateChangeMigration.pdf, Accessed on 24 March 2019).

to come up with any solutions to the refugee conundrum, let us look at some of the court's judgements.

Firstly as stated in Ktaer Abbas Habib Al Qutaifi v. Union of India[50] "Article 21 of the Indian Constitution emphasizes the right to non-refoulment. Its restricted applicability, on the other hand, finally ends when a refugee constitutes a security concern. Court referred the Article 51(c)[51] that "the State shall strive to encourage regard for international humanitarian law and treaty commitments through the relations of organized peoples with one another" for emphasizing this principle of non-refoulment. "The evidence relating to the meaning and breadth of non-refoulment in its treaty sense adequately supports the finding that the norm now forms part of general international law," the Court added. There is direct evidence showing that the principle is obligatory on all Countries, even if they do not expressly agree. "The court ruled in its final comments that asylum seekers seeking legal acknowledgment could not be relocated till the UNHCR had verified their eligibility. Despite India's refusal to ratify international conventions, such as the 1951 Refugee Convention, this case shows that it is responsible for non-refoulment.

The Supreme Court took the same view in Malavika Karlekar v. Union of India,[52] prohibiting the repatriation of a group of shelter seekers. The said set of people had already applied for migrant status and presented a compelling circumstance for refuge. They presented no danger to the country's security. Until their legal status could be determined, they were placed under protection.

In the suit of U. Myat Kyaw & Nayzin v State of Manipur & Superintendent of Jail[53] the High Court of Guwahati well-ordered the government to let free a group of asylum seekers. They were alleged for unauthorized entrance into India under the terms of the Foreigners Act of 1946. They were ordered to be safeguarded for two months so that they might apply to UNHCR for a refugee status determination at that era. The court of law acknowledged the right to be free of refoulment, which prohibits transferring refugees back to the home country over their will if they face a significant danger of harm from threats to

50. 1999 CriLJ 919.Retrieved June 20, 2021, from https://indiankanoon.org/. Accessed on 11 May 2020).
51. The Constitution of India, 1950.
52. Crl. W P No. 583 of 1992. Retrieved June 20, 2021, from https://indiankanoon.org/ Accessed on 17 March 2020).
53. Civil Rule No. 516 of 1991, India: High Courts, 26 November 1991. https://www.refworld.org/cases,IND_HC,3f4b8db67.html Accessed on 17 May 2020).

their lives or torture, harsh, inhuman, or degrading treatment. According to the cases, the UNHCR should investigate the condition of potential refugees before extraditing them and ensure that non-refoulement obligations are not violated.

In Khudiram Chakma v. State of Arunachal Pradesh[54], the Supreme Court commented on the Universal Declaration of Human Rights,[55] considering Article 14's limitation on refoulment as follows:

"Article 14 of the Universal Declaration of Human Rights, which speaks of the right to enjoy asylum has to be interpreted in the light of the instrument as a whole; and must be taken to mean something. It implies that although an asylum seeker has no right to be granted admission to a foreign State, equally a State which has granted him asylum must not later return him to the country where he came. Moreover, the Article carries considerable moral authority and embodies the legal prerequisite of regional declarations and instruments."

These rulings emphasize that the Indian legal system identifies that nation is obliged by international conventions regarding the right to non-refoulment of individuals from Indian land. The right to life and liberty is also recognized in the Indian Constitution, providing a strong legal basis for refugees in India to pursue and protect their right to non-refoulment. The Supreme Court of India recognized that immigrants and regular citizens should be provided equal protection under the law, citing right to life under Article 21's and right to equality under Article 14's.

In National Human Rights Commission v. State of Arunachal Pradesh & Anr[56] the court affirms the right to personal protection. The Supreme Court recognizes these rights and holds the Indian State and Central Government to an express commitment to safeguard the lives and individual protection of all foreigners, including migrants, against risks posed by both actors from the private sector and the Central or State Government. As a consequence, federal and state governments should "act dispassionately and perform their legal responsibilities to protect the lives, health, and well-being of refugees residing in the United States without being impeded by local politics," according to the report. To carry

54. 1994 AIR 1461.
55. https://www.un.org/en/about-us/universal-declaration-of-human-rights
56. 1996 AIR 1234.

out its obligations, the administration might use policeman, army or some other force. The Supreme Court ruled that it is the government's accountability to address legally with threats to refugees. The above includes a legal obligation to apply the law when whichever nation poses a danger to refugees' safety. The Supreme Court of India, on the other hand, adheres to normal procedure also when dealing with pressing issues.

The court concluded in Anand Swaroop Verma v. Union of India[57] that foreigners do not lose their fundamental rights under Article 21. The State must adhere to the inherent spirit of Article 21 of the Constitution even while dealing with the situations of immigrants. There is no such thing as a formula for a strait jacket. Every case must be assessed based on its unique facts and circumstances. The problem has yet to be addressed in any of these cases, and the government is continuing with its current approach, which is failing to assist these climate migrants from many other countries, particularly those from Bangladesh.

India's Policy on Refugees

Despite the increasing number of refugees, India lacks appropriate legislation to address the issue. The 1946 Foreigners Act fails to address the unique challenges that refugees experience as a group. It also grants the central government the authority to remove any foreign national. Furthermore, the Citizenship Amendment Act of 2019 (CAA)[58] expressly omits Muslims from its scope, claiming that only Hindu, Christian, Jain, Parsi, Sikh, and Buddhist immigrants persecuted in Bangladesh, Pakistan, and Afghanistan are eligible for citizenship.

Furthermore, despite the fact that it is neither a signatory to the 1951 Refugee Convention or its 1967 Protocol, India has a strong track record when it comes to refugee protection. India has a long history of morally absorbing foreigners and their cultures. In addition, the Indian constitution protects the rights to life, liberty, and dignity of all people. "While all rights are available to citizens, persons including foreign citizens are entitled to the right to equality and the right to life, among others, the Supreme Court decided in National Human Rights Commission vs. State of Arunachal Pradesh (1996)."

57. (2002) (VI AD (DELHI) 1025 CRLW. No. 746/2002 8.8.2002).
58. https://prsindia.org/billtrack/the-citizenship-amendment-bill-2019

Conclusion and Suggestions

Due to climate change, millions of people are exposed to greater environmental risks, displacing a large number of people and pushing them to relocate. Following a review of the challenges that climate refugees face, it was proposed that such people be recognized as climate refugees under international law, with suitable institutional mechanisms in place to address their concerns. Unfortunately, there are weaknesses in the current national and international strategy for dealing with migration, like the fact that the international community has yet to acknowledge this new migrant group. There seems to be no agreement on the meaning and position of climate migrants because the term "refugee" has a varied meaning under international law. Our understanding of how climate change may effect migration as a root cause is currently lacking. Consequently, even if climate refugees are recognized, who will bear the obligation of providing support and protection?.

Individuals may, therefore, relocate to other nations or inside the territory. Individuals should be identified as internally displaced inside countries and regions in order for appropriate action to be done to address their problems. The amount of data available on the relationship between climate change and human migration is currently limited. It is necessary to advance a well understanding of the connection among climate change and relocation. Bangladeshi climate change challenges may drive a large number of people to migrate to India. Nevertheless, no institutional mechanisms or appropriate policies exist to reduce people's vulnerability due to climate change, which would be pushing migration. Bangladesh, according to the discussion above, is facing a grave environmental disaster and the threat of climate change. As a consequence, migration to India will be a main cause of concern for the states, and the problem will worsen in the absence of regional legal systems, exposing people to the effects of climate change.

More emphasis could be placed on decreasing people's susceptibility to climate change, for which regional platforms such as SAARC[59] should be used to develop new legal and institutional frameworks to address the issues and recognize the rights of people who are displaced due to environmental factors and cross-national borders. Rather than viewing migration as a political and

59. (SAARC) South Asia's regional intergovernmental organisation and geopolitical union is the South Asian Association for Regional Cooperation. Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka are its members. In the year 1985, it began. It started in the year 1985. Accessed on 10 April 2020.

economic issue, both countries should see it as an adaptation strategy to climate change. Unfortunately, India's refugee rules and regulations do not protect the rights of migrants escaping Bangladesh due to events of climate change. India must take the lead in adopting new rules to protect the rights of those fleeing migration caused by climate change. An worldwide, legal agreement on formal recognition, protection, and assistance for climate refugees might be established, which could be seen as a significant step towards aiding climate refugees and eventually urge all nations to sign the 2015 Paris Agreement.[60]

Suggestions

This paper suggests the following to address the issue of climate migrants and their protection in India and across the South Asian nations. Although climate migrants do not have legal status, a few actions can be performed at the regional level until they are recognized by international organisations.

- The interconnectedness of resources and its effects on human migration should be recognized by all governments. Research efforts should be promoted in order to better understand these climate change vulnerabilities and their implications for migration. In more vulnerable countries, more focus should be placed on reducing people's vulnerability to climate change.
- People displaced by environmental circumstances and crossing national borders should have their rights recognized through regional venues such as SAARC[61].
- Apart from viewing migration as a political and economic issue, India should recognize it as a climate change adaptation strategy.
- At the moment, India's policies and laws on refugees are not ready to guarantee the rights of migrants fleeing other nations owing to climate change. India should take the initiative in the area in developing new measures to safeguard the rights of persons fleeing climate change-related migration.
- There is potential for switching from each nation's National Climate Change Action Plan to a South Asian Adaptation Action Plan[62] that includes the matter of cross-border migration and their protection.

60. https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement Accessed on 10 April 2020.
61. The South Asian Association for Regional Cooperation is the regional intergovernmental organization and geopolitical union of states in South Asia. Its member states are Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka.
62. http://pubdocs.worldbank.org/en/312361573496069925/South-Asia-Regional-Climate-Adaptation-and-Resilience-Program.pdf.

Protection of Farmers in Indian Sui Generis Plant Variety Protection Regime: A Critical Analysis

*Smita Srivastava**

Abstract

At the international level TRIPS Agreement requires the member states "to protect the plant varieties either by patent or by effective sui generis system." It is considered that International Convention for Protection of New Varieties of Plants, 1961 (UPOV) provides a model law for "effective sui generis system" for protection of plant variety. It provides for breeder's right regime, which also recognizes the breeder's exemption and farmer's privilege. However, biggest criticism of this Convention is that it over-appreciates the role of breeders. Being an agricultural economy, in order to protect the interest of its farmers, India has adopted its own sui generis system for protection of plant variety. For that purpose, India has enacted the Protection of Plant Varieties and Farmer's Right Act, 2001, which is progressive legislation and strikes a balance among right and interest of various stakeholders.

Key words: - *Farmer's Rights, Plant Variety, TRIPS, UPOV.*

Introduction

India is basically an agricultural economy and vast majority of its people are farmers. Even though the share of agriculture in GDP has declined relatively fast in the past few decades, it still accounts for 17.1 percent of the gross domestic product and employs an overwhelming majority of the population.[1] Overall, agriculture provides livelihood to about 70 percent of the population. India is very rich in terms of plant genetic resources for food and agriculture and is leading producer of many crops like wheat and rice. Further, a number of industries, such as the cotton and jute industries or the sugar industry, are dependent on agricultural commodities. [2]

Indian agriculture is characterized by pre-dominance of small and marginal farmers. It has slowly developed over thousands of years with the domestication of plants and animals. Farmers and rural community by their traditional practices have greatly contributed to the creation, conservation, exchange and utilization of genetic diversity. Agriculture is and will continue to be central to all strategies for planned socio-economic development of this country. [3]

Rise of the modern technology culminated in agricultural research. It is essential to achieve self-sufficiency in food production. Research in agriculture field mainly focuses on evolving new plant varieties capable of catering the modern-day needs. It involves huge investment and laborious efforts which deserve protection. Therefore, there was a need to encourage research in agriculture sector by offering protection to the new plant varieties. At the same time farmers and other groups contributed to the conservation of plant generic resources and in making them available for use in evolving new varieties deserve recognition through rewards. So, there was need to balance two interests.

Since agriculture is backbone of India's economy, therefore, Indian policy was based on the concept that plant varieties and seeds are common heritage of mankind. India did not want to monopolies the crucial areas like agriculture, therefore, Indian Patent Act, 1970 specifically excluded the plant in whole or part thereof including seeds, varieties, species and essential biological process for production of plants from purview of patent protection. However, under TRIPS Agreement, it was also obliged to provide either a patent protection or a combination thereof to plant varieties. This led to a heated debate as to the system of protection to be adopted for plant varieties. Being an agrarian economy, patent protection for plant varieties was not considered to be in the interest of the country and India opted for sui generis legislation. Primary breeders of India are farmers and hence it was necessary to protect the interest of farmers.[4] In order to make balance between the rights of farming community and the breeders, India enacted the Protection of Plant Varieties and Farmer's Right Act, 2001.

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1. Ministry of Finance, Economic Survey 2017-2018.
2. See Philippe Cullet, *Intellectual Property Protection and Sustainable Development* (LexisNexis Butterworths, New Delhi, 2005) 188.
3. See Sanjit Kumar Chakraborty, *Intellectual Property Rights Over Plant Genetic Resources: Enviro-Legal Issues and Perspective in India*, (2(1) KJLS 2012) 78, 83.
4. See Elizabeth Verkey, Law of Plant Varieties Protection (1st ed., Eastern Book Company, Lucknow, 2007) 120.

International Convention for Protection of New Varieties of Plants, 1961 (UPOV as revised in 1972, 1978, 1991)

Article 27(3) (b) of TRIPS Agreement imposes an obligation on member states "to provide for the protection of plant varieties either by patent or by effective sui generis system." It is considered that International Convention for Protection of New Varieties of Plants, 1961 (UPOV) as revised in 1972, 1978 and 1991 provides a model law for effective sui generis system for plant variety protection. UPOV established the breeder's right regime. It is different from patent system. For this system "distinctness, novelty, uniformity and stability" is required. Under this system breeders can control the "commercialization of propagating materials" e.g., seeds. In addition, it permits breeders' exemption and farmers' privilege. Protected variety may be used as a source for the development of a new variety. Farmers may re-use saved seeds on their own land. However, farmers are not recognized as breeders. Moreover, there is no provision for benefit sharing or compensation to communities, if community conserved biological resources are utilized in developing a specific plant variety.

However, TRIPS Agreement does not require that UPOV would be the only option.[5] Therefore, member countries can develop other sui generis form of protection, to the extent that they are 'effective.' A large number of developing countries have opted to join the UPOV; only a few have attempted to develop more innovative alternative sui generis model.[6] Being an agricultural country, UPOV was not suitable for India. Therefore, it developed its own sui generis legislation. For that purpose, India has enacted the "Protection of Plant Varieties and Farmers' Rights Act, 2001."

The Protection of Plant Varieties and Farmer's Right Act, 2001

Purpose of the PPVFRA, 2001 is "to establish an effective system for protection plant varieties, the rights of farmers and the breeders and to encourage the development of new varieties of plants" in line with the TRIPS. Basically, this Act is adopted with a clear twin mandate. First, it recognizes the contribution of farmers "in conserving, improving and making available plant genetic resources

5. See Cristoph Antons, *Article 27(3) (b) TRIPS and Plant Variety Protection in Developing Countries*, in Trips Plus 20: From Trade Rules to Market Principles (Hanns Ullrich, Reto M. Hilty, Matthias Lamping, Josef Drexel eds., Springer – Verlag, 2016) 393.
6. See Carlos M. Correa, Patent Rights, in Intellectual Property and International Trade: The Trips Agreement (Carlos M. Correa & Abdulqawi A Yusuf (eds.), Kluwer Law International, Netherlands, 2nd ed., 2008) 234.

for development of new plant varieties." Second, it protects the plant breeder's right "to stimulate investment for research & development for the development of new plant varieties." It is "to foster the growth of the seed industry and this will in turn ensure the availability of high-quality seeds and planting material to farmers." [7] In general, the purpose of the PPVFRA, 2001 are much broader in scope than those of the UPOV which focuses exclusively on the recognition and protection of rights of plant breeders.[8]

Registrable Variety

Four separate varieties have been created under the PPVFR Act, 2001 for registration. Section 14 of PPVFR Act, 2001 provides, "an application for registration can be made only in respect of new varieties, an extant variety or a farmers' variety." Registration of essentially derived variety has been dealt with separately in section 23 of PPVFR Act, 2001.

a) New Variety- New varieties are varieties of such genera and species as specified under section 29(2). Under section 29(2) Central Government is under obligation "to notify in Official Gazette the genera or species for the purposes of registration of varieties other than extant varieties and farmers' varieties."

b) Extant Variety- Extant variety means "a variety available in India which is—

(I) notified under section 5 of the Seeds Act, 1966 (54 of 1966) [9]; or

(ii) farmers' variety; or

(iii) a variety about which there is common knowledge; or

(iv) any other variety which is in public domain." [10]

Extant variety basically includes existing and known varieties. Ultimate aim is to protect traditional knowledge and indigenous rights.

c) Farmers' variety- Farmers' variety means "a variety which— (i) has been traditionally cultivated and evolved by the farmers in their fields; or (ii) is a wild relative or land race of a variety about which the farmers possess the common knowledge." [11] Protection of common knowledge strengthens9

7. Protection of Plant Varieties and Farmers' Right Act 2001, Preamble.
8. See Philippe Cullet, op. cit. supra note 2, at 274.
9. Varieties are notified under Seeds Act 1966 in situation where it is deemed necessary to regulate the quality of seeds for specific varieties sold for use in agriculture.
10. Protection of Plant Varieties and Farmers' Rights Act, 2001, sec. 2 (j).
11. Id. sec. 2 (l).

community rights. This concept is ignored in UPOV. Farmers' variety is distinct from larger extant variety. Extant Variety includes everything in public domain. Farmer's variety includes only varieties "traditionally cultivated by farmers" or over which farmer possess "common knowledge."[12]

d) Essentially Derived Varieties- Act also provides for the registration of essentially derived varieties. This concept was introduced by 1991 Act of UPOV Convention to ensure greater protection to breeders. For that purpose, breeder's right has been extended to essentially derived variety. In India, the definition of essentially derived variety has been borrowed from UPOV.

Criteria for Registration

Novelty, distinctiveness, uniformity and stability are the basic criteria for registration of new variety.[13]

a) Novel- a new variety shall be deemed to be novel, "if, at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety—

(i) in India, earlier than one year; or

(ii) outside India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years, before the date of filing such application."[14]

b) Distinctiveness- A new variety is distinct, "if it is clearly distinguishable by at least one essential characteristic from any another variety whose existence is a matter of common knowledge in any country at the time of filing of the application."[15]

c) Uniform- A new variety is uniform, "if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics."[16]

12. See Srividhya Ragavan, Patent and Trade Disparities in Developing Countries (Oxford University Press, New Delhi, 2012) 298.
13. Protection of Plant Varieties and Farmers' Rights Act, 2001, sec. 15(1).
14. Id. sec. 15(3) (a).
15. Id. sec. 15(3) (b).
16. Id. sec. 15(3) (c).

d) Stable- A new variety is stable, "if its essential characteristics remain unchanged after repeated propagation or, in the case a particular cycle of propagation, at the end of each such cycle."[17]

These technical criteria are similar to provisions of UPOV. Extant varieties can be registered if they fulfill the registration criteria of "distinctiveness, uniformity & stability."[18] It is different from new varieties in the sense that the condition of novelty is not required in the case of extant variety.

Limitations on Registration

The Act provides certain limitations on the registration of plant varieties even if they meet the registration criteria. This is one aspect which goes beyond the legal framework proposed in UPOV Convention. Under the PPVFA, a variety shall not be registered, "if prevention of commercial exploitation of such variety is necessary to protect public order, public morality or human, animal and plant life and health or to avoid serious prejudice to the environment."[19] Further "no variety of any genera or species which involves any technology which is injurious to the life or health of human beings, animals or plants shall be registered under this Act." Moreover, registration of varieties which contain "generic use restriction technologies" (GURT) is also prohibited.[20] Terminator technology ensures that seeds injected with suicide gene does not germinate after harvesting. This technology has potential to endanger the food security of country.

Rights conferred for Registered Varieties

Rights conferred for varieties that fulfill the registration criteria are directly derived from the UPOV Convention model. A certificate of registration confers on the breeder or his assignee an exclusive right "to produce, sell, market, distribute, import or export the variety." In general, these rights are granted to the commercial breeder or farmer that has requested the registration of the variety. In the case of extant variety, however, "unless a breeder can establish a right, the rights conferred are by default granted to Central government" and "in case of an extant variety notified for State or any area thereof under section 5 of the Seed Act 1966, the relevant State government shall be deemed to be the owner of right." Rights conferred also include the right to license them to other

17. Id. sec. 15(3) (d).
18. Id. sec. 15(2).
19. Id. sec. 29(1).
20. Id. sec. 29(3).

persons.[21] The duration of right has been taken from the UPOV 1978 which provides duration of 15 years from the date of registration with the exception of trees and vines which are protected for 18 years.[22]

Rights conferred are limited like plant breeders' rights under the UPOV Convention by special allowance for researchers. Breeder's right does not extend to the use of any registered variety "for the purpose of conducting experiment or research" and "for using the said variety as an initial source of variety for creating other varieties." But "where the repeated use of such variety as a parental line is necessary of commercial production of such other newly developed variety," the authorization of breeder of registered variety is required.[23]

Rights conferred can also be restricted by compulsory licenses. Under the Plant Variety Act, 2001, compulsory licensees can be issued three years after the certificate of registration has been issued to anyone applying for a license that can show that "the reasonable requirements of the public for seeds or other propagating material of variety have not been satisfied or that the seeds or other propagating material of the variety are not available to the public at a reasonable price." [24]

Farmers' Right

Indian Plant Variety Act is first legislation in the world granting the formal rights to farmers. The Act recognizes the farmer as a "cultivator, conserver and a breeder." The Act provides that "a farmer who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety." [25] Therefore, farmers have been given exactly the same rights as commercial breeders for their varieties, provided these varieties meet the registration criteria of the plant breeder's right regime.[26] The definition of breeder also includes farmer or group of farmers.[27] Therefore, apart from

21. Id. sec. 28.
22. Id. sec. 24(6).
23. Id. sec. 30.
24. Id. sec. 47.
25. Id. sec. 39(I).
26. See Philippe Cullet, *op. cit. supra* note 2, at 279.
27. According to Sec. 2(c) of PPVFR Act, 2001, "breeder" means "a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety."

privileges, ownership rights have also been given to farmers.

Act recognizes that farmers are not only innovators but also important conservers of agro-biodiversity. A farmer who is engaged "in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled for recognition and reward from the Gene Fund, if the material so selected and preserved has been used as donors of genes in varieties registrable under this Act." [28]

Act provides that farmers are entitled "to save, use, sow, resow, exchange, share or sell their farm produce including seeds of a variety protected under the Act."[29] Therefore, no new right has been created but only some basic minimum rights have been maintained that farmers have always had. This provision is similar to the basic minimum level of protection recognized in the "International Treaty on Plant Genetic Resources for Food and Agriculture, 2001." However, farmers are not entitled to sell branded seeds of variety protected under the Act. Therefore, balance has been made between the rights of farmers and breeders.

Further, there are certain other protections given to farmer. Farmer is protected against bad seeds. If a propagating material of registered variety is sold to farmer or group of farmers, breeder of variety is duty bound "to disclose them the expected performance of the material in given condition." If the material fails to perform, farmer may claim compensation.[30] Taking into account low literacy level in country, the Act provides "safeguards against innocent infringement" by farmers. A farmer shall not be considered as "infringing the right established under the Act where he was not aware of existence of the right." [31]

Benefit Sharing

Once certificate of registration is issued it shall be published by authority. The purpose is "to invite claims of benefit sharing if any with respect to respective registered plant variety." Any citizen of India or group of citizens of India or firm or governmental or non-governmental organization formed and established in India may submit a claim of benefit sharing. If such a claim is made, a copy of the same shall be served on the breeder of the respective plant variety to invite his oppositions to benefit sharing. An opportunity of being heard will be

28. Protection of Plant Varieties and Farmers' Rights Act, 2001, sec. 39(iii).
29. Id. sec. 39(iv).
30. Id. sec. 39(2).
31. Id. sec. 42(1).

given to both the parties before making any decision. While determining the amount of benefit sharing, the authority shall consider the factors such as "extent and nature of the use of genetic material of the claimant in the development of the variety, commercial utility and demand in the market of the variety." The amount of benefit sharing "to a variety so determined shall be deposited by the breeder of such variety in the National Gene Fund." [32]

Object of benefit-sharing provision is to give reward to the contribution and efforts of the farmers in the newly developed varieties. However, there are some issues in proper implementation of the benefit-sharing provisions as benefit sharing claim presuppose that the local community will be aware about that. Such awareness among the farming community in country like India is not possible due to the social, economic and educational conditions. In order to resolve this issue, it is important for the state to make the traditional communities more aware about their rights.[33]

Community Rights

On significant deviation of the PPVFRA, 2001 from UPOV lies in introducing "a right to community compensation in recognition of traditional knowledge contributions." On behalf of any village or local community in India, any person or group of persons or any governmental or non-governmental organization may file any claim attributable to the contribution of the people of that village or local community in the evolution of any variety.[34]

National Gene Fund

Another notable feature of PPVFRA, 2001 is creation of national gene fund. It is common fund created by the Central government for benefit of farmers and biodiversity. Funds collected from benefit sharing received from breeder, compensation required under various provisions, annual fee payable by way of royalty, contribution from national and international organization and allied sources shall be credited to Gene Fund. [35]

Fund has been established to reward farmers whose existing varieties and material has been used as a source to create new variety. Therefore, it would be

32. Id. sec. 26.
33. See Ramesh M., *Protection of Plant Varieties in India: Perspectives and Issues*, (Dec. 15, 2018, 10:30 AM) http://airwebworld.com/articles/index.php?article=1539.
34. Protection of Plant Varieties and Farmers' Rights Act, 2001, sec. 41.
35. Id. sec. 45(1).

applied for the "amount to be paid by way of benefit sharing under sec. 26 and compensation payable under sec. 41." It would also be applied towards meeting the expenditure "for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use." [36]

Conclusion

Protection of Plant Variety and Farmers' Rights Act, 2001 is progressive sui generis plant variety protection legislation. It tries to strike balance among the right and interest of various stake holders of agricultural sector. Equal right to commercial breeders and farmers is farsighted.[37] In contrast to patent system the plant variety protection mechanism tries to identify, recognize and reward the people who are actually involved in the evolution of a particular plant variety. Farmers are recognized not just "as a cultivator" but also "as conserver of agricultural gene pool and as breeder who has bred several successful varieties." Period of monopoly is very less and even during the period also there is possibility of compulsory licensing of registered variety in public interest. Disclosure requirement prohibits misappropriation of the genetic resources, especially of the varieties that have been developed by the farming community. The system of National Gene Fund, benefit sharing, community rights, protection against bad seeds and terminator technology guaranteed under the system is worth appreciating. Interest of the public or the society can be best served under the plant variety system.

Act provides reasonable alternative to UPOV. UPOV system has been formulated by industrialized nations. These countries are ignorant to conditions of agricultural economies. It is not suitable for developing countries as the primary object of UPOV is to protect the interest of powerful seed companies who are the breeders. Under this system, rights are granted only to the breeder, there are no rights for the farmer. India is an agricultural economy. Big seeds companies are not part of essential seed sectors and our major seed producers are farming community and their co-operatives. Therefore, our legal system should protect the interests of the farmers as producer as well as consumer of seeds. We should not join this system, otherwise we will be bound to follow the principle of UPOV. [38]

36. Id. sec. 45(2).
37. See Philippe Cullet, *op. cit. supra* note 2, at 283.
38. See Suman Sahai, *India's New Plant Variety Protection and Farmers' Right Law* in Plant Varieties and Farmers' Rights- policies and Legal Perspectives (1st ed., A Usha, ed., Icfai University Press, 2007) 105-106.

Commercial Courts Act, 2015: A Critical Analysis

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Abstract

Failure to address the pendency of disputes can indeed be pernicious, and this assumes specific importance when the disputes concern commercial matters. The adverse impact of inefficiencies in dealing with commercial disputes does not only affect India domestically but also portrays it as a country plagued by an inefficient system and an unfriendly business environment internationally. To improve the situation, the Parliament of India established special Commercial Courts by enacting the Commercial Courts Act in the year 2015. The present article seeks to trace the development of the Act and critically examine, in the light of judicial pronouncements, the provisions thereof. Further, an attempt has been made to verify statistically whether the laudable move of introducing compulsory pre-litigation mediation has proven beneficial or not by analysing the situation in Delhi. After analysing the aforementioned, certain suggestions have been made that can go a long way in further improving the efficacy of the Commercial Courts.

Key words: - *Alternative Dispute Resolution, Commercial Courts, Commercial disputes, Mediation, Pre-Litigation protocols, Specialisation.*

Introduction

Specialisation is not a newly conceived idea when it comes to the legal field. Tracing down the footsteps of time, specialised establishments date all the way back to the mid-seventeenth century, when dedicated authorities adjudicated on

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excise and income tax matters in addition to the traditional court system;[1] which has led to the growth of special institutions to deal with disputes having specialised and distinct subject matter. During the time when the mercantile law was being developed, John Locke considered that general law was bad for business[2] and thus in 1699, he, while assisting in drafting the Fundamental Constitution of Carolina enshrined a provision of trial by a special jury and also a trial by the means of a special judge other than a general judge who knew the mercantile law in greater detail.[3]

As a British colony, our country developed its judicial and legal systems along the lines of the common-law system, with courts established based on the basic presidency principle, namely the Courts of Calcutta, Madras, and Bombay. At the time of independence, the Income Tax Appellate Tribunal was the only existing pre-independence tribunal functioning in India.[4] The essence of establishing a tribunal was pertinent as the traditional courts sometimes lacked the technical know-how and specialised approach which was required to deal with the case at hand, therefore various tribunals were established in India[5]. Post-1991, with the adoption of the LPG policy, there was a massive influx of foreign national companies with new and innovative technologies and ideas[6]. In order to encourage foreign investment in any country, it was necessary to create a sense of trust with regard to the safety of money and secondly, ensure quick resolution of any disputes that may arise in relation to it.

Tracing the Development of Commercial Courts in India

The Law Commission's 188th Report, published in 2003, recommended the establishment of Commercial Divisions in the High Court, in light of the growing number of investors, both domestic and foreign, and the increase in commercial disputes, with the objective of resolving such disputes more systematically and effectively. The commercial dispute as defined by the Commission not only includes disputes arising between tradesmen but also disputes related to commercial property- both movable and immovable. It also proposed that the presiding judges must be experienced in civil law and

1. Datar, A. P. (2006). 'The Tribunalisation of Justice in India' 1 ACTA JURIDICA 288.
2. Bursetj, C. R. (2016). 'Merchant Courts, Arbitration, and the Politics of Commercial Litigation in the Eighteenth-Century British Empire' 34 LAW & HIST. REV. 615 citing R. Milton & Philip Milton, 'Selecting the Grand Jury: A Tract by John Locke' (1997) 40 HIST. J.
3. Ibid 616.
4. Datar (n 1).
5. *S.P. Sampath Kumar v. Union of India* (1987) 3 SCR 233.
6. Mani, S. (2009). 'Is India Becoming More Innovative since 1991? Some Disquieting Features' 44 ECON POLIT WKLY 41.

commercial laws. After the said idea of constituting Commercial Divisions in High Courts was broached by the Commission, it became an important agenda of the Joint Conference of Chief Justices and Chief Ministers, 2009. This was followed by the introduction of the Commercial Division of High Courts Bill, 2009, which sought to create Commercial Divisions in the High Court to deal with commercial matters having a 'specified value' of more than Five Crore Rupees. It also envisaged certain legal provisions that provided expedited procedures of dispute resolution. This Bill was passed by the Lok Sabha on 18th December 2009 but when it reached Rajya Sabha, it was referred to Standing Committee. In its report, the Committee observed that unless the strength of High Court judges was not increased, the said Divisions would, instead of helping, overburden the courts.[7] Ultimately, the Bill lapsed.

Thereafter, in its report No.253, in 2015, the Commission recommended the establishment of Commercial Courts, and Commercial Divisions and Commercial Appellate Division in the High Court to ensure speedy disposal of high-value commercial suits. To this effect, a new bill, titled "The Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015" was proposed by the Commission along with some changes in Civil Procedure Code, 1908. It departed from the Bill of 2009 to the extent of reducing the specified value to One Crore Rupees from Five Crore Rupees. Another distinguishing feature was scraping down the provision regarding the appeal to the Supreme Court (which existed under the 2009 Bill) citing endangerment of overburdening the Apex Court.

This followed the introduction of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 in Rajya Sabha. It was sent to the Select Committee and while the same was pending there, an Ordinance was promulgated by the President of India on 23rd October 2015 which led to the creation of Commercial Divisions and Appellate Commercial Divisions of High Courts and also the establishment of Commercial Court at District levels in areas where the High Court did not exercise ordinary original civil jurisdiction. Consequently, a Bill to replace the ordinance was laid down in the Parliament, which was passed by both the houses and culminated into Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Pursuant thereto, 247 Commercial Courts at the District level were created by the Government of India.

7. Select Committee, *Report of the Select Committee on the Commercial Division of High Courts Bill, 2009 as passed by Lok Sabha* (Rajya Sabha, July 2010).

Since then, the Commercial Courts Act, 2015 (hereinafter "Act") came into existence intending to address the speedy[8] and amicable[9] resolution of disputes of commercial nature. A perusal of its objects and reasons would show that it was enacted with a three-fold hankering, viz. acceleration of economic growth, improvement of the international image of the Indian justice delivery system and improvement in the faith of the investor world in the legal culture of the nation.

In 2018, an Ordinance was promulgated by the President for the amendment of the Act of 2015. The major changes that were brought by this amendment included reduction of minimum 'specified value' to Three Lakh Rupees from One Crore Rupees; setting up District level Commercial Courts even in areas where the High Courts exercised ordinary original civil jurisdiction (with varied pecuniary jurisdiction), and establishment of Appellate Courts at the District level for adjudication of appeals against decisions of a Commercial Courts below the level of District Judge. A path-breaking change in the form of compulsory pre-institution mediation was also introduced by way of this amendment. Consequently, a Bill to replace the Ordinance was laid down before the Parliament, which was passed on 10th August 2018. During the parliamentary debates relating to the said amendment, a contention was raised that the reduction of pecuniary jurisdiction to Three Lakh Rupees will over-burden the Commercial Courts and defeat the very objective for which the Commercial Courts Act was enacted. Further, the issue of judicial vacancies and their impact on Commercial Courts was also discussed. It was the stand of the Government in the Parliament that the rationale behind reduction of minimum specified value to Three Lakh Rupees was to increase "judicial accessibility to a wider audience" and to provide faster disposal, in terms of the Act, to a greater number of disputes.[10] Apart from this, emphasis was also supplied on the potency of the Amendment to improve the ease of doing business in India. A noteworthy aspect of the parliamentary debates on pre-institution mediation in Commercial Courts was that it received widespread support and encountered no significant opposition.

8. The Commercial Courts Act 2015, Statement of Objects and Reasons, (Act 4 of 2016).
9. Ibid s.12A.
10. LS Deb 1 August 2018, Vol. XXXIII

Analysis Through Judicial Lens

A. Vast Definition

The continuous development of technology and infrastructure has led to an exponential growth in trade and commercial practices where the definitions sometimes appear to be narrow on the face, in such a situation the courts must have an inclusive approach rather than an approach of exclusivity. Thus, when a dispute is termed as a commercial dispute, the Court shall follow a multi-dimensional approach while deciding the same.[11] The method of bifurcation and segregation tends to relieve the burden of the traditional courts as the disputes of one nature are now sent for adjudication to a dedicated court. The Act, in its definition clause, has provided a vast list of disputes which will be treated as commercial disputes for the purpose of the Act. However, it cannot be said that there cannot be any dispute that can be labelled as "commercial" outside the said definition. In this regard, it can be noted "that all suits that in common parlance may be stated to be of commercial nature cannot be brought within the ambit of Commercial Courts Act and that if the same is done and the doors of the commercial courts and the commercial division of the High Court are opened too wide, the purpose of enactment of the Commercial Courts Act, as the specialised courts would be defeated with such courts being inundated, making expeditious disposal impossible" [12]

The Hon'ble High Court of Delhi in another matter[13] held that "parliament has consciously given the precise definition as to what a commercial dispute "means". It is not an inclusive definition and the specific matters which qualify as relating to "commercial disputes" have been specifically set out in clauses (i) to (xxii)". Cases such as those involving a friendly loan[14], sale deed[15] and cancellation of a Power of Attorney, even if with respect to immovable property[16] and used exclusively in trade or commerce and as part of a transaction of sale of such property, have been excluded.[17] However, corporate guarantees have been held [18] to be covered under the said definition.

The term "in relation to immovable property" as stipulated under the definition clause has to be given an expansive and purposeful interpretation, and not a narrow one. If any immovable property is used for commercial activity exclusively, any dispute regarding recovery of rent or profit will lie before a Commercial Court[19]. However, the interpretation should not be so wide that it defeats the very intent with which this Act has been enacted[20] and therefore, a balance has to be struck.

B. Specialisation

The Hon'ble Supreme Court of India, in the case of Rojer Mathew v. South Indian Bank Limited & Others[21] held that "the rise of specialisation and increase of complex regulatory and commercial aspects requires esoteric appraisal and adjudication. The existing lower courts in the country are not well equipped to deal with such complex new issues which see constant evolution as compared to the stable nature of existing civil, criminal and the tax jurisprudence."

The Commercial Courts were envisioned to function with judges experienced in commercial disputes. The Act also casts a duty upon the State Government to invest in training of the judges manning Commercial Courts. Despite this, specialisation has not been implemented in its true spirit. A study[22] shows that upon juxtaposing the time spent by Judges on commercial cases vis-à-vis the time spent on non-commercial cases, it can be seen that the latter occupied most part and the former was gives lesser time. Further, it was highlighted that neither specific timeslots were earmarked for taking up commercial matters nor the benches were exclusive i.e. to say the same bench would hear both- commercial and non-commercial disputes. This might also be seen as against the objective of specialist judges for commercial cases, as envisioned under the Act. At the same time, it must also be kept in mind that specialisation should not be to an extent that it leads to a problem of tunnel vision. Despite all these odds and high pendency, it pointed out that the disposal time for commercial disputes (in

11. *Jasper Infotech Pvt. Ltd. v. Deepak Anand & Others* (2015) SCC OnLine Del 14399.
12. *Sanjeev Kumar Arora v. Satish Mohan Agarwal* MANU/DE/1086/2017.
13. *Havells India Limited v. The Advertising Standards Council of India* (2016) 155 DRJ 435.
14. *Rita Agarwal v. Uday Medicare Pvt Limited & Others* (2018) SCC OnLine Del 8595.
15. *Sumer Singh & Anr. v. Om Prakash Gupta & Others* (2017) SCC OnLine Del 6675.
16. *Vasu Healthcare Private Limited v. Gujarat Akruti TCG Biotch Limited and Ors* MANU/GJ/1130/2017.
17. *Hindpal Singh Jabbal v. Jasbir Singh* 2016 SCC OnLine Del 490.
18. *Punj Lloyd Ltd. v. M/S. Hadia Abdul Latif Jameel Co. Ltd. & Anr* 2018 SCC OnLine Del 12455.
19. *Jagmohan Behl v. State Bank of Indore* 2017 SCC OnLine Del 10706.
20. *Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP* (2020) SC 1859.
21. (2019) 15 SCALE 615.
22. Kruthika Jerome, 'Caught In The Act: Assessing The Functioning Of Commercial Courts In Delhi', Doing Business in Delhi: A Study of Initiated and Uninitiated Regulatory Reforms (1st edn, Centre for Civil Society 2018) <https://ccs.in/sites/default/files/research/doing_business_in_delhi.pdf> accessed 26 June 2021.

Delhi) was merely 151 days.

C. State as a Party to Commercial Dispute

An interesting feature of the Act is seen in sub-clause (b) to the Explanation appended to section 2(1)© which states that "one of the contracting parties is the state or any of its agencies or instrumentalities, or a private body carrying out public functions" which means that a commercial dispute shall not cease to be commercial dispute merely because a party happens to State or a State-owned/supported entity.

It is true that there is no dearth of cases that involves the State as a party to a contract. It is also settled that if State is a party to the contract, the remedy against it lies in the private law sphere as well as public law i.e., writ petition. As a natural corollary, there can be two parallel proceedings involving the same issue. This warrants that writ petitions concerning commercial disputes should also be heard and decided by the Commercial Division of the High Court[23]. Hitherto, there exists a doubt with regard to the maintainability of writ petitions filed before Commercial Divisions. In the case of Rajasthan State Mines and Minerals Ltd. v. Ankur Minmine Product Pvt. Ltd[24]., it was held that writ petitions (qua interlocutory orders of Commercial Courts) would not lie before the Appellate Commercial Division and can only be heard by the Bench, which is authorised to hear writ petitions, as per the roster.

D. Summary Judgment and Case Management

Another notable concept under the Act is summary judgment. Enshrined in order XIII A, it is a provision by way of which the court can, instead of proceeding to the trial, directly pass a judgment where it finds that no triable issue exists for consideration. The concept is similar to judgment on the basis of the admission of a party[25], however, the two provisions are not the same in as much as summary judgment need not be necessarily based on admission and can be passed on the basis of the lowest common denominator test- which widens the scope thereof as compared to judgment on admission. It is not only useful in cases proceeded ex-parte but also in other cases where some documents have

23. Justice Abdul Quddhose, 'Writs Before Commercial Divisions In High Courts, A Conundrum' (Livelaw.com, 23 July 2020) <https://www.livelaw.in/columns/writs-before-commercial-divisions-in-high-courts-a-conundrum-160369> accessed June 30, 2021.
24. MANU/RH/0690/2019.
25. *Venezia Mobili (India) Pvt. Ltd. v. Ramprastha Promoters and Developers Pvt. Ltd.* MANU/DE/1031/2019.

been admitted by the defendant or there is no real prospect of his success. The court can pass a summary judgment without recording oral evidence as well.[26]

This concept has been especially significant for the quick disposal of commercial cases revolving around trademark infringement. The Delhi High Court has dealt with summary judgments in several cases revolving around trade mark infringement like Helamin Technology v. Haribansh Rai,[27] Sandisk v. Memory World[28], FRHI Hotels and Resorts S.A.R.L. v. Dr. Mukram Ulla Khan.[29] All of the above cases involved unjustified infringement of intellectual property. In the case of Rockwool International A/S v. Thermocare Rockwool (India) Pvt. Ltd.[30] however, Justice Pratibha M. Singh, refused to accept the plaintiff's request for a summary judgment and quoted the judgment in the case of Bright Enterprises Private Ltd. v. MJ Bizcraft[31], stating that:

"From the provisions laid out in Order XIIIA, it is evident that the proceedings before Court are adversarial in nature and not inquisitorial. It follows, therefore, that summary judgment under Order XIIIA cannot be rendered in the absence of an adversary and merely upon the inquisition by the Court. The Court is never an adversary in a dispute between parties."

Case management is an established international practice which has been introduced in the Indian legal regime by this Act. It allows a Judge to narrow down the issues existing between the parties to the lis, create timelines and explore the possibility of amicable resolution. As far as the uncontroverted issues are concerned, early judgments can be passed thereon.[32]

E. Appeals

Being a creation of statute, an appeal is not an inherent right and is, thus, confined to the provisions that provide for appeal under the concerned legislation. The Commercial Courts Act imposes a bar on filing revision against any interlocutory orders[33] and instead provides that an aggrieved party may

26. *Mallcom (India) Limited and Another v. Rakesh Kumar and Others* (2019) 259 DLT 1.
27. 2017 SCC OnLine Del 11566.
28. 2018 SCC Online Del 11243.
29. (2018) 250 DLT 305.
30. (2018) 254 DLT 90.
31. 2017 SCC OnLine Del 6394.
32. Justice Abdul Quddhose, 'Importance Of Case Management And Practice Directions Before Commercial Courts' (Livelaw.com, 2 Sep 2020) < https://www.livelaw.in/columns/importance-of-case-management-and-practice-directions-before-commercial-courts-162293> accessed on 20 June 2021.
33. The Commercial Courts Act 2015, s. 8.

challenge any interlocutory order in the appeal that he may prefer against the decree passed by the Commercial Court. The Act specifically provides for filing of an appeal within 60 days of the judgment and also requires the Appellate Court to decide the same within a period of 6 months[34].

The appeals that arise from an order passed by a Commercial Court District Judge level are to be heard by the Appellate Commercial Division of the High Court and not by a Single Judge of the High Court.[35] Interestingly, a distinction has been carved out in cases where an interlocutory application is decided, in a commercial dispute, by a Judicial Registrar acting as a delegate of a Single Bench and those interlocutory applications decided by the Bench itself. Whereas in former cases, an aggrieved party will get two statutory appeals i.e., one under the High Court rules and the other under the Commercial Court Act, in case of the latter, the aggrieved party will have the right to only one statutory appeal i.e., under the Commercial Court Act only.[36]

It is noteworthy that the proviso to section 13(1A) states that an appeal shall lie from the orders that find a place under order XLIII of the Civil Procedure Code, 1908 or section 37 of the Arbitration and Conciliation Act. In recent times, many judicial pronouncements have been passed on this point such as the judgment of the Hon'ble High Court of Delhi in D & H India Ltd. v. Superon Schweisstechnik India Ltd.[37], wherein it was held that if the said proviso was to be read in the manner so as to exclude all orders except those enumerated in order XLIII, it will be tantamount to re-writing the proviso itself. The Court found the proviso to be an enabling provision rather than a disabling one. However, another Division Bench of the same High Court held that legislature intended to provide "extremely limited jurisdiction and circumscribe the appellate jurisdiction" [38]. Similarly, in Prasar Bharati v. M/s Stracon India Limited & Anr.[39], the Court refused to uphold, as maintainable, an appeal under section 13 of Commercial Court Act against an interlocutory order on the ground that it was neither enshrined under order XLIII of the Civil Procedure Code, 1908 nor section 37 of the Arbitration and Conciliation Act.

34. Ibid s.13.
35. *Delhi Tourism And Transportation Development Corporation v. Swadeshi Civil Infrastructure Pvt. Ltd.* FAO 232/2020 & CM APPLN. 32258-59/2020, decided on January 27, 2021, High Court of Judicature at Delhi.
36. *D&H India Ltd. v. Superon Schweisstechnik India Ltd.* 2020 SCC OnLine Del 477.
37. Ibid.
38. *South Delhi Municipal Corporation v. M/s Tech Mahindra*, 2019 SCC OnLine Del 11863.
39. 2020 SCC OnLine Del 737.

F. Strict Timelines

Strict interpretation has been provided qua the timelines stipulated under the Commercial Courts Act, and they have been held to be non-condonable in a plethora of cases[40]. Recently, in M/s SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors.[41], the Hon'ble Supreme Court of India confirmed the fact that the timelines under the Commercial Court Act were mandatory in nature, and no extension can be given for the filing of the written statement in such a suit beyond 120 days by exercising provisions of order V, order VIII and section 151 of the Civil Procedure Code, 1908. Even if the plaintiff is ready to accept a delayed written statement in a commercial case, it cannot be allowed[42]. Pertinently, the legislature has provided a breather for commercial cases which were filed before the commencement of the Commercial Courts Act but later got transferred to Commercial Courts. Section 15(4) of the Act allows the court to prescribe new timelines in such cases. [43]

G. Relation with Arbitration Matters

In addition to a dedicated approach for specialised commercial disputes, the Commercial Courts are also empowered to hear applications and appeals related to or arising out of arbitration between the parties to the lis. The legislations are to be carefully implemented and drafted where it gains the confidence of the parties and thereby provides them with a platform where the disputes are expeditiously settled. In the Indian context, the sister legislations- the Commercial Courts Act, 2015 and the Arbitration and Conciliation Act, 1996 (post the changes done in 2015) were specifically aimed at developing a robust arbitral mechanism for commercial disputes which had minimal judicial interference to ensure a seamless approach while resolving such disputes.[44] Arbitrability of commercial disputes has been viewed with different dimensions by the Courts of India where if the contracting parties mutually decide to be bound by such terms which relate to the enforceability of the contract, the parties later cannot waive off the execution or enforceability of the arbitral award in the case of a commercial dispute.[45] Therefore, the binding force of a

40. *Oku Tech Pvt Ltd. v. Sangeet Agarwal* 2016 SCC Online Del 6601.
41. (2019) 12 SCC 210.
42. *Axis Bank Limited v. Mira Gehani & Ors.* 2019 SCC OnLine Bom. 358.
43. Also see, *Dilip Choudhury v. Pratishruti Projects Limited* 2019 SCC OnLine Cal 2346 and *Reliance General Insurance Company Ltd. v. Colonial Life Insurance Company (Trinidad) Limited* (2019) SCC OnLine Bom 848.
44. Garimella, S. R. & Ashraful, M.Z. (2019). 'The Emergence of International Commercial Courts in India: A Narrative for Ease of Doing Business?' 1 ERASMUS LAW REV.
45. *Cruz City I Mauritius Holding v. Unitech Limited*. 2017 SCC OnLine (Del) 7810.

commercial dispute is akin to a decree of a civil court which can be executed against the party against whom the decrease is passed and the parties cannot later waive off their duty to be bound by such action. If the arbitration concerns a dispute which is commercial in nature, then only the Commercial Court will have jurisdiction to deal with interim applications under section 9 of the Arbitration and Conciliation Act[46]. However, this shall not be construed to mean that the provisions of Act would apply over that of Arbitration and Conciliation Act as the latter being a special Act qua the proceedings arising thereunder would prevail over the former.[47] The Hon'ble Supreme Court of India, in the matter of Kandla Export Corporation v. M/S. OCI Corporation[48] was also of the view that even if the rule of harmonious construction is applied, "they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely the Commercial Courts Act, being left to operate in spheres other than arbitration."

H. Pre-Institute Mediation and Settlement

By way of the Amendment Act of 2018, the legislature has inserted section 12A in the Act and introduced the provision of Pre-Institute Mediation and Settlement of non-urgent commercial disputes. Section 12(A)(2) authorises and vests the Legal Services Authorities and other authorities that function within its ambit with the responsibility to undertake pre-institution mediation and mandates the process to be completed within three months of the filing of the application, with certain exceptions. The procedure, in simple terms, requires the applicant to apply to the State Legal Services Authority, which in turn issues notice for consent to the opposite party. If the opposite party accepts to take part in the mediation proceedings, both the parties are required to deposit fees (depending upon the quantum of claim) with the Authority and a mediator is appointed. In case the opposite party chooses not to participate, a non-starter report is issued by the Authority; thereafter applicant can approach the Commercial Court. For the cases involving urgent relief, the mandate of undergoing pre-institution mediation is dispensed with. The biggest drawback of mediation is considered to be the lack of enforceability, and the amendment took care of this by way of sub-section (5), which confers the status of an arbitral award to the settlement arrived in such mediation.

46. *D.M. Corporation Pvt. Ltd. v. The State of Maharashtra and Ors.* 2018 (4) MHLJ 457.
47. *Prasar Bharti* (n. 39).
48. (2018) 14 SCC 715.

Participation in mediation might not ensure the settlement of dispute but surely allows the parties to invest a common thought and space for a mutual ground to settle their disputes. Inculcating such provisions in the statutory texts of nations promote a guided yet flexible atmosphere for resolving disputes.

Mediation (as a part of the Act) envelopes the aspects of confidentiality and tailored procedural approaches where the parties mutually derive a solution. Away from the public gaze, the parties can, with confidence and without worrying about irreparable loss due to disclosure, talk it out in order to resolve disputes. Additionally, advantages like the flexibility of the procedure and preservation of business relationships also follow. It provides for a "level playing field" to the disputing parties.[49] Also, traditional litigation often burns a hole in the wallets of the parties as it has the reputation of being an expensive one whereas mediation can provide a business-oriented solution. In a study relating to commercial litigation[50], it was found that the majority of cases that were disposed of were either due to the settlement amongst the parties or because of withdrawal by one of them. This buttresses the potency of ADR and points towards the lack of will to adversely litigate.

Statistical Analysis

One of the key aspects of the Commercial Courts Act was the inclusion of section 17, a provision that required the maintenance of statistical data as to the number of suits, applications, writ petitions and appeals before Commercial Divisions, Appellate Courts and Commercial Courts on monthly basis and also mandated the publishing of such data on the respective High Court websites.

A study of the empirical data regarding pre-institution mediation of commercial cases gives out a mixed picture. The data made available by DSLSA (Delhi State Legal Services Authority)[51], does not show a very happy picture and leaves much to be desired. The data dealing with the period from July 2018 to March

49. Blackman, S, H. & McNeill, R. M. (1998). 'Alternative Dispute Resolution in Commercial Intellectual Property Disputes' 47 (1709) The American University Law Review. < https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1415&context=aulr> accessed 11 June 2021.
50. Ameen Jauhar and Vaidehi Misra, 'Commercial Courts Act, 2015: An Empirical Impact Evaluation' (Vidhilegalpolicy.in, 2019) <https://vidhilegalpolicy.in/wp-content/uploads/2019/07/CoC_Digital_10June_noon.pdf> accessed 20 June 2021.
51. 'Statistics - Delhi State Legal Services Authority' (Delhi State Legal Services Authority, 2021) <http://dslsa.org/statistics/> accessed 13 June 2021.

2019 shows that a total of 1788 applications were received, after issuing notice, 1032 applications were disposed of as non-starter (this is a term used for a situation where the other party does not appear for the mediation. 15 applications were referred to mediation out of which 7 were settled amicably by the parties whereas 1 was not settled; the data belonging to the period from April 2019 to June 2019 shows that 1457 applications were received, out of which 1244 were declared as non-starters while 32 applications were referred for mediation. Out of the said 32 applications, 8 were settled and in 3 applications settlements could not take place. Further, from July 2019 to September 2019, 2031 applications were received, out of which 1690 were non-starters and 41 were sent for mediation and a settlement in 13 of them was witnessed, with 21 of them remaining unsettled. A glimpse of the period from October 2019 to December 2019 goes on to show that the authorities received 2081 applications in total with 1870 remaining non-starters and 17 sent for mediations. Out of these 17, more than 50% i.e., 8 applications were settled in mediation and 3 remain unsettled.

An analysis of the above data has to be understood from a broader perspective. Although it is premature to comment, published data presents an image of mere shifting of the burden from the judiciary to the Legal Services Authorities. It is seen that the majority of the cases are being sent to the court as non-starters due to the lack of the desire of one party to mediate. Since it is not mandatory for both the parties to participate in the proceedings, the very purpose of providing an alternative remedy is defeated. It is also seen that where the applications are sent for mediation, a very promising result is noticed in as much as there has been a settlement in almost 40 % of the cases.

Conclusion and Suggestions

Commercial activities play a pivotal role in making any economy grow and flourish. They have a bearing both domestically as well as internationally and it is thus important that any disputes concerning them are dealt with at war footing, in a very efficacious manner. This has become the need of the hour due to the exacerbation that took place because of the COVID-19 pandemic. Statistics from the World Bank's Ease of Business Survey and National Judicial Grid are sufficient to exhibit that there is a pressing need to address the issues associated with the speedy and effective settlement of commercial disputes. With the veritable increase in commercial activities and a concomitant rise in disputes connected to them, the establishment of specialised courts such as Commercial Courts has created a distinct environment to cater to dispute resolution. The Act, as already discussed, was envisioned as a panacea to the enormous case pendency plaguing the Indian judiciary and was framed for boosting India's international stature in the field of commercial litigation. It has still left much to be desired.

In order to make this noble legislation truly a success story, other important factors such as proscribing passing of interim and injunctive orders in a mechanical manner, timely delivery of judgments after concluding arguments and conducting and adhering to case management hearings must be seriously considered.[52]

The idea of mandatory pre-institution mediation seems very promising but it needs to be followed in letter and spirit, and participation though voluntary should not be allowed to become a dead letter. A possible solution to this can be making imposition or reduction in costs on/ to the party, at the time of the outcome of the case, contingent upon participation in such mediation. This will have a dual effect of deterring the faulting party and encouraging the genuinely aggrieved one.

Another method of defeating this noble provision is clandestine drafting to include urgent relief in plaint; the courts need to be vigilant about this and not buy it at its face value. There is also a need to simplify the procedures involved in instituting the case.

It is also pertinent to mention that if the principle of 'cost following cause' is applied rigorously, it will have manifold benefits viz. reduction in vexatious litigations as it has a direct bearing on commercial interest, filtering out frivolous appeals and re-imbursement of actual costs to the deserving party.

Despite the enactment, high pendency of cases can be seen. This is also attributable to the insufficient strength of judges. A survey[53] shows that the judge to population ratio in subordinate courts is 1:75102 i.e., 1 judge per 75102 litigants. At the High Court level, the situation is much worse with 1 judge over 2,24,364 litigants. Pertinently, the Hon'ble Supreme Court of India has recently[54] pointed out that vacancy at both the high court and the subordinate court shall be filled up expeditiously but unfortunately the judgment has not followed in its

52. Shubham Saigal Faisal Sherwani, 'Of Flawed Considerations And Failed Legislations: Observations From The Implementation Of The Commercial Courts Act, 2015' (Bar and Bench - Indian Legal news, 2021) <https://www.barandbench.com/columns/the-commercial-courts-act-2015-notes-on-considerations-and-observations-from-its-implementation> accessed 11 June 2021
53. Dushyant Mahadik, 'Analysis Of Causes For Pendency In High Courts And Subordinate Courts In Maharashtra Department Of Justice' (Doj.gov.in, 2018) <https://doj.gov.in/sites/default/files/ASCI%20Final%20Report%20Page%20641%20to%20822.pdf> accessed 30 May 2021.
54. *M/S PLR Projects Pvt. Ltd. v. Mahanadi Coalfields Limited* (2020) 9 SCC 452.

letter and spirit. It is high time that more judges are appointed so that an arrangement can be made whereby some judges are exclusively dedicated to hearing commercial disputes (unlike what is happening currently at the High Court level where the same benches hear non-commercial disputes as well). This would not only expedite the resolution process but also help in achieving specialised knowledge that is essential to deal with technical-commercial cases.

Last but not the least, it is the need of the hour that conundrums posed by the lack of settled positions, as seen above, about the maintainability of writ petitions before Commercial Divisions and scope of proviso to Section 13 of the Act are resolved for finality.

Navigating from Commercial to Altruistic Surrogacy: Contested Considerations in Human Rights Discourse

Namita Singh Malik* and Smita Gupta**

Abstract

Nature has bestowed the competency to procreate a life only to women. Women had been performing this labour of love with great joy, dedication, and sacrifice. Unfortunately, owing to certain physiological reasons every woman is not blessed with fertility. In such situation few people explore alternate ways to continue their progeny; one such measure is surrogacy. Feminist and critics have viewed surrogacy as labour- gendered, exploitative, and stigmatized. In spite of criticism, surrogate parenting has evolved as a popular solution for procreation.

The practice of surrogacy raises complex web of socio legal concerns. At one end it is seen as praiseworthy act of generosity (altruistic surrogacy); on the other it is called as calculated act of economic necessity (commercial surrogacy). Many authors have dealt with contested claims favouring one and rejecting the other. One side, Karandilkar (2014) argues that commercial surrogacy is exploitative of poor women & Breecher B. strengthening this contention further by arguing that commercialization of surrogacy will create a pool of surrogates on the model of working-class prostitution and shall be banned. On the other side, Sharmila (2017) wrangle and rejects idea of permitting only altruistic surrogacy with the bone of contention that "families are never quite safe havens; rather they are sites that endanger gender subordination".

Paper examines surrogacy through the lens of socio legal morality analysing contested considerations of human rights discourse such as feminism, slavery, privacy, freedom, liberty, and exploitation. Paper traverse through evolution and development of commercial surrogacy in India; further probing into

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exploitative and philanthropic argument of commercial and altruistic surrogacy, respectively. Paper concludes with possible limitations and success rates of permitting only altruistic surrogacy in India.

Key words: - *Altruistic, Commercial, Exploitation, Human Rights, Surrogacy.*

Introduction

Fortunate are those couples who are blessed to bring their little bundle of joy comes to life naturally. Late marriages, increasing stress levels, hormonal imbalances could lead to infertility. Having own offspring may seems like a distant dream to such couples.

Such helplessness pinches but it does not succeed in burying parental aspirations. The urge to become a mother, pushes them to search for alternative methods of conception like Intra-Uterine Injections (IUI), Artificial Reproductive Technology (ART), In-Vitro Fertilisation (IVF) etc. These alternative methods are the silver lining for infertile couples. The global reproductive environment is completely revolutionized with advanced medical science methods of embryo transfer, donor insemination etc.

Surrogacy is defined as a "practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth" (Report, 2019). As per this, those childless parents (intending parents) who are unable to procreate on their own and surrogate mother agree that she shall legally and physically transfer the child to the "intending parents" without retaining any parental obligations. Feminist and critics have viewed surrogacy as labour- gendered, exploitative, and stigmatized. It is also coined as reproductive prostitution, reproductive slavery, or factory method of childbearing. Surrogate mothers are called as paid breeders, biological entrepreneur, or human incubators (Andrews, 1988) and the child conceived is called as chattel or merchandise.

Surrogate parenting is a "popular solution to the problems of female sterility, infertility, and disability" (Allen, 1990). In account of the problem this seems to be better option for able bodied women to become mother without any impediments. In all cases of surrogate parenting, surrogate mother agrees to handover the custody of the child born to intending parents before beginning of any kind of artificial insemination. Women could become surrogates for altruistic or commercial reasons. Surrogacy can be of two kinds: traditional or gestational. "For traditional surrogacy, the surrogate is the child's genetic mother, whereas for gestational surrogacy, the surrogate is implanted with another woman's fertilized egg" (Amrita, 2009) (Hammarberg, Louise, & Petrillo, 2011).

There is no uniformity as to position of surrogacy in the world. In few countries' surrogacy is legal[1] ; in few countries it is illegal[2] and in many other countries unregulated [3].

Financial reasons have caused countries to initiate for better regulating practices in assisted reproductive technologies to establish a non-exploitative system. For instance, "Australia permits only altruistic surrogacy, and the surrogate cannot use her own eggs. Additionally, compensation can only take the form of medical expenses, legal advice, counselling, travel costs, loss of earnings, and premiums for health, disability, or life insurance" (Hammarberg, Louise, & Petrillo, 2011).

Moreover, there is no international conventions dealing with surrogacy laws or laws regulating motherhood and reproduction, but an indirect reference can be made to provision of Universal Declaration of Human Rights. It is imperative to engage Article 23 (1) & Article 25 (1) of UDHR 1948 in this dialogue.[4] The practice of surrogacy raises complex web of socio legal concerns (Allen, 1990). Issues related to commodification of babies and their legal status, enforceability of surrogacy agreements, exploitation and human rights of surrogate mothers, rights and duties of commissioned parents, socio legal environment and government rights to intervene with private procreative rights poses serious deliberations (Whiteford & Poland, 1990).

The perception of people regarding altruistic and commercial surrogacy also varies; Altruistic surrogacy is looked up as a generous praise worthy act, whereas commercial surrogacy is looked down as morally objectionable & miserable calculated act. Paper examines exploitative component in commercial and altruistic surrogacy with specific reference to proposed changes in law regulating surrogacy in India.

Methodology

This is a conceptual paper beginning with introduction and literature review. I have reviewed the extant literature that addresses contemporary issues on surrogacy and related dimension. The further scheme of this paper is divided into five parts, starting with examining surrogacy through the lens of socio legal morality analysing feminism, slavery, privacy, freedom, and liberty. The second part of this paper traverses evolution and development of commercial surrogacy in India. Thereafter paper analyses exploitative nature of commercial surrogacy; In next part I critique the Indian government proposal to allow only altruistic surrogacy. The concluding part outlines the possible limitations of success rates of introducing altruistic surrogacy in India.

Contested Consideration

Surrogacy can be contested in the backdrop of many consideration to several human rights concepts which intersect and overlap in meaningful deliberations. Here I argue surrogacy through the lens of socio legal morality analysing feminism, slavery, privacy, freedom, and liberty.

Surrogacy and Feminism

The issue of surrogacy stems not only from medical roots, but also touches upon feminist, social and ethical issues. Feminist jurisprudence asserts that reproduction and motherhood requires mother to put many of her things on backseat for welfare of her children whereas husbands view that women is morally responsible for it in comparison to any other alternatives.

Liberal feminists defend the practice of renting womb as they argue that women should have absolute right over their body, mind, and emotions (Pande, 2015). Perhaps, "Surrogate mothers, or womb mothers, in India navigate much more than their identity as mothers" [5]. They exist with the new identity in a new world which is considered to be contentious and labelled as unnatural and unethical.

If surrogate mothers are categorised as reproductive labour, then the light is thrown on paradoxical feature of this gender. Commercial surrogacy advocates propose argument that as different forms of labour like sex work or domestic work same could be surrogate mother. It is additionally stated that commercial surrogates' women use their body and its parts like womb, breast as instruments of labour. Where on one hand it challenges these traditional dichotomies simultaneously reifies them (Pande, 2015).

Surrogacy and Slavery

Delaney states that opposition to surrogacy comes from reflections in against to general notions of human morality and could leave to slavery (Willis, 2008). "The characteristic feature of slaves is that they lack self-ownership. Slave owners sell, use, and dominate" (Willis, 2008). Similarly, in case of surrogacy, commissioning parents could restrict and regulate certain human rights of surrogate mothers, however it cannot "ignores the enormous scope of control the slave owner exerts over the slave, a feature quite lacking in surrogacy arrangements". This kind of assumption implies that surrogates, commissioning parents, facilitators such as doctors and legal advisors indulged in whole process are immoral people, facilitating women to become slaves for intending parents. Interpreting this logic in extreme, even judges like Noel Keanne (Keane & Breo, 1981) and Judge Sorkow of the Baby M case (First Surrogacy Case, 1988) who help draft and enforce surrogacy agreements, are parties to immorality. Labelling surrogacy as slavery is not justified and so it is condemned on moral and policy basis.

Surrogacy & Fundamental rights to Privacy, Freedom & Liberty

Under the modern jurisprudence of constitutional privacy, the Constitution embodies protection for certain rights such as right to privacy, freedom, and liberty. Such rights touching upon every aspect of human experience are being upheld by interpretation of constitutional provisions (Justice K.S.Puttaswamy V Union of India, 2017) [6]. Right to reproduction is also upheld as fundamental right guaranteed by constitution (Baby Manji Yamada V Union of India, 2008).

These include the right to procreate, to use contraception and, under Roe v. Wade (Roe V Wade, 1973), to obtain medically safe abortions.

One such concern raised by human rights activist is regarding right to freedom and liberty of surrogate mothers. Observations from several accounts have reflected the condition of "surrogate hostels" where women are camped in clinical compounds (Panitch, 2013). Women are under close observation in these hostels like their meals and health etc. Even these women who are surrogate mothers have to face controlled contact with their own families and children. Such hostels undergo various problems, e.g.: poor quality of food and water, deteriorated sanitation facilities and hygiene are common. Sadly, clinics easily differ from their role as health maintenance suppliers to mere surrogate agents, encroaching upon fundamental rights of a human being.

Evolution of Commercial Surrogacy in India

In India, commercial surrogacy was legalized in 2002 (Chang, 2009), and is among the first country to have a thriving national and trans-national commercial surrogacy industry (Chang, 2009). Over the course of 18 years, the Indian surrogacy industry had become a US$2.3 billion a year business (Shetty, 2012). India regularly features among the top most destination for medical tourism with other popular locations including Costa Rica and Thailand (Alleman, 2010). This was possible because Indian medical industry was able to provide medical facilities at low cost in comparison to global consumer base (Parks, 2010). Precisely there have been a large number of U.S. citizens who were motivated to travel India for varied infertility. Childless couples have been travelling from different countries like United States and United Kingdom to India which has majority of English-understanding population, for the purpose of availing low-cost advanced medical technologies (Parks, 2010).

Minimum state interference and vague regulating laws, have caused India to be a great destination for flourishing commercial surrogacy. "As a consequence, intended parents are able to take advantage of the client-friendly policies of private clinics and hospitals, where doctors like pimps are willing to offer options and services that are banned or heavily regulated in other parts of the world" (Corea, 1987).That's why in The Mother Machine, fertility clinics have been described as reproductive brothels.

Between 1990- 2014 India became a "hot spot" for transnational surrogacy due to the Indian government support for an unregulated surrogacy business to increase gross domestic product growth. Government has adopted policies such as offering subsidies for clinics and hospitals to ones treating overseas patients. This has led to encouragement and boost in medical and reproductive tourism to India (Deckha, 2015). Not only does India have advanced medical technology and traditionally high standards of medical care, the cost of medical procedures is much lower than the cost of the same procedures in other developed countries like USA, UK & Canada (Deckha, 2015).Instead of formal regulations, the processes were governed by market forces, which was most attractive to

international customers who wish to avoid legal hurdles and save money.

"Despite the growing international demands for Indian surrogate mothers, the government never fully addressed the social, economic, and political conditions of such women. Due to lack of regulations, fees, policies, and surrogacy contracts varied from clinic to clinic" (Bailey, 2009). In India commercial surrogacy is proposed to be banned. Several legislations[7]. have been tabled in past a decade to put a complete ban on commercial surrogacy including prohibition on international surrogacy.

In India, "The Assisted Reproductive Technology (Regulation) Bill of 2014 was passed in response to growing concerns of ethical exploitation of surrogate mothers and was designed to provide comprehensive regulation of the industry for the first time. However, it instead banned the use of surrogacy for one of the largest consumer groups (international intending parents) and directly affected women who benefited financially from surrogacy". The successive surrogacy regulation bills of 2016 and 2019 continues to ban international intending parents & commercial surrogacy.

The present position of surrogacy laws is that the law bans commercial surrogacy and allows only altruistic surrogacy[8]. The Indian government made certain change incorporating all recommendations made by Rajya Sabha select committee broadening the ambit of beneficiaries of Surrogacy by means of approving Surrogacy (Regulation) Bill 2019 (Report, 2019). The modified bill is allowing any women (either close relative or not) to be a surrogate mother and proposed that widows and divorced women can also be beneficiaries besides infertile couples. Although in the new proposed law, only Indian couples, with both partners being of Indian origins, can opt for surrogacy in the country. This bill is yet to be tabled in second half of the budget session but is on hold as the entire working of parliament is affected due to Covid 19 pandemic.

Is Commercial Surrogacy exploitative by nature?

A global observation on surrogacy reveals that commercial surrogacy is banned in most of the civilized and developed nations of the world. This condemnation raises questions as to the morality of commercial surrogacy. Since the popularization of commercial surrogacy, stakeholders have raised concern in relation to possible exploitation and coercion of surrogate mothers (Deonandan, Green, & A, 2012).

In order to analyse nature of exploitation validity of consent plays a major role. Commercial surrogacy is exploitative in a case where surrogate consent is invalid. Argument is proposed that not all cases of under reward, are cases of exploitation. For instance, a poor person in extreme necessity, to make his family needs meet, works in a factory for 100 rupees, is both a case of underpaid and exploitation. Where in opposite to it, a wealthy person who volunteered his entire one day working of Rs.100 to charity, will be categorized as rewarded but not exploited. In both the cases, nature of consent is different. While in previous

case, consent is doubt when only option left for doing an underpaid job is starvation whereas in the subsequent case it is not problematic when consent is to underpayment.

This is underpinning the argument of consent in cases of exploitation. Breecher has pointed out arguing against commercialisation of surrogacy in following words: " A pool of surrogates could well be created on the model of working class prostitution ; women would come to be imported from poor countries for the purpose of serving as surrogates" (Breecher, 1987).

It is interesting to observe that the primary motives of becoming surrogate mothers in contextual. In western setting, where countries are more developed surrogate mothers' motivations are often altruistic while in developing country like India, financial factors are mostly predominant leading to concerns for exploitations well (Imrie & Jadva, 2014). Wikinson (2016) pointed out, "in most cases Intending parents were from developed countries and surrogate mothers from developing countries like India" (Wilkinson, 2016). Financially in India commercial surrogates are highly underpaid keeping in view of commissioning parents benefit and the risk involved to the surrogate". Indian surrogates are paid, on average, between US$3,000 and US$5,000, compared to U.S. surrogates who make between US$20,000 and US$30,000" (Bailey, 2009). However, the salary generated from commercial surrogacy is often equivalent to 10 years of typical salary among poor uneducated women in India (Shetty, 2012). This amount is substantially more in comparison to what a poor woman will earn in her full-time employment. However, the payment for the services is justified but the point of consideration is that it could coerce women to take decision for being surrogates in compulsive situations.

Another way to look at it is that not in all cases of commercial surrogacy, exploitation could be seen. There could be a situation when a surrogate may not get harmed by the exploitation. Indeed, she may be benefitted from it. Within the category 'exploitation', two possibilities persist; firstly (where there is a harm to the exploited party) and secondly in mutually advantageous exploitation (where both parties benefit). It has been observed that the relation between harm and benefit varies from commission parents to surrogates', which poses an issue against principle of distributive justice.

To sum up this argument, one's belief in extent of exploitation stems in their understanding of distributive justice. Minimalist justice perception of the person is likely to take the exploitation view whereas, strong egalitarian account view is likely to see widespread exploitation phenomenon (Wilkinson S. , 2003). For instance, in a case where the surrogate mother faces risk to life and bears pain and suffering disproportionate to money paid to her and ease of parenting to commissioning parents, it shall speak volume against principle of distributive justice.

Is commercial surrogacy – an act of economic necessity or noble cause?

The issue related to driving force to become a surrogate mother is widely contested. "The motivations for becoming surrogate mothers were clearly financial in nature rather than altruistic" (Karandikar, Gezinski, & Carter, 2014). Karandikar stands in opposition to Blyth, which argues that the primary motivation for becoming surrogates is to provide aid to infertile couples or social welfare (Blyth, 1994). Most of the empirical research's highlight that poor women choose surrogacy due to overwhelming life burdens they experience in life (Karandikar, Gezinski, & Carter, 2014). "Financial gain was the predominant opening response when women discussed their motivation for pursuing surrogacy. The inclusion of surrogacy as a noble act can be viewed as a moral justification for a choice already made for financial reasons" (Karandikar, Gezinski, & Carter, 2014).

Whether commercial surrogacy should be banned?

There have already been lot of empirical research conducted in recent past, contesting ban of commercial surrogacy. Huber, Karandikar & Gezinski conducted study in India (Gujarat) which raises contradictory concerns over ban on commercial surrogacy (Huber, Krandikar, & Gezinski, 2017). It discusses narratives of 25 surrogate mothers, who are against ban imposed on commercial surrogacy. Most of them were home makers, unemployed and those who were employed, they were in low menial jobs - as cook or cleaner and many times in the same clinic where they were working.

Huber, Karandikar & Gezinski study mention narratives given by so-called exploited women, which revolve around three main questions "(a) Perception of surrogate mother's about surrogacy; (b) consequence of the ban on surrogate mothers, International Parents & Fertility clinics; & (c) Long term economic results of surrogacy".

All participants expressed their contempt for the ban on international surrogacy as per the study of Huber, Karandikar & Gezinski. With united voices they all reiterated that there should be no ban so that the bridge between international Intending Parents (IPs) and Indian surrogates' is un-hurdled. They all have same opinion that the practice is quite beneficial to all wherein intending parents get children and surrogates' get financial satisfaction and doctors in between also get business. In another study, most of the participants in the study were against the ban on commercial surrogacy[9]; while few have opined that there can be other better ways to implement some kind of public regulation on surrogacy in contrast to complete ban[10].

An argument which is generally proposed against banning trans-national commercial surrogacy stems from the fact that international Interested parents have exploited context of poverty which does not allow them to provide better care for the child, therefore surrogate women must place the child with the Interested parents (Wilkinson S. , 2016).

Navigating from Commercial to Altruistic Surrogacy: Contested Considerations in Human Rights Discourse

Shetty state in his study that majorly surrogates belong to weaker sections of society and have weak financial backgrounds and so are motivated for economic benefits (Shetty, 2012). The strongest argument against allowing commercial surrogacy is, if commercial surrogacy continues to flourish, poor women will fell prey into the hands of surrogate agents who will exploit the biological resource of these women making them vulnerable physically and psychologically. On top of it may add on to trafficking of poor women for this cause.

Scenario in western countries is different where psychological, physical, and legal risk in regard to surrogacy has largely been restrained by intensive counselling and support sessions for surrogate mothers and intending parents (Anttila, Wennerholm, Loft, Pinborg, & Bergh, 2016), whereas in India the possibility of having such meaningful counselling session with surrogate mothers is far less. Arora in her study, conducted in Gujarat, has mentioned about a narrative of gestational surrogate shares that the social stigma around surrogacy compels them to live in gestational dormitories for at least 9 months, leaving back their family and homes. In this process, they suffered mental harm and depression due to lack of trained mental health personnel in rural areas, where most of the surrogates come from (Arora, 2012).

Is Non-commercial surrogacy non-exploitative in nature?

It is a common belief of the society that women are socially constructed as caring, loving, compliant and selfless. "All endorsement surrounding altruistic surrogacy is premised on the notion that women are expected to provide free biological and social reproductive labour, but only within kin networks". The proposed Indian law on Surrogacy (Regulation) Bill 2019 permits altruistic surrogacy only for those childless Indian heterosexual couples who have genuine medical reason and have been married for more than five years[11]. It is noted that childlessness or infertility of such women does not count whose husband has children through prior marriage or relationship. As per the Surrogacy Bill, surrogate mother must have given birth to a healthy child prior to her surrogacy and must be a relative of the couple[12]. Further mentioned in the Bill that women the age group of 25-35 years can be a surrogate mother once in her lifetime but should not accept any monetary compensation in exchange of it because she provides gestational services out of kindness and selflessness. The select committee of the Rajya Sabha has proposed replacement of this term 'close relative' with 'relative' as the word 'close' is not legally defined and constructed in the (Regulation) on Surrogacy Bill 2019.

Few analysts identify a gender bias in proposed surrogacy law, providing different rights for male and females, wherein single female (both divorce a widower) could opt for surrogacy, but males are denied this right. Krajewska & Cahill in their study on single men's surrogacy and fertility rights author argues that single men are absent subjects in law, they are invisible in the area of assisted reproduction and surrogacy (Krajewska & Cahill-O'Callaghan, 2019).

However, Krajewska & Cahill argues that changes in human rights law has helped construct single men as subjects of law in English courts. But in India single men are ruled out in proposed surrogacy law.

Ban on commercial surrogacy seems to be revolutionary step by Indian Government as it curtails reproductive exchanges corrupted by money, but I disagree here challenging that its replacement with altruistic surrogacy is not going to work and nor it would be rewarding for most of the women. Select Committee report on Surrogacy Regulation Bill 2019, which was presented in Rajya Sabha on 25th February 2020 suggested to introduce compensated surrogacy instead of altruistic, (Report, 2019). Insight in drafting of the Surrogacy (Regulation) Bill 2019 reveals that lawmakers have proposed altruistic surrogacy with an internalised perception, that, work performed by women must be out of love and therefore can be even termed as 'labour of love'. If women had been performing this duty without compensation since ages, then why not now? These are transformational times where the society is continuously on changing mode, where economics play most crucial role in shaping our choices from 'living' to 'giving'. Women in present times (especially upper class & middle class) due to access to education and knowledge have become more conscious of themselves. Women under 30s are on body & beauty conscious round (all thanks to body shaming surrounding unfit women) with highly driven by career goals, marriage, family, children have taken a back seat in their life, as women in general are delaying their marriage plans seeking to settle first in their career.

Further, in present times, especially in urban and semi urban areas, many women are engaged in economic activities to run or support their household. Pregnancy comes with its own set of physical and psychological restrictions which could hamper work life of women engaged in economic activities. In such scenario, women coming forward to become surrogate mothers without any compensation seems to be in doubt.

People advocating for Altruistic surrogacy propose that if surrogate can be within the extended family members, then it shall remove the taint of money and will also provide protection from commercial brokers. This notion is backed by two arguments: Firstly, exploitation happens only in commercial agencies and infertility clinics. Secondly, families are safe havens for women.

In response to the first argument, it is viewed that undoubtedly commercial agents and infertility clinics have exploited the surrogates, but the nature of exploitation and benefit accrued are financial in nature. Instead of putting a blanket ban of commercial surrogacy, regulations should have been put in place to protect interest of this workforce.

For Second argument, it seems to be fully unconvincing assumption that family are safe haven for women. On the contrary, realistic picture sites that substantial inequalities and domestic violence materialization is within the family for large number of women around the world. Moreover, families become the are sites that engender gender subordination. Rudrappa (Rudrappa, 2017) argues that by

"posing altruistic surrogacy within kin networks as the path to women's welfare, the state reemphasised an idealized concept of the traditional, heterosexual family that prescribes strict gender norms of what is expected of men, and what is expected of women where gender norms are perceived as innate biological manifestations" (Rudrappa, 2017). Hence, the acts of childbirth, child-care, child rearing, gestation are not recognised as labour practices instead taken for granted.

State moves to push gestation back into the family, it has effectively deregulated surrogacy. Even the proposed law on surrogacy in India does not include any protective measures due to the fact that all exchanges are idealized as being based on love, mutual respect, and reverence for motherly efforts. It is argued that altruistic surrogacy is much more harmful to women because it has led women and her reproductive capacities within the families where they shall receive no remuneration for gestation. Therefore, it is viewed that altruistic surrogacy is more exploitative in nature for women, which is certainly not a surprising development.

Limitations

The study focuses on exploitative aspect of commercial and altruistic surrogacy and touches notion of feminism, slavery, privacy, and freedom in relation to surrogacy. It opens up research directions for all those who wish to explore each dimension in relation to surrogacy. This study can be a clue for conducting empirical research on probable success rate of allowing only altruistic surrogacy in India. Further there could be more deliberations on nuances of commercial and altruistic surrogacy making the study more comprehensive. The linkages afforded in the study can be taken up for further exploration.

Conclusion

Surrogacy must be observed as an appreciable act of magnanimity and commitment. It can generate mutual distributive social and personal benefits. The swaying pendulum question whether Indian state, will endorse commercial surrogacy or bans surrogacy? but the fundamental basis of the argument is that reproductive labour of women must be acknowledged as "embodied, mindful activity" alternately to an innate activity of women as a daughter, a wife or a mother. Approach of Indian government of distancing itself, from the commerce of gestation and handing it over to realms of "private sphere of family" wherein, women itself is treated as gendered subjects of family, caste, and community is unagreeable. It is advocated that if the government is concerned for protection of surrogate mothers' rights, then it must give legitimate identity to surrogacy and expand the kind of protections in equivalence to working citizens of democratic societies. "This would mean health insurance schemes, right to unionize, form collectives and cooperatives, protecting the mothers' collective bargaining rights on wages and work conditions".

It will be a demotivating statement to state that absolute ban on commercial surrogacy will deepen exploitation, moreover, permitting only altruistic surrogacy will be situation more worrisome, wherein women shall have no credit for any financial compensation in exchange to their biological reproductive labour. It will be doubtful that women will come forward and agree to be surrogate mothers via altruistic surrogacy. It is suggested that legislature shall adopt the recommendations proposed by the Select committee of Rajya Sabha replacing altruistic surrogacy to compensated surrogacy in interest of all stakeholders.

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Notes

1. In countries like Ukraine, Russia, Kazhakstan, Israel, India, Georgia, UK, Greece, Astonia, Armeina , surrogacy is legal fully or partially. (In US, legal situation for surrogacy varies greatly from state to state).
2. In countries like Spain, Australia, China, Denmark, Turkey, Switzerland, Norway, Pakistan, Malaysia, Italy, France, Germany & Austria both commercial & Altruistic surrogacy is illegal.
3. Surrogacy is unregulated at Columbia, Iran, Belgium, Greece, Japan, Per, Poland, Nigeria, Romania, South Korea, Sweden, Venezuela.
4. Universal Declaration of Human Rights, 1948, Article 23 (1): Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

   Universal Declaration of Human Rights, 1948, Article 25 (1): Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

   Universal Declaration of Human Rights, 1948, Article (2): Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
5. The origin of the term 'surrogacy' and its social and political implications have been widely discussed by feminists (Rothman, 1989; Snowdon, 1994). Critics have argued that the terminology 'surrogate' suggests that the womb mother is somehow less than the genetic or social mother. The respondents in this study refer to one another as 'surrogate mothers', and when explained what the term 'surrogate' meant in English, most agreed that the description was fitting.
6. A nine-judge constitutional bench of the Supreme Court unanimously declared that individual privacy is a "guaranteed fundamental right". Judgment also specifically recognised the constitutional right of women to make reproductive choices, as a part of personal liberty under Article 21 of the Indian Constitution judgment (Justice K S Puttaswamy v Union of India 2012a: para 72, 2012b: para 46, 2012c: para 38). The bench also reiterated the position adopted by a three-judge bench in Suchita Srivastava v Chandigarh Administration (2009), which held that reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth, and to subsequently raise children, and that these rights form part of a woman's right to privacy, dignity, and bodily integrity.
7. Assisted Reproductive Technology Regulation Bill of 2014; The Surrogacy (Regulation) Bill, 2016; The Surrogacy (Regulation) Bill, 2019, (It is noteworthy here that none of the bill could be passed by parliament. On 26 February 2020, the Cabinet approved the Surrogacy (Regulation) Bill after incorporating the recommendations of a Rajya Sabha Select committee. The bill was planned to be tabled in budget session but due to pandemic Covid 19, all parliamentary work is suspended.
8. There are two types of surrogacy arrangements: Commercial Surrogacy & Altruistic Surrogacy. (a) Altruistic: where the surrogate mother is the one, who cares for the intended person or couple and due to her concern in the interest of the person or couple, decides to help them to become parents. Altruistic surrogacy is based upon care, concern and the same has no space or scope for monetary compensation. In this arrangement the surrogate mother receives no financial rewards for her pregnancy or the relinquishment of the child to the genetic parents except for essential medical expenses; and (b) Commercial: where the surrogate mother is paid over and above the necessary medical expenses.
9. Selected Narratives of participants opposing ban on commercial surrogacy: Kavita alleged: " I think that the government should lift the ban and give a chance to these women, as well as the others, involved in this process . . . because it's for a good cause. Everybody is benefited by this, the doctors who are involved, the couples who cannot have their own children, and women like us who cannot earn enough to feed our own children"; Tarla shares: . . . " The government should lift this ban. Everybody is mutually benefited from this practice. We come from a small village where there is no source of major income.By the means of this practice, we earn a large amount and can look after our financial needs." ; Shilpa argues:" Poor people like us have been most affected. We have no major source of income. With the surrogate money, we can buy a house for ourselves; invest in our children's future...."; Binky mentioned : "I would just like to say that the ban should be lifted. There are so many other women like me, who work as servant maids and are exploited at their work places. This is a better practice wherein they can earn well and look after their families. . ."
10. Selected Narratives of participants opposing ban on commercial surrogacy, Diksha said: " I feel that this is completely wrong on the government's part and that surrogacy should not have been banned. I feel that there should be

rules and regulations pertaining to it but it shouldn't be banned altogether. . . . The government should reconsider their decision about the ban since there are women who are being affected by this, such as the widows, divorced, uneducated women . . . and they are at a loss because the standard of living is increasing every day and by the means of surrogacy, they can at least assist themselves financially. . . . They can certainly enforce rules and restrictions to regulate this practice, but they should lift the ban".

11. The proposed law Surrogacy (Regulation) Bill 2019 allows widowed women and divorce women to opt for surrogacy, whereas Gay couples, unmarried couples, men, foreigners, and married couples with children (either biological or through adoption) are specifically named as ineligible for surrogacy. The proposed law is highly objected by LGBT rights activist, as curtails the rights of gay couples.
12. The Surrogacy (Regulation) Bill, 2019, (Chapter 4 dealing with regulation for surrogacy & surrogacy procedure) See Sec. 4, Clause 3 (b) deals with the surrogate mother is in possession of an eligibility certificate issued by the appropriate authority on fulfilment of the following conditions, namely:—

(I) no woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise.

(II) no person, other than a close relative of the intending couple, shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act.

(III) no woman shall act as a surrogate mother by providing her own gametes.

(IV) no woman shall act as a surrogate mother more than once in her lifetime:

Provided that the number of attempts for surrogacy procedures on the surrogate mother shall be such as may be prescribed; and (V) a certificate of medical and psychological fitness for surrogacy and surrogacy procedures from a registered medical practitioner.

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Promoting Business through the Protection of Human Rights: A Perspective

Aparna Srivastava and Mudassir Fatah* **

Abstract

In the contemporary world, human rights issues related to corporates have gained enormous importance with enhanced globalization globally and the gradual prominence of the corporate world. Worldwide, transnational companies have become extraordinarily powerful and wield lot of influence on different spheres of life. At times, the turnover of these companies is higher or comparable to the Gross Domestic Products of the countries they are operating in.

After independence the Indian economic policy was majorly influenced by its colonial experiences. It was viewed as exploitative in nature by the leaders of India. The political leaders of the country were particularly impressed with socialist policies. Economic Policy of the country majorly inclined towards the protectionism, though it strongly emphasised on the import substitution and controlled industrialization under the states supervision. A large public sector, business regulation, and central planning were other features of the Indian economy. Like in the erstwhile Soviet Union, Five-Year Plans of India mirrored the same. Numerous industries, were effectively nationalized in the mid-1950s. Elaborate licenses were needed to set up any business in India from 1947 to 1990, which mostly involved red tapism.

In India, substantial changes took place in this regard with the implementation of the New Economic Policy in 1991 and consequent liberalization which started on 24 July 1991.

Key words: - *Business, CHRB, Human Resource Management, Human Rights, NHRIs.*

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Introduction

The core purpose of the government with the introduction of reforms in 1991 was to transform the economic system of the country, aiming to industrialize the nation and achieve high economic growth for the well-being of the people.

The newly established companies over the years include indigenous home grown Indian companies and Indian subsidiaries of foreign multinationals also as joint venture businesses. Though the growing number of companies came with number of positive things which led to the numerous developments, it simultaneously led to cases of infringement of the rights of people. The general public was affected in several ways various also. The impact varied from environmental pollution to the deprivation of their land with inadequate and or sometimes without compensation. This did affect the health and medical conditions of people also.

The gas leakage in the chemical plant at Union Carbide's in Bhopal resulted in large number of deaths in December 1984. The Bhopal gas tragedy, as it is called, also exposed the limitations of legal norms in holding the international companies responsible for numerous human rights violations.

National framework of Human Rights

India has ratified many International Covenants and Treaties which eventually have affected the human rights responsibilities of the companies, either directly or indirectly, it most importantly includes the International Covenant on Economic, Social and Cultural Rights. There are various provisions in the Indian Constitution also focussing on the same-especially the Fundamental Rights and Directive Principles of State Policy are applied in the context of the companies. Constitution of India in Part III has set out a wide-ranging list of Fundamental Rights. The list includes many rights, from freedom to form associations or unions, the prohibition of discrimination, to prohibition of trafficking in human beings and the strict prohibition on forced labour and employing the children under fourteen years of age in any factory or mine or in any hazardous environment and the protection of the citizens against any illegal detention or custody.

Constitution of India in Part IV lays down numerous Directive Principles of State Policy which are understood as being socio-economic rights. Constitution of India in Article 38 lays down the essence of the Directive Principles of State Policy as it says that the state shall not only work towards the promotion of the welfare of its citizens by promoting a social order, which majorly includes social, economic and political justice to all, but it (state) will also work to minimalize the inequality of income between citizens. To serve the common cause for the development of the public, there are other relevant Directive Principles also, like, right to adequate means of livelihood and the allocation of ownership and control on the material or natural resources. The above mentioned provisions can be enormously beneficial in determining the human

rights and the legal responsibilities of the companies for the redressal of the human rights abuses in corporates.

Apart from constitutional law, the Indian Companies Act, 1956 also comprises of numerous provisions which envisages criminal liability of the companies in various situations. Tort principles in India also form one of the strongest basis for lawsuits against the corporates or the companies for a wide range of human rights infringements. In addition to this, there are number of laws in India to protect the interest of workers, which includes the Workmen's Compensation Act of 1923, the Trade Unions Act of 1926, the Payment of Wages Act of 1936, the Industrial Disputes Act of 1947, the Factories Act of 1948 and the Employees State Insurance Act 1948 among others. An addition to the domestic laws in this area was passed in 2008, which provided the social security to the unorganized workers. The Unorganized Workers' Social Security Act of 2008 actually seeks the welfare of unorganized workers. There are also environmental laws to protect forests and the rights of the tribal communities living in the forests.

Though the legal base has been defined clearly in the constitution, number of companies have tried to use some ingenious ways for overriding the legal requirements. This obviously is being done for protecting their benefits and gains. Such cases of human rights abuses need to be taken care of and the appropriate remedies need to be found.

In India, the legal framework may at times limit the scope of legal remedies, but mostly it is actually the non-implementation or sometimes the partial enforcement of laws which gives birth to numerous problems/issues. Lack of resources also becomes a block to large number of people as all are not in a position to approach the courts. The heavy pendency of cases and the huge delay in dispersing the cases also gives a birth to numerous problems. Illiteracy as well as poverty in the country also poses a serious challenge in accessing the remedy for victims of corporate human rights abuses. Lots of the common people, living in rural areas especially are not aware adequately about their rights, thus are more vulnerable of such abuses. There are, certainly, a growing network of civil society associations which are creating human rights awareness, but the awareness needs to be improved to have some concrete outcome. This does help in seeking and obtaining a legal remedy.

Thus, the protection of human rights demands effective and strong institutions to adjudicate the rightful claims and implement orders urgently. Apart from the formal courts, there is a dire need for non-judicial or quasi-judicial mechanisms to help in protecting human rights also.

The amount of time and the expenses involved, from lawyers' fees and the fees of courts, the costs of gathering the evidence, to documentation and the travelling to different places including courts for the legal process, act as a deterrent to access to the remedy and cause significant hardships to the victims of corporate human rights abuses. Laws in India allows the companies and its officers to be held responsible, criminally as well as for specified wrongdoings.

But prosecuting the companies and or its officials is not so easy, practically various constraints does exist. The Bhopal gas tragedy shows it very clearly that how much difficult and time-consuming it could be to impose criminal liability on a company. The exercise has been resource intensive as well, even if in a situation was within the horizons of provisions of criminal law. It has been very difficult sometimes to gain access to the internal documents of corporate, which might have/be providing some critical evidence. And if a foreign parent company is involved in the case, even the courts might not be in a position to secure jurisdiction needed for solving the case.

National Human Rights Commission of India

As India is one of the fast growing economies in the contemporary world, government of India at various occasions did feel that safeguarding the human rights of its citizens should become a part of the whole business practice. The national human rights institutions review corporate and other laws within their jurisdiction for compatibility with international human rights and recommend to the government desirable changes to existing corporate laws and policies. They work with local communities to raise awareness in the business community about the inadequacy of the minimum wage and to promote awareness of the need for payment of a living wage. They also can systematically monitor the impacts of the low minimum wage on the rights of children and their families and report findings and recommendations to government.

In 1993 Government of India established the NHRC for the Protection of Human Rights of its citizens. Section 12 of the Protection of the Human Rights Act provides that the NHRC shall, have the power to take cognizance suo motu, or on a petition filed by a victim or on the orders of any court- into a grievance vis-à-vis human rights abuses. It can also intervene in any proceeding if the allegation of violation of human rights are pending before a court. Though the National Human Rights Commission may not be expressly entrusted with the task of dealing with corporate human rights abuses, but the fact of the matter is that in practice, it has intervened in some matters concerning business and human rights violations, for instance, NHRC sought a report from the Odisha government on the activities of Vedanta on its mining and refinery activities in that state.

National Human Rights Commission, India, in 2011 took cognizance of a complaint that in India about fifty thousand people die every year because of asbestos-related cancer. The petitioner requested the Commission's intervention needed to put ban on chrysotile asbestos (white asbestos), which is used on roofs and walls. The petitioner claimed that it causes numerous incurable diseases. It was alleged that the Government of India has technically put a ban on the mining of asbestos but did allow its import from other countries, the countries which do not allow it be used domestically. NHRC issued notices to the Secretaries of the Union Ministries of Chemical and Fertilizers, Health and Family Welfare, Environment and Forest, Industry and Commerce, and Labour

and to the Chief Secretaries of all States of the Indian Union and Union Territories as well and called for reports on the issues raised by the petitioner in complaint.

Moreover, the Commission issued a notice to the Chief Secretary, Government of Uttar Pradesh also, and directed him to look into the complaint of the farmers of five villages in district Aligarh regarding their land being acquired by force by the district authorities for a private company-J.P. Group, which was constructing the Model Town and the Yamuna Expressway. Additionally, farmers had also alleged that the revenue department disconnected their electric supply. It was also alleged that the farmers were not allowed cultivation on their lands and were being falsely implicated in the criminal charges and threatened by the police with dire penalties if they declined to part with their lands. The Commission also decided to send a team to these villages, Jahangarh, Jikerpur, Udaipur, Kansera, and Tappal for on-the-spot investigation and enquiry to understand the facts at the ground level.

National Human Rights Commission, India, has been working for increasing awareness among the public functionaries vis-à-vis the need for safeguarding the rights of people, particularly of those who are living in remote rural areas where the rights abuses/violations are taking place either by the individuals or by the companies for their selfish gains. Though, much more is needed. Governments at different levels need to formulate the appropriate policies and also create such environment where corporates are encouraged to work in the public interest. This can be done by keeping the long term goals in view for their growth and for the growth of the public at large. After all, if public at large is well off with their per capita income increasing, the increase in demand will increase subsequently and will eventually benefit the corporate sector.

National Human Rights Commission, India took a serious note of the Human Rights violations at workplace(s) during the Covid-19 pandemic. It also issued a detailed advisory for securing the rights of the employees. "Advisory on Impact of COVID 19 Pandemic: Business & Human Rights and Future Response" was issued on October 5, 2020. In this advisory, NHRC laid the details and advised the companies in multiple ways, like, prioritizing workers' safety and/or their financial security, taking care of the potential gender discrimination in the workplaces, giving special attention to workers along supply chains, support to local communities which are located in the influence area of business operations, etc. The advisory also focussed on providing health insurance to all the employees either directly or indirectly. Such measures need to be taken which will help in the management of stress of the employees in stressful situations is also part of the advisory.

On part of the NHRC, India, it was one of the most important step towards the management of human rights issues during the Covid-19. If followed in letter and spirit, a cordial relationship can be built between the employee and the employer. It was an important intervention on part of the NHRC. The proactive role(s) of NHRIs if applied practically would definitely minimize the issues of the employees.

Human Resource Management plays a critical role in the protection of Human Rights of its Employees

Human rights are the primary responsibility of governments but companies can do a lot within their own business to support and respect the observance of human rights. Human resources which is the backbone of the management – is the via media to achieve the same. In fact, human Resources and Human Rights are closely linked and deeply connected, though in the first instance they may appear far-fetched and disconnected.

The shift is visible when with multinational businesses and supply chains that span continents, HR departments find themselves increasingly responsible for identifying and addressing human rights such as water, education and rights of the marginalized sections – moving far beyond employment rights.

Human Resource Team is the one who needs to apprise the higher management that an inclusive growth is ideal for a company's long term health and that can be accomplished only by incorporating the human rights principles in the policies, programmes and projects of business. HR's of the companies need to understand that they are dealing with the human beings and not with the machines, so a humane approach is needed. This is indeed a must for the transformation(s) we are seeking. In addition, short term and ad hoc measures are detrimental to the long-term interests of the companies. The employment rights for an inclusive growth in the first phase and in the second phase the HR must work for the rights of those in the supply chain also. This is how the rights of the employees can be maintained and secured.

International human rights standards and frameworks applicable to business and human rights

UN Global Compact principles that aim at partnerships of the Corporates with civil society, governments and other stakeholders

The Ten Principles of the UN Global Compact are derived from: The Universal Declaration of Human Rights, International Labour Organization's Declaration on Rights at Work, Rio Declaration on Environment and Development, United Nations Convention Against Corruption and are as follows.

Human Rights

Principle 1: businesses should support and respect the protection of internationally proclaimed human rights.

Principle 2: businesses must make sure that they are not complicit in human rights abuses.

Labour

Principle 3: businesses should uphold the freedom of association and the

effective recognition of the right to collective bargaining.

Principle 4: must ensure elimination of all forms of forced and compulsory labour.

Principle 5: ensure effective abolition of child labour

Principle 6: elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: businesses should support a precautionary approach to environmental challenges.

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: businesses should work against corruption in all its forms, including extortion and bribery.

Corporate Human Rights Benchmark

The Corporate Human Rights Benchmark (CHRB) access the Corporate sector regarding their performance on human rights indicators. CHRB released its (latest) key findings in November 2019. The Benchmark ranked 97 of the world's largest publicly traded companies in 2019.

Human Rights Benchmarks are rooted in the United Nations Guiding Principles on Business and Human Rights and Other international and industry-specific standards on human rights and responsible business conduct. Members of the Compact are expected to publish in their annual report or similar corporate report (e.g., sustainability report) a description of the ways in which they are supporting the UN Global Compact and its ten principles. The Communication on Progress as it is referred to - has been adopted with an intent to encourage openness and transparency practices by participants. The CHRB are expected to protect human rights through better coordination between companies, governments, civil society organisations, investors, academics and legal experts.

Conclusion

We live at a time of convergent crises: pandemic, climate breakdown, and unsustainable inequality. Forward-thinking business leaders and investors are already embracing care for human rights and the environment, and have due diligence plans to build resilience in preparation for the disruptive shocks to

come.

Strikingly, the convergent crises are making these leaders more vocal in their advocacy for smart government regulation to support urgent market transformations. The lessons from both the global economic crisis of 2008 and the COVID-19 pandemic are that our dominant business model is unsustainable and must be transformed. Assertive states are essential in this transition. The UN Guiding Principles and the Paris Agreement, with a new emphasis on corporate due diligence, workers' rights, and social protection, point the way to a more resilient and inclusive future for global markets.

Our response to the pandemic now will shape our futures. With the planned scale of global economic stimulus, governments, business and investors have a unique chance to bring human rights and climate responsibility to the heart of business models and our economies. That NHRIs and the Team Human Resources in every organization will have a very significant role to play throughout the transition and thereafter goes without saying.

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Right to Freedom of Speech and Expression: Analysing the Legal and Constitutional Complexities in the Indian Context

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Abstract

Freedom of speech and expression is guaranteed as a Fundamental Right under Article 19 (1) (a) of the constitution. However, fearing its misuse in the context of partition that followed independence, the constitution makers deliberately rendered this right conditional under article 19 (2) by inserting provisos that derived the boundaries of such freedom. In post-independence India, though the scope of these restrictions were redefined, the contextual contingencies did not allow for major restructuring. The vagueness of laws governing freedom of expression, and absence of a consistent approach from the judiciary allows wide space for state intervention, and also makes it amenable to attack by other actors who acquire the role of censors. As a result, the boundaries of the 'reasonableness' of restrictions are consistently redefined leaving the citizens perplexed about their freedom of expression. In the article I argue that in India, the complexities attached with freedom of speech and expression are primarily produced by three factors and their interactions at different levels: a) The vagueness of the laws concerning freedom of speech and expression; b) Ambiguity in courts position and absence of settled principles; and c) Censorship being imposed by actors other than state institutions. These together create a 'web of censorship', which makes it difficult for any person to exercise and enjoy freedom of expression without a looming threat of its curtailment. The need, therefore, is for a serious rethinking about institutional mechanisms to protect the sanctity and true value of freedom of speech and expression in India.

Key words: - *Censorship, Constitution, Freedom of Speech and Expression, Statutory laws, Liberty.*

Introduction

On January 31, 2013, in a press conference, Ms Jayalalithaa, the then Chief Minister of Tamil Nadu announced that Government of Tamil Nadu would do

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everything possible to work out an amicable agreement 'If the leaders of the Muslim organizations and Mr. Kamal Hasan can sit together'. She also assured that the government would remove all objections from the release of his film 'Viswaroopam' if could 'thrash out the differences with the protesting Muslim groups'.[1] The movie 'Viswaroopam' was produced and directed by a famous actor Kamal Hasan. It released all over India on 25 January, 2013 except in Tamil Nadu where following complaints and protests by some Muslim groups, a ban was imposed by state government in the pretext of law-and-order problems across the state.[2] The Muslim groups claimed that certain scenes in the movie portrayed the Holy Quran and their religion in a bad light and warned that it could affect 'social harmony.[3] The curious case of Viswaroopam became more complex when the actor approached the Madras High Court to seek relief. The First bench of High Court on 30 January restored the ban after setting aside a single Judge's interim order delivered just one day earlier that had ordered a stay on the ban. The interim order was passed only after the judge attended a special screening of the movie to decide over the merits of the case, and interestingly, before passing the interim injunction, the judge had also advised the parties to 'amicably settle' the issue.[4] After the stay was removed, the actor in fear of heavy financial loses agreed to make changes to seven scenes following meeting with Muslim outfits which was arranged by the state government. 'Viswaroopam' finally released in Tamil Nadu on 7th February and within a few days earned the actor huge profits, partly due to sympathy and more because of the publicity generated by the controversy.

At the end an 'amicable' solution seemed to have been found which would have pleased all parties involved- Hasan made unexpected profits, the Muslim organizations successfully forced the changes they wished, and the state government appeared to be a champion in managing such crisis by pleasing both the rival parties. What remained unresolved here, however, was the question of free speech. Claims of offence by some organization against forms of expression is not a new thing in India, but the way in which the state approached the issue

1. Arun Ram, 'Vishwaroopam may be released soon, compromise on the cards' *The Times of India* (Online Ed.) (31 January 2013), available at http://articles.timesofindia.indiatimes.com/2013-01-31/india/36658001_1 _kam al-haasan-s-vishwaroopam-viswaroopam-veteran-actor (last accessed on 14 March 2021).
2. The movie had obtained a certificate from the central regulatory body or censor board on 23 January which had advised minor changes on account of excessive showcase of violence, but none of these related to religious hurt.
3. 'Muslim Organizations demand ban on 'Viswaroopam'' *The Indian Express* (Online Ed.) (23 January 2013), available at http://www.indianexpress.com/news/muslim-organisations-demand-ban-on-vishwaroopam / 1063259 / (last accessed 14 March 2021).
4. T. S. Sekaran, 'Amicably settle Vishwaroopam row' *The New Indian Express* (Online Ed.) (29 January 2013), available at http://newindianexpress.com/states/tamil_nadu/article1440303.ece (last accessed 14 March 2021).

of freedom of expression during the controversy reflected an attitude of compromise and confusion which had garbed the debates on censorship in India since the time it became independent. The discourse on freedom of expression has always rested on an attempt to find 'reasonable restrictions' and to prioritize the role of the state in its implementation. As this article would argue, the problem of finding a balance has always remained a challenge. In this article, I argue that the complexities related to of freedom of speech and expression in the Indian context have had its roots in three interrelated issues. Firstly, the statutory and constitutional laws provide significant scope for state to intervene and restrict freedom of expression. Secondly, the position of judiciary remains unsettled. The judgments are ambiguous and inconsistent, particularly when state intervention is demanded in the name of hurt sensibilities of communities or religious groups. Thirdly, this laxity in the legal system has been used by non-state actors to act as censors imposing what in the contemporary lexicon is called 'street censorship' or 'mob censorship'.

Freedom of Speech and Expression and Statutory Laws in India

An important person who played significant role in shaping the legal structure in pre-independence India was Thomas Babington Macaulay. Macaulay drafted the Penal Code of India (IPC), now the longest serving criminal code in the world.[5] While framing the IPC, he included laws that would govern freedom of expression, and this resonated his own experiences in the Indian context. Macaulay proposed specific laws to take care of what Butler[6] and Mackinnon[7] call, the performative dimension of speech. He included laws that could prevent loaded words or offensive gestures that could produce mental agitation and hurt sentiments. Chapter XXII of the code was specifically titled 'Of Criminal Intimidation, Insult and Annoyance' and dealt with different forms of speech acts, which were not previously criminalized. He introduced various innovations in these laws to make it more comprehensive and effective. For example, the term 'defamation' was expanded to cover acts that fell under the category of libels or slander.[8] Together with this he also rejected that it was possible to make clear differentiation between speech and acts. The argument that he proposed for this understanding was that several forms of speech contained offensive and

5. Stanley Yeo and Barry Wright, 'Revitalising Macaulay's Indian Penal Code' in Stanley Yeo, Barry Wright and Wing-Cheong Chan (eds), *Codification, Macaulay and The Indian Penal Code: The Legacies and The Modern Challenges of Criminal Law Reforms* (Ashgate 2011).
6. Judith Butler, *Excitable Speech: A Politics of the Performative* (Routledge 1997).
7. Catherine Mackinnon, *Only Words* (Harvard University Press 1996) 30-31.
8. He made it explicit in the provision that whoever by any form of expression, whether, spoken, written or symbolic, attempted to intentionally harm the reputation of any individual in society, it would fall under the definition of defamation. 'Of Defamation' in *A Penal Code Prepared by the Indian Law Commissioners* (Bengal Military Orphan Press 1837) 124.

insulting language and had a tendency to cause mental pain, and regardless of whether it caused a breach of peace, it was a sufficient reason to act against such speeches.[9] Macaulay's reading and understanding of Indian context had convinced him that there was no other country where injuries to mental feelings or hurt sentimentalities had more deadly and aggressive reactions and responses.[10] Legal experts like John Dawson Mayne[11] and Sir Lawrence Peel[12] opined that if hurt sentiments were accepted as a cause for action it would lead to legal disaster. They suggested that causing public disorder should be the only valid basis of restricting any form of expression.

The argument that Macaulay was advocating in justification for limiting the scope of freedom of speech and expression in India had primarily to do with the volatile communal relations, which James Fitzjames Stephen compared with 'sitting on a volcano', and hence the need for greater control.[13] One could have dismissed this understanding as official version justifying control by colonial state. But truth remains that two of the most significant laws that determine the fate of freedom of expression even in contemporary India i.e., sections 153 (A) and 295 (A) of the IPC were formulated in 1890s and 1920s, periods claimed by historians as phases of 'competitive communalism'. Significantly, in each of the cases as I have shown elsewhere, not only the demands for laws emanated from the native Indians themselves, but they also actively participated in their formulations as reflected from the reading of debates of Central Legislative Assembly of the period.[14]

As the above discussions show, the questions about 'restrictions' and 'role of state' were pertinent even before independence, among the British legislators who deliberated on these issues and based on their own rationality and sensitive understanding of the situation responded by enacting legal measures that remain relevant even today. With time, post-independence Indian state has kept on increasing its arsenal to suit newer challenges. If one tries to list the kind of legal instruments that the government uses for censorship it would include: i)

9. T. B. Macaulay, 'On Offence against the Body' in Lady Trevlyn (ed), *The Complete works of Lord Macaulay* vol. xi (Longmans, Green and Co. 1898).
10. As quoted in Asad Ali Ahmad, 'Spectre of Macaulay: Blasphemy, The Indian Penal Code, and Pakistan's Postcolonial Predicament' in Raminder Kaur and William Mazzarella (eds), *Censorship in South Asia: Cultural Regulation from Sedition to Seduction* (Indiana University Press 2009) 130.
11. J. D. Mayne, *Commentaries on Indian Penal Code* (J. Higgenbotham 1862).
12. Lawrence Peel, *Observations on the Indian Penal Code* (Military Orphan Press 1848).
13. As quoted in T. John O'Dowd, 'Pilate's Paramount Duty: Constitutional Reasonableness and the restriction of Freedom of Expression and Assembly' in Sunil Khilnani, Vikram Raghavan, and Arun K. Thiruvengadam (eds), *Comparative Constitutionalism in South Asia* (Oxford University Press 2013) 271.
14. Nishant Kumar, 'Law and Colonial Subjects: The subject-citizen riddle and the making of section 295 (A)' in Gunnel Caderlof and Sanjukta Das Gupta (eds), *Subjects, Citizens, and Law: Colonial and Independent India* (Routledge 2017) 78-101.

The Press and Registration Books Act, 1867; ii) Official Secrets Act, 1923; iii) Young Persons (Harmful Publications) Act, 1956; iv) The Post Office Act, 1958 (Section 20); v) The Obscene Publications Act, 1959; vi) Section 11 of Customs Act; vii) Section 124 (5) of Representation of the People Act, 1951; viii) Cinematograph Act 1952; and, ix) Section 95 of the Code of Criminal Procedure (CrPC), 1973. Other than these, the Indian Penal Code (IPC) contains several provisions like section124 (A), 153(A), 153(B), 292, 293, 295(A), and 505(2). Above all these, each state government has its own form of Public Safety Acts based on their needs as law and order is primarily a subject within state list in India.

There are legislations to regulate freedom of almost every form of expression in public. Further, the scope of these laws is too wide. Section 153(A) of the IPC allows for criminalising any expression that promoted enmity between different communities based on religion, race, place of birth, residence, language etc., or caused disharmony in society. Further, Section 153(B) prohibits any assertions or accusations that are detrimental to the project of national integration. Other than these, there are also provisions like:

- Section 295 that criminalizes the acts of defiling or injuring places of worship with an intention to insult religion;
- Section 295(A), prevents any form of deliberate and malicious acts, including spoken or written words, that outrage 'religious' feelings of any section by denigrating its religion or belief system;
- Section 298, extensively restricts utterance of words etc. that are intended to hurt religious feelings;
- Section 505(1), aims to prevent any form of statements that could lead to public mischief; and,
- Section 505(2), criminalizes any statements that create or promote feelings of hatred, enmity or ill-will among citizens.

The terms used in these legal provisions like 'injury', 'insult', 'outrage feelings', 'wound', and 'promoting enmity', have much wider connotation than 'hate speech' which is often used in other modern democracies, particularly in Europe and America, as justification to regulate free speech. There may be difference of opinion about the range of regulative and restrictive laws allowed to the state, but owing to troubled inter-communal relationships, damaged further during Partition, and the development of a post-colonial national state facing the challenges of nation building and integration, the Constitution-makers decided to continue with all these statutory laws despite their colonial origin. As in many European nations, where the context of holocaust was cited as justification for restricting free speech or in the US where racism and anti-communism became reasons to regulate some forms of expressions, India had its own complex reality

to respond to.[15] However, after independence, it was also held by Constitution-makers that the fate of this important right could not be left to the mercy of the government of the day and hence the courts were given the absolute power to interpret and adjudicate regarding the offences falling under these provisions. In case there was some subversion of the freedom of speech and expression, the victim had every right to approach the highest court and the court could issue writs through powers granted by constitution under article 32. So, it is explicit that though it is a fundament right, freedom of speech and expression was neither sacrosanct nor more preferable to other similar rights guaranteed by the constitution like right to religion.

Indian Constitution and Freedom of Speech and Expression

The use of vernacular press in the nationalist movement and the suppression of the same by the British authorities produced a new narrative of Indian people's struggle for freedom of speech and expression. Indians wanted the same rights and privileges that Europeans enjoyed in India and that Britons had among themselves in England. Explicit demands for fundamental rights were made at several platforms. Several documents of primary nationalist organizations like The Constitution of India Bill of 1895; Commonwealth of India Bill of 1925; Nehru Report; Karachi Resolution of 1931 and Sapru Report of 1945 were reflective of a growing demand in India for rights of different kinds. Freedom of speech and expression featured in all these documents reflecting a kind of unanimity on the issue. But when the same nationalists sat down to write the Constitution of free India, the emergent circumstances forced a strange form of compromise.

A careful study of the Constituent Assembly Debates (henceforth to be called CAD) confirms that the inclusion of freedom of speech and expression as a part of fundamental rights was never actually debated and it was taken as given that it shall constitute an important aspect of our constitution. The nature of nationalists' struggle against British Rule that included the demand for freedom of expression, and the inspiration that India's constitution drew from international covenants and constitutions of other successful democracies, were primarily responsible for such belief. The CAD reflects constant invocation of the debates over First amendment in the US and The Bill of Rights, among others, whenever the issue of freedom of speech and expression was discussed. Although, in the debates one cannot trace any debates about the importance or need for freedom of speech and expression in a free democracy, the role of the state and its regulatory powers vis-à-vis free speech and the rational limits to it

15. Charles Taylor, 'The Rushdie Controversy' (1989) 2(1) Public Culture.

were extensively discussed in the Assembly.

The CAD indicate at the tensions between the ideals of individual and group rights and the balance reached by Constitution-makers by inserting 'reasonable' restrictions as check and balance to important fundamental rights. At least three important concerns on the subject freedom of speech and expression are reflected in the debates of Constituent Assembly: a) There was a unanimous concern about the continuity of the British attitude in administration even after Independence. This was reflected in the consistent reference to the British rule whenever members wished to criticise the government or question its intentions with regard to important reforms initiated through the constitution that they were dissatisfied with.[16]; b) There were a number of new challenges that the Constitution-makers had in mind because in the back drop of Partition and communal violence that it accompanied, several vernacular press were accused of igniting communal hatred[17]; and c) There were serious concerns about the role of government. Constitution-makers were not convinced that governments of future could be trusted on questions relating freedom of speech and expression, and therefore, a need was felt to bestow upon the judiciary a significant role to act as the custodian of fundamental rights.

Based on these apprehensions and concerns, article 19 (1) (a) was adopted that ascertained the status of freedom of speech and expression as a fundamental right. However, it was loaded with provisos defined under article 19(2). The restrictions spelled out in this proviso, imposed restriction in the name of protecting 'sovereignty and integrity of India', 'security of the State', 'friendly relations with foreign States', 'public order', 'decency', 'morality' as well as in relation to 'contempt of court', 'defamation' and 'incitement to an offence'. These restrictions had much broader connotation and ramifications than the ones imposed on free speech in US or other Western democracies. Particularly perplexing are the restrictions based on 'decency', 'morality', or 'defamation'. These terms remain ambiguous in legal lexicon and invite subjective interpretations. Also, these terms carry much wider scope for state intervention

16. For example, Mr. Mohammed Ismail Sahib raised his concern about limiting the scope of freedom of speech and expression and said: '… it was different when the Britisher, the foreigner was in the country and that now it's our own rule'. He claimed that the nature of bureaucracy did not seem to change and reflected the memories of foreigners' rule as power had corrupting nature, and therefore, he demanded that there was a need to protect citizens from vagaries of the executives and allow them more liberty without being threatened by executive action as during British rule. CAD VII 725.
17. Like, T. T. Krishnamachari in his support of extensive powers to the state highlighted the various problems and tensions that government had to face and respond to in the context of partition like the refugee problem, and the economic troubles, but most troubling were the instances of communal violence. Therefore, he, like many others, stood in support of restrictions being imposed on rights even if they were for time being, or till the time things got normal. CAD VII 770-3.

than in cases of 'hate speech' which is one of the primary justifications used for regulation of speech acts in western democracies. In fact, the fact remains that unlike these countries, the debates about free speech in India was never about the 'need of legislations' to regulate 'hate speech', as the provisions were always present there in the statutory laws particularly IPC since colonial period. Rather, it was primarily about the meaning and interpretations of the restrictions in the light of changing context of Indian polity. The lawmakers, it is explicit during CAD, and other debates in the legislature after independence, were convinced that though freedom of speech and expression carried lot of weight and was seminal for our democratic culture, its misuse, which included communal polarization and instigation, needed to stop at all costs as it threatened social harmony and national integration. Therefore, it was broadly agreed that Fundamental Right to Freedom of speech and expression could not be left unregulated and therefore a number of caveats specified under article 19 (2).

Legal scholars like Lawrence Liang claim that these both provisions, if read together, exposes an inherent dichotomy. Article 19(1)(a) views citizen as rational and autonomous being who is completely autonomous in exercising its freedom, particularly with respect to speech acts, article 19(2) on the other hand portrays the image of the same citizen as a sentimental, corruptible being, who can be easily manipulated and provoked leading to outrage.[18] This same imagination of Indian citizens as emotional beings, who could easily be 'hurt' especially on sensitive subjects related to caste, gender or religion became the reason for introducing important amendments to the constitutional and statutory laws at regular intervals even after independence. It was seen as the responsibility of the government to protect its citizens from the vagaries of free speech. Also, law was seen as a medium to inculcate toleration and discipline among citizens by putting proper checks and balances. This is reflected most effectively in the debates in both houses of Parliament when amendment to the statutory laws, particularly of sections 153(A) and 295(A) in 1961 and 1969.

At the same time, government agencies played a prominent role in censoring forms of speech and expression accused of offending religious sensibilities or inciting hate among different communities or on various other grounds in the name of maintaining tranquillity and public order. The underlying assumption in such act by state agencies was, according to Pratap Bhanu Mehta, that citizens lacked the maturity and capacity to tolerate hurtful speeches. This attitude also

18. Lawrence Liang, 'Free Speech and Expression' in Sujit Choudhary, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of The Indian Constitution* (Oxford University Press 2016) 818.

presented the state in a paternalistic role where it chooses to project itself as a defender of public order by disciplining citizens, without worrying about the fate of free speech.[19]

In fact, in such cases where any form of expression is disturbs or is expected to disturb peace and harmony, the authorities seem to take a radical position of censoring that expression, banning publications/films/piece of art from public consumption or even arresting authors/publishers/filmmakers. They claim that the aggrieved party has every right under law to approach court with his/her grievance and seek judicial opinion on the matter. This benefitted the state agencies in two ways: Firstly, it helped to pacify incumbent law-and-order situation, at least temporarily, and secondly, if there was a positive verdict in favour of victim whose right to freedom of speech and expression was restricted, and there was recurrence of law-and-order issue as a reaction, authorities can shift the blame of disturbance on the judgment and also justify their position on the subject in the earlier instance.[20]

Judiciary's Position on Freedom of Expression

As is evident from the above discussion, judiciary in the Indian context, has an important role in the discourse of freedom of speech and expression, as was also expected by the Constitution-makers. But, unlike in the US, where the question of free speech has often been decided based on tests such as 'fighting words' and 'clear and present danger' doctrines, courts India have taken a broader and wider position. It often tests the 'reasonableness' of restrictions imposed by authorities by analysing the procedural as well as substantive aspects of each case independently.[21] Different judgments of courts indicate that there is lack of consistency in its approach including the tests employed to judge the reasonability of restrictions. For example, one of the important tests used in cases under section 153(A) and 295(A) is that of mens rea or the 'intention' [22] of the person who is convicted of disturbing public order by his speech act. In such cases, sometimes the courts take into consideration the 'content' [23] the speech act

19. Pratap Bhanu Mehta, 'Passion and Constraint: Courts and the Regulation of Religious Meaning' in Rajeev Bhargava (ed), *Politics and Ethics of the Indian Constitution* (Oxford University Press 2008) 330-332.
20. Dhavan has called this approach 'problem solving' politics which is generally used by government to respond to threats of disturbances to public order in such cases. Rajeev Dhavan, *Publish and be Damned: Censorship and Intolerance in India* (Tulika Books 2008) 145.
21. The State of Madras v. V. G. Row (1952) AIR 196 SCR 597.
22. *Ramjilal Modi v. State of Uttar Pradesh* AIR 1957 SC 622; 1957 SCR 860, *Public Prosecutor v. P. Ramaswamy Nadar* Case Number - Crl. App. No. 125 of 1962.
23. *N. Veerabrahmam v. State of Andhra Pradesh* AIR 1959 AP 572; *Nand Kishore Singh v. State of Bihar* AIR 1986 Pat 98.

and at other times it also focusses on the 'context' [24] in which the speech act was performed. At the same time, in various cases, the Supreme Court upheld the constitutionality of laws governing freedom of speech and expression, generally drawing justification from article 19(2) of the constitution.[25] The most consistent justifications forwarded by courts for upholding the regulation of freedom of speech and expression are: a) The concerns for public order produced by contentious speech acts; and b) Need to defend and promote religious pluralism and secularism in India.

'Public order' was added as part of caveats governing freedom of speech and expression mentioned in article 19(2) through the First Constitutional Amendment with the aim to balance claims of 'individual freedom' against that of 'social freedom'.[26] Various judgments of Courts have extensively defined 'public order' and have also drawn out its scope for usage. For example, Superintendent, Central Prison, Fatehgarh case, court used the expression 'public order' in relation to absence of disorder which involved 'breaches of local significance.' [27] It defined public order in terms of a state of society where citizens could carry out their normal activities peacefully without any threat or disturbance. It was held that 'public order' could include minor issues of law-and-order at local level or larger issues including threat to sovereignty of nation. Therefore, it was held that term should be used precisely. Reiterating the need of precision in the usage of the term, the court in Dr. Ram Manohar Lohia case introduced an idea of three concentric circles. In this set, 'law and order' and 'security of state' could be assumed to represent the outer and inner most circles and 'public order' as the circle in middle.[28] Using this analogy, the court held that it was possible that an act affected law-and-order, but all such acts could not be put under 'public order', and similarly all cases concerning public disorder could not be treated as a threat to the security of the state. In Arun Ghosh case court argued that it was important to distinguish cases pertaining to public order from acts against individuals, which might not have tendency or possibility to cause 'general disturbance of public tranquillity'. So, in this case, Courts seem to assert that the amount or degree of disturbance, along with the impact it had upon the life of the population or community, shall determine whether an act

24. *Virendra v. State of Punjab* (1957) AIR 896 SCR 308; *Gopal Vinayak Godse v. Union of India and others* (1971) AIR BOM 56.
25. The constitutionality of section 295(A), 153(A) of IPC and section 95 of CrPC have been respectively upheld in *Ramji Lal Modi* (n 22); *Babu Rao Patel* 1980 A.I.R. 763; *N. Veerabrahmam* (n 23).
26. Nehru's 'Statements of Objects and Reasons' appended to the Constitution (First Amendment) Act, 1951.
27. *Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia* (1960) 2 SCR 84.
28. *Dr. Ram Manohar Lohia* 1966 AIR 740.

could qualify as one involving public order issue.[29]

The Constitution-makers had expected that the judiciary would balance the claims of individual liberties against the need for social cohesion. There was general scepticism about the role of government in power and the fear that freedom of speech and expression could be restricted unreasonably to serve political purposes in the name of threat to 'public order'. At the same time, there was a possibility that if public order issues are not handled with promptness and precision, it could take uncontrollable form. Therefore, courts were expected to define the boundaries of freedom of expression reasonably in order to prevent its misuse, while remaining sensitive to its importance as a fundamental right. Scholars like Pratap Bhanu Mehta have questioned the role of judiciary and claimed that since 'maintaining public order' has been held as a valid ground for regulating freedom of speech and expression, it has also been used and allowed in cases where the scale of threat to public order was very less.[30] The general attitude of the courts, according to Mehta, is that if a restriction is claimed by state to be associated with public order, courts accept it as valid, which is reflective of a very broad interpretation of restrictions as defined under article 19(2). Consequently, whenever any form of expression is held by state agencies to be potent enough to ignite controversy that could impact law and order situation, they act against it and more than often, this position is also supported and validated by the Judiciary.

At the same time, courts have also maintained that freedom of speech and expression is neither the only fundamental right nor absolute. At times, when this right seemed to be in contestation with other similar constitutional provisions, like right to freely profess, practise and propagate religion, the courts' have tried to develop a balance, which broadly stands on two important premises. Firstly, courts have opined that hurt sensibilities have potential to cause disruptions in public order. Secondly, freedom of conscience and religion are protected under article 25 of the Constitution and therefore it is the responsibility of the state to create environment so that this right, like any other, could be freely exercised, without fear or threat from others. This attitude became evident in N. Veerabrahmam case[31] where the Andhra Pradesh High Court argued that freedom of speech and expression did not allow the freedom to make scandalous attack on religious beliefs of others. It explicitly held that there was no right to denigrate or vilify the religion or religious faith of any other section. It also held that state had enough powers under its command to

29. *Arun Ghosh v. State of West Bengal* (1969) 1970 3 SCR 288.
30. Mehta (n 19) 330-332.
31. *N. Veerabrahmam* (n 23).

ensure that every citizen is able to enjoy freedom of religion and conscience without interference from others, and it was the duty of state to protect this fundamental right. In examples like these, it becomes evident that although courts do not reject the importance of freedom of speech and expression, it had no special status in their eyes, and therefore the need to be balanced with other fundamental rights, as and when such clashes occur.

This attitude of court tends to protect religions from any form of scrutiny and criticism. They have at times also taken upon themselves to determine what could be allowed as valid criticism courts have generally shown leniency towards criticisms of religious practices, but strongly held that any vilification of religious figures or persons, and criticism of religious beliefs and holy texts of any religion, could not be justified. It has been explicitly held in various judgments like Sri Baragur Ramachandrappa case where the Supreme Court opined that freedom of speech was not immune to restrictions and that no one had a right to hurt the religious feelings of others. The learned judges held in the case that India was a multicultural society and therefore any malicious attempts to denigrate or interfere or criticize the faith of others was unacceptable.[32] Court further held that secular values were at the very core of Indian identity and therefore if anyone intended to threaten this value, it was the duty of the state to against such persons, even it was done in the name of freedom of expression. Courts have generally upheld state action in cases where state agencies could convince the court that it amounted to a misuse of freedom of expression as it threatened the free exercise of right to freedom of religion.

This position is also reflected in the case of Lalai Singh Yadav where Justice Krishna Iyer in the Supreme Court argued that it was the duty of the secular state in a country like India to create an environment where the sentiments and feelings of all people are protected.[33] He expressed fear that if such protection is not granted it could result in a violent disruption of public order. He also maintained that all such actions to prevent violent outbursts, including banning a book or other forms of censorship, fall well within the permissible powers of the state and should be utilized with care based on best of its judgments.[34] The principle of balancing different fundamental rights without prioritization, along with the threat inherent in the misuse of freedom of speech and expression have gradually allowed space for greater interference by state agencies in the pretext of public order. The above discussions indicate at two important aspects related

32. *Sri Baragur Ramachandrappa & Others v. State of Karnataka & Another* (2007) 5 S.C.C.11.
33. *State of Uttar Pradesh v. Lalai Singh Yadav* (1976) 1977 AIR 202.
34. Ibid.

to judiciary's position on freedom of speech and expression. Firstly, courts provide legal patronage and protection to state's action in such cases by interpreting the statutory and constitutional laws very expansively.[35] Secondly, courts' attitude reflects a form of legal paternalism, where they seem to educate the citizens about what to say, how much to say, and how to say. [36]

Non-state actors as Censor

Parallel to the history of free speech, is also the history of religious violence and riots in post-independence India. Several reports about riots in post-independence period have shown that most instances of communal frenzy or riots were preceded by outrageous spitting of venom either through writings, speeches or other forms of symbolism. These were often targeting the marginalized and vulnerable communities and included direct threats or denigration of others' identity or faith. With the high number of instances of communal violence, state has often been very sensitive to such ignitions and often responds pro-actively when the claim of 'offence' is raised by certain socio-religious groups. However, the picture has not always been so neat. Studies on communal violence like that of Wilkinson[37] have shown that in cases where the state government senses electoral benefits from riots, its responses are much lazy and casual. This presents an alternate picture of the politics of censorship, where the response of the government is not always objective but guided by their political interests. So, the role of judiciary becomes very significant in the discourse.

At the same time the role of non-state actors cannot be dismissed. These non-state actors, consisting of persons claiming to be representatives or protectors of socio-religious or other identity-based groups, used to play significant role in censorship even during colonial times. However, after independence, this role took a more central stage, and they justified their intervention in the name of provisions granted under constitutional and statutory laws. They consistently argue that the secular Indian state was duty bound to protect the feelings of all its citizens from being hurt. At the same time, their protests against forms of expression claimed to be offensive were recognized by the state as a democratic right of citizens to raise concern against such expressions. However, it has

35. This in no way means that this patronage is uncritical. In many judgments, courts have been very particular about the procedures followed by state agencies. However, on most occasions they seem to uphold state's action, particularly if there is claim of threat to law and order.
36. *Sri Baragur Ramachandrappa* case (n 32) effectively reminds us of this position of the court. The way court defines the boundaries of freedom of expression and suggests in precise terms what shall be allowed or not allowed in the name of freedom of speech and expression.
37. Steven I. Wilkinson, *Religious Politics and Communal Violence* (Oxford University Press 2005).

equally been asserted that such protests should not in any way be violent or threatening law of the land. Scholars on censorship have convincingly shown that on many occasions this principle was violated by the demonstrating parties, and protesting groups have resorted to violence to express their anguish and exhibit the depth of hurt caused by those contentious forms of expressions.[38] These responses also included issuance of threats to people involved with the book/painting/movie etc. like publisher/author/painter/producer/director/actor, attacking their homes, vandalizing of property, and at times even physical assault. But this is not the only form in which censorship is imposed by non-state actors. They have also taken part by either launching formal complaints against such expressions, or by asserting pressure government officials to act against such forms of expression claimed to be offensive, through mobilization and demonstration. Further, they also take the legal route by filing writ petitions, or actively participating in the judicial process by filing supportive affidavits in the court in favour of government's decision to censure such forms of expressions.[39] Based on these observations some scholars have concluded that censorship by non-state actors in India is a more dangerous threat to freedom of speech and expression than censorship imposed by state.

One could see two significant way in which the scope of censorship and freedom of speech and expression had altered: a) Firstly, it led to the phenomena that I call 'manufacturing of offense'. When either the government or the judiciary banned or restricted something they were required to state how the act or expression could lead to disorder and a threat to peace or at least legally justify the probable reason for such act. Action by non-state actors like mobilization or demonstration against any form of expression force the government to see direct threat to public order. At times, these self-proclaimed defenders of their community use threats or violence to enforce social censorship. In the process, often it is seen that though the concerned piece of art or book or movie may not in itself be an incitement to public disorder or offence but the way in which it is posed or interpreted by these groups and explained, it might offend sentiments. This is what I mean by 'manufacture of offense', where the work itself might not be intended to create or reflect hate but is interpreted in a way to do so. b) Secondly, it expanded the scope of hate speech invariably to include the expressions that might not otherwise fall in its arena. A

38. Dhavan (n 20); Girja Kumar, *The Book on Trial: Fundamentalism and Censorship in India* (Har Anand, 1997).
39. A. G. Noorani, 'Informal Censorship' (1995) 30(40) Economic and Political Weekly 2472.

significant example is that of 'sexual speech' [40]. The groups which depended on cultural mobilization started vandalizing the representation of women in any form that they felt is an insult to their culture (based not on their identity as women but rather based on their representation). So, when Shiv Sena was opposing the release of 'Fire', it had two main contentions- Firstly, they claimed that lesbianism was not a part of Indian culture and through movies like these there was some western conspiracy to inspire Indian women become lesbians; Secondly, there was also opposition to the naming of the two protagonists as Sita and Radha, as a deliberate attempt to denigrate respected Hindu ideal figures.[41] Such cases of participation of non-state actors have further complicated the understanding of freedom of speech and expression in India.

Conclusion

The above discussions show that the concerns of Macaulay about finding the right balance between individual liberty and legal 'restrictions' is still not settled. In fact, in its attempt to manage this balance, the state itself becomes a party to controversies, which pose serious questions about its authority and objectivity. There are several factors that together make freedom of expression in India a complex legal matter. On the one hand the vagueness of the terms used to define restrictions, both in constitution as well as other legal provisions, and on the other hand, the position of courts on questions of freedom of expression is posed against threats of public order or other constitutional rights including religious freedom. The absence of settled principles to deal with the subject has opened flood gates that allow fringe groups to assert their importance, and the willingness of the state governments to engage favourably with these elements in a fear to avoid electoral complications have added to the confusion.

The ambiguity within statutory laws combined with the attitude of judiciary and role of non-state actors produces a 'web of censorship', which makes it difficult for any person to exercise and enjoy the freedom of expression without a looming threat of its curtailment. One is never confident about the space within which he/she can enjoy the freedom of expression and the boundaries are consistently redefined by the censors- both state and non-state. The

40. Ratna Kapoor differentiates between 'Hate Speech' and 'Sexual Speech' and tries to argue that both needs to be treated differently in law, without realizing that in the context of new forms of censorship there are severe possibilities of overlaps. Ratna Kapoor 'Who Draws the Line? Feminist Reflections on Speech and Censorship' (1996) 20 Economic and Political Weekly.
41. Ratna Kapoor 'Too Hot to Handle: The Cultural Politics of "Fire"' (2000) 64 Feminist Review 56-59; C. M. Naim 'A Dissent on "Fire"' (1999) 34(16/17) Economic and Political Weekly.

repercussions of such confusions may not have the same to offer to all citizens as it did to Kamal Hasan, the filmmaker of Viswaroopam, who earned huge profits from the controversy and the 'amicable' solution brokered by the state government. At times it puts citizens under tremendous financial and psychological stress and loss of faith in the legal system. It is true that the structural and social realities of India do not allow the space for a libertarian notion of free speech, but the ambiguousness of the laws and the absence of consistent approach from the state instil serious concerns about the respect for such rights in contemporary times.

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Safeguarding Human Rights Amid COVID 19: A Public Policy Perspective

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Abstract

Among the fallouts of Covid 19 crisis, infringement of human rights stands toll. States have the responsibility to protect and guarantee 'rights' to all its citizens but pandemics like Covid 19 poses a greater challenge. For India, the government has a major role to play in providing health infrastructure and formulate effective policies for mitigating the spread of this disease. The task got bigger as a good number of Indian populations are employed in unorganised sector and amid any turbulence they look up to government's help. How far the Indian government (both the central and state level) been able to deal with this crisis is a matter of academic inquiry. Contextualising this quest as a challenge to the protection of human rights during pandemic, this article is an endeavour to explore how state capacities need to unfold during pandemics in the context of protection of human rights and the challenges faced by them.

Key words: - *Human Rights, Pandemic, State capacity*

Introduction

Human rights are strongly linked to individual health and pandemics like covid 19 poses great challenge to it. It is found that 'rights based' approach to deal with crisis of HIV/AIDS were very effective in ensuring public health (Sekalala et. al 2000). Therefore, it becomes imperative to explore the challenges of covid 19 through human rights perspective. To start with, COVID 19 posed unprecedented challenge to states' 'capacities' and 'capabilities' in safeguarding 'human rights'. The challenge got intricate because apart from being a health

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emergency, it cascaded as a major economic and social crisis. The challenge got bigger in developing countries like India, where the public health infrastructure is insufficient for its vast population and private healthcare is beyond the reach of ordinary people. At the time of Covid 19, the economy got jammed because of periodic lockdowns. As a result, many small and medium sized industries were shut down. What followed in India was unprecedented as there was massive migration of workers from industrialised part of India to their hometowns far away. As there was lack of transportation and other services, many of the labourers/ workers walked bare foot for over 1000 kilometres. How do state respond to these conditions caught the attention of scholars all around the world. As India is committed to U.N. sustainable development goal (SDG) – it is the responsibility of the government to provide a universal and affordable healthcare to all its citizens. Many political commentators viewed this crisis as a situation calling for the 'return of state'. They envisaged a bigger role of state as it was the only way out to deal with the crisis of this magnitude. Furthermore, there are certain basic services that need to be delivered by the modern democratic states as a part of safeguarding 'human rights'. This paper is an attempt to explore the efforts of Indian government in dealing with covid 19 pandemic from a public policy perspective and the challenges in ensuring 'human rights'.

Human Rights and Pandemic

United Nations (U.N) has described 'Human Rights' as a bundle of rights inherent to every individual. It majorly includes right to life and liberty, freedom from slavery and torture, freedom of opinion and expression and the right to work and education. Ensuring all these rights was a severe challenge for the Indian government during covid 19. To begin with, millions of people lost their lives and lockdowns on regular intervals jammed the already staggering economy. There were many social consequences as people were confined to their homes and the only way out for socialising was through internet. Schools were closed and young children could not go out to parks and were stuck to online classes and video games. This complete set of new practice also witnessed psychological problems. The cases of domestic violence and divorce went high. It was called as quarantine paradox and it witnessed a steady rise in the cases of gender based violence (Mittal and Singh, 2020). Therefore, this pandemic was not only a health issue, but it had various ramifications. How far the government of India and other state governments were successful to mitigate the ill effects of this pandemic is a matter of academic inquiry for the scholars of human rights and public policy. How far the policies of India government, both at the centre and the state level ensured human rights at the time of covid 19 pandemic will beget valuable input to policy makers and add to the ever-growing scholarship on human rights and its effective delivery. Moreover, the 'rights based' approach to pandemic has yielded success in dealing with HIV/ AIDS. Therefore, adopting a human rights perspective in dealing with pandemics like covid 19 is desirable. This article is an attempt to explore why

and how pandemic situations should be viewed as a crisis of delivering 'human rights'. This paper has three major sections, first section narrates the measures taken by the Indian government in mitigating the effects of covid 19, the second section explores how far these policies were successful, and the third section concludes and suggests inputs for policy making with special reference to ensuring human rights amid pandemics like covid 19.

Measures taken by the government

The government of India took many measures to mitigate the effects of pandemic on its citizens. It was as early as in January 2020 that airport screening of the passengers started and awareness campaign about the threat of covid 19 began through different channels. After looking at the success of lockdowns in many countries, the government also imposed the first phase of the lockdown for three weeks beginning 24th March 2020. It soon paved way to second phase that was for five weeks. It is worth mentioning that Indian was one among the few countries that imposed such a prolonged lockdown. Moreover, the use of technology proved very useful- mobile Apps like 'Aarogya Setu' kept track of things and provided useful information to citizens. Civil society organisations also became active, and they helped people with distributing food packets. Social distancing and wearing of mask were compulsory for the everyday behaviour. Doctors and allied staff were called as corona warriors and they worked day and night to ensure that people got the best of whatever was available.

Another important development was that the central government invoked the Disaster Management Act 2005. It is an Act enacted by the Parliament of India to provide for the effective management of disasters and for matters connected therewith or incidental thereto. It meant that directions of National Disaster Authority would supersede all the existing laws and directions. After the invocation of this Act, the prime minister was in constant touch with the chief ministers of various states and reviewed the situation of covid 19 periodically.

The greatest challenge before the government was to contain the spread of misinformation causing fear and chaos among the citizens. Consequently, we find that at places there are incidents of violence against the health workers. Some of the misinformation also led to communal hatred as Tablighi Jamaat a religious Muslim group held responsible for the spread of virus. Social media platforms were used to incite hatred against other groups, and it also led to violent acts and as people were confined to their homes, social media became a very powerful tool of communication. Therefore, the government role was multifaceted, and governments' intervention is analysed below in two major heads-Health and Economy.

Healthcare related

Right to life is one of the most important of all the human rights therefore providing adequate medical support becomes extremely important. Moreover, India is committed to the United Nations Sustainable Development Goals (SDGs), hence it has to provide universal healthcare to all the citizens without any discrimination. The constitution of India has put the subject 'health' under state list; consequently, it becomes the responsibility of the states to provide for adequate medical support to all the people. While all these provisions appear to be adequate for providing the citizens with health care, there are many challenges. Being the second most populous country in the world, catering to a pandemic would be very challenging and demanding. Moreover, health workers would also be susceptible and apprehensive in delivering services for contagious disease like covid19. In order to tackle this issue, the government made many efforts. First, the government announced medical insurance cover of Rs 5 million per healthcare worker. Secondly, it made a head start with the vaccination programme. The two main vaccine manufacturers- Serum Institute of India and Bharat Biotech successfully came out with Covishield and Covaxin respectively. Both of these companies received grants from the government to increase their productions and get the entire population vaccinated. Thirdly, the government also prioritised the distribution of vaccines in three phases. First, starting from 16 January 2021, it vaccinated the healthcare and frontline workers, secondly from 1March 2021, it was for people above the age of 45, and the last phase starting from 1 May 2021, it was for anyone above the age of 18 but below 45 years of age. This vaccination program is one of the largest vaccination programmes.

Economic Measures

Securing livelihood becomes one of the most important ways in delivering human rights. Keeping this in mind, the government launched food scheme Pradhan Mantri Garib Kalyan Anna Yojana (PM-GKAY) in which food grains were provided to the poor, especially the landless agriculture labourers, marginal farmers, rural artisans/craftsmen and persons earning their livelihood on daily basis in the informal sector. This support was over the regular monthly entitlements under National Food Security Act, 2013 (NFSA). The government further strengthened the national employment-guaranteeing program (NREGA). First, it increased the daily wage from Rs 182 to Rs 202 and second, it instructed the start of the works under it from April 20th, 2020. The government anticipated the job loss in the bigger cities followed by migration. It was an effort to provide cushion to this loss of employment. It is found that between April and September 2020, around 8.3 million job cards were issued which is the highest in past seven years (see Ahmad Sultan et al. 2020). Furthermore, the government also decided for using the District Mineral Foundation (DMF) funds for creating local jobs. Earlier in 2015, this fund was created for mining districts with the aim for benefitting the mining affected people. Another scheme where money was directly transferred was through P.M Jan Dhan Yojna where the

government provided a monthly instalment of Rs 500 for three months for nearly 20 crore women account holders. The central government also gave three months advance pension to widows, senior citizens and differently abled in the first week of April 2020 amid lockdown. For the Self –help Groups (SHGs) which almost caters to 70 million households, the government doubled the collateral free loans to Rs 20 lakhs. One of the gravest challenges was in the way of rising crude prices and the government decided to provide relief to poor households by giving LPG cylinders free for three months. These efforts appeared to be quite assuring in sustain the economy of common households in India. How the efforts made by the government both at health and economy level becomes a matter of enquiry both for the students of human rights and public policy. The next section is an effort to explore how these efforts fared at the grassroots level.

How government's efforts fared?

The efforts of the government received mixed responses as far as safeguarding human rights were concerned. At the policy level, many shortcomings were witnessed which could be a revelation for further endeavours of the government. To start with the policy of lockdown, it had some major flipsides. It is claimed that the lockdown was imposed in a very strict manner and only four hours notice time was given to people to prepare for it (see Jyanti Gosh, 2020). It caused labourers specially working in unorganised sectors a lot of hardship. Many of them started to migrate to their hometown as far as 1000 kilometres on foot and their vulnerability to diseases increased manifolds (see Jyanti Gosh, 2020). Moreover, lack of clear-cut guidelines made things worse as officials interpreted the provisions of lockdowns in their own ways. There was also a lack of consultation of the central government with state governments in terms of movements of buses and trains which caused lots of confusion to people. Moreover, many workers lost their jobs as factories were closed. In order to ensure food rights, the central government launched one of the massive programmes- Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY). This programme is a food security welfare scheme to assist and mitigate the impact of covid 19. This programme ensured continues supply of food grains to people. It is claimed that more than 30 crore poor received financial assistance of Rs 28,256 under this programme to protect themselves from the impact of lockdown. However, there were also reports that stated the problems with the distribution mechanism of this programme and claimed that even after one month of lockdown, migrants did not receive food rations or cash reliefs from the government (see SWAN Report 2020).

Moving from welfare schemes to the use of technology, we find that the government made use of technology in mitigating the ill effects of covid 19. The most prominent was Aarogya Setu Application, which would let the users know if they had come in close contact with anyone infected with covid19. Many lauded this application but there were also apprehensions in using it. Former Justice of Supreme Court Sri B N Krishna stated that making people use this

application was illegal, as any law did not back it. Another effort of the government was making the wearing of mask and observing social distancing compulsory. This had a positive impact as it helped in containing the spread of virus. It is found that wearing mask coupled with social distancing flattened the pandemic curve (see Tom Li, etal, 2020). Furthermore, the most notable achievement was that people adhered to the appeals of the Prime Minister who made observance of these practices as a Jan Andolan against pandemic. Though peoples' morale was high, but lack of health infrastructure did not match up with it.

The bottlenecks' in our health infrastructure surfaced during covid 19.The second wave of pandemic-witnessed people struggling for beds and oxygen facilities in the hospital. As a result, the numbers of death causalities were high. There was a big blame game between the central government and the various state governments. Centre government expected that as health is in state list, it is the responsibly of the states in India to provide for health care while the states argued that they had massive paucity of funds for providing adequate health infrastructure. Amid this tussle between the state and the central government, efforts were continuously being made to restore adequate health facility. In order to deal with this the need for shifting health into concurrent list was suggested by the fifteenth Finance Commission Chairman Mr. N.K. Singh. Another applaud able effort was administration of vaccines. Technology was used and the vaccine was administered on priority basis and the vaccination program is continuing.

Conclusion and Suggestions

Covid 19 emerged as the biggest challenge to the world in the recent times. It affected the humankind in all the possible ways. While governments are still pondering over the right ways to deal with crisis of this magnitude, this article proposed that 'human rights' should have been at the core of the responses. It makes the following suggestions for the same. To start with, the government must install trust among its citizens to deal with pandemic situations like covid 19. Communication and the role of social media are crucial in installing trust among citizens. It was largely because of lack of trust and poor media management that lead to labourers' migration to their hometowns. Moreover, in mitigating a crisis like covid 19, government should have incorporated and carved a bigger role for private sectors and non-government organisations. Critical infrastructure as clean water, regular food supplies, and medical facilities are better delivered if 'rights' based perspectives are adopted. The paper proposes that a state must adopt human rights perspectives in dealing with pandemics and their achievement should also be evaluated in terms of how successfully it safeguarded 'human rights'.

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Covid-19 Pandemic Outside, Effect Inside: Changing Attitude and Behaviour of the Society

Barnali Maity*

Abstract

COVID-19 associated with Coronavirus (SARS-coV-2) as a global health threat declared to be pandemic by WHO, has profoundly changed lives, causing tremendous human suffering, and challenging the most basic foundations of societal well-being. The danger of this extended pandemic with cross-border infection has encouraged the changing attitude and behaviour of the society recommended by all the health authorities across the countries. There are two main approaches in this change. The first is instrumental compliance where authorities try to change through command and expect obedience through the fear of its punishment; and second approach is normative compliance, where the public are persuaded as protective behaviour of their own and also fellows' benefit. Within a short span of time, COVID-19 appeared to have reached the peak, a second wave of this infection is already observed, as it has been spreading at a frantic pace, isolating families, and snuffing out lives. Rapid mass attitude and behaviour change is necessary to tackle the pandemic by 'flattening the curve' of infections and preventing medical services from being overwhelmed. Widespread attitude and behaviour change is required as the basis of eradication or 'COVID-zero' strategies. The time is the need to adopt new ways of living and new attitudes towards life and humanity, is called 'New Normal'. The main purpose of this article is to summarize the effect of coronavirus pandemic on the society with its short-term and long-term socio-psychological upshots in the 'New Normal'. Now it is the need to know that how people live and interact with each other, how they work and communicate, how they move around and travel, including from social security to individual human rights. The methodology adopted in this study is content analysis based on secondary data, taken from academic journals of various disciplines,

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government publications, reports, policy papers, relevant websites, databases, newspaper articles and newsletters etc. This paper shows the impact of COVID-19 on day to day life, covering the potential different sectors like healthcare, economic, social and personal. Due to the unprecedented spread of the virus, the authorities around the world have begun to introduce the measures of social and physical isolation in the form of lockdown restrictions on the freedom of movement of citizens. Every aspect of social lives has been affected with the restrictions of the lockdown, inducing tremendous human suffering with serious and long-term implications as pandemic outside for people's health, jobs and incomes, as well as imposing a huge toll in terms of fear, anxiety, insecurity and worry as effect inside. People began to get used to living with the novel this 'new normal', where the social, economic and psychological repercussions of life under conditions of prolonged feeling of fear, anxiety and with reduced ability to move and communicate remain to be seen. For better dealing with these issues of the society, psychosocial and economic crisis prevention and intervention models should be urgently developed by the government, health care practitioners and other stakeholders.

Key words: - *Changing attitude and behaviour, COVID-19 pandemic, Effect inside, Lockdown.*

Introduction

COVID-19 as a Corona Virus Disease-2019 is posing enormous health, economic and social challenges to the entire human population. The COVID-19 outbreak as a highly infectious disease is the new problem of the humanity, caused by severe acute respiratory syndrome coronavirus-2 (SARS-CoV-2). Most of the countries around the world declared compulsory stay-at-home policy, closing of educational institutions, businesses, and public spaces. World Health Organization (WHO) advised the member states to take immediate actions which include treatment and detection to reduce the virus transmission. WHO has also advised the general public to maintain some basic precautionary measures, i.e., wearing a mask, washing hands, using a hand sanitizer, maintaining physical distancing, and staying at home. The people must learn to cope with coronavirus by changing the habits and attitudes towards life and fellow humans if the virus stays with the people for longer than expected. The multiple and different strains of COVID-19 are circulating around the world with small change in its genetic code, named as the first four letters of the Greek alphabet- Alpha, Beta, Gamma and Delta.Therefore, the COVID-19 continues to haunt every individual's life, thus having direct or indirect impact on everyone's overall health. In the COVID-19 therapy front, clinicians have gotten much better at treating hospitalized COVID -19 patients leading to a drop in the death rate. In addition, there are a number of new drugs that significantly alter the course of the illness. From last year, December, people are getting vaccinated, and all the countries are trying to cover this vaccination on their all citizens with the utmost effort. But still the continued global outbreak has resulted in the spread of many new strains of the virus. Some are more infectious and some

more virulent than previous one. It is a big question to know for sure how effective existing vaccines will be in halting transmission of the virus. Having an effective COVID-19 screening system, encouraging people to take tests regularly, and ensuring maintaining indoor stay behaviour are still acting as efficient way to live through pandemics.

Non-pharmaceutical interventions is actually needed to reduce sustained local transmission by reducing contact rates in the general population, have so far ranged from moderate containment measures, such as school closures and cancellations of public gatherings, to drastic measures, such as travel bans and nationwide lockdowns. It has changed daily routines, caused worldwide economic crisis, increased unemployment, and placed people under emotional and financial pressures that affected the livelihoods of the majority of people. Individuals are modifying their behaviours and adopting preventive measures in response to this pandemic in order to reducing the likelihood of transmission and infection. Behavioural factors like wearing mask, maintaining physical distance, and ensuring hygiene are playing a large part in slowing and stopping the virus spread. As a global public health emergency, authorities around the world try to prevent the virus spread by imposing physical distancing measures, quarantining citizens, and isolating infected persons, in order to quell the spread of Covid-19 and 'flatten the curve'. To reduce the effective reproductive number of virus infections, governments enforced numerous emergency rules and regulations. Individuals were asked to adhere to constraining behaviours, such as staying at home, keeping physical distance, repeatedly washing hands, and avoiding public gatherings. The obligatory lockdown and maintaining isolation have created enormous impacts on social relation, communications, and networking. All these things are creating a lot of concern for people leading to heightened levels of anxiety and stress. Societies are in a transition phase into the 'New Normal' era which requires rethinking of the values and society as a whole. Therefore, its socio-psychological outcomes need to be analysed.

Objectives

The aim of the study is to document people's experiences of living in this pandemic period, how they have changed their attitude and behaviour in the new normal, what social changes are occurring now or will be happening in the COVID world. The purpose of the article is to explore the impact of this unprecedented environment created by this pandemic on overall physical and mental health of individual and communities in its current magnitude. Social research is urgently needed to assess the stress, anxiety, depression among the population related to their attitude and behavioural practices toward COVID-19 in the society. The study presents the existing relevant intervention actions and recommendations to cope efficiently and effectively with the socio-psychological short-term and long-term outcomes in the society. It also tries to mention certain measures and policies as effective and helpful for the era of COVID-19.

Methodology

The article is associated with the detailed review of the existing available research and literature on the COVID-19 health symptoms and interventions relevant to the COVID-19 pandemic. The study is depending on content analysis. Data were retrieved from various secondary sources, including articles and research works available on the socio-psychological effect during this lockdown. The relevant material has been collected from papers in academic journals of various disciplines, government publications, reports, policy papers, relevant websites, databases, newspaper articles and newsletters etc.

COVID-19

Initially, in the month of December 2019, a human respiratory disease appeared in Wuhan Hubei Province, People's Republic of China, caused by a novel member of the coronaviruses. On 31st December 2019, China informed the World Health Organization (WHO) about the number of patients with symptoms of respiratory illness of unknown cause (WHO, 2020a). In January 2020, the World Health Organization (WHO, 2020b) declared the outbreak of this new coronavirus disease, COVID-19, to be a Public Health Emergency of International Concern. On 11th February 2020, WHO announced a name for the new coronavirus disease: COVID-19 (WHO, 2020b). Over a period of few weeks, the infection spread across the globe in rapid pace. On the 11th of March 2020, WHO declared COVID-19 as a global health threat, a pandemic as by then about 114 countries were affected across the world (WHO, 2020c). Because, COVID-19 is extremely contagious and can even be transmitted by respiratory droplets (coughs or sneezes) in contact with an infected person (CDC, 2020).

Pandemic Outside

When people come to know about a new coronavirus disease information, they usually have an emotional response that affects immediate attitude and behavioural changes. Individual and collective behaviour is very much important during a pandemic. An individual's behaviour can affect their family, social networks, organizations in which they participate, communities to which they belong, information they obtain, and make the impact on their society. Epidemics can affect individuals' fears, and emotions, may in turn affect behaviours during epidemics (Bi et al. 2019). For collective behaviour, the authorities around the world began to intervene in public lives and travel on a large scale. This intervention came in their daily lives with certain mandatory requirements. The government instructed the public to follow specific behaviours and the inability to perform that behaviours has been considered a violation of the law.

In the early months of 2020, a new respiratory virus (COVID-19) became a global phenomenon. COVID-19 virus is mainly transmitted from person to

person. Prevention is the only approach available to society to control the COVID-19 transmission fostering positive attitudes and behaviours that enable practicing self-quarantine and good hygienic measures, unless and until the definite vaccine or any curative therapy of the multiple different strains of COVID-19 is available for the common people as the medicine of coronavirus disease. Almost all the governments around the world adopted preventative measures during March 2020 to control COVID-19 dissemination including border closures, suspending the operation of all government and private institutions except vital sectors, implementing a nationwide curfew, suspension of public transportation, and isolation of infected patients and their close contacts. In addition to these measures, the awareness, attitudes, behaviours, and practices of people toward COVID-19 are the keys for controlling the spread of this infection. The government pandemic management systems and policies help the people to adjust. People learnt about maintaining of social distancing and its rules, conditions, and procedures. Also, they adapt themselves to the coming situation whilst contemplating the difference between a normal situation and a pandemic situation.

Despite the tremendous advancement of medical sciences and healthcare technology, almost all the nations are struggling to slow down the transmission of the disease and flatten its curve by testing and treating positive patients, quarantining suspected persons through contact tracing, restricting large gatherings, maintaining complete or partial lock down which definitely thwarts the psychological resilience of the public (Chakraborty and Maity, 2020). The COVID-19 pandemic has changed everything around in a way for which society was least prepared. It had greatly impacted on daily lives, including changes in everyday routines and cancelation of important activities. It has changed the world in many ways. Long term lockdown causes unavailability of community services and collapse of many industries, leading to a negative impact on local and national economic stabilities (Rubin et.al., 2020). Of the several implications on humanity, the issues of health, the rapid decline of economy, shortage of day to day essentials, poverty, and unemployment has undoubtedly taken centre stage and each has left a mark on the lives of people. People today are living in a way they never have before, i.e., working from home, learning online, in-door stay behaviour, and many are experimenting in the design of their identities. Society is drastically experiencing a new, unpredictable, and rapidly evolving situation. A continuously growing share of the global population is living with new rules on the restriction of movement and new norms are beginning to emerge. People have been told to physically isolate with those who regularly had contact with the families, friends, and colleagues. The risk of passing the COVID-19 virus to others has conditioned the society to be fearful. This new virus is beyond the control or understanding and has instilled fear in the society. This fear has governed the day-to-day social lives. People are adapting slowly to a pandemic situation due to fear about the virus spread, and they also understand what the ideal social behaviour should be in a similar situation. COVID-19 has created a negative association with connections which people make as a human being. They have to stay confined at home, family

dynamics have remarkably changed due to lockdown, travel is restricted, and there has been a reduction in leisure activities and social life. Actually, the ongoing pandemic threat has forced human beings to restrain them within the four walls of their rooms. The work situation has also changed thoroughly; many people have temporary or permanently lost their jobs, many are working from home with insufficient preparation for doing so, and many are experiencing heavy workloads with increased levels of stress and a greater exposure to the virus. People are bound to embrace and adapt to this 'New Normal'.

The coronavirus has spread as a global pandemic disease which is creating stress, stigma, minimising social networks, dismantling the family relationship and intimate relationships with relatives, neighbours, and various communities. These conditions lead to interpersonal conflicts and violence in the family. This pandemic also leads to global economic recession and increase in poverty level. The state of lock-down in many parts of the world, which are contributing largely to the global economy, has led to the halting of services and products. This has led to a break in the global supply chains and thus, affected the global economy brutally (Ebrahim et. al., 2020). The financial crises such as a decline in monetary values, share market values and businesses changes in supply chain networks and purchasing power of the people. This large-scale disaster have had significant negative impact on individuals ranging from depression, post-traumatic stress disorder, substance use disorder, behavioural disorder, to domestic violence and child abuse. The current COVID-19 pandemic has given rise to similar situations where the population suffer the risk of anxiety and depression, loneliness and domestic violence; and with schools closed, there is a very real possibility of an epidemic of child abuse (Galea et al., 2020). People subject to quarantine or self-isolation are at risk for anger and boredom; emotional tendencies that can be explosive when multiple household members simultaneously endure them for weeks or months on end. Now people find themselves in sudden forced proximity with their immediate family. The forced proximity is a risk factor for aggression and domestic violence. During this lockdown, there have been a number of stressors such as quarantine, pay-cuts, unemployment, uncertainty, fear, violence, abuse etc., which have caused distress amongst population. Critically, domestic abuse has increased during the COVID-19 lockdown (Wenham et al., 2020). Confinement at home is not a blessing for many, especially those who have been in abusive relationships. In other words, COVID-19 increases isolation and decreases the societal protection from domestic violence. The pandemic outbreak resulted in lockdowns and stay-at-home orders which likely increased women's social isolation and made it much harder to (temporarily) escape from violent partners (Usher et al., 2020). UN women has referred to the rise in violence against women during the Covid-19 pandemic and is accompanying lockdown as the "Shadow Pandemic" (UN Women, 2020).There have been reports of a sudden surge in domestic violence and child abuse incidences in midst of the COVID-19 crisis. The lockdown has aggravated the situation for victims of domestic violence according to the statistics released by the National Commission of Women in India. The total

complaints from women rose in the period between 23rd and 30th of March 2020. During this week, 214 complaints were received out of which 58 are of domestic violence (India Today, 31stMarch 2020). The increase has been attributed to abusers being confined in homes with the absence of getting any outlet to their anger or frustration and the helplessness of the victims to share their grief or travel from their near or dear ones due to self-isolation. During the 11 days' lockdown period, the Government of India's 'Childline' helpline has received more than 92,000 distress calls on abuse and violence requesting for protection, this period became prolonged confinement for children confined with their abusers at home (The Economic Times, 2020).

Effect Inside

COVID-19 Pandemic has shifted a social person from relationships to isolations and a fear psychosis has set in among people leading to anxiety and other mental issues as well. As the virus continues to spread across the world, there are the unintended, negative consequences; it brings with it multiple new stresses, including physical and psychological health risks, isolation and loneliness, economic vulnerability, and job losses. All these pressures people are facing will be translated into anger, frustration, and irritability (Hawryluck et al., 2004). While quarantine is a necessary preventive measure to curb the spread of infectious disease, individuals who are kept in isolation and quarantine, experience significant distress in the form of anxiety, anger, fear, frustration, confusion and post-traumatic stress symptoms (Brooks et al., 2020). The forced quarantine to combat COVID-19 applied by nationwide lockdowns produce acute panic, anxiety, obsessive behaviours, hoarding, paranoia, and post-traumatic stress disorder in the society. The negative impact of the confinement has also long-lasting effects. In line with this review, people in China experienced boredom, loneliness and anger while being confined, as well as an increase in psychological problems, such as anxiety, stress and depression (Duan and Zhu, 2020). During the lock-down period, the normal daily routines are completely hampered. People stay at home rather than go to work; kids take online classes rather than go to school. With so much uncertainty it is almost impossible to get into a rhythm. All of this leads to boredom and depression (Holmes, 2020). It is normal to be worried about contracting or spreading COVID-19. The virus is highly contagious, people are concerned and worried about their own and closed one's health, worried about falling ill and dying, and worried about losing people they love. The anxiety and concerns in society are globally affecting every individual to variable extents. Similarly, additional changes like – isolation, self-quarantine, restriction of travel and the ever-spreading rumours in social media are also likely to affect mental health adversely (Banerjee, 2020).

The pressure of maintaining physical distancing has been so strong that people have been forced to pass their time in a state of stress, depression, boredom, and loneliness. The accelerating spread of COVID-19 and its upshots has led people to fear, panic, concern, and anxiety (Ahorsu et al.,2020). Such situation

implicitly reflects the diathesis for proximate bio-psychosocial risk factors for depression and anxiety including relatively higher mortality rate (Xiang et al, 2020). Apart from its physical impact, COVID-19 pandemic has brought numerous changes to people's lives. Covid-19 pandemic has vigorous and multifaceted responses both in terms of physical as well as social health (Rajkumar, 2020). Physical interactions are an essential part of human social experience, and they are particularly important for the social development of human being. By shut down of almost all sectors, the pandemic is preventing people from socializing with others. This affects the ability to make quality connections, which impacts human personal growth. Long-term isolation leaves the people basic human needs unsatisfied and ultimately affects the mental health. This new form of attitude and behaviour accepted as community mitigation strategies for the better is required as deliberate practice.

A huge number of people develop financial losses or on the verge of unemployment, further intensify the negative emotions experienced by these individuals during the COVID-19 pandemic (Ho et al., 2020). In total, there were unprecedented global employment losses in 2020 of 114 million jobs relative to 2019. In relative terms, employment losses were higher for women (5.0 per cent) than for men, and for young workers (8.7 per cent) than for older workers (ILO, 2021). Unemployment is linked with a number of psychological disorders, particularly anxiety, depression, and substance abuse; dangerous behaviours including suicide and violence toward family members. It increases the risk of impaired mental health, especially when the economy shrinks with very limited employment opportunities. The fear of losing the job, pay cuts, lay-offs and reduced benefits make many workers in question about their future. Job insecurity, economic loss and unemployment can have a severe impact on mental health (Lund et. al, 2018). Increasing Psychosocial risks also increase stress levels and lead to physical and mental health problems. Psychological responses also include low mood, low motivation, exhaustion, anxiety, depression, burnout and suicidal thoughts. There are the changes in behaviours, such as a change in activity level or increased use of tobacco, alcohol and drugs as a way of coping, in addition to changes in the person's ability to relax or level of irritability. Unemployment is a global public health concern in the time of COVID-19 (Blustein, et. al., 2010). A recent study of 1210 participants from 194 cities in China revealed that 53.8% had a mild to extreme psychological effect, 31.3% had some kind of depression, 36.4% had some kind of anxiety and 32.4% had some kind of stress (Van Bavel, 2020). A study from Eastern India noted that majority of the responders felt worried about financial restraint during lockdown, almost one-fourth experienced depressive symptoms and one third found it difficult to adjust with this 'new normal'. More than half of the subjects were "preoccupied with the idea of getting infected with COVID-19". 25.6% of the respondents found that COVID-19 had threatened their existence (Chakraborty and Chatterjee, 2020).

Social stress caused by the pandemic lockdown has many faces and reasons resulting from travelling restrictions and disruption of cultural celebrations,

physical estrangement with friends and family, closure of places of entertainment and leisure, limited healthcare facilities and interruption in regular immunisations in hospitals due to fear of getting infected the virus. For some, these changes may be presented as the opportunities of increased time with family, flexible working structure. Physical hostility is associated with loneliness, higher levels of depression and anxiety, stress, poorer health behaviours, poorer sleep, higher blood pressure, poorer immune function, and pain. Also, the stress from thinking about all this reflects on their sleep quality. They could either have a problem with sleep onset or they could have a problem with sleep maintenance (Holmes, 2020).

Educational institutions have been shut down. Unplanned closure of schools and colleges are affecting the students about the quality education. The uncertainty and postponement of examinations are working also as a stressor for young minds. The lack of structure from schooling and missed education will have a lasting impact on well-being and apt to be related to increased anxiety, depression, and stress about educational attainment and progress going forward (Van Lancker & Parolin, 2020). Closing of educational institutions, parks, playgrounds, and outdoor interactions disrupt children's usual lifestyle and potentially promote distress and confusion. Children are likely to become more demanding and nagging, having to cope up with these changes, and exhibit impatience, annoyance, and hostility, which in turn affect them suffering from physical and mental violence by overly pressurized parents. So many stressors, such as monotony, disappointment, lack of face-to-face contact with classmates, friends and teachers, lack of enough personal space at home, and family financial losses during long span lockdowns, all can potentially trigger troublesome and even prolonged adverse mental consequences in children. In a recent survey report administered during the COVID-19 pandemic, children and young adults are particularly at risk of developing anxious symptoms (Orgilés et al., 2020). This research involved a sample of 1,143 parents of Italian and Spanish children (ranging the age of 3-18). In general, parents observed emotional and behavioural changes in their children during the quarantine: symptoms related to difficulty in concentrating (76.6%), boredom (52%), irritability (39%), restlessness (38.8%), nervousness (38%), sense of loneliness (31.3%), uneasiness (30.4%), and worries (30.1%). As the new virus forces them to keep distant physically, they start feeling lonely. They miss the ability to see, face to face chat, hug, or spending time with friends. Life seems shallower to them, more like survival than living, especially they live alone.

Women are likely to carry a greater social burden and responsibility in the household care due to absence of any external help and support i.e., maid-servants, for the fear of getting infected during the COVID-19 pandemic. Working women, in particular, are struggling to juggle multiple social roles and responsibilities - supporting children with schoolwork, household services and care, working from home, and parenting - leading to emotional exhaustion. Certainly, the pandemic is taking a heavy toll on the daily lives of the working women and, balancing work and home life is a major challenge. As per a global

survey by Deloitte, Nearly seven out of ten women experienced negative shifts in their routine as a result of the Covid-19 pandemic, believe their career progression will slow down (India, Today, 2021). As a result, it has brought about increased risks of conflict among household members. Family violence as the most dangerous one is often the result of the parents' psychosocial conditions. It does not only cause increase of crime rates raise only, but it also shapes the child's personality. Family violence affects all aspects of the child's life, as it negatively affects their mental health, and leads to emotional and behavioural disorders and psychological insecurity (Lee, 2019).

The single biggest impact of the COVID-19 pandemic lockdown has been the increasing acceptance of the 'Work from home' concept. 'Work from home' has truly become the new normal, a situation was driven more by compulsion than by choice. The acceptance of WFH has increased worldwide in pandemic era, academics argue regarding its pros and cons. There are certain drawbacks of WFH, such as employees working at home have to pay for electricity and the internet costs themselves (Purwanto et al., 2020). Usually, people love to go to work, enabling an opportunity to socially engage and stay motivated. Now the boundaries between work time and personal time have been blurred; while working from home, a mindset that has been a difficult adjustment for many People. Office employees living with their families ultimately face an internal dilemma of balancing their time spending at home between family and work, a component which surely adds the stress among them during this lockdown. Employees might be distracted by the presence of young children or family members while working at home (Baruch, 2000 and Kazekami, 2020) along with blurred boundaries between work and family life lead to overwork (Grant et al., 2019). Conversely, Kazekami (2020) studied the productivity of workers in Japan and discovered that tele-work increases life satisfaction.

This pandemic environment has some positive upshots. To adapt the pandemic atmosphere, people try to understand what the ideal social behaviour is in this pandemic situation. Government pandemic management systems and policies also help them to comply. They learn about self distancing and its rules, conditions, and procedures. They adapt themselves to the situation whilst contemplating the difference between a normal situation and a pandemic situation. There is the sudden rise of social integration through facing common crisis by individuals; families and communities engage in a high level of social cohesion or social conscience to face this difficult situation. Hence, everyone is getting used to a common lifestyle, common sharing and caring for others. There has been the sense that "neighbours are connecting and looking out for each other more than usual" (Stansfield, 2020).

Changing Attitude and Behaviour

Changing human attitude and behaviour of the society is the best defence in tackling the virus. Containing Covid-19 outbreak requires the medical advice, as well as continued compliance with the recommended behavioural changes that

in many ways go against social and cultural conventions. People's attitude and behaviour is influenced by social norms: what they perceive that others are doing or what they think that others approve or disapprove of. The attitude and behavioural changes are required to fight against the pandemic are instructive because of how deceptively simple they appear at first blush. Citizens are being asked to avoid all unnecessary social contacts with non-family members, maintain physical distance when contact is unavoidable, wash hands with soap and water on frequent basis, and wear a mask that covers one's nose and mouth in all public spaces. This indicates the increasing concern of society towards personal hygienic measures to avoid COVID-19 infection. Sensitization and awareness about COVID-19 are reflected in their behaviour and attitude significantly as people agreed with physical distancing, avoiding travel, self-quarantine, and adequate hygienic measures. These quickly learned behaviours are adopted in response to this public health emergency and were previously not a part of everyday experience. Moreover, while adapting to the rapidly changing guidance for the public, people are swiftly and proactively changing their attitude and behaviour. The fear and anxiety related to the pandemic influence the attitude and behaviour of people in the community.

Providing the public, a comprehensive information and good knowledge about the coronavirus disease are the only approach to control COVID-19 transmission. For effective prevention of disease spread, it is being emphasized the behavioural interventions, including raising awareness of the disease and encouraging protective behaviour such as self-quarantine and good hygienic measures such as hand washing, eye protection, and use of face masks and disposable gloves. These protective measures is associated with largely on rapid changes in population attitude and behaviour, which are dependent on individuals' ability to perceive risks associated with the virus and adapt their behaviour accordingly. The WHO recognises the value of human behaviour in managing any pandemic. Its Outbreak Communications Planning Guide suggested that the behavioural changes can reduce the spread by as much as 80% (WHO, 2008).

Hence, a detailed study attempted to evaluate the awareness, attitude, anxiety, and perceived mental healthcare needs in the society. The study participants reported regarding their frequent use of sanitizers, hand wash, and masks during the past one week. This indicates the increasingconcern of participants towards personal hygienic measures to avoid COVID-19 infection. Most of the participants (more than 4/5th) were agreed with self-distancing, avoiding travel, self-quarantine, and adequate hygienic measures. More than 80 % of the participants were preoccupied with the COVID-19 pandemic over the past week. Approximately 40 % of the participants were paranoid with the thought of contracting the Novel Coronavirus infection over the past week. About 72 % of participants reported being worried for themselves and their close ones during the ongoing pandemic. Approximately, 12 % of the participants had sleeping difficulty due to being worried about the pandemic in the past week. Among the participants, 82 % had reduced social contact, and about 90 % avoided partying,

meetings, and gatherings. Around 3/4th of the participants avoided ordering food online last week. A total of 80 % of participants repeatedly discussed the pandemic with their friends during this period. In this study, 41 % of the people affirmed feeling scared when someone in their social circle became sick. About 1/3rd participants reported having inappropriate social behaviour owing to the fear of contracting the virus. Almost 33 % of the people accepted that they felt obliged to buy and stock essentials at home. In this study, 37 % of participants admitted using a mask without the apparent signs and symptoms of the infection and more than 75% felt the need to use sanitizers and gloves. Almost 85 % agreed that they frequently washed their hands. Nearly half the participants felt panic by the reports of COVID-19 pandemic on the electronic and print media over the past week (Roy et al., 2020).

When people are under lockdown and quarantine orders, it is impossible to maintain the social relationships exactly as these were before. After all, everyone must try to reduce the risk of contracting COVID-19, coronavirus disease. At the most basic level, the way people relate to other people outside their households is like anything they have never experienced. When people do interact with others, they touch them less and move more rapidly to avoid them. The feeling of confusion and distrust is created in interacting people. People speak to others at a safe (as per guidelines) distance or through an electronic device. Since people are afraid as they can be infected when they are close to others and when they touch contaminated surfaces, people change their attitudes towards all aspects of social contact associated with the spread of disease. Working life is changed and involves more working from home, through reducing face to face contact, emphasizing more on online meetings, and reducing shared equipments. In sudden reaction, people are less prepared to join crowds and crowded places and develop a new perception of a safe distance. And use of public transport and travelling is being reduced and more carefully planned. There is also less body contact, increased preparedness to wear face coverings and acceptance of other protective measures in a wider range of situations. More emphasis is needed on personal hygiene measures, such as hand-washing, combined with a higher awareness of the infection risk associated with objects that are touched by huge number of people.

New lifestyles in "New Normal" are emerging. Maintaining family relationships and friendships, working, and conducting business, strong dependency on electronic media, engage in civic activities and entertainments are all affected by the new rules. Due to the covid-19 pandemic the physical interaction undoubtedly has been reduced but virtual interaction has been increased and a new society that is called the 'New Normal' society where new preferences and priorities have emerged. The people spend their time with family and maintaining health and hygiene which is needful to combat COVID-19. Overall, it is declared that proper use of these preventive practices convey the good awareness and positive attitude among people to defeat COVID-19. The habituated routine life has turned fragile and meanings have changed fast with the creation of a new set of meanings, essences, and priorities. Covid-19

Pandemic has changed the patterned social practices and social order along with the culturally embedded assumptions including the way of life. Therefore, the urgent need is to have an attitudinal change towards a more sustainable control of the pandemic situation in the society. In this pandemic situation, the social code of conduct is suddenly revised to address the public health crisis. It is becoming new 'normal' to keep a 2-meter distance with one another, and fulfil the 20-second hand-washing rule.

As physical distancing and isolation linger, many cultures around the world are adapting their distinct greetings to fit the New Normal. The Corona virus outbreak has made it important to keep the distance between people and greet each other in many non-contact forms. 'Namaste' is just one of them. Traditionally, shaking hands has become the universal gesture for greeting, and it is almost instinctive that people do it in meeting someone. While greeting close friends or family members, the most natural thing to do is to make a hug. In coronavirus pandemic, these simple gestures can lead to possible contamination. Hugging, kissing, shaking hands are all gestures to show familiarity and love, but in times of distancing and isolation people have been forced to turn to 'namaste', that can convey their emotions without the risk of infection. Press both the palm of hands against each other and spout "namaste." That is the traditional way of greeting someone. New Normal is accepting for greeting 'namaste' instead of handshake for safe from coronavirus.

Conclusion

COVID-19 as a new coronavirus disease has caused great impacts to the people's daily life extraordinarily. It has led the entire world under its feet. It appears to have reached the peak, first wave of this infection have already snatched many lives, a second wave is already observed with more disruptions than previous one, and third wave are going to be introduced with new strains of the virus. Over the course of the pandemic, still a number of variants of SARS-CoV-2 have arisen. Some of them are raising worries that they may draw out the pandemic or make the therapy and vaccines both less effective. Meanwhile, humankind across the world has to struggle to discontinue the chain reaction of COVID-19, and also to optimize its growing burden, it is imperative to keep balance in public lifestyle and day to day new experiences.

But the current crisis does not lie in Covid-19 disease alone but rather in the fear, panic and terror caused by the spread of this coronavirus. Focus has mostly been on testing, treatment, and prevention of COVID-19 but people and communities are going through various socio-psychological problems as well as in adjusting to the current lifestyles. While countries are trying to revamp the health infrastructure to cope up with the increased patient load, there is hardly any initiative been taken for the treatment of socio-psychological disorders related to the changing attitude and behaviour of the society.

There is also a need to intensify the awareness program and address the attitudinal and behavioural health issues of people during this COVID-19

pandemic. It is evident that community awareness regarding preventive measures against COVID-19 pandemic plays a crucial role in reducing disease transmission. If appropriate policy measures are not implemented in time, the virus of racism will inherently remain in the mind-sets of people, with a threat to the violation of peace and stability of the society.

Policy Recommendation

The proposed COVID-19 recovery action plan should focus on the socio-economic, socio-psychological spheres keeping in hand the medical and technical spheres. Most of the proposed actions have been focused on short-term and medium-term actions. However, there should be some significant actions identified under long-term actions which are related to individual and group level attitudes. Anxiety and fears related to new set of behaviour and attitude should be acknowledged and not be ignored, but better be understood and addressed by individuals, communities and governments. COVID-19 is a pandemic situation, and it has more critical aspects in the social domain which needs to be looked at through a sociological perspective also.

For reducing economic stress and anxiety during the pandemic, various economic safety nets like paid leave, unemployment insurance, direct cash, or food payments to the poor should be properly implemented to overcome economic burden. The COVID-19 outbreak response plan requires a deliberate effort to reach out to the furthest and most vulnerable through economic relief packages and social sector services.

To minimize the violence faced by vulnerable groups, there should be some widespread dissemination of digital platforms for seeking help. Community groups like the mother's group should be oriented and mobilized during this pandemic period to check-in women and children at risk of violence and act as a support system to guide them accordingly.

The pandemic has forced people to turn inwards; therefore, society as a whole requires more cooperation and support. People are in a state of distrust and insecurity if they can seek the help of their neighbours or friends in the hour of need. There is an urgent need to create an organic community ecosystem. Community systems need strengthening in terms of managing resources and providing information. It can be a useful tool in bringing the community together and restoring the faith.

Structured websites and toll free helpline numbers may be launched for alleviating socio-psychological distress among the populace. Social media is to be used in good sense, to educate people regarding COVID-19 transmission dynamics, symptoms of disease, and time when exact consultations are needed. To protect social media from devaluations andto avoid panic among general masses, strict government laws and regulations regarding fake news, social media rumours, disinformation and misinformation are to be implemented.

Covid-19 pandemic and its global fallout must give further boost to India's

Prime Minister's Swachh Bharat Abhiyaan. A new and serious approach to sanitation and cleanliness should be the future priority.

There is a need for financial and social investment in research to better understand the upshots of COVID-19 on socio-psychological symptoms and disorders with changing set of attitude and behaviour related to this pandemic prevention.

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Ground Reality to Political Reality: Securing Justice for India's Sanitation Labour

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Abstract

There are numerous pressing issues surrounding caste-based discrimination and social stratification which persist in our country even today, despite multiple legislations and constitutional mandates being in place. Of these, manual scavenging is particularly dehumanizing in nature. It involves manual cleaning of human excrement which is a massive blow in the face of human dignity, and ought to be viewed as a type of modern-day bondage, authorized through an exploitative and barbaric framework of social stratification. Through this paper, an earnest attempt has been made to give insights into the perils associated with this practice, such as the occupational health hazards, a vicious cycle of impoverishment, and the persistent stigma, which in turn highlights the failure of public service delivery and under-par governance pertaining to sanitation in our country.

Key words: - *Discrimination, Human Rights, Manual Scavenging, Public Service Delivery, Sanitation.*

Introduction

Public service delivery, in its simplest form, refers to a mechanism through which public services are delivered to the public by the union, state or local governments. Sewage and garbage disposal, maintenance of cleanliness, provision of public health services and educational facilities form some of the basic examples of public services. A mere overview of the concept of public service delivery is sufficient to depict that it is centric to the ideas of good

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governance and overall welfare, which are not ends in themselves but rather play a crucial role in enabling citizens to develop to their fullest potential and in turn contribute towards the growth of the nation at large. In India, despite repeated recognition of ensuring effective public service delivery as a priority area, facts and figures depict a grim picture with glaring inefficiencies.

The discussion in the present paper shall primarily revolve around 'Sanitation' as public service, and the ever-prevalent menace of manual scavenging, where human being manually cleans the excrement of another. To put it in even simpler terms, manual scavenging is a form of modern-day servitude, disguised as an occupational practice. Owing to its utterly disgraceful nature, this job is performed largely by the Dalit community, which occupies the lowest position in the social hierarchy, and are thus viewed as the only community 'polluted enough' to engage in such work.

Hereinafter, an attempt shall be made to shed light upon firstly, a conceptual framework tracing the history of manual scavenging, secondly to give vivid insights into the plight and predicaments of manual scavengers, and thirdly the State's failure to deliver efficiently in order to uphold the right to sanitation. Lastly, the conclusions, suggestions shall be highlighted.

REVIEW OF LITERATURE IN A THEORETICAL FRAMEWORK

The Concept of 'Caste' is a complex one. The Caste System in India is a classification of individuals into four hierarchically ranked strata called 'varnas'. These 'Varnas' take the form of an occupational classification, and hence dictate access to wealth, power, and privilege.[1] Historian and Sociologist A.N. Bose[2], in an attempt simplify the complexities associated with Caste, explains in that the Brahmins, who lay at the apex of the hierarchy, were supposed to be dedicated to priesthood at Hindu temples or at socio-religious ceremonies etc. Kshatriyas – the second in line, were to dedicate themselves to administrative duties, participation in war, etc. Followed by Kshatriyas was the Vaisya class, forming a major part of society in terms of population size. Within the Vaisyas also, there was a wide disparity of wealth, as they ranged from rich merchants trading as far as Mesopotamia and the East Indies to small peasants, hawkers, petty artisans, etc., and most often, did not command much respect from the upper castes. At the bottom of the caste-hierarchy were the Sudras, who lived a deplorable existence and were looked at as mere chattel of their masters, i.e. the upper castes.

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Interestingly, the concept has been given various contrasting interpretations. Dr. B.N. Datta in his work, 'Studies in Indian Social Polity' describes the concept of 'Varna' as a mere economically based class distinction[3], while Tukaram Tatya Padwal argued that the caste system in India had been nothing but division of labour made out on the lines of practical necessity, wherein individuals had the freedom and independence to move up and down the hierarchy based solely on their merit and capability[4]. More recently, Arundhati Roy, in an essay "The Doctor and The Saint" [5], which forms an integral part of the reprint of the original work of Dr. B.R. Ambedkar, titled "Annihilation of Caste", gives a vivid picture of the caste system as it existed back in the 1930s. Roy believes that to understand caste, a suitable comparative analysis ought to be made between how it operated in our country, versus racial discrimination in the USA during almost the same time. That is to say, those who were superior in the hierarchy enjoyed a plethora of economic and social privileges, which were enforced through oppression, and often took the form of social boycott, mob violence, etc.

Further, implications of caste-based stratification have been explained by categorizing it into various sub-themes. In intellectual terms, caste brought about limitations in the educational opportunities largely for the entire society, except a small, privileged section of society, thereby leaving the minds of the majority as cramped as the "feet of Chinese girls". Brahmins who did, in fact attain access to education, were not exposed so much to scientific studies, rather they were taught with a restrictive approach limited only to the understanding of the Vedas and other holy texts.[6] In terms of ethics, it has been opined that the pride associated with being an upper caste made people oblivious and ignorant towards the miseries of the depressed and underprivileged classes. Alongside, caste had equally harsh political detriments, as the warrior classes in India i.e., Kshatriyas and Rajputs were also divided, preventing the upper castes from joining the forces owing to the strict separation of occupational practices associated with each caste [7].

Delving into the implications of such notions, Annapurna Waughray highlights that while 'untouchability' initially had a mere abstract construct, it gradually became manifested in corporeal terms almost as an inherited trait which one

3. Dutta, B. (1964). *Studies in Indian Social Polity*, Calcutta, Purabi Publishers, 30.
4. Padwal, Tukaram Tatya. (1915), *Jatibheda Vivekasara*, Ganpat Krishna Press, 47-50.
5. Ambedkar, B.R. (2014). *Annihilation of Caste: The Annotated Critical Edition*, Navayana Publishing Pvt. Ltd. (ISBN 9788189059675).
6. *Supra Note* 4.
7. *Supra Note* 4.

couldn't detach from their social identity. Exclusionary practices began to be institutionalized, and endogamy became a norm.[8] Desai and Dubey have also explained that the sheer lack of resources and financial dependence made the so-called 'untouchables' find themselves at a greater risk of boycott. Social exclusion has been described as the only weapon bearing the potential to further oppress the oppressed.[9]

S. Waseem Ahmad and M. Ashraf Ali[10] in their article 'Social Justice and the Constitution Of India' have highlighted that before the commencement of the Constitution, a large number of princely states as well as provinces had brought about legal measures for doing away with the practice of untouchability from Indian society. Movements of social reform were trending under the worthy leadership of Gandhi with the objective of uplifting those who were lesser fortunate. Marc Galanter[11], who authored 'Law and Caste in Modern India' also offers an interesting perspective[12]. He is of the view that in the year 1950, with the adoption of the Constitution of India, came into being an entirely new order with regard to the concept of caste in Hindu society as well as the role played by law in forbidding the same. He highlights that this revolution did not take place overnight, but in fact depicts the zenith of more than five decades of persistent efforts towards anti-caste reform. Galanter also highlights that at the time when the Constitution of India was adopted, customarily recognized practices of the colonial era, i.e., excluding the Dalits from public spaces etc., which were also to a great extent made enforceable at the hands of authorities, had transitioned into specific offences which were backed by penal sanctions across the nation. Varun K. Aery[13], highlights the post-constitutional regime, whereby under Article 17 it was expressly stated that "Untouchability is abolished and its practice in any form is forbidden, and the enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law". Additionally, in the year 1955, the Union legislature enacted the Protection of Civil Rights Act, prohibiting the enforcement of disabilities "on the ground of untouchability" pertaining to entry in and worship at temples, practicing the

8. Waughray, A. (2010). *Caste Discrimination and Minority Rights: The Case of India's Dalits*, International Journal on Minority and Group Rights, 327–353. (JSTOR, www.jstor.org/stable/24675791).
9. Desai S, Dubey A. (2011), *Caste in 21st century India: competing narratives*, Econonic and Political Weekly. 46(11), 40- 49.
10. Waseem Ahmad, S. & Ashraf Ali, M. (2006)., *Social Justice and the Constitution of India*, Indian Political Science Association, The Indian Journal of Political Science 67(4), 767- 782.
11. Galanter, M. (1989). *Law and Caste in Modern India*, (1963), University of California Press,544-559
12. Rocher, L. (1993). *Journal of the American Oriental Society*, 113(1), 153-155.
13. Aery, Varun K. (2015). *Born into Bondage: Enforcing Human Rights of India's Manual Scavengers*. Indonesian Journal of International & Comparative Law 2(4), 719-742.

occupation of one's choice, access to shops, restaurants, water resources, educational institutions, public hospitals, etc. However, he adds that regardless of these measures, the age-old caste-based customs and discriminatory practices continue to persist even today, thus plaguing India's ability to truly attain freedom.

Interestingly, Raj S. Gandhi[14] delves into the "how" and "why" behind lower castes constituting a "minority" in the present day. Shedding light upon their status, he writes that though the 'lower-caste' groups are neither religious, nor racial, nor an ethnic minority today, the 'untouchables' of our country do in-fact continue to constitute a significant minority community with regard to the despised occupational practices that they are perpetually compelled to perform. More so, in terms of the extreme inferior social status that has been ascribed to them, lower than average income, voluntary or involuntary societal segregation, and a vast number of other disabilities from which they suffer, as opposed to the privileges of high-caste Hindus, all of which loom large despite the "abolition of untouchability" being in place in the legal framework. Many pressing issues have continued to surround caste-based discrimination and social stratification. Of these, manual scavenging is particularly disgraceful and dehumanizing in nature. Scholarly works suggest that it has been prevalent ever since the inception of the caste-system itself and came to be recognised as an exploitative practice much later. Earlier, it was seen as a form of practical necessity, i.e., if there is human excrement, it ought to be cleaned, but by virtue of the caste-system, this task continues to be assigned exclusively to the Dalit community, one generation after another.

Plight and Predicaments of Manual Scavengers -- An Empirical Analysis

Methodology

The objective of the present research is to evaluate the status of the workers involved in the occupational practice of manual scavenging, and thus analyse the efficacy of administrative responsiveness and policy measures towards the amelioration and upliftment of the said community.

To truly understand their predicament, it was essential to view the situation from the lens of the community itself. Hence, an empirical or field-based study was carried out to gather primary data in this regard. In addition to the field-based

14. Gandhi, R. (1982). *The Practice of Untouchability: Persistence and Change*. Humboldt Journal of Social Relations, 10(1), 254-275.

study, other relevant documentation was reviewed, including a wide range of secondary sources, reports addressing the issue of manual scavenging, databases and manuals produced by various organizations, such as those enlisting chronic accidents of sewer and septic-tank workers, etc.

Universe

The present report is based on a field study conducted in early 2020 in the New Delhi as well as Meerut, both of which are prominent components of the National Capital Region (NCR). Also, it is relies on multiple telephonic interviews with Dr. Renu Chhachar, National Coordinator at Safai Karamchari Andolan, who was at the forefront of carrying out covid relief work for sanitation workers on behalf of Safai Karamchari Andolan (SKA). Communities involved in the practice of manual scavenging in the aforementioned region were identified and approached with the assistance of SKA, a nationwide coalition, working for over 30 years, with the vision and mission to eradicate manual scavenging from across the nation.

Sampling Method & Sample Size

The researcher used snowball sampling method for carrying out interviews and focused group discussions, with a total sample size of over 50 people, including men and women of varied age-groups, actively involved in the occupational practice of manual scavenging, either as sewage cleaners or traditional dry latrine workers. The interviews as well as focused group discussions were aimed at seeking from the respondents, details regarding their age, source of livelihood, experiences of social stigma, health problems, sanitation infrastructure inadequacies, among other things. All interviewees participated voluntarily and without any compensation whatsoever. Further, it is hereby submitted that the reliability of the present research report is solely based on the consistency of the opinions expressed by the respondents.

Rationale

The National Capital Region (NCR) is supposed to serve as an exemplar of the highest form of development in all possible facets across India. Though the status of the community may differ in various corners of the country, yet prevalence of a certain situation within 100 kms of the Parliament House, where our legislators make tall claims of "Swachh Bharat" and "nation building", may indeed go a long way to depict a reflection of the state of affairs in the entire country at large. Hence, owing to the limitation of covering an even larger pool of respondents due to geographical, financial and time constraints, the researcher deemed it appropriate to gather from the community, a first-hand account of the perils associated with modern-day slavery disguised as employment, in New Delhi and Meerut, the seemingly distinguished components of NCR.

ANALYSIS OF PRIMARY DATA:

Age Group:

Age Group (Yrs.)	Number of Respondents	Percentage
15-20	2	4%
21-30	10	20%
31-40	13	26%
41-50	15	30%
51-60	6	12%
Over 60	4	8%
Total	50	100%

Arranged in decreasing order, 30% of the respondents fall in the age group of 40-50 years, followed by 26% from 30-40 years, 20% from 20-30 years, 12% from 50-60 years, and most astonishingly, 8% and 4% from the age bracket of over 60, and from 15-20 years respectively. All 8% of the respondents, lying at the far end of the spectrum, i.e. over 60 years of age, remarked that their entire life has gone by in a legacy of stigma, suffocation, and indignity. While some have grown to wholeheartedly accept it as their fate and only seek change for the future generations, others still continue to question the Almighty with "Why Me?". Those under 20 years of age were mostly school dropouts and were made to do such work by their families, forcibly or otherwise, in order to lend a helping hand for earning their daily bread and butter, particularly due to lack of alternate employment opportunities.

Source of Livelihood & Nature of Work

64% of the respondents were employed in the work of cleaning sewers or septic tanks, as their only source of livelihood. Residing in the Harijan Basti of New Delhi's Tilak Nagar area, famous for housing a large concentration of the Valmiki community in the capital, they get work from all corners of the city, as people directly approach them for sewage or other cleaning-related jobs. "Nobody else would ever do such dirty work, and the upper castes know that. Sometimes people come to us from far-off places, maybe even 25-30 kilometers away, only because they know that men from this Basti would be readily available to go down into the

sewers", said 32 years old Sunny, who resides with his wife, three children, and ailing parents. While explaining about the method adopted to carry out the work, a group of these men gave a rather vivid description of the tools that were used. Firstly, on several occasions, they have to make use of what is known locally as "Ghan" (hammer), and "Sabbal" (a rod like instrument with a pointed tip), tools for opening a jammed lid, due to extreme pressure created by the presence of noxious gases. Then, they make use of a plastic instrument called "Kolchi", with which they remove all the larger pieces of filth floating on the surface. Lastly, they tie 4-5 bamboo sticks together, and call it "Khappachhi", which they insert and vigorously move back and forth in an attempt to unclog the sewer. The number of bamboo sticks usually varies depending on the depth of the sewer, which may range from 2.5 ft. to sometimes as deep as 30 ft.

The remaining 36% respondents were women from the Dalit community, residing in Sadar area in the town of Meerut, who were primarily employed in cleaning insanitary latrines in the neighbourhood, due to a highly inadequate sanitation infrastructure with no proper sewage system. Their work entails cleaning the dry latrines using what they call as 'Jhadoo' & 'Panja', wherein the Jhadoo is a traditional broom and the Panja, a metallic instrument used to scrape off the faecal waste. After collecting the waste from the dry latrines of a single household, these women collect all the filth in a large bucket, which they then dispose off at the "Khatta", a dump-yard which is typically few kilometers away from the residential area. 48 years old Sudesh recalled being severely reprimanded by her employer for dumping the waste in a nearby drain on a certain day when she was heavily menstruating and found herself unable to walk all the way to the Khatta.

Awareness of the Law:

Without exception, each of the respondents seemed to have no awareness of the law or the rights that are guaranteed to them therefrom. While some were hopeful of change due to what they had seen on the news channels, others frowned upon their fate stating that no law could ever grant them freedom from helplessness, indignity and impoverishment.

Strictly Ascribed Gender Roles:

64% of the respondents who were engaged in sewer cleaning work, were men, and the remaining 36% were women, engaged in dry latrine scavenging. Typically, the roles have been clearly compartmentalized for the two genders, with barely any intermingling, whatsoever. When asked about what the women in the community did to make a living, some sewer workers from the Valmiki Basti expressed that it is difficult for women to find jobs such as that of a house help. Further describing their state of despair, Phool Kumar said, "Most people identify us with our community, and shy away from employing our women as house help because they are seen as 'too dirty' to work in a domestic setting. We are a family of seven and hence my wife has no option but to work. Currently she is working as domestic help because

she lied about our caste. If she hadn't lied, we would have come home every day only to see a frown on our children's faces."

On the other hand, women working as manual scavengers in the dry latrines of Meerut, are the primary bread earners of their family. For them, cleaning and clearing excrement from dry latrines becomes an obvious source of livelihood, due to lack of other opportunities and a virtually nonexistent sewage system in the vicinity. Shedding light upon their predicament, Munni remarked, "I studied till 5th standard, but here we don't get any other work to do, regardless of where we go. It's not that I haven't tried. If I go to a house to find work, they ask my caste. Once I tell them I am Valmiki, they will only give me work involving cleaning the toilets. I want to do something else, maybe put-up a food stall in the neighbourhood, but we don't have so much money to invest."

Social Stigma and Discrimination

While it was refreshing to hear a handful of workers blatantly denying having faced discrimination or stigma of any kind, most others had extremely painful accounts to share, laying thrust on the continued prevalence of the perils associated with untouchability, even in the present day and age. Bimla, a dry latrine cleaner from Sadar area of Meerut observed, "members of our own community are empathetic towards one another, because they know what each one goes through on a daily basis." Further, Mithilesh highlighted, "Vegetable vendors also treat us worse than dogs. When we buy something, they ask us to keep the money on the side, just to avoid any contact at all. But, if the vendor happens to be from our own community, he would never do such a thing."

With extreme anguish in their voice, two of the women said, "Some can't even stand the sight of us, and therefore have started cleaning their own latrines. So, now who becomes the Bhangi?" These aspects give a vivid insight into the deplorable state of affairs which such women, along with their families, have to battle on a regular basis. Exploitation is also a common practice, be it with traditional scavengers in Meerut or sewer cleaners of Delhi's Tilak Nagar. Needless to say, the women can't take their dirty brooms, baskets, and "Panja" (metallic scraper with a sharpened edge) inside their homes after work and are compelled to keep them outside. Taking advantage of this, it is a common practice that scrap dealers engage in petty thievery, often stealing the metallic 'Panja' from outside their homes, which makes it almost impossible for them to go to work the following day unless they purchase a new one. Recounting similar cases of exploitation, Gajraj mentioned, "when we have just cleaned a sewer or septic tank, it becomes very easy for the rickshaw pullers or auto drivers to identify us even from a distance. Most of them refuse to give us a ride, and even if they agree, they would charge nothing less than five times the usual amount." He added, "It is ok when outsiders treat us like that, but what does one do when our own kids misbehave? My school-going son once called me Bhangi in front of his friends, and often tells me not to take up such work in the vicinity because it brings him a great deal of embarrassment before his peers."

Exploitation at the hands of Authorities:

Not only are these workers being exploited by private entities, but more so it's the public authorities that take undue advantage of their power and position at the behest of this depressed community. Dheeraj shared his experience stating, "It is almost impossible to get a permanent job at Delhi Jal Board because one needs to pay a huge sum as bribe, the kind of money we have never seen in our entire lifetime." He added, "We are being compelled to live in abject poverty. The contractor pays us a meagre sum from his salary and makes deductions even for public holidays. How does one sustain a family of five with about six thousand rupees a month? It makes me so furious that sometimes I wish to tell the contractor to pocket those six thousand rupees also." Similarly, the women working in Meerut expressed their concern stating that it is absolutely necessary to pay a hefty sum as bribe to be able to secure a permanent job as a Safai Karamchari, working under the Municipal Corporation. "It is virtually impossible for us to save that much money, and even if we are able to, we would rather start something of our own, like putting up a stall in the weekly bazaar."

Health Hazards:

One of the most perturbing consequences of being actively involved in manually handling excrement is the associated health hazards. Respondents have stated that most often, they are encountered with respiratory issues having the severity of asthma, skin infections, chronic hair loss, constant nausea, frequent headaches and even tuberculosis, amidst a host of other medical conditions. While in the case of workers who have to clean sewers/septic tanks/drains etc., certain common features can be identified which pose a greater risk to their health. The foremost being a complete lack of maintenance and an inherently callous approach by the state, municipal bodies, institutions as well as private entities. Based on the interviews and discussions carried out by the researcher, it became apparent that employment on ad-hoc basis prevails largely across the Delhi Jal Board (DJB), subcontracting the work only as and when the need arises, which raises a huge question on the conditions that the workers have to undergo. That being the case, there is a constant lapse with regard to provision of safety gear, despite the same being sanctioned by the Jal Board authorities. Respondents working as subcontractors said that it is only once or twice a week that they are given access to any kind of machinery or protective gear. Those working solely with private entities are at a much greater risk of being exposed to health hazards, as they work at their own peril at all times, as the employers are only concerned with the end result and not the process or safety of workers. The respondents explained, "When we get private work, we usually go in a team of three or more. Sometimes the sewers are very deep, so we tie a rope to a broad belt with the help of which we go down. The other end of the rope is held by someone sitting all the way up. There are noxious fumes inside which makes it very difficult to breathe. When we feel asphyxiated, we shake the rope vigorously so that our fellows would pull us up, otherwise we would only be at God's mercy." They also shared that often the gases are released with so much pressure upon opening the lid of the sewer/septic tank that they fall

unconscious on the spot. To avoid such a thing, they usually leave open the lid for about 15-20 minutes to allow the noxious gases to be released, after which they throw in a lighted matchstick to check if the gases have escaped entirely or not.

Apart from the commonly experienced health problems as stated above, the dry latrine workers have a particularly challenging time during the monsoon season when they have to carry baskets full of excrement over long distances, which comes dripping down due to rainfall, causing extreme discomfort, apart from serious issues such as chronic hair-fall, allergies and skin infections. Kamal said that she suffered a miscarriage because she had to carry heavy loads during pregnancy, "I must have been about three to four months pregnant. There was no one to help me carry the heavy baskets. We that had to collect the faeces, carry it on our head and our hip, and then go and throw it somewhere else. It is because of this that I lost my baby."

State of Abject Poverty:

During a meeting at Safai Karamchari Andolan's head office in New Delhi's Patel Nagar, when the researcher raised a question before the Founder, National Coordinators, Advocate — Ms. Sumona Khanna as well as outreach workers with regard to the absence of a minimum wage for manual scavengers leading to their ever-increasing exploitation, it was unanimously opined that manual scavenging ought to be viewed as a massive challenge to human dignity, and had nothing to do with the remuneration involved. However, while conducting the empirical research, the situation seemed rather contradictory. Shanti from Meerut recounted, "We are paid 30 Rupees to 50 Rupees per household, on a monthly basis, depending on the number of latrines to be cleaned. When we ask for money, our payment is either delayed, or the money is handed from a distance, to avoid coming in contact with us." The challenges faced by the community in the town of Meerut in terms of remuneration are equally grave as those of the sewer cleaners in New Delhi, in spite of the latter earning about at least 10-12 times the money as the former. Living in the capital city is a costly affair, and a highly inadequate remuneration ensures that these workers continue to live in abject poverty, further curtailing their ability to acquire other skills, and limiting them only in the constant battle to earn two square meals a day for their families.

Contrary to the opinions of the Safai Karamchari Andolan, it was observed that certainly dignity is the bigger question that requires to be addressed, but before that, economic stability was absolutely necessary to enable these communities to find their way out of the shackles of indignity. At present, they are impoverished to an extent that dignity is certainly not the first thing in their minds. Bearing testimony to this were the seemingly dejected dry latrine workers, at the mere thought of sewer lines being laid out in the vicinity, due to which they would be led to joblessness.

THE UNSUNG WARRIORS OF INDIA'S BATTLE AGAINST COVID

During the current pandemic situation, the threat to the life of a manual scavenger is higher than ever before, yet their efforts continue to go unnoticed. A notable instance to recall the thankless nature of their job would be that of Sunday, 22 March 2020, when people all over the country applauded to pay their tribute to our healthcare professionals who had been working tirelessly through the hardships, but there was absolutely no acknowledgement for our sanitation labour, who were equally grappling with 'high risk' work, despite having no access to even the most basic protective equipment. It is also conveniently overlooked how our sanitation labour has been responsible for handling and cleaning medical waste, which further magnifies the risk that they are ordinarily exposed to on an average day. However, for a very brief period during the initial Covid rhetoric, manual scavengers were being celebrated as "hygiene heroes" and "unsung warriors" [15] of India. In the wake of this, the Union government had sought to introduce a bill which proposed to bring about complete mechanisation in sanitation services, with a view to obviate the need for manual intervention with human excrement. Further, it aimed to introduce a legal basis for compensation in the event of deaths due to manual scavenging and also to bring about increased accountability at the district level. Unfortunately, however, the drafting was undertaken in a manner that was far from being transparent. A completely discreet process was adopted and there had been absolutely no consultation with the stakeholders[16]. Even the text of the proposed Bill was not made available in public domain and no comments were sought at any stage. However, being less than a week away from conclusion of 2021 Monsoon Session, the draft of the aforementioned amended law which was supposed to be introduced in the 2020 Monsoon Session of Parliament i.e. The Prohibition of Employment as Manual Scavengers and their Rehabilitation (Amendment) Bill, 2020, still awaits cabinet approval as there is no proposal to introduce, consider or pass the same [17]. At a juncture where the third wave of the Covid-19 virus is set to tighten its grip on the country, it may also be safe to predict that the lives of our sanitation labour will further degrade, compared to the already abysmal and

15. https://www.wateraidindia.in/blog/sanitation-workers-unsung-heroes-in-the-fight-against-covid-19
16. Patil, K. (2021). *Manual Scavenging (Amendment) Bill 2020: Tangible or Still a Mirage for the Underprivileged*. (Retrieved from https://ssrn.com/abstract=3866435 or http://dx.doi.org/10.2139/ssrn.3866435)
17. Dasgupta Sravasti, 23 March, 2021 No plan to amend manual scavenging law, govt says 6 months after announcing new bill https://theprint.in/india/governance/no-plan-to-amend-manual-scavenging-law-govt-says-6-months-after-announcing-new-bill/627186/

subhuman working conditions that they have pulled through since decades.

Emerging Contradictions of Public Service Delivery and Sanitation Infrastructure

Needless to say, over the years, sanitation has become a much talked-about issue of concern and has garnered attention as well as intervention across the globe[18]. Among the numerous countries that have faced challenges pertaining to sanitation, the situation in India is particularly problematic owing to the gravity of the issue, to the point that India has been often viewed as the 'largest open lavatory' in the world, as we house the world's highest number of open defecators [19].

It is pertinent to acknowledge that in such a scenario, ending open defecation ought to be seen as the primary step in ensuring the right to sanitation as well as putting an end to the practice of manual scavenging. It would be unfair to say that policy interventions made by the Government have not contributed immensely in giving massive visibility to the cause of sanitation improvement. For example, unprecedented attention and urgency has been given to making the entire nation free of open defecation by way of the Swachh Bharat Abhiyan, both in rural and urban areas. However, the focus in India has largely been on fostering access to individual toilets rather than a holistically improved sanitation infrastructure[20]. It is noteworthy that this approach continues to be inherently flawed. Primarily, it needs to be understood that construction of toilets must be done in such a way that it addresses the consequences of broader toilet coverage. If most toilets are not linked to a proper sewage network, it lays tremendous burden of adequately managing the septic tanks, which in turn poses a huge challenge to the already existing issue of

18. UN General Assembly Resolution (2010), *The Human Right to Water and Sanitation*, U.N. Doc. A/RES/64/292
19. WHO/UNICEF — Progress on drinking water and sanitation (2014 update) - India still had 597 million open defecators while the second highest in the list, Indonesia, had less than a tenth of India's number, i.e. 54 million, 22
20. Guidelines for SBM (Gramin), (2014). S. 2 and Guidelines for Nirmal Bharat Abhiyan, 2012, S. 2(1)

manual scavenging[21]. Besides that, a partial focus only on toilet construction without viewing the larger picture leads to several undesirable repercussions. This may be understood by the observing the outcome of unorganised septage management, as it is carried out in rural areas. Echoing the views of Bezwada Wilson, most of the toilets built were single pit toilets that become full after about a year's use. These toilets are then often cleaned manually. Twin pit toilets have the advantage of longevity where one pit gets full and then the other pit is used till the excreta in the first pit turns to manure. But even this excreta-turned-manure pit needs cleaning every few years and that work is carried out by manual scavengers. Thereby, causing more harm than good. Unsurprisingly, families often end up disposing of the fecal matter in common fields away from the village or in a neighbouring water body or stream. Not only does this pose huge environmental issues but is also intricately connected to the problem of manual scavenging, wherein it is people from the Dalit community who are ultimately tasked with cleaning such filth. The issue is magnified owing to the absence of a proper mechanism, both in terms of absence of a law dedicated to ensuring the right to sanitation (vis a vis mere policy framework), as well as infrastructural flaws.[22] In simpler terms, the right to sanitation is operative, but only in principle and not in practice. When it comes to the ground reality, i.e. people's experience of sanitation interventions, there is still a long way to go, as suggested by the field report mentioned herein. This position may be summarised in the words of the Hon'ble Apex Court as 'a toilet in structure is not a toilet in reality'[23].

Reiterating the words of environmental activist Vimlendu Jha, "The problem of Swachh Bharat Mission is that it gave people toilets but it never gave them ways to dispose of the waste" [24]. While the Government seeks to facilitate building toilets under the present policy framework, leaving the impressing that the problem of faecal matter management stands solved. However, the toilets being built under SBM are largely reliant on water supply and a lot of parts of India, especially rural India, are not connected by the sewage system, which emerges from the field study. Hence, the pertinent question is that where will all the waste go? More importantly,

21. *See Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*, s. 2(j); Manual scavenging is the practice of 'manually carrying human excreta'.
22. Cullet, Philippe P. (2018), *Policy as Law: Lessons from Sanitation Interventions in Rural India*. Stanford Journal of International Law, 54, 241-258
23. JK Raju v State of Andhra Pradesh, Writ Petition (Civil) No. 631/2004 (Supreme Court of India, Order of 27 January 2015).
24. https://www.news18.com/news/buzz/manual-scavenging-is-illegal-in-india-then-hows-there-7-lakh-foot-soldiers-of-swachh-bharat-1898891.html

who will clean it? Needless to say, these questions are rhetorical since upper caste Indians continue to live in oblivion and blissful ignorance, based on their position in the caste-hierarchy. It is in this regard that Bezwada Wilson, founder of Safai Karamchari Andolan has often called manual scavengers the "foot soldiers of Swachh Bharat"[25].

As far as the sole focus on individual toilet construction is concerned, what is also problematic is the shift from a supply-based to a demand-based regime. That is to say, the various policy initiatives which had kickstarted back in the 1990s, up until the much-discussed Swachh Bharat Abhiyan, all have laid thrust only on motivating individuals to create toilets, rather than making it solely a State-led initiative. It needs to be acknowledged that the role of the State should not be restricted merely to encouragement or at the most, facilitating. The State ought to act as a provider, and ensure a holistic sanitation infrastructure, replete with individual/household toilets to laying of sewage lines, ensuring machinery for cleaning of septic tanks, etc. As highlighted by the empirical study, the deplorable situation of sanitation workers would be uplifted only when the State makes an effort to take charge in the truest sense of the term, rather than only engaging in encouragement through incentives.

This may further be highlighted by the fact that under the Swachh Bharat Mission, bearers of rights have been termed as 'beneficiaries'. That is to say, ensuring their rights is not necessary seen as something that they are entitled to by law. On the contrary, they have to adhere to the duty of building toilets[26]. For instance, in several districts, BPL cardholders are not permitted to get ration until they are able to furnish proof of having built a toilet at their place of residence[27]. Such a mandate has no legal congruence whatsoever and has also been confirmed in an Hon'ble High Court order as being violative of Article 21. [28]

CONCLUSION

In the day and age where India aspires to become a super-power and we are in a world where technology is the face of the future, it is beyond shameful that a community is neglected to the extent of being compelled to descend into manholes and carry baskets full of excrement over their heads.

25. Ibid.
26. See Nirmal Gram Puraskar Guidelines, 2010, p. 2.
27. See e.g., Milind Ghatwai, Sheopur Adm Gives Rations only to Villagers with Toilets, Indian Express (25 January 2017), p. 2. For the disputed case of Ajmer district see KumKum Dasgupta, With Stiff Target for Building Toilets under Swachh Bharat Abhiyan, States are Flouting Citizens' Rights, Hindustan Times (4 April 2017), 11.
28. Premlata w/o Ram Sagar v Govt. of NCT Delhi, Writ Petition (Civil) 7687/2010 (High Court of Delhi, Order of 13 May 2011).

The issues discussed in this paper raise a tremendous worry regarding the ever-increasing gap between the ground reality and the political reality of the situation. For an effective redressal in the truest sense, it ought to be acknowledged that the issue is three fold -- firstly and most importantly, it is an issue of caste-associated oppression; secondly, that of an appalling state of sanitation infrastructure at large and thirdly, of legislative gaps in enactment as well as their implementation.

In the wake of such an adverse situation as highlighted by the present study, merely highlighting campaigns in the nature of Swachh Bharat Abhiyaan does little to integrate these depressed classes into the mainstream. Till the time adequate administrative measures aren't taken to significantly address each of three issues, India shall continue to be viewed as the largest open lavatory in the world, which practices modern-day bondage by making one human being clean the filth of another. That is to say, the answer lies in adopting a holistic approach whereby not only are the age-old societal stigmas broken by sensitizing the masses, but in assisting the community to obtain access to alternate means of livelihood, which is only possible by way of ensuring a robust sanitation infrastructure which obviates the need for manual intervention with filth.

Notes

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As Per The Prohibition of Employment of Manual Scavengers and Their Rehabilitation Act, No. 25 of 2013:

- A "sewer" shall be taken to mean "an underground conduit or pipe for carrying off human excreta, besides other waste matter and drainage wastes." — As defined under S. 2(1)(q)
- "Insanitary Latrine" has been defined as "a latrine which requires human excreta to be cleaned, or otherwise handled manually, either in situ, or in an open drain or pit into which the excreta is discharged or flushed out." — As defined under S. 2(1)(e)
- A "septic tank" shall mean to be "a watertight settling tank or chamber, normally located underground, which is used to receive and hold human excreta, allowing it to decompose through bacterial activity." — As defined under S. 2(1)(p)

Human Rights and Intellectual Property Rights: An Overview

Basavaraj M. Kubakaddi*

Abstract

Human Rights and the Intellectual Property Rights are the two particular fields, that have to a great extent advanced independently. Their relationship should be reconsidered for various reasons. In the first place, the effects of protected innovation rights on the acknowledgement of Human Rights, for example, the privilege to wellbeing became considerably more obvious after appropriation of TRIPS agreement. In the second place, the expanding significance of licensed innovation has prompted the requirement for explaining the extent of Human Rights arrangements securing singular commitments to information in the field of clinical patent. Thirdly, various new moves should be tended to concerning commitments to information, which can't successfully be ensured under existing protected innovation right systems. This article looks at the changed parts of the connection between protected innovation rights, Human Rights, science and innovation-related arrangements in Human Rights settlements and above all will have a reference with respect to one side to wellbeing as a human right. It examines existing information assurance related arrangements in human rights bargains. It additionally analyses a portion of the effects of existing protected innovation rights systems on the acknowledgement of Human Rights.

Key words: - *Human Rights, IPR, Innovation, TRIPS*

Introduction

The Intellectual Property Rights the Human Rights are the different areas of Law which have developed autonomously. Licensed innovation Rights comprise

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of legally perceived Rights, giving impetuses to the support of the private part in different fields and try to add to the mechanical turn of events. The Human Rights are the Basic Rights, that are recognised by the State, and are natural Rights of human nobility. The Globalization of the Intellectual Property Rights set off the discussion on the connection between the Intellectual Property Rights and the Human Rights, in light of the fact that many creating nations, especially the least evolved nations, are not in a situation to execute the TRIPS gauges in their purview moving along without any more bargaining their advancement without affecting Human Rights.

In the recent decades, significant changes have been taken place both at the city and universal level, and it required a new and even-minded methodology for more extensive comprehension of the protection of intellectual property. In the year 1994, the understanding for building up the World Trade Organization came up, as a piece of it, a concession to the Trade-Related Aspects of the Intellectual Property Rights additionally came into power. The TRIPS understanding has laid down same uniform principles for implementation of the Intellectual Property Rights (IPRs). At the same time the Globalization of IPRs additionally made the discussion about the connection between the licensed innovation and the Human Rights, in light of the fact that many creating nations, especially the least evolved nations, are not in a situation to actualize the TRIPS gauges in their locale moving forward without any more trading off their improvement at the expense of Human Rights. The Intellectual Property Rights are viewed as oppositely inverse to Human Rights, concerned uniquely with financial returns with no social point of view. It is on the grounds that the character of the licensed innovation rights, when contrasted with human rights, is maybe not completely refreshing up until this point.

The intellectual property rights are viewed as oppositely inverse to human rights, concerned uniquely with the financial returns with no social point of view. It is on the grounds that the character of the licensed innovation rights, when contrasted with human rights, may be not completely refreshing up until this point.

The Intellectual Property systems are made with a social viewpoint looking to adjust between the good and financial privileges of the maker of the designers as licenses and with the more extensive intrigue and needs of society. The principle defense which is given on the side of patent is expressed to be that those motivations and compensations to innovators and the makers' outcomes in the advantages for the general public. The human rights which are concerned with the protected innovations take what are regularly a verifiable harmony among the privileges of the innovators and producers and the enthusiasm of the extensive society inside the scholarly ideal models and makes it unmistakably increasingly express and demanding. Though the fact that, the rights of protected innovation have become contextualized in the differing strategy zones for instance exchange, culture and legacy, speculation, condition, food security, logical and mechanical advancement. Be that as it may, in spite of these developing linkages, the character of the protected innovation rights as Human

Rights, just as the connection between the privilege to the licensed innovation and other human rights have not been completely investigated. So, the law of property manages the legitimate relations among individuals as to things. In this view, the expression "right", regardless of whether applied to property, mankind as a rule or individual specifically, expect uncommon importance and hugeness.

These Intellectual Property regimes solicitation to adjust the monetary privileges and moral privileges of makers and innovators with the more extensive interest and wants of the general public. A significant legitimization to licenses and the Copyrights is that motivators and awards to creators bring about focal points for the general public. An individual's privileges are the ways to deal with holding takes what's typically a certain irony between the privileges of the makers and designers and in this way the interests of the more extensive society inside holding standards and makes it way increasingly explicit & demanding. The Covenant on Economic, Social and Cultural Rights is the significant instrument for worldwide human rights protection and solution to these issues. Art. 15 of CESCR indicates that all States Parties to the Covenant that have lawfully accepted the present instrument, "perceive the best possible of everybody" each "to extravagant the benefits of logical advancement and its applications" & "to get delighted from the assurance of the material and moral interests coming out of any logical, scholarly or imaginative production of that he is the writer.

FOCUS OF THE ARTICLE

This article focuses on various issues emerging with regards to the direct and indirect connections among the Human Rights and innovation rights that are protected, just as the extensive problem of the conceivable future job of information related Human Rights arrangements. In other words, that in this venture we will break down the contentions which emerge between the Human Rights and the Intellectual Property Rights. Protected innovation Rights are the need of the time since Intellectual Property Rights fills two needs, first, it ensures the monetary and good privileges of the maker and the innovator, secondly, by giving this sort of security it supports further examination in various fields. Yet, aside from this Human Rights can't be relinquished on the raised area of the improvement in the structure Intellectual Property Rights. Subsequently in this task we will talk about that how far an equalization can be kept up between the human privileges of the general public all in all and the Intellectual Property Rights. We know that Human Rights are key for the stately endurance of the person likewise Intellectual Property Rights are fundamental not just for the monetary improvement of the nation yet in addition to energize a designer or a maker by giving him an honour for his creation or work, which is an aftereffect of his difficult work, valuable time and obviously his keenness.

GLIMPSE OF INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS

Protected innovation Rights are the rights that are given to the inventor or maker or a designer as the consideration for his work done and society should also be benefited by his innovative work. Whereas the Human Rights are the rights guaranteed to the individual for his existence by birth and they are not inalienable. They are also considered as inherent in nature. Though Intellectual Property Rights are the Human Rights, they cannot be enforced like Human Rights, because state can acquire the intellectual properties by paying compensation to the holder or maker, but Human Rights cannot be acquired by the state and state can obstruct intellectual property rights to satisfy Human Rights commitments. In this manner, after these definitions, we can without much of a stretch advancement forward in understanding the discussion between the two just as the arrangement of the discussion between the Intellectual Property Rights and the Human Rights.

To be reliable with the standards in the CESCR, the Human Rights approach varies in various respects from the principles set by licensed innovation law. In a nutshell, it necessitates that the sort and level of insurance managed under any licensed innovation system legitimately encourage and advance logical advancement and its applications and do as such in a way that will extensively profit citizenry on a person, just as aggregate level. It sets up a better quality for assessing patent applications, to be specific that the proposed creation likewise be steady with the natural respect of the human individual and with focal human rights standards. Since a human right is a general privilege, its execution ought to be estimated especially by how much it benefits the individuals who up to this point have been the most impeded and powerless.

DISCOURSE BETWEEN HUMAN RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

Human Rights and Intellectual Property Rights are the different fields of law that have advanced autonomously. In accordance with one viewpoint, protected innovation rights are comprised of legally perceived rights, that give motivations to the support of the private area in some specific fields and look to make some additions to mechanical turn of events. Licensed innovation rights, for example, licenses are close syndication rights. This imposing business model would be offered by the society as an end-result of specific concessions, for e.g., exposure of data and constrained span of the rights conceded. Human Rights are major rights, that are recognised by the state and however, they are inalienable rights connected with human pride. Along with this we can identify and recognise different type of relations between protected innovation rights and Human Rights. For example, patent laws display that there is a pecuniary measurement to the rights conceded and that a parity should be removed which is existed between the interests of the patent holders and the interests of the society at large. Likewise, protected innovation rights have direct and backhanded effects

on the acknowledgment of Human Rights. For example, protected innovation rights will incorporate monetary and other good components. And the last one may be connected to specific parts of the Human Rights. Finally, Human Rights arrangements display certain rights which are related to the science and innovation.

The relations between protected innovation rights and the Human Rights have been recognized since long ago, as they are examined in the science and innovation-related arrangements by the Universal Declaration of Human Rights. Nevertheless, the primary discussions about the connections between Human Rights and the property rights focused for quite a while on genuine property rights as they are opposed to licensed innovation rights. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has suggested for creation of nations and in a general sense it has changed the idea of the discussion related to protected innovation rights and the Human Rights. This move has been exhibited in three different ways, first of all, the potential effects of the presentation or reinforcing of protected innovation rights gauges on the acknowledgement of Human Rights have been examined in some emergency situations like access to HIV/AIDS drugs. Secondly, there has been recharged banter over the presentation of protected innovation in basic 'Bills of Rights' at the national as well as provincial level. Thirdly, at the United Nations level, there has been restored enthusiasm related to science arrangements of Art. 15(1) of the Covenant on Economic, Social and Cultural Rights (CESCR).

A significant point to note here is that however the relative separation currently finished with the wake of the acknowledgment that there is a cosy connection between the Intellectual Property Rights and the acknowledgment of the human privileges of the poor in the creating nations. In any case, the ground the truth is some place unique. Actually, the Intellectual Property Rights shows just as the Human Rights show discusses the government assistance states and the government assistance of the people living in the worry states, yet the idea of protected innovation rights doesn't fill the fundamental need of the human rights. Licensed innovation Rights empowers the turn of events and insurance of the good and financial privileges of the maker of the designer with the security of human rights as it said as follows that Intellectual Property Rights are implied:

1. To give legal meaning to the good and monetary benefits of makers in their manifestations and such benefits of open in access to those manifestations.
2. To advance innovativeness, dispersal, and utilization of outcomes and to strengthen reasonable exchanging which would add to financial and social turn of events.

For the most part, contended that society benefits extraordinarily affected from mechanical advancements, which ought to be empowered. In any case, it some place encroaches upon the essential privileges of the person. Similarly, as with respect to the human rights to wellbeing, the connection has gotten clear on account of the relation between the clinical licenses and acknowledgment of the

privilege to wellbeing in relation to the HIV/AIDS scourges and the T.B. in the creating nations. This is because of the way that accessible medications to address these ailments are generally new, increasingly costly, and exorbitant on the grounds that it is secured by an item patent.

INTELLECTUAL PROPERTY RIGHTS AND PERCEPTION OF HUMAN RIGHTS

Intellectual Property rights to a great extent developed as a particular field of law for the greater part of their history. This was expected to some degree to the discernment that rights like licenses made a particular commitment towards monetary and innovative turn of events. The connections between the impetuses allowed through the patent framework and its more extensive effects on society were just hastily tended to. In any case, the premise of Patent rights is a harmony between the interests of society everywhere in mechanical and monetary turn of events and the rights allowed to singular innovators. This is connected to the way that there has consistently been a strain intrinsic in the patent framework between the advancement of intensity for monetary improvement in industrialist economies and the acquaintance of close restraining infrastructure rights with guarantee comparable points in certain particular fields. It has along these lines consistently been perceived that an equalization ought to be struck between the rights conceded to patent holders and the more extensive interests of society. At the end of the day, financial concerns comprise a basic piece of patent laws and bargains. This accentuation on financial concerns is constrained by the setting inside which they are presented. Patent laws center around the privileges of patent holders and the interests of every other person.

This has two significant ramifications, first, there is no balance of rights between the various on-screen characters in the nearness. Second, patent laws have just made immaterial commitments to the comprehension of the potential effects that they can have on the acknowledgement of human rights. The overall disengagement of licensed innovation rights from more extensive discussions concerning their effect on the acknowledgement of human rights or on natural preservation has finished after the selection of the TRIPS Agreement, whose primary effect has been to significantly raise protected innovation rights principles in a lion's share of creating nations. With regards to a dominant part of creating nations and most likely all least evolved nations, the usage of the TRIPS Agreement can possibly impacts affect the acknowledgement of Human Rights. The connection between patent insurance and the acknowledgement of Human Rights isn't new in essence, however, it has been made substantially more obvious after the reception of the TRIPS agreement. Most creating nations have had and are having to rapidly adjust protected innovation rights guidelines which can possibly trigger huge financial disturbance. This was likely never so obvious in created nations, where the reinforcing of patent security has to a great extent been gradual. The connections between protected innovation rights and the acknowledgement of Human Rights in creating nations exist as to various

human rights. They are effectively obvious on account of the rights to food and to wellbeing.

APPEASING, PEACEMAKING AND EGALITARIANISM APPROACH BETWEEN HUMAN RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

So as to paint a general foundation to the discussion, among the numerous legitimate writings identified with the interface between human rights and IPRs, two will be cited here: the "Universal Declaration of Human Rights" of 1948 ("UDHR") and the "Worldwide Covenant on Economic, Social, and Cultural Rights." For the current reason, it is adequate to refer to UDHR Article 27.1 which expresses that "everybody has the privilege uninhibitedly to take part in the social existence of the network, to appreciate expressions of the human experience and to partake in logical headway and its advantages," and Article 27.2 of the UDHR, which expresses that "everybody has the option to the assurance of the good and material interests coming about because of any logical, abstract or masterful creation of which he is the writer." These two passages of a similar arrangement of the UDHR delineate the complex and in some cases vague relationship, which may offer ascent to inconsistencies, between the IP framework and human rights.

Two fundamental ways of thinking have established the pace of the discussion.

1. The supporters of the hypothesis as per which human rights and IPRs are in the restriction has endeavoured to prevent IPRs the status from claiming human rights, along these lines building up the chain of importance among the rights contained in the UDHR, which would manage the cost of the higher need to certain human rights and hence legitimize forcing confinements on IPRs to help interests having a place, from their perspective to the open as opposed to the private intrigue.
2. The advocates of the concurrence hypothesis, then again, don't think about that there is an inalienable clash between the two groups of law, as they interchange in a commonly steady way, for instance, since IPRs have added to the foundation and advancement of other essential rights, for example, the opportunity of discourse through copyright.

While the angry, yet maybe not generally gainful, the discussion keeps on testing the connection among IPRs and human rights, let us inspect the nature and position of IPRs inside the general lawful request in somewhat more detail. The way that IPRs alludes to "property" in an assortment of dialects will, in general, recommend that the authentic will of administrators in an assortment of frameworks of law has been to allow IPRs a position similar to different types of property rights.

The UDHR Article 27.1, obviously expresses that everyone has the privilege unreservedly to take part in the social existence of the network, to appreciate human expressions and to partake in logical progression and its advantages, and

Article 27.2 of the UDHR, states that everyone has an option to the insurance of good and material interests coming about because of logical, scholarly or creative creation of which he is the writer. These two passages of a similar arrangement of the UDHR outline the complex and once in a while uncertain relationship, which may offer ascent to inconsistencies, between the Intellectual Property Rights and Human Rights.

CONVENTIONS ON INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS

The answer for the issue of misbalance between human rights can be discovered in the foundation of the new arrangements at universal concern. Over the most recent two years, protected innovation issues have ascended to the head of the plans of a few global associations. At that point to defeat the issue number of the settlements got acquainted with balance the working of the protected innovation rights and human rights. We will talk about the accompanying settlements regarding their fundamental and extreme objective.

A. UNESCO: The Convention on the Protection and Promotion of the Diversity of Cultural Expressions

UNESCO received another universal understanding on October 20, 2005, i.e., the Convention on the Assurance and Promotion of the Diversity of Cultural Expressions ("Cultural Diversity Convention"). The said Convention, which is a result of 2 years of escalated dealings by Government authorities and gatherings of autonomous specialists, expands upon the Universal Declaration on Cultural Diversity which UNESCO's individuals consistently embraced in 2001. The Cultural Diversity Convention reacts to the conviction shared by numerous legislatures that the undeniably smooth motion of social products and ventures across national fringes is jeopardizing social assorted variety and residential social enterprises. Attesting that social assorted variety is a "typical legacy of mankind," the Convention reaffirms states' "sovereign option to detail and actualize their social approaches and to receive measures to ensure and advance the decent variety of social articulations" inside its domain. A progression of "core values" advises how states are to accomplish this target.

B. WIPO: The Development Agenda and Access to Knowledge Treaty

Since its creation in the late 1960s, the WIPO has occupied with an expansive cluster of exercises steady with its order of "advancing the security of licensed innovation all through the world." To help part states in arranging worldwide understandings, the WIPO Secretariat has occasional conciliatory gatherings, shares data, and gives master guidance. WIPO likewise gives specialized help and preparing to national governments and to their licensed innovation workplaces, particularly in creating nations. All the more as of late, the association has made standing, master, and between legislative boards of

trustees which inspect explicitly licensed innovation subjects and make nonbinding rules and proposals. In the course of the most recent decade, WIPO and its part states have been particularly dynamic in haggling new protected innovation bargains identifying with copyrights, licenses, and trademarks and in attempted an eager program of delicate law making. In spite of the fact that these exercises have created newly licensed innovation assurance norms, those guidelines have not solely preferred the interests of industrialized nations. Albeit a few activities have profited states with well-resourced and persuasive licensed innovation ventures, creating nations have held significant impact in the association to shape arrangement commitments and delicate law standards. Among the numerous things on the Development Agenda is a proposition for a Treaty on Access to Knowledge.

CONCLUSION

The advancement and securing of Human Rights of an individual is a basic need as guaranteed by the Constitution of India and Covenant on Civil and Political rights, Covenant on Economic, Social and Cultural rights. It is significant that National Human Rights Commission and State Human Rights Commissions are playing vital role in promoting Human Rights. On par with International Obligation, Human Rights Act has been enacted domestically by the Parliament and the same need to be strengthened. Apex court of India also contributed more for strengthening and protecting Human Rights. Wherever there is a gap in the legislation that has been filled by the judiciary by interpreting the law. Intellectual Property Rights (IPRs) have expected focal significance all through the world in the ongoing past. Licensed innovation is the imaginative work of the human psyche. The principal inspiration for its security is to support imaginative exercises. The commitment of licensed innovation to the mechanical and monetary improvement of a nation can't be overstated. The success accomplished by created countries is the aftereffect of the abuse of their licensed innovation. The assurance of the licensed innovation is likewise liable for the exchange of innovation from created nations to the creating nations. Since the job of licensed innovation is the sine qua non in the modern and monetary advancement of a nation, it turns out to be subsequently inescapable to ensure it. However, simultaneously, this part of the law is required and expects to advance and ensure the enthusiasm of a person to make sure about the reasonable incentive for his scholarly exertion or speculation or capital or work. Be that as it may, the ongoing arrangements in TRIPs and the resulting decisions by the different courts have extended the extent of patentability past human creative mind and have brought every single living resembling plants, creatures including individuals under the ambit of Intellectual Property Rights

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Legal Analytical Studies of Right to Privacy: A Critical Examination of Indian Case Studies

Abhilasha Sisodia* and Narendra Bahadur Singh**

Abstract

The idea of privacy is certainly not a new thing but this idea can be found in ancient Hindu texts. The origination of right to privacy is as old as custom-based law. This term 'privacy' is not static, it is absolutely unique in nature as the law consistently continues changing according to necessities and demands of the general public. This privacy right has not been explicitly suggested under the Indian Constitution. However, the courts have read the right to privacy into other existing fundamental rights, i.e., Freedom of Speech and Expression under Article 19(1) (a) and right to life and personal liberty under Article 21 of the Constitution of India. However, these Fundamental Rights under the Constitution of India are subject to reasonable restrictions given under Article 19(2) of the Constitution that may be imposed by the state. Recently, in the landmark case of Justice K.S Puttaswamy (Retd.) & Another vs. Union of India and Others, the constitution bench of the Hon'ble Supreme Court has held Right to Privacy as a fundamental right, subject to certain reasonable restrictions. In the absence of specific legislation for data protection in India, the Information Technology Act 2000 (the IT Act) and a collection of other statutes stand in for this purpose. The efficacy of present legal framework is needed to analyze to give a sophisticated protection to the privacy issues. This paper proposes to discuss every aspect of Right to Privacy with special reference to Puttaswamy's case. The researcher will mainly focus upon the enacted laws which are meant for protection of privacy right. The researcher will also recommend some suggestive measures in order to remove such defects in online privacy laws to a great extent.

Key words: - *Privacy, Information Technology, Puttaswamy, Right to Life.*

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Introduction

The idea of privacy is certainly not a new thing but this idea can be found in ancient Hindu texts. The origination of right to privacy is as old as custom-based law. This term 'privacy' is not static, it is absolutely unique in nature as the law consistently continues changing according to necessities and demands of the general public. In ancient India, the law merely protected people from bodily harm, such as from trespassers, and it was at this point that the notion of property rights arose in order to safeguard the house and animals. As shown by the debates of the Constituent Assembly, privacy was intentionally kept out of the Constitution. It's unclear what the legislators were envisioning when they approved this legislation. Although the right to privacy is not expressly stated in India's post-independence Constitution, it has evolved as a result of several legal rulings. Privacy right is a subsidiary right esteemed under Article 21 of the Indian Constitution and is a necessary part according to different Supreme Court decisions. Many modifications were implemented and lots of suggestions for alterations were given during enactment of the Act as the law makers have realized that as per the change in needs and demands of people in society; there is the need for protecting not only the physical security but the scope of law shall also extend in protecting and securing one's emotional, spiritual and intellectual well-being. Article 21 of Indian Constitution ensures two kinds of Rights: i. Right to life. ii. Right to individual freedom. Right to privacy covers both these aspects of right. This right is not just ensured under Indian constitution however this right has likewise been perceived in different laws additionally like Criminal Laws, Law of Torts, Information Technology Act 2000 (IT Act), Information Technology Act 2008, The Aadhar Act 2016 and so forth At International level this right has been perceived as a fundamental right under the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Civil and Political Rights, 1966 (ECHR), The European Convention of on Human Rights, 1953 (ICCPR).One can't envision to make the most of his right to existence without presence of privacy right. Each person has certain piece of the existence which are relied upon to be classified and are not needed to be plugged freely; and right to privacy is one of those rights which are meant to protect our secrecy. This privacy right has not been explicitly suggested under the Indian Constitution. This right got its place under Indian Constitution through Judicial Interpretation. High Court has given various translations to the term 'right to life'. Consideration of privacy rights as one of the principal rights under Article 21 is the after effect of one of such translations.

The insurance of privacy cannot be isolated from technological progression: these days, because of the advancement of science and innovation, the likelihood to barge in into somebody's privacy has expanded. We cannot even imagine having a life without technological involvement. The law needs to respond to these changes, guaranteeing the legitimate insurance of privacy. Subsequently, information that users do not wish to share must be protected. It necessitates adequate political and legislative intervention in order to safeguard

users' privacy while also defining the extent to which it may be violated. As a result, it wouldn't be inaccurate to contend that, in the present scenario, people's rights to privacy act as a check on government and non-governmental agencies. Privacy itself is as much as old as humanity, notwithstanding, it was not generally a lawfully ensured right. What is viewed as private and what is lawfully ensured as private can vary. Perhaps the main issues concerning legitimate privacy insurance is that as indicated by a few privacy researchers and the European Court of Human Rights it is anything but conceivable to give a thorough lawful meaning of the subject of privacy security. The significance of privacy can be identified with the way that privacy has a nearby association with human respect, opportunity, and freedom of the individual, and it is increasingly more tested in the age of the fast innovative advancement of the data society. India, on the other hand, has yet to enact any data protection legislation. The two major pieces of law that deal with data protection are the Information Technology Act of 2000 and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules of 2011 (often known as the "IT Rules"). It included many new legislations requiring businesses and organizations that handle personal data to obtain written approval from data owners before conducting any activities. The Information Technology (Amendment) Act of 2008 has previously modified the Information Technology Act of 2000, adding sections 43A and 72A to the Act. In this article we will examine both National just as its international perspective. Privacy right is an aspect of basic liberty and subsequently, it is basic from the character of a person.

Defining the Term 'Privacy' from the Prism of History

As indicated by Black's Law Dictionary, Right to Privacy signifies 'the right of an individual to be liberated from any unusual obstruction. [1]

According to Gillian Black, in her book on Publicity rights, propounded that 'security is the craving of a person to be liberated from interruption[2].' 'None of the citizens will be exposed any kind of unlawful interruptions with regard to his protection nor to any unlawful assaults or stabbings[3].' In R v. Edwards[4], Justice

1. Retrieved from https://lawtimesjournal.in/privacy-as-a-fundamental-right/ , Accessed on 30th June'2021.
2. Deb Arpita, Right to Privacy in India: Evolution and Legal Analytical Study, Law Corner,2020, Retrieved from https://lawcorner.in/right-to-privacy-in-india-evolution-and-legal-analytical-study Accessed on 19th January ,2021,10 PM.
3. Retrieved from https://www.lawyersnjurists.com/article/%E2%80%98no-one-shall-be-subjected-to-arbitrary-or-unlawful-interference-with-his-privacy-home-or-correspondence-nor-to-unlawful-attacks-on-his-honor-and-reputation-%E2%80%99 Accessed on 19th January,2021,11 PM.
4. R v. Edwards (1996) 1 SCR 128.

Cory of Canada's Supreme Court utilized these words to characterize security: "… the state or state of being separated from everyone else, undisturbed, or liberated from public consideration, as an issue of decision or right; independence from resistivity or interruption."

Notwithstanding of a few actions which was made to describe protection, yet we are not able to discover any uniform acknowledged definition. Number of researchers and specialists have characterized this term in their own particular manner of translation and examination. However, there is no explicitly characterized degree for this term. Along with these lines, we can say that protection should be reevaluated and rethought in this contemporary period. Lawful specialists like Arthur Miller have expressed that protection is hard to characterize in the light of the fact that it is momentary.[5] Previously, the privacy rights were intended to provide protection with respect to only tangible things which resulted in actual injury but now after publication of article by authors Brandeis and Samuel Warren, we can explore that this right not only tend to include the tangible things but various other dimensions as well which are very clearly discussed under Puttaswamy's case[6].

The right to security is our legacy and we own this right since our birth. The impression of protection in some cases becomes uncertain in view of its current diverse recorded hypotheses of security[7]. By and by, because of innovative progress; it has grown extremely simple to encroach in someone's personal life. Because of this reality, it is necessitated that law should push ahead according to contemporary difficulties and ought to guarantee the lawful assurance of protection[8]. The appearance of innovation has additionally presented us with absolutely new components of security like one among them is Informational protection; in which every single people data is accessible in this digital world either its own or expert. As we realize that Natural rights are the birth rights

5. Gerety, T.: Redefining Privacy. Harvard Civil Rights-Civil Liberties Law Review Vol. 12, No. 2. (1977) p. 281.
6. Vrinda Bhandari, Amba Kak, Smriti Parsheera and Faiza Rahman, An Analysis of Puttaswamy : The Supreme Court's Privacy Verdict, Accessed on 21 January,2021, Retrieved from https://www.ssoar.info/ssoar/bitstream/handle/document/54766/ssoar-indrastraglobal-2017-11-bhandari_et_al-An_Analysis_of_Puttaswamy_The.pdf?sequence=1,
7. Greene Jamal, "The So- Called Right to Privacy", U.C. DAVIS LAW REVIEW, VOL. 43, P. 715, 2010; COLUMBIA PUBLIC LAW RESEARCH PAPER NO. 10-226 (2009), Retrieved from https://lawreview.law.ucdavis.edu/issues/43/3/liberty/43-3_Greene.pdf. Accessed on 29 June,2021, 10:00 AM.
8. Lukacs Adrienn., What Is Privacy? *The History and Definition of Privacy*, 2016, Retrieved from https://publicatio.bibl.u-szeged.hu/10794/7/3188699.pdf , Accessed on 21 January,2021.

which are viewed as incomparable of the relative multitude of other existing rights. Protection rights are additionally observed as identical to the Natural rights as this right is prevalent among any remaining existing rights[9].

Another perspective on the significance of right to privacy is that it is basically regarded as natural right.[10] Natural Rights are those divine rights which are considered eminent and supreme from any other existing rights. The common agreement scholars like John Locke in his book named "Two Treatises on Civil Government" planted the seeds of "right to protection" by upholding the hypothesis of regular rights which as indicated by him were uninfringeable and outright[11]. Daniel Solove has talked about in one of his articles that the essential issue we find in the current meanings of protection is that these definitions examines the extent of security either excessively constricted or excessively broad. He underscores that the fundamental issue is that these creators have utilized a customary method of conceptualizing protection, and subsequently their definitions just features a few parts of security and hence it is anything but ready to give an accurate view on the components of protection[12]. As indicated by him the Judges, legislators and examination researchers have likewise neglected to conceptualize the specific issues that law of protection is approached to address[13]. The issues identified with protection are even not all around expressed, because of which we cannot resolve the issues identifying with breach of security as we are not having any specific law for this notion. Adding the trademark that protection should be deciphered by the current cultural financial designs, the chore of making a comprehensive lawful idea of safety appears to be unthinkable[14]. Regardless of these vulnerabilities, a few global authoritative reports recognizes the right to privacy. However, the inquiry emerges as to whether an effective legal protection can be ensured when the subject of protection cannot be determined exactly.

9. Bloustein, E. J. "Privacy as an Aspect of Human Dignity: an Answer to Dean Prosser", New York University Law Review Vol. 39, 1964. p. 973., p. 974.
10. Payal Thaorey, Informational Privacy: Legal Introspection In India, 2019, Retrieved from http://ili.ac.in/pdf/pt.pdf Accessed on 21st January, 2021 at 02:13 p.m
11. Jana Kalyan Das, Philosophical foundations of The Right to Privacy, retrieved from http://www.livelaw.in/philosophical-foundations-right-to-privacy/, Accessed on 21st January, 2021 at 12:45 p.m.
12. Gavison, R.: Privacy and the Limits of Law. The Yale Law Journal Vol. 89, No. 3. (1980) p. 423.
13. Retrieved from https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2086&context=faculty_publications , Accessed on 30th June,2021.
14. Daniel J. Solove, Conceptualizing Privacy,2006, Retrieved from https://www.jstor.org/stable/3481326?seq=1, Accessed on 5th April, 2021 at 10:33 AM.

Literature Review

Aristotle, the Greek philosopher, distinguished between the public realm of political affairs (which he called the polis) and the private domain of human existence (which he called the psyche) (termed oikos). This contradiction may help to identify "a privileged and restricted zone on behalf of the citizen". In the Commentaries on the Laws of England (1765), William Blackstone has discussed this distinction by categorizing wrongs as private and public wrongs. Later on, John Stuart Mill in his essay "On Liberty," which was published in the year 1859, highlighted the necessity to protect a zone where citizens liberty is unencumbered by state control. After Mill, John Austin who was an English Jurist discussed about the dichotomy between the public and private spheres in his Lectures on Jurisprudence (1869).

A vital advance was the making of the cutting-edge protection idea, which previously showed up in the well-known investigation (The Right to Privacy) composed by Louis Brandeis and Samuel Warren in 1890. From that point forward, the right to security has become broadly known and recognized and began to develop and turned into an essential basic fundamental right. In Treatise on the Law of Torts, Thomas Cooley coined the expression 'the entitlement to be kept alone'. This was one of the most remarkable contribution from the side of Cooley which described the privacy right copiously. Individual's lives, liberty, and domains are, as a matter of fundamental natural law is to be regarded as a personal treasure, according to John Locke's Second Treatise of Government which was published in the year 1690. A few extraordinary law specialists made endeavors to define privacy, but still because of its complexity, the greater part of these definitions just highlight the basic features of it. In an article titled as 'The Spirit of the Common Law', which was published in the year 1921, the author Roscoe Pound defined natural rights as that interest of people which is needed to be safeguarded.

My aim is to point out this issue that despite of the long history of privacy protection and several efforts made by lawful researchers for quite a long time, privacy is as yet a major question and brings up a mass of issues to be replied. Despite the way that right to privacy just turned into a by and large acknowledged right in the nineteenth twentieth century, protection of this right had existed well before this period. The development of the concept of privacy has an extremely long history; it has its beginnings effectively in the antiquated social orders. Indeed, even the Bible has a few entries where the infringement of security showed up in its initial structure, where dishonor and barbarity followed the interruption into somebody's private circle[15]. It is sufficient to consider Adam

15. Konvitz, M., *Privacy And The Law: A Philosophical Prelude. Law and Contemporary Problems*, Vol 31, No. 2. (1966) p. 272.

and Eve, who began to cover their bodies with leaves to protect their privacy. The possibility of protection generally comes from the distinction among "private" and "public" [16]. As part of Ronald Dworkin's liberal theory of law, he has written in his landmark essay titled as 'Taking Rights Seriously' (1977), about the concept that people might have rights against the state that are antecedent to rights granted by explicit legislation. Undoubtedly, it can be professed that in many respects right to protection was in reliant to right to freedom of speech, which was even oriented in the first Amendment of bill of rights. Henceforth, it can be inferred that right to privacy forms an integral part of USA constitution[17].

As professed by Brandies and Warren throwing light on privacy rights stated that under the domain of privacy right any kind of misappropriation of one's name, uninvited interruption in anyone privacy right will amount to the violation of privacy right[18]. In today's digital era, we feel that privacy is one of the most important right which is needed to be protected and secured where each and every information from personal to public has been uploaded and surrounded by electronic medium either directly or indirectly. Privacy is not the same as secrecy. A private matter is something that one does not want the entire world to know about, but a secret matter is something that no one wants to know about. The ability to selectively disclose oneself to the world is known as privacy.

Critical Appraisal of Right to Privacy at National and International Level

The right to privacy and confidentiality is perhaps one of the foremost civil rights[19] which is sine quo non for a person to enjoy one's individual self-rule. As civilizations arose and formalized through written constitutions, some of the most significant civil rights were guaranteed to the citizens or inhabitants. At the point when those awards were subsequently discovered lacking, social liberties developments arose as the vehicle for guaranteeing more equivalent security of law and uniformity under the watchful eye of law for all residents and

16. Szabo M. D.: *Kiserlet a privacy fogalmanak meghatarozasara a magyar jogrendszer fogalmaival*. Informacios Tarsadalom 2, 2005. p. 45
17. Retrieved from, https://nationalparalegal.edu/UnderstandingWarrenBrandeis.aspx , Accessed on 22nd January,2021,2:14 PM.
18. Right to Privacy in India: Evolution and Legal Analytical Study, Anonymous, Retrieved from, https://lawcorner.in/right-to-privacy-in-india-evolution-and-legal-analytical-study/ , Accessed on 22nd January,2021,2:34 PM.
19. Civil rights are the protections and privileges of personal liberty given to all citizens by law. Examples of civil rights and liberties include the right to get redress if injured by another, the right to privacy, the right of peaceful protest, the right to a fair investigation and trial if suspected of a crime, and more generally based constitutional rights such as the right to vote, the right to personal liberty, the right to life, the right to freedom of movement, the right to business and profession, the right to freedom of speech and expression.

supporting new laws to confine the impact of separations. Some civil liberties are guaranteed in written constitution while some rights may be inferred by customs and courts announcements which are key for human endurance for leading a dignified life[20].

Indian Legal regime Governing Right to Privacy

In specimen of Article 21 the Right to Privacy has been construed by the Supreme Court of the Indian Constitution vigorously. It declares that none of the person can be defended or denied of their enjoying their right to live and right to relish their personal freedom until and unless he has been prohibited by law.

Because of continual breach of privacy right, Indian Judiciary was indebted to play a pro-active role in ensuring this right. As we probably are aware very well that in our Indian Constitution, this right to protection has not been explicitly ensured[21].

Indian Constitution

Subsequently, there isn't any specific legislation and proclamations related to our right to privacy. However, the sting of Right to Privacy can be very clearly seen in various sectors such as Information Technology, relishing Intellectual property rights etc.[22] In any case, through different decisions of the Courts throughout the long term, different rights has been interpreted distinctively in order to embrace right to privacy basically through Article 21 by interpreting the right to life and liberty[23].

Reasonable Restrictions Upon Privacy Rights

Each constitutional rights are dependent upon specific restrictions. Right to Privacy isn't a special case for it. Article 19(2) of the Indian Constitution expresses that the Right to Privacy can be obligatory under various judicious restrictions in context of sovereignty and veracity of the country, considering

20. Thaorey Payal ,"Informational Privacy: Legal Introspection In India", ILI Law Review Vol.II, 2019.
21. Retrieved from http://defindia.org/wp-content/uploads/2017/09/Understanding-the-Lack-of-Privacy-in-Indian-Cultural-Context.pdf , Accessed on 30th June'2021.
22. Kramer R.Irwin, "The Birth of Privacy Law: A Century Since Warren and Brandeis", Volume 39,Issue 3, Available at https://scholarship.law.edu/lawreview/vol39/iss3/3.
23. Holvast Jan, "History of Privacy", Retrieved from https://link.springer.com/content/pdf/10.1007%2F978-3-642-03315-5_2.pdf , Accessed on 30th June'2021.

various security affairs, maintaining friendlier and healthy relations with neighboring foreign countries, in case of defamation or provocation to an offence or in circumstances of disregarding the justice of court[24]. This right is equally imperiled to various reasonable limitations through the elucidations of numerous provisions and statements of Supreme Court as for instance taking an eminent case of Maneka Gandhi v. Association of India[25], where it was held that this right to privacy could be confined by strategy set up by law wherein this methodology ought to be simply, reasonable, and sensible.

Privacy and Law of Contract

The Indian Contract Act is the controlling legislation for commercial terms and agreements in India. There are various ways for parties to approve to confine the limit for using of personal information obtained, such as through a "privacy provision" or a "confidentiality clause[26]." As needs be, gatherings to an agreement may consent to the utilization or exposure of a person's very own data, with the due authorization and assent of the person, in a concurred way and additionally for concurred purposes, at the same time, any unapproved revelation of data, against the express terms of the understanding would add up to a break of agreement as a result of any default in recognition of the particulars of the agreement[27].

Consequently, customary parties of contract may approve to the usage or revelation of anyone's personal information in a settled discussion in consent of persons approval and consent but if any information is shared illegally without prior information or in contrary to the terms of the agreement, will be treated as violation of contract which will be treated as illegal in the eyes of law [28].

Law of Torts

Law of Torts do not contain any direct arrangements identifying with penetrate of protection. The law of tort grants protection in the case of civil wrongs like

24. Tripathi Shivnath, "Right To Privacy As A Fundamental Right: Extent And Limitations", Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2273074 , Accessed on 30th June'2021.
25. AIR 1978 SC 597.
26. Alashoor M. Tawfiq, Aryal Arun, Kenny Grace, "Understanding the Privacy Issue in the Digital Age: An Expert Perspective"Retrieved from https://aisel.aisnet.org/amcis2016/ISSec/Presentations/18/ , Accessed on 30th June'2021.
27. ALibeigi Ali, Munir Bakar, Karim Ershadul MD,
28. "Right to Privacy, a Complicated Concept to Review", Retrieved from https://www.researchgate.net/publication/335856643_Right_to_Privacy_A_Complicated_Concept_to_Review , Accessed on 30th June 2021.

trespass, defamation etc[29]. Nonetheless, with the technological progression these days these normal torts laws are not sufficient. Thus, it is the need of an hour to establish explicit data protection and breach of privacy laws.

Tort law is frequently viewed as a mechanism for ensuring privacy. Tort law, on the other hand, may erode privacy by pushing defendants to collect sensitive information about people, establish extensive monitoring, and reveal information. And the pressure is increasing as technology reduces the cost of monitoring and other data collection, making it increasingly likely to be regarded as part of a defence strategy.

International Legal Regime Governing Right to Privacy

There are numerous International Human Rights including both at global and district level embracing various provisions directly connected to Right to Privacy as for instance, Article 12 of UDHR (UN, 1948)[30], and Article 17 of international contract on Civil and Political Rights (UN, 1966)[31], also including Article 8 of the European Convention on Human Rights, 1950[32]; all aforementioned are examples relating to human rights declarations[33].

The International Conventions are as per the following:

A. The Universal Declaration of Human Rights, 1948

The privacy right acquired acknowledgment on the global level with the selection of the Universal Declaration of Human Rights 1948. This fundamental right to secure a person's privacy has been cherished in Article 12 of the Universal Declaration of Human Rights, 1948[34] ("UDHR") states that nobody is permitted to make undue intrusion in anyone's life nor one can defame one's

29. Ghosh Jayanta, Shankar Uday, "Privacy and Data Protection Laws in India: A Right-Based Analysis", Bharati Law Review, Oct – Dec 2016, Retrieved from https://www.researchgate.net/publication/323958405_'Privacy_and_Data_Protection_Laws_in_India_A_Right-Based_Analysis, Accessed on 30th June'2021.
30. Retrieved from http://www.claiminghumanrights.org/udhr_article_12.html, Accessed on 30th June 2021.
31. Retrieved from https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx , Accessed on 30th June 2021.
32. "Guide on Article 8 of the European Convention on Human Rights" Retrieved from https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf , Accessed on 30th June 2021.
33. Retrieved from https://fra.europa.eu/en/eu-charter/article/7-respect-private-and-family-life , Accessed on 30th June'2021.

status and dignity.

B. The International Covenant on Civil and Political Rights, 1966

This common liberty has likewise been verbalized in the International Covenant on Civil and Political Rights, 1976 ("ICCPR"). This provision has been expounded under Article 17 of the ICCPR, 1976. The Article 17 peruses following attributes as none of the person could be embellished to flexible or illegitimate impedance with the privacy, family, home or correspondence, nor to illegal attacks upon his honor and repute. It also scrutinizes that every person has the privilege to avail their legal rights against any kind of assaults or obstruction committed upon them[35].

The Right to privacy ensures one's personality, uprightness and closeness character incorporates one's name, sex, appearance, sentiments, honor, and notoriety, etc.[36] The right to privacy as gone ahead as per Article 17 of ICCPR is a perplexing right containing individual privacy, the right to singular self-assurance or more all the option to regard for explicit private organizations like the home, correspondence, and the family. The Human Rights Committee is of the view that the term 'family' in Article 17 ought to be given a wide understanding to incorporate every one of those containing the family as perceived in the general public of the state party concerned. The term 'home' is to be perceived to demonstrate where an individual dwells or completes his typical occupation. The term 'correspondence' likewise needs an expansive understanding and covers today, notwithstanding composed letters, all types of correspondence over distance by phone, message, wire, fax, electronic mail, etc. The most widely recognized obstructions are secret state observation measures to forestall wrongdoing, fighting psychological warfare, etc.

The ICCPR requires the state to enact laws and take other steps to give legitimacy to the prohibition of such interferences and attacks, as well as the enforcement of this right. Because India is a signatory to both the UDHR and the ICCPR, they are immediately binding on the country. However, no legislation has been enacted in India to protect the environment.

34. The Universal Declaration of Human Rights, 1948, Retrieved from http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html, Accessed on Feb.17,2021 at 12:54 PM.
35. The International Covenant on Civil and Political Rights, 1961, Retrieved from http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html , Accessed on Feb.17,2021 at 01:05 PM.
36. Janusz Symonides: Human Rights: New Dimensions and Challenges, USA, Ashgate Publishing Company, Burlington 1998 p. 88, Retrieved from http://www.gbv.de/dms/sub-hamburg/247264598.pdf , Accessed on 29th June'2021 at 1:00 PM.

C. The European Convention on Human Rights,

This convention was adopted in 1953 which states[37] that:

'One's personal life, home, family, or communication should not be exposed to any arbitrary intrusion, nor should his honour and reputation be attacked," according to Article 8 of the Convention, and a public authority shall not intervene in anyone's life unless as required by law.'

Supreme Court Verdicts on Different Aspects of Right to Privacy

A historic judgement was given by the Supreme Court regarding privacy right on 24th August,2017 in Puttuswamy's case. With reference to a nine-judge Supreme Court panel in Puttuswamy v. Association of India's case the court affirmed many versions of the privacy rights.

Phone Tapping and Right to Privacy

Telephone tapping and right to privacy is influenced by new innovative turns of events and thus has become a discussing issue. In R.M. Malkani v. Province of Maharashtra[38], the Supreme Court stated that the Court would not endure shields for the protection of citizens to be risked by allowing the police to continue by unlawful or unpredictable techniques. The defilement of Article 21 and Article 19(1) incurs that even phone tapping will be corroborated as invasion of right to privacy and opportunity of articulation and furthermore government cannot force restrictions on distributing disparaging materials against its authorities that make it violative of the Constitution.

According to Justice Kuldip Singh's ruling in People's Union for Civil Liberties v. Union of India, under Article 19(1) (a) of Indian Constitution; the right to have a phone call in the privacy of one's home or business without being interrupted may surely be asserted as their privacy right. The Supreme Court ruled in this case that telephonic communications are private by nature, and so phone tapping is a breach of one's privacy right [39].

37. European Convention on Human Rights, 1953, Retrieved from http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html Accessed on , Accessed on Feb.17,2021 at 01:10 PM.
38. AIR 1973 SC 157.

Right to Privacy Acquaintances with Health Centers

The health industry is a main source of privacy and one of the most essential components of the right to privacy. Health information comprises not just information on one's health or handicap, but also information about possible health services.

It is a natural human inclination for some people to see medical records as highly private. The right to life is so important that it supersedes the right to privacy. The trust connection between a doctor and a patient is known as a fiduciary relationship, which refers to those partnerships that are founded on mutual faith and belief. Every person has the option of keeping their medical history private or sharing it with someone they choose. A practitioner is bound by an oath or medical ethics not to disclose a patient's confidential information if doing so will have a negative impact on or endanger the lives of others.

- Any information relating to health and our medical history must be kept under secrecy and disclosure of such sensitive information will not only be contradicting medical ethics but it also leads to violation of existing law. This principle is also applicable to the healthcare centers however, this rule is subject to the information which a government or public authorities want to receive in the interest of security of state.
- We are allowed to access our child's medical condition for their well-being.
- If we feel that any person engaged in medical profession is mismanaging our personal details and found to be corrupt, it will amount to violation of our privacy right and we can sue that doctor for infringement of our privacy right.

Family and privacy

If privacy has a societal influence, it is on the family, which is recognized as a group of personal relationships that may thrive if kept hidden from public observation. Privacy in connection to one's family is extremely important, from one's financial situation to the preservation of marital rights. From one's financial condition to the observation of marital rights, privacy in relation to one's family is quite essential. There is no reason to be concerned about privacy if primary has no societal consequence. As a result, we may conclude that if

39. Dr. P.K Rana, Right To Privacy in Indian Perspective, Retrieved from http://www.lawjournals.org/archives/2016/vol2/issue5/2-5-26 , Accessed on Feb,16,2021 at 12:40 PM.

privacy has a societal influence, it is on the family.

In recent privacy discussions, the topic of privacy inside the family has been largely overlooked. However, privacy invasions between parents and children, or adult partners or spouses, can be equally as serious as those in more "public arenas[40]." The dynamics of family interactions have changed as more people have access to more sophisticated kinds of electronic monitoring technology The nature of privacy inside the family has altered as a result of monitoring, which is mediated and aided by both covert and overt technological surveillance methods. Parents employ GPS-enabled mobile phone tracking software to follow their children and monitor their family members' Internet usage. Parents, siblings, and children are also publishing information about their relatives on the internet, often without their consent.

Privacy and Gender Priority

This is a right that every human, male, or female possesses. Our right exists not just for males in this male-dominated nation, but also for women, regardless of who she is or what data she has, from her monthly cycle to her sexual delights, from union to her personal obligations, regardless of whether she is a housewife, a representative, or a politician[41]. It does not matter whether she is a housewife, a representative, a corporate junkie, a merchant, or even a whore, her life is her own and no one else, and no one has the right or privilege to peer into it, whether it is her spouse, individual laborer's, management, society, or anything else. Even a lady of simple temperance is entitled to solitude, and no one has the right to invade her personal space. Each female has the fundamental right to be treated with goodness and legitimate nobility.

Therefore, we can state that this is a right that every human, male, or female, assumed or scandalous, possesses. Our right exists not just for males in this male-dominated nation, but also for women, regardless of who she is or what data she has, from her monthly cycle to her sexual benefits, from union to her personal obligations, regardless of whether she is a housewife, a representative, or a politician.

40. Jindal Poorvisha, Right to privacy in India: Its sanctity in India, 2020, Retrieved from https://blog.ipleaders.in/know-the-right-to-privacy-in-india-its-sanctity-in-india/ , Accessed on Feb.17,2021 at 12:35 PM.
41. Retrieved from http://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html , Accessed on Feb.17,2021.

Press and Privacy

This is often recognized as the Fourth Estate, and it is the backbone of any democracy. In a democracy, the press has independence, but in a non-democratic society, it has total power. The press's right to seek information from the government, where using right-to-know principles to compel disclosure may conflict with an individual's assertion that information about his or her personal matters should not be shared with others.

There are few absolute rights in the Constitution, and journalistic freedom is restricted. While it is legal to criticize the government, it is not legal to disseminate incorrect information on individual citizens The term "defamation" refers to words that are "injurious to others" either spoken or written. Written slander (or defamation extensively published through oral broadcast) is referred to as "libel."

Exploration of Puttuswamy's Case with Different Dimensions

The case of Puttuswamy v. Union of India[42] was significant since all nine judges drew the same ruling. Justice Kaul, Justice Nariman, Justice Bobde, Justice Chandrachud, Justice Chimaleshwar, and Justice Sapre were among the judges. The key points of the decision are stated below:

Privacy Right as Fundamental Right

The Supreme Court decided that the right to privacy is a fundamental right that cannot be defined independently but may be extrapolated from the Indian Constitution's Articles 14, 19, and 21. It is a natural right that is included in the9 right to live and be free[43]. It is a fundamental and inalienable right that is linked to the individual and encompasses all of his data, personal details, and information. So, we can state that it is a fundamental and unalienable right that is linked to the individual and encompasses all data about that individual as well as the decisions that he or she makes. Now, in present scenario any kind of encroachment or activity by the state invading privacy right of any citizen would be subject of judicial review.

42. (2017) 10 SCC 1.
43. Retrieved from, Retrieved from, https://scobserver-production.s3.amazonaws.com/uploads/case_document/document_upload/635/PRIVACY_-_Written_Submissions_FINAL.pdf Accessed on April 9,2021 at 3:30 PM.

Right to Privacy is not an Absolute Right

The Supreme Court was pointed out that this privacy right cannot prevent the state and the government to impose reasonable constraints and therefore is subject to limits and checks imposed by the government. It was held that the state has the jurisdiction to limit the privacy right to safeguard legitimate state interests, but only if it follows the three-pronged tests stated by the court[44]. Thus, all State activity that could affect privacy will currently be estimated against this three-overlay test. This is probably going to affect a few continuous schemes including above all, the Aadhaar personality project.

(a) Some Additional Implications

Recognizing the complexities of all of the aforementioned concerns, the Court emphasised the necessity for comprehensive privacy laws and stated that the government has already established a committee to investigate these issues, which is chaired by retired Justice B.N. Srikrishna.

There are a few extra ramifications of this judgment on issue accidental to the chief issue chose by the Court:

I. By explicitly perceiving a person's more right than wrong to privacy with respect to his sexual decisions, the judgment is probably going to affect the appeal forthcoming under the steady gaze of the Court on the de-criminalization of homosexuality in India.

II. The judgment has additionally mentioned a few objective facts on the unpredictable connection between close to home privacy and large information, especially with regards to how the prudent utilization of these advancements can bring about the State accomplishing its genuine advantages with more prominent efficiencies.

III. To the extent that the ruling expresses that the state cannot intervene in an individual's dietary decisions, it has no influence on the many lawsuits contesting meat restrictions imposed by specific states.

IV. It has also recognized the impact that non-State entertainers can have on privacy in the home, particularly when it comes to enlightening privacy on the Internet. While fundamental rights are typically only authorized against government activities, given the judgment's comprehensive language and

44. Bhandari, V., Kak, A., Parsheera, S., & Rahman, F. (2017). An Analysis of Puttaswamy: The Supreme Court's Privacy Verdict. IndraStra Global, 11, 1-5. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-54766-2. Retrieved from https://lawlex.org/lex-bulletin/case-summary-k-s-puttaswamy-retd-v-s-union-of-india-2017/18929 ; Accessed on Feb.12,2021 at 10:38 AM.

the extent to which educational privacy has been alluded.

Perceiving the complexity of this load of issues, the Court featured the need to sanction an extensive enactment on privacy and noticed that the public authority has effectively delegated a board of trustees under the chairmanship of resigned Justice B.N. Sri Krishna to investigate these issues.

Leading Judgements on Right to Privacy

The problem of privacy was explored in this case using the Unique Identity Scheme. The Supreme Court of India's nine-judge bench upheld the basic right to privacy under Article 21 of the Indian Constitution on August 24, 2017.

The privacy is to be a crucial section of Part III of the Indian Constitution, which sets forth the essential privileges of Indian nationals, according to the ruling. The Supreme Court further stated that the state should modify individual privacy with discretion at all levels, and that all laws and operations should be in accordance with the constitution.

It is expressed in the judgment that the privacy is to be a vital segment of part III of the Indian Constitution, which sets out the fundamental privileges of the Indian residents. The Supreme Court likewise expressed that the state should cautiously adjust the individual privacy at any expense and all laws and acts should comply with the constitution. The court also stated that the right to privacy is not an absolute right, and that any attack on privacy by a government or non-government entity must pass the Triple Test [45]. First one is appropriate objective, second one is proportionality and thirdly legality.

Kharak Singh v. The State of U.P. [46]

A minority judgement in this Supreme Court case established the right to privacy as a basic right. The right to privacy was found by the minority judges under both the right to personal liberty and the right to freedom of movement.

45. An Analysis of Puttaswamy: The Supreme Court's Privacy Verdict, Retrieved from https://medium.com/indrastra/an-analysis-of-puttaswamy-the-supreme-courts-privacy-verdict-53d97d0b3fc6 Accessed on 9th April,2021, 3:17 pm.
46. 1963 AIR 1295

R. Rajagopal v. Union of India (1994) . [47]

The Supreme Court of India declared that a magazine could publish an autobiography written by a prisoner without his knowledge or licence. Officials at the jail sought to prevent the autobiography from being published by compelling the prisoner to request that it should not be published. The Court stated that striking the right balance between freedom and security was fundamental.

District Registrar and Collector, Hyderabad and another v. Canara Bank and another (2004).

As per the decision of court of law, the indispensable rights that give birth to the right to privacy are right to freedom of speech, expression and movement. The Court further found that the right to privacy only applies to people, not locations, and that an invasion of privacy might be caused by administrative or executive measures, judicial rulings and legislative actions.

Unique Identification Authority of India & Another. v. Central Bureau of Investigation (2014).

In this case it was held that without prior consent of any citizens the Unique Identity Authority of India shall not circulate or publicize any biometric information of any person with any other agency. If such information is leaked or shared, it will amount to violation of their privacy right.

People's Union for Civil Liberties v. Union of India [48].

The right to privacy was extended to communications in this Supreme Court judgement. The Court established certain guidelines that form the backbone of India's interception provisions which includes issues such as the need for the information and whether it can be obtained through other methods should be considered when approving interception.

47. 1995 AIR 264.
48. AIR 1997 SC 568

Selvi and others v. State of Karnataka and others (2010)

The Supreme Court acknowledged the genuine distinction between physical and mental privacy in this decision. Criminal and evidentiary laws may necessitate interference with a person's right to physical and bodily privacy in some circumstances, but this cannot be used to compel a person "to convey personal information underlying an important aspect."

This case also establishes the junction of the right to privacy and Article 20(3). (self-incrimination). No one should be allowed to interfere with a person's decision to make a remark since it is a personal one. Without someone's agreement, procedures like polygraph testing, narcoanalysis, and the Brain Electrical Activation Profile (BEAP) if used without their consent and approval, it will be treated as violation of their privacy right.

Conclusion and Suggestions

Lastly, we can conclude by saying that in this world of digital technology, nothing remains confidential and private. Once any information gets uploaded or leaked, it has no barriers of privacy. Hacking is a well-known 'Cyber Crime' which enables one to access others confidential information also which one does not intend to disclose. Such blatant violation of personal privacy is morally and ethically wrong. Finally, we can state that nothing is truly private or secret in this age of digital technology. There are no barriers to privacy once information is posted or released.

Hacking is a well-known 'Cyber Crime' that allows one to gain access to other people's personal information that they do not want to share.

Some recommendations as regard to privacy laws are as follows:

- Privacy Literary campaigns to be organized by Governmental and Non-Governmental agencies at regular intervals.
- By organizing seminars, conferences at regional, national, and international levels to discuss about privacy issues.
- Promoting public awareness by motivating public to restrict their private information related to personal life confined to themselves instead of highlighting those on social media.
- Strict Implementation of existing codified laws and its related punishment should firmly be executed.

A Critique on the Facets of liberty: Maneka Gandhi to Stan Swamy

Anviksha Pachori* and Indira Yadav**

Abstract

The expressions 'life and personal liberty' and 'procedure established by law', appears in article 21 which had laid latent for nearly three decades since the constitution of India came into existence and was brought to life by the breakthrough decision of 'Maneka Gandhi vs. Union of India'. This case has judicially attributed the widest possible connotations to add to 'right to life' and 'personal liberty', which has widened its scope and given it a variety of new positive dimensions and momentous humanitarian contours to make rights more effective and eloquent. It touches upon the natural law essence in legal interpretation which was missing and brought back by the judicially awakened spirits of those times, it is also used as a lens to stir and press the inevitability of due process into our present legal ordeal. The concept of liberty has been further examined with the help of the recent case of Romila Thapar and the case of Stan Swamy to infer whether those attributes are still existing to safeguard the realm of social justice or are we going backwards. This paper taps into the diverse facets of liberty which were unstated, unfettered and applied with the change of its interpretation over the span of 50 years. As it has been rightly said that liberty without law is anarchy and law without liberty becomes tyranny, what is needed is a careful balance between the two, and to seek a golden meaning.

Key words: - *Anarchy, Humanitarian, Liberty, Procedure established by Law, Social Justice.*

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Introduction

"Justice grows out of recognition of ourselves in each other — that my liberty depends on you being free too."[1]

-Barak Obama

As it is stated in article 21 of the Constitution of India, "No person shall be deprived of his life or personal liberty except according to procedure established by law" which has its own utmost importance in literal sense but the path breaking case of Maneka Gandhi[2] is not only a torch bearer for the interpretation of Article 21 but has also opened a completely new paradigm to interpret the part III of the Constitution. Preceding to Maneka Gandhi's decision, the judges have not realised their power of judicial interpretation, where, also, art. 21 of the constitution of India not only protected the right to life and personal liberty but also provided safeguard against the arbitrary actions of the executive and extended this protection against the frivolous politically motivated actions of the political leaders of local government.

Maneka Gandhi's case had generated an impression of peaceful transition from an old legal positivism to the commands of natural law and reached to the embodiment of social justice solely through the awakening of judicial interpretation[3], something which was not seen by the founding fathers of the constitution till that time. Basically, the aim was to achieve the interpretation of the concept of Liberty in its widest amplitude. This displays that even in India the concept of 'reasonable' and 'Fair', and not only 'Lex' but 'Jus' prevails.[4]

This paper encapsulates the challenge and problem which relates to the extent of natural law theory[5] under Indian constitution in context of Liberty and how the Supreme Court took three decades to bring Art. 21 to life, which is not only tremendous success of constitution makers but a stepping stone towards Human rights safeguards in India and where are were heading keeping liberty as the epicentre of our discussion. Previously the highest Court of the country has declared its popular opinion that the meaning attached to the expression 'personal liberty' in Art. 21 is that liberty which is associated only with the corporeal body, that is, precisely the freedom from arrest and detention without

1. Barack Obama, 'Remarks by the President in Eulogy for the Honourable Reverend Clementa Pinckney', College of Charleston, South Carolina on June 26, 2015,<https://obamawhitehouse.archives.gov/the-press-office/2015/06/26/remarks-president-eulogy-honorable-reverend-clementa-pinckney>.
2. (1978) 1 SCC 248. See also MP Jain, *Indian Constitutional Law* (6th edn, LexisNexis 2010).
3. C Agarwal, 'Due Process of Law and Natural Justice' (2010) Manupatra <http://www.manupatrafast.com/articles/articleSearch.aspx> last accessed on 28 June 2021.
4. Munn vs. Illinous, 94 US 113 (1877). See also DD Basu, Introduction to the Constitution of India (7th edn, LexisNexis 2008).
5. 'Natural law' Black's Law Dictionary (5th edn, West Publishing Company 1979) 925.

the authority of law. But later in Maneka Gandhi's Case, the bench by majority, elaborated the term 'liberty' to its widest amplitude and greater scope than 'personal liberty'. Additionally, the Court added the term 'law' as 'State made law' and acknowledged the petition about the term 'law' in Art. 21 as 'jus naturale' rather than the 'procedure established by law', this was further assimilated with help of many case laws. This paper also captures the effort to see at a glance, whether the same meaning is given to the recent cases of Romila Thapar v Union of India[6] (2018) and Stan Swamy (2021) which connects us to our present as was given in the landmark case of Maneka and the future it holds for our country and its citizens in terms of liberty. In both the cases the guardians of law seem to have deviated from Maneka Gandhi and taken an archaic approach, where procedure prevailed over idea of liberty. On the one hand, in the case of Romila Thapar the Apex Court did not feel the need of constituting a Special investigation team even after serious flaws in the investigation have been pointed out by the petitioner and on the other hand Stan Swami died because he was denied bail on the medical grounds repeatedly because of the nature of charges on him.

The literature reviewed in analysing the case is D.D Basu 'An introduction to the Constitution of India' helped in analysis on the case of Maneka Gandhi vs. Union of India and the concept scrutinised here in context of Personal liberty over ruling the case of A K Gopalan. A brief analysis of the concept of 'liberty' from Romila Thapar and Stan Swamy case of recent times provides a lot of help is understanding the current definition of liberty.

A ROLLBACK IN RIGHT'S JURISPRUDENCE

A man suspected of a bad character has got as much right to lead a free and decent life as a man of good character. He cannot be denied these opportunities purely on the ground that he has alleged to erred or committed some wrongs in his life. This will not be in conformity with the ideals of 'reformation' and 'rehabilitation of the criminals' enshrined under criminal law and constitution of India both. In Maneka's case the dissenting opinion therefore is more in conformity with the objects and ideals of a social welfare state, contemplated under article 38 of the Indian Constitution. But what was consented in Maneka has approached in the right way or whether the hard lined nationalistic approach comes in the way of interpretation of law from natural justice point of view, seems vague when it is viewed from bird's eye view. Human rights and liberty seem to have taken a back seat when it comes to security of the country and various procedure laid down diluted the due process at the present instance.

Looking at the case of Father Stan Swamy, who was a human rights activist, dedicated his life for the upliftment and welfare of various poor Adivasi

6. AIR 2018 SC 4683.

communities in Jharkhand. He was vocal against various decisions of the government and raised his voice when various Adivasis were thrown in the jail after being categorised as 'Naxals' by the investigation agencies indiscriminately. He further filed a public interest petition in the high court of Jharkhand demanding the release of those under trial prisoners on personal bond and speedy trial. He also raised his voice against the non- execution of 5th Schedule of the constitution of India that provides for the establishment of Tribe Advisory Councils with the membership resting in tribals handling the affairs of tribal area.[7]

The irony in this case is that Father Stan Swami committed his whole life in fighting for the rights of oppressed and helpless, however in last moments of his life he was denied of his most crucial and basic rights guaranteed by the constitution to every citizen of India including accused of severe crimes until proven guilty and had to be stripped of their lives as per the procedure established by law.

In the landmark judgment, Supreme Court has held that Parliament or any government in power cannot exert it's ulterior motives or can exert power by any means to carry out or abridge any of the fundamental rights guaranteed therein, which exactly negates effort of Maneka in Stan Swamy. The Court, however, applied the doctrine of prospective overruling in Maneka's case, by refusing to give it ruling a retrospective effect, it prevented a possible chaos in the society. This stance shows how cautious SC was while interpreting the rights of the people, in the present scenario it is not even applied to the cases which fits right into the pigeon hole.

The expansion of the law on the rights jurisprudence, especially on Maneka's case seems to be in conformity with the intentions of the founders of the Constitution who wanted these rights to have 'a universal obligation being imposed upon every authority created by law' and to protect it is duty of the law bearers, this cannot be affected by regime that changes after every election. According to them the foremost reason of declaring these rights as most vital was to safeguard the freedom of the citizen against any intrusion by the legislature and executive powers and if that is not the case then all of us are exposed to the danger of injustice.

7. Press Trust of India, 'Stan Swamy: A life dedicated to upliftment of Adivasis', *India Today* (Ranchi, 06 July 2021)<https://www.indiatoday.in/india/story/stan-swamy-a-life-dedicated-to-upliftment-of-adivasis-1824308-2021-07-06> accessed 12 September 2021.

THE JUDICIAL TRENDs IN PERSPECTIVE:

Gopalan To Maneka

The Gopalan case[8] was the first case where a take on liberty was taken by the Supreme Court. The petitioner was an activist imprisoned under the Preventive Detention Act (PTA), 1950, for attempting to subvert the government. He moved for a writ of habeas corpus and challenged his detention on various grounds, including violations of his rights protected under articles 14, 19, 21, 22 and 32 of the Constitution.[9] He also argued that the PTA was unconstitutional and void.

But for section 14 of the Act, which prohibited the detention to communicate the grounds of his detention to any one and which could be easily separated from rest of the Act, the Court held the Act was valid and accordingly the detention of the petitioner was lawful. The six Judges wrote separate and detailed judgments probably to interpret and clarify the new Constitution. The crucial point involved in the case was about the interpretation of the words 'procedure established by law' under article 21, which were interpreted to mean an enactment of a competent legislature without, paying much regard to the fact as to whether such enactments are just and equitable and follows the principle of Natural laws.

The judgment was severely criticized. An authority remarked:

"The utility of the given guarantee in Art. 21 has been undoubtedly curtailed by the interpretation given by the Supreme Court in Gopalan's case. According to the interpretation of Art. 21 is that no guarantee against legislative aggression upon individual liberty. Provided the Legislature is competent to pass the law, and no other constitutional provision stands in the way, it can enact any law authorizing the deprivation of personal liberty, the courts shall have no power to review the reasonableness or otherwise of such law... Personal liberty* has also been given the narrower interpretation to mean freedom from physical restraint or coercion...that does not admit of legal justification. One may legitimately ask what was the necessity of embodying a guarantee merely against executive action in a codified Bill of Rights when the Executive cannot, patently, take any action which is not authorized by law..". [10]

The criticism was correct. Even taking into account the circumstances and situations of those days, the decision cannot be entirely justified in as much as, in its zeal to protect the first Parliament of independent India, the Court drifted

8. *A. K Gopalan vs. State of Madras*, AIR 950 SC 27. See also MP Jain, *Indian Constitutional Law* (6th edn, LexisNexis 2010) 1179.
9. Ibid.
10. DD Basu, *Introduction to the Constitution of India* (7th edn, LexisNexis 2008) 71.

too far from the main issue of the case. It was possible to uphold the validity of the Act and the orders made there under on the ground of their being a reasonable restriction on the right of liberty, and as being valid procedures established by law under article 21, without going into such detailed discussions on the subject, and unnecessarily restricting the meaning and scope of the words 'personal liberty'. If the ruling in Gopalan case were to be strictly interpreted and applied today, nothing could prevent the legislature to enact any law prohibiting any one to take his meal or to go to bed for certain durations. That is why the role and responsibility of natural law are very wider and strictly been given preference everywhere whether sooner or later.

For a long time, the scope of article 21 remained the same, though exceptions in other fields were noticeable. In Ram Chandra v. State of Bihar[11] the Court ruled that the word "law" in article 21 refers to law made by the state, and not to a law in the abstract sense symbolizing the values of natural justice. It was held that the words "procedure established by law" meant the procedure established by the law of the state, that is to say, by the Union Parliament or the legislature of the states. It was held that since section 4 of the Prevention of Corruption Act, 1947, has been enacted by the Union Parliament, it was a procedure established by law, and so its constitutionality cannot be probed on the ground of its violating article 21.[12]

Similar rigid attitudes were reflected in several other cases. The Court held that calling upon a person under section 240 of the Indian Companies Act, 1956, to give evidence and produce documents does not infringe the right of a person against self-incrimination as he is not an 'accused' within the meaning of law.[13]

Under the Indian law this doctrine is well preserved and protected under some of the provisions of the Indian Evidence Act, 1872, such as sections 24, 25, 26, 52 to 55, and 102 to 106. Section 24 says that any confession made in pursuance to any promise, threat or inducement emanating from a person in authority, is inadmissible in evidence. Section 25 says that any confession made to a police officer is invalid. Section 26 says that any confession made under the custody of a police officer is inadmissible in evidence. Sections 52 to 56 provide that a reference to bad character of an accused is irrelevant in evidence unless his character is itself a fact in issue, but his good character is relevant. Sections 102

11. AIR 1961 SC 1629. According to art 12 of the Indian Constitution the word 'state' means and includes the central government, the state governments, and the other authorities controlled by them.
12. Ibid. See also MP Jain, *Indian Constitutional Law* (6th edn, LexisNexis 2010).
13. *Narayan Lai v. M P Mistry*, AIR 1961 SC 29.

to 106 throw the burden of proof always on prosecution unless a thing is especially in the knowledge of the accused or if the accused wants the court to believe that his act came within one of the general exceptions of the Indian Penal Code, 1860. These provisions go well to support the presumption and any authority making an arrest or detention of a person or persons have to take this fact into consideration. Thus, this presumption acts as a great psychological or moral check upon the authorities making an arrest or detention.

The period of status quo was followed by that of transition, and a shift was noticeable from the thinking on the line of Gopalan judgment, to something better in the interest of human liberty. It was at this time that the Court struck down an Act of Central Provinces and Berar dealing with the goondas,[14] on the ground that in as much as the said Act did not lay down any criteria to determine as to who is a 'goonda', who has violated one's liberty, and hence was unconstitutional.[15] It is fundamental to note that where a law authorizes a specified body to take preventive action against citizens, it is crucial that it should explicitly become a part of the duty to satisfy the accused about the presence of existing law that regards as condition precedent before exercising it, if any part of that law is silent in lieu of one of such condition precedent, it gives birth to a serious infirmity which would certainly best ripped out of that statute.[16]

Beyond Maneka Gandhi's case

Maneka Gandhi case has been exerting the multi-dimensional impact on development of constitutional law in India.

(1) Highly activist magnitude- bring out the radical change in the society i.e., the law which was dormant from being so long came to existence and gave new shape to presence of Natural laws.

(2) Procedural magna carta- According to Justice Bhagwati Art. 21 "embodies the constitutional provision of supreme importance in a democratic society"[17] and has become the main source of substantive right and procedural safeguards to the people.

(3) Maneka Gandhi is American concept of Due process after the wide interpretation of art. 21 in the given case law.

14. *Kharak Singh v. State of UP*, AIR 1963 SC 1295.
15. Ibid.
16. *Kharak Singh* (n14).
17. *Francis Carolie vs. Union Territory of Delhi*, AIR 1981 SC 746. See also MP Jain, Indian Constitutional Law (6th edn, LexisNexis 2010).

The Supreme Court has defined that when the Gopalan case was overruled in R.C Cooper and its principle extended in the Maneka Gandhi case, art 21 got unleashed from the coerced connotation given to it in the Gopalan Case. It arose to attain power and strength previously undreamt. It was a breath of fresh air and an inspired decision and lengthened its contents which also gave revival to Natural law and showcased its inevitable existence.[18]

Maneka's decision has entirely overridden the Gopalan view which had held the firm ground for nearly three decades. Since Maneka, the Supreme Court reiterated this point again and again the need to underline the essence of article 14, 19 and 21, as they are not mutually exclusive but the part of the same cluster of Natural laws and need to be interpreted in trinity. [19]

Maneka Gandhi stated in explicit terms the significance of the Principles of natural justice in our constitution. Though not explicitly mentioned they form the foundation on which our constitution stands. Natural Rights are embodied in our constitution in form of fundamental rights. These Rights cannot be taken away except in the way prescribed in the constitution itself. And the state when taking away such rights need to give strong enough reasons to justify its action. Of all the rights, Right to life and liberty as stated by Article 21 is of Paramount importance and it cannot be taken away by the state "except according to the procedure established by law" this procedure however cannot be arbitrary, unfair, oppressive, unjust or unreasonable. Instead, it has to be fair, reasonable and just. However, this cannot be said what happened in the case of Stan swami.

The essence of the law is not logic but experience, the life of fundamental rights is sustained not by logic but by an expansive interpretation. This, in fact, is the logic of fundamental rights which are meant not to give a progressive image abroad to a tyrannical executive but to give content to the ideals of equality and liberty enshrined in the preamble

Looking at this case and the angle it gives to the interpretation of law, whether same has also been achieved in other case of Romila and Stan swamy.

Romila Thapar v. Union of India

However, in the recent case of Romila Thapar v. Union of India [20] the apex court

18. Pramila Agarwal, 'Indian judiciary and Natural Justice' (1964) 25 The Indian Journal of Political Science 282 <http://www.jstor.org/stable/41854041> accessed 26 July 2015.
19. SN Jain, 'Administrative law aspect of Maneka Gandhi' (1979) 21 Journal of the Indian Law Institute 382.
20. *Romila* (n 6)

seemed to have taken an archaic approach unlike recent judgements. Five persons named Gautam Navalakha (Human Rights Activist and Journalist, New Delhi), Sudha Bharadwaj (Advocate, Professor, Human Rights Defender, currently residing in Faridabad), Varavara Rao (79-year-old, Political worker, Commentator and Renowned poet, Hyderabad), Arun Ferreira (Practising Lawyer and Human Rights Activist, Mumbai), Vernon Gonsalves (lecturer, writer and columnist, Mumbai) were arrested by Pune police, on August 28,2018 for allegedly being involved in a conspiracy to kill Prime Minister. Further, it was also alleged that these activists are also an active member of Communist Party of India (Maoist), a banned organisation.

Accordingly, the accused were charged under the provisions of UAPA. As per the Pune police, when they were investigating the communal violence which took place in Bhima- Koregaon, and in the process found some incriminating material against the accused.

On August 29, 2018, a petition under Article 32 of the constitution was filed by the five distinguished personalities in their respective fields named as Romila Thapar, Devaki Jain, Prabhat Pattnaik, Satish Deshpande, Maja Daruwala, seeking an"independent and comprehensive inquiry". The petitioner urged that the provisions of Unlawful Activities (Prevention) Act, 1967 (UAPA) are invoked by the state to supress the voice of dissent, by treating human rights activists, journalists, writers and thinkers who have been fighting for the rights of poor and marginalised people, especially Dalits. Further, four of the accused have submitted the signed statements to the court for considering the petition as their writ petition.

To support their contention petitioner argued that there is no separate complaint registered against the petitioner, instead the arrest had been conducted by the Pune police on the basis of an FIR related to Bhima- Koregaon violence. The accused neither were present at the place of incident nor their names were present in the initial FIR. Hence, the state is not taking the conspiracy theory as serious matter.

The petitioner also contended that the letters on the basis of which the accused were arrested are fabricated as they are undated and unsigned. Moreover, some of these letters were flashed and read before the media even before the authenticity of such letters have been confirmed. This incident highlighted the ulterior motive of the police to smear the image of these accused with the help of media and create a negative public opinion against these activists and ultimately hamper the justice procedure.

It was also pointed by the petitioners that the two Panch Witnesses were the employee of Pune Municipal Corporation and travelled with police outside Maharashtra to the place of investigation and therefore were not independent

witnesses as required by Code of Criminal Procedure. [21]

The council for the petitioner also drew the focus of the court towards the various past incidents where three of the accused were targeted and prosecuted for the offences under Indian Penal Code, 1860, the Arms Act, 1959 and the UAPA. Arun Ferreria was acquitted in all the 11 cases, Vernon Gonsalves was acquitted in 17 cases out of 19 and appeal in pending in two cases and Vara Vara Rao have been acquitted in 20 cases instituted against him.

The court in the present relying on some past judgements held that the accused has no right to ask for the change in investigating agency or court monitored investigation.Supreme Court time and again emphasised the importance of fair investigation in the criminal Legal system and how an impartial investigation is the right of every accused as enshrined under the concept of liberty protected by Article 21 of our constitution.

In the case of Manu Sharma v. State (NCT of Delhi)[22] Supreme Court stated that Human rights and dignity occupy an esteem position in criminal justice system of India. Therefore, an investigation should be conducted in a fair, transparent, judicious and expeditious manner. These are the basic tenets of Indian criminal jurisprudence and are in adherence to Article 20 and 21 of Indian constitution.

Further in the case of Babubhai v. State of Gujrat [23] the Supreme Court held that "The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive". The investigation officer has a duty to ensure that any kind of mischief or harassment to accused should be avoided during investigation. He should be fair and conscious avoiding any likelihood of fabrication of evidence. Further, the investigation officer has a responsibility to unravel the truth and not to present evidence(s) with the aim of bringing conviction to the accused.

As pointed out by Hon'ble Justice DY Chandrachud in his dissenting opinion, in the present case the petition was not filed to demand a remedy available under CrPc but was moved by the petitioner with a greater concern that the five accused were arrested by the state in order to suppress the voice dissent and each accused is the advocate of marginalised people who are subjected to human rights violation.

Further he referred to the series of cases including the case Bharati Tamang v Union of India[24] and Babubhai Jamnadas Patel v State of Gujarat[25] and

21. CrPc, s 41B.
22. (2010) 6 SCC 1.
23. (2010)12 SCC 254.
24. 18 (2011) 1 SCC 560.
25. 17 (2009) 9 SCC 610.

concluded that in special circumstances the Supreme Court is entitled under Article 32 to constitute a special investigation team or monitor the investigation. In the present case he observed the circumstances are such that there was a requirement to constitute an SIT as various conducts of Maharashtra police as pointed out by petitioner casted serious doubts on its impartiality and fair investigation.

There is no doubt that the present judgement was a setback in the developing concept of liberty which was given an extensive meaning by the Supreme court in its series of various judgments following the path of Maneka Gandhi.[26] Being the highest court of the land, it is the onus of the highest Court of the country to protect the most basic rights of the citizens and prevent human rights violation in any form.

In the present case the majority judgement completely ignored the fact that there was a significant mishandling of the case on the part of Maharashtra police shedding serious doubts on their fairness and impartial investigation, which in turn is prejudicial to the interest of the accused persons who have a Right to impartial investigation which needed to be protected at any cost and transcends any other rule which comes in conflict with it. However, the court did not feel any necessity for the same and therefore disposed of the petition without granting any relief to the petitioners.

Curious case of Stan Swamy

Father Stan Swamy, a Jesuit priest and tribal rights activists was one of the many accused who were arrested in connection to the Elgar Parishad-Bhima Koregaon case. 84-year-old Stan swamy was the oldest prisoner of India who was charged under UAPA. Initially, Pune police was dealing with his case and conducted Searches at his house, however in January 2020 his case was transferred to National Investigation Agency ("NIA").[27] He was arrested on October 8 and sent to judicial custody at Taloja jail. He was accused of being Communist Party of India ("CPI") (Maoist) cadre and Convenor of Persecuted Prisoners Solidarity Committee ("PPSC"), the frontal organisation of CPI (Maoist). Further, it was asserted by NIA that it found incriminating documents, literature and

26. *Maneka Gandhi* (n 2).
27. Dhamini Ratnam, KAY Abbas and Divya Chandrababu, 'The life and death of Father Stan Swamy' Hindustan Times (12 July 2021) <https://www.hindustantimes.com/india-news/the-life-and-death-of-father-stan-swamy-101626061660105.html> accessed 25 July 2021.

propaganda from Satan Swami.[28] Swami health condition started to deteriorate in the jail as he was a patient of Parkinson's disease. He applied for bail at various occasions, but it had been denied again and again by NIA and he ended up in jail for 8 months awaiting his trial.[29] When Swamy's condition worsened his lawyer approached Bombay High Court, which after investigation and deliberation passed an order to shift Swamy to the hospital. He was admitted to the Holy Family hospital, where he tested positive for COVID 19.[30] He passed away on July 5, 2021, in the hospital after suffering from cardiac arrest.

While he was in Judicial Custody, his condition was worsening day by day due to his Parkinson's disease and he had tremors in both arms making it impossible for him even to do simple and essential routine tasks such as drinking water, eating food, wearing clothes, taking bath.[31] Prison authorities paid no heed to the repeated request of Swami for straw sipper so that he can drink water, eventually he had to move to the special court for the same. Moreover, after he started to have symptoms of COVID-19, he requested the jail authorities to get him tested which was again ignored by them. Ultimately, his lawyer had to move to Bombay HC and it issued an order to shift him to the hospital.[32] Moreover, the whole Taloja Jail with over 3500 prisoners was handled by just three ayurvedic doctors who were accused of administering allopathic medicines without qualification.[33]

In the Landmark case of Francis Carolie Mullin v. The Administrator, UT Delhi[34] "A prisoner or detenue is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration, and if any of these rights are violated, the Court which is to use the words of Krishna Iyer, J., not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope, will immediately spring into action and run to his rescue".

Further, in Francis Carolie it was also held that right to life also includes right to

28. Explained Desk, 'Explained: Who was Stan Swamy, arrested in the Elgar Parishad case, who died on July 5?' *The Indian Express* (Mumbai, 13 July 2021) <https://indianexpress.com/article/explained/who-was-stan-swamy-6717126/> accessed 25 July 2021.
29. 'Stan Swamy: India outrage over death of jailed activist' *BBC News* (7 July 2021). <https://www.bbc.com/news/world-asia-india-57718361> accessed 25 July 2021.
30. Sukanya Shantha, 'Two Days After HC Orders Hospitalisation, Stan Swamy Tests Positive for COVID-19' *The Wire* (Mumbai, 30 May 2021) <https://thewire.in/rights/stan-swamy-covid-19-hospital-elgar-parishad> accessed 25 July 2021.
31. Ibid.
32. Ratnam, Abbas and Chandrababu (n 27).
33. Shantha (n 30).
34. *Francis Carolie* (n 17).

adequate nutrition and food, clothing and shelter and other basic necessities that are important for living life with dignity and that torture or harsh action or undignified or inhuman conduct of any sort would infringe human dignity and in turn would constitute an encroachment on right to life which would ultimately be forbidden by Article 21unless in accordance with procedure established by law. However, a law or procedure that validates such painful and degrading treatment never pass the test of reasonability and non-arbitrariness and would be held violative of Article 14 and 21'. [35]

However, Stan Swami was stripped of his most basic right in the prison when he was not provided with the straw sipper that is the right to water and food. It was becoming difficult for him to continue his daily life normally due to ailment, that included having food and drinking water, therefore he needed straw. However, prison authorities seemed not to care about his state at all. Further he was not provided with proper treatment and care when his health was declining with each passing day. Even after he started manifesting COVID 19 symptoms and requested for the check-up, no heed was paid to his condition.

In the landmark judgment of DK Basu v State of West Bengal[36] it was held by the Supreme Court that Fundamental Rights hold the most prominent position in Constitution of India and expression "life or personal liberty" as mentioned in Article 21 envisages the right to live with human dignity and in turn includes right against torture and battering by the state or the representatives of state.

Stan Swamy was denied bail again and again by NIA because of the nature of charges pressed against him,[37] which were supposedly more important than his life. He was not treated with human dignity in the prison and tortured by prison authorities who even after his several requests failed to provide him straw to drink water, who did not provide him with proper treatment and care when he was in need. He was subjected to cruelty, when even his basic necessities were not fulfilled by the jail authorities. His right to life and liberty guaranteed by constitution of India was infringed by the state when he was denied bail repeatedly.

In Parmananda Katara v. Union of India[38] Supreme Court held that the preservation of life indisputably is of cardinal significance and Article 21 obliges the state to preserve life.

35. Ibid.
36. (1997) 1 SCC 416.
37. (n 29).
38. AIR 1989 SC 2039.

However, in the case of Stan Swamy the state failed to fulfil his obligation and kept the nature of charges above life of a human who was awaiting his trial and as per Indian law was innocent, as not proven guilty.

CONCLUSION

The Natural law and the law relating to liberty has been given an extensive importance under Maneka Gandhi case, where supreme Court upholds the liberty of an individual and shaken several other dimensions of rights which were unexplored to be existed in the first place. It is observed that within the Indian legal structure, while the Constitution is supreme and has expressly guaranteed certain rights to the people, they cannot be taken away by any means including any administrative or executive action.

Although filing of a writ petition based on even minimal violence, hearsay or politically motivated agenda has become a common thing which totally violates the principles of natural law and complaints based on such violations should not go unnoticed. These have become almost the last refuge of a writ argument; it must be said that the seriousness of such a charge could in no way become lessened by frequency of its use or familiarity of its employment. In man's never-ending quest for justice in this unending world of doubt and uncertainty, there are no more spontaneously accepted legal principles than the principles of natural justice. All man, woman and God acknowledge the allegiance to these ancient and hallowed principles. It is commonly accepted that natural justice like the American Due Process is the best instrument for promoting the interests and the dignity of man as well as for furthering the legitimate State purposes which under Indian law taken shape as 'procedure established by law'. It ensures the participation of the common man in the Government process while insuring the Government against committing these elementary blunders which leave lasting stains of infamy and blemish on its system of justice.

Right to Sustainable Life: Environmental Perspectives and Sustainability Consciousness in Sanskrit Literature

Pankaja Ghai Kaushik and Kalyani Akalamkam***

Abstract

Right to environment, inter- generational equity and sustainability are third generation human rights which have gained lot importance in the present times of environmental crisis. The last four decades saw large scale global initiatives in terms of policies and regulatory frameworks to protect environment and promote sustainable development for the sustained future of humanity and the planet. In this context, the interdisciplinary research in the area of environmental studies has gained importance along with the indigenous and local knowledge systems for possible solutions to mitigate environmental crisis. Sanskrit is one of the oldest living languages in the world and ancient Indian texts written in Sanskrit have rich tradition of knowledge systems. Sanskrit literature presents the philosophy of life which reflects consciousness towards nature. This paper traces the evolution and representation of the concepts and constructs "Environment", 'Sustainable development 'and 'Sustainability consciousness" in the ancient and classical Sanskrit literature and also attempts to trace the spatial and temporal understanding of these concepts. The paper analyses some portions of the Sanskrit texts through the lens of contemporary principles and regulatory framework of environmental protection for sustainable development (specifically Agenda 21). The methodology is rooted in the qualitative interpretative framework of both primary and secondary Sanskrit texts and documents.

Key words: - *Environmental Perspectives, Sustainable life, Sanskrit literature, Vedic literature.*

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Introduction

The Right to a sustainable future has never before assumed such an importance as in the present times. The accelerated phenomenon of climate change and its impact on humanity and the planet is a wakeup call for us to either perish or take action. Rapid industrialization, urbanization and modernization has not only endangered the entire planet but narrowed our thinking and actions towards environment. Though 'Ecology' and 'Environment' had always been an integral part of our life and academic discourse, it has become an interdisciplinary research area in the last four decades. The publication of Silent Spring (1962) was a landmark as a wake-up alarm in mainstreaming the concern for environment as a global agenda. Since then, global initiatives steered by United Nations have focused on framing and executing various policies, principles and declarations in the area environmental education and later to the concept of sustainable development. Sustainable Development (SD) is not a mere rhetoric but a concrete action plan for all the public and private initiatives. The concept of SD was first proposed in Stockholm Declaration 1972 as 'Man has the fundamental right to freedom, equality and adequate conditions of life in an environment that permits a life of dignity and wellbeing and he bears a solemn responsibility to protect and improve the environment for the present and future generations. This concept of SD was given proper shape and definition as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"[1].The concept became further part of Agenda 21 Rio Declaration (1992). Sustainable development is a dynamic and an evolutionary concept as per the spatial and temporal variables. This temporal variability is an implicit understanding in the principle of inter - generational equity (Principle 3, Agenda 21)[2]. The Concept of Sustainable development is represented by three inter connected and overlapping dimensions which are referred as three pillars of Sustainable development, namely- Economy, Environment and Society. This model SD is ratified by all the international agencies and became a yardstick for all the SD initiatives across the world. According to UNESCO framework, these three dimensions need to be explicitly stated and explained in terms our knowledge(knowingness), attitude and behavior. This can be translated into sustainability consciousness which refers the experiences or awareness of sustainability phenomenon which include experiences, perceptions that are commonly associated with us such as beliefs, feelings and actions. In 2015, the UN general Assembly adopted Agenda 2030

1. *Our Common Future, WCED, 1987.*
2. *Agenda 21, UN Declaration, 1992.*

for sustainable development with an aim to redirect humanity towards a sustainable path for the future. Marching ahead on the path of SD will not only require a change in our thinking but also in our actions. Individuals have a role and potential to become sustainability change makers. In this context, it is important to look back into the history and reflect on how and in what way this concept of sustainable development and sustainability consciousness has been part of our collective understanding of environmental integrity, economic viability, and a just society. This paper attempts to look at how the concept and construct of sustainable development and sustainability consciousness is represented in Sanskrit texts and analyses through the lens of some of the principles proclaimed in the agenda 21 and from the perspective of third generation human rights.

Research Focus

Right to environment, inter-generational equity and sustainability are third generation human rights. Right to wholesome environment is a fundamental right protected under article 21 of constitution of India. However, this right and the duty to protect environment has always been integral part of our life in India, irrespective of cultural and regional diversity. Respect for nature and environment had been central focus of people's lives. Environment and nature have been integral themes of literature across the world and literature is a powerful medium to influence peoples' thinking, emotions and actions. The literature had been and continues to be used as an instrument of social change in the context of environmental conservation and sustainability consciousness. Sanskrit is one of the oldest living languages in the world and ancient Indian texts written in Sanskrit have rich tradition of knowledge which provides information on ancient Indian thought. Sanskrit scriptures present the philosophy of life which reflects consciousness towards nature. From the Vedic literature to classical Sanskrit literature, we find enormous references regarding deep awareness and understanding of ancient seers, thinkers and poets on environmental consciousness and sustainable development. Right from the origin of universe, sustainability has been main subject of Sanskrit scriptures. This paper traces the evolution and representation of the concepts and constructs "Environment", 'Sustainable development 'and 'Sustainability consciousness" in the ancient and classical Sanskrit literature and also attempts to trace the spatial and temporal understanding of these concepts. The paper analyses some portions of the Sanskrit texts through the lens of contemporary principles and regulatory framework of environmental protection for sustainable development (specifically Agenda 21). This paper also explores the role of Sanskrit literature in promoting environmental awareness and sustainability consciousness.

The methodology is rooted in the qualitative interpretative framework of both primary and secondary Sanskrit texts and documents. To understand the spatial and temporal variables of these constructs of 'environment', 'sustainable development' and 'sustainability consciousness', the Sanskrit literature is analyzed in four distinct categories- 1) Vedic and Upanishad texts 2) Puranas 3) Arthashastra & Dharmashastra 4) Classical Sanskrit Literature.

Vedic and Upanishad or Upanishadic? literature

Vedic literature reflects man's respect and reverence for nature and environment and the belief of the absolute supremacy of nature. Vedic literature proposes the theory of 'One origin' which establishes principle of mutual relationship between humans and natural elements[3] and that one's development does not take at the cost of the other. Vedic seers have sought that the constant development of human beings and nature should be continued with this principle to have an ecological balance. Various vedic texts conform to the fact that human beings derive all their livelihood, wealth, and happiness from nature and in the light of this belief, seers have accorded the status of divinity to natural entities and composed hymns and prayers for them. In Rigveda most suktas are worshipping prayers. These prayers have been meant for natural entities like Agni (fire), Indra (rain), Marut (air), Varuna (water), Sun, Uśas (Dawn), Prithivi (earth), Parjanya (Clouds), Sarit(rivers) etc. The underlying philosophy behind these prayers and hymns was not only to seek protection from the natural calamities and but also to express gratitude to the nature.

Vedic texts also expressed reverence to environment in terms of relationship between humans and nature as illustrated in the hymn where earth is referred as mother and space as father.[4]

This notion of relationship motivates human beings to remain sensitive and responsible, thereby not causing any harm to the nature. Bhumi sukta in Atharveda is the oldest literary text in the world which discusses environmental aspects of the earth in a very elaborate and invocative manner. This text had in fact presented multidimensional aspects of ecology ranging from regenerative capacity of the earth, importance of water bodies, mineral wealth, various biotic

3. *Venastatpashyannihitam Guha sadyatra vishvam bhavatyekanidam, Tasminnidam sa cha vi chaiti sarvam ch ota protashcha vibhuh prajasu*, (Shukla Yajurveda .32.8).
4. *Dyaurme pita janita nabhiratra bandhurme mata Prithivi nahiyan*, (Rigveda 1.164.33).
   Matabhumih putroham priithivyah parjanyah pita sa u na pipartum (Atharvaveda. 12.1.12).

and abiotic cycles. The text has also pre emptied the consequences of imbalance in the natural elements leading to what we today call as 'Climate change". We can also see the reference of sustainable development in Bhumi sukta (Atharvaveda 2.12) where it emphasised that one needs to grow or take from earth as per its capacity only and not to burden by overproduction. An adjective has been added to earth as "Hiranyavakshaa"; earth is full of precious minerals and metals.[5] The concept of the Earth as a sustained space is put forward in this text. As Space, air, fire, water and earth were considered as the main natural elements through which human beings attain livelihood and nourishment and any disturbance in these elements causes imbalance. There are many hymns composed in Vedic literature for their calmness and pacification.[6] These kinds of hymns composed in Vedic literature seek not only ecological balance but also balance between various abiotic and biotic cycles responsible for sustenance of various lifeforms on the earth. Analyzing early Vedic literature, one can see that Vedic seers were able to presume environmental crisis and hence established some principles of life to mitigate these issues. Few illustrations are discussed in this context. For example, in Rigveda there are many references where the conservation of natural resources is integral part of people's life. It was recommended that rivers should be worshiped and protected. People were asked not to pollute the rivers by throwing garbage.[7] In Yajurveda, people have been asked to protect space and earth as these both protect the people.[8]

As plants are to be protected and preserved, explicit instructions were mentioned that if someone excavate the earth, he should fill it up later or sooner.[9] Tree plantation was mandatory for people.[10] Vedas have established nurturing relationship between earth and space and analysis of Vedic texts reveals that many methods to stop pollution and other natural calamities, like plantation of trees, prohibition on cutting of trees, forest conservation, purifying air through

5. *Vishambhara vasudhaani pratishtha*
   Hiranyavaksha jagato niveshan, (Atharvaveda 2.12.4).
   Nidhim bibharti bahudha guha vasu manim hiranyam prithivi dadaatu me.
   (Atharvaveda 2.12.6).
6. *Om Dau shantirantarikshashantih Prithivi shantirapah shantiroshadhayah shanti vanaspatayah*
   shantirvishvedevah shantirbrham shantih sarvam shantih shantireva shantih sa ma shantiredhi .
7. *Naapsu mutrapureesham kuryat*.(Taittiriya Aranyaka… 1.26).
8. *Avatam tvam dyavaptrihivi ava tvam dyavaprithivi*. (Yajurveda. 2.9).
   Ma dyava Prithivi abhishochih ma antariksham ma vanaspatin. (Yajurveda 11).
9. *Yatte bhume vishvani kshipram tadapi rohatu*
   Ma te marma vimrigvari ma te hridayamarpitam, (Atharvaveda. 12.1.35).
10. *Vanaspatim vane asthapayadhvam*. (Rigveda…10.101.11).

'yajya', use of solar energy, pollution eliminating tree plantation, efforts to save water on Earth from being polluted were suggested.[11] The plant ecology has been given great importance in Vedic literature to maintain the environment in balance. Worshiping natural elements by lighting fire and offering "Havya" is named "Yajya" was one of the prescribed processes mentioned in Vedic texts for preserving environment and maintaining ecological balance. 'Yajya' was considered to be an essential act to be performed by people of all stages for numerous benefits like purifying air and surroundings as it was believed that many invisible harmful germs present in the surroundings are eradicated in this process. Also, the performing the 'Yajya' was linked with social obligations of charity and provision of livelihood to many. The concept of economic sustainability is evident from the the very first sukta of first mandal of Rigveda there is a mantra where Rsi offer prayer to deity fire (Agni) and ask for wealth which multiplies day by day and which does not give him bad name but give him honour and glory.[12]

The concept of Rita (one norm) was put forward in Vedic literature. It is mentioned in Sanskrit scriptures that there is one eternal norm or rule which controls the entire environment. All the natural elements follow this rule so that balance is maintained and if this balance is disturbed, the entire environmental balance is threatened. Protection of the environment is not imposed from outside, but it is considered as 'Dharma'(duty) which each and every person is required to perform. This concept of 'Dharma' (religious or spiritual responsibility) of protection of environment is unique feature of Sanskrit scriptures. Vedic texts also emphasized on peaceful cohabitation and harmony in society as a pre requisite for sustainable development[13] and many Yajyas were performed and prescribed for this purpose.

The Concept of one origin has been carried forward in the Upanishad literature as Sarva khalvidam brhama. In this first mantra of Ishavasyopanisad, everything in this universe has been associated to a greater force or almighty and one should not be possessive or act authoritatively or be coveted for being the controller of the natural elements.[14] This concept of limited control of human

11. Rajput, Mohansingh: 'Vedic Sanskriti mein gahan paristhitikiya adhyayana' Chaukhamba orientalia, Varanasi pp. 87.
12. *Agnina rayimashnavat poshameva dive dive. Yashasam viravattamam*. (Rigveda. 1.1.3).
13. *Ye devanamritvijo yajyiyaso manoryajatra amritaritajyah*
    Te no rasantmurugayamadya yuyam paata svastibhih sa daanah, (Atharavaveda).
14. *Ishaavasyamidam sarvam yat kincha jagatyaam jagat*
    tena tyaktena bhunjithaa ma gridhah kasyasviddhanam, (Ishavasyopanishad. 1.1).

beings on nature established the idea of simple and sustainable living. The fundamentals of conservation ethics were brilliantly formulated in the Ishopanishad as "The whole universe together with its creatures belongs to nature. Let no one type of species encroach over the rights and privilege of other species. One can enjoy the bounties of nature, by giving up greed". In Shwetashvataropanishad five natural elements (Earth, Water, Fire, Air & Sky) have been discussed in spiritual manner.[15] Apart from the conservation of the five natural elements, Upanishads also promote animal conservation. According to Vedic seers, as animals are also creatures of almighty, they are to be protected.[16] Upanishads subscribe to the 'Eco-centric' philosophy of intrinsic value in all living beings and human beings are only one part of entire nature. Ishopanishad is one of the oldest texts in the world which clearly articulated the philosophy of the 'Eco centrism' and states that human being are not superior to any other species, and no one is above the other in nature. Therefore, human beings or any other living organisms have no legitimate right to encroach on the rights of existence of others.

The Vedic view manifested in various Sanskrit texts subscribes to a spiritual, intellectual and cultural basis for an environment friendly, balanced and sustainable lifestyle. The inter linkages between all the three aspects of sustainable development i.e., environment, economy and society are beautifully established and the five pillars of SD proposed for attainment of sustainable development goals of 'Agenda 2030 'i.e., 'People', 'Peace', 'Prosperity',' Planet' and 'Partnership' are also expressed in the Vedic literature. Various hymns and mantras written and sung in the Vedic texts not only promote sustainability consciousness in human beings but also promote inter-generational equity which is one of the principle of SD in agenda 21.Right to inter-generational equity and sustainability which are presently referred as third generation human rights were presented in the Vedic view of the environment ,transcending visible and non-visible boundaries and establishing intimate relationship between nature and human beings in a spiritual and meta physical manner .

15. *Prithvyapatejonilakhe samutthite panchtamake yogagune pravritte*
na tasya rogo na jaraa na mrityuh praptasya yogagnimayam shareeram.
(Shwetashvataropanishad. 2.12).
16. *Tasmachchha deva bahudha samprasutah*
Sadhyaa manushyah pashavo vayansi, (Mundakopanishad 2.17).

Puranas

Puranas had a great impact on ancient Indian social structure. They have numerous references where one can easily find evidences of environment conservation measures. Most of the social rituals and customs associated with worshiping of nature have origins in the puranic texts or mythology. Puranic period is marked with a shift in ideology wherein the environment preservation and protection had taken form of religious rituals. There are many references of good practices which were designed with the purpose of motivating people for environment conservation and developing environmental and sustainable consciousness. In Vishnu Purana it is said that the one must work for the well-being of all the natural elements in the same manner as one puts efforts for his progeny and such a person is blessed with all kinds of wealth.[17] In puranas, plantation of trees has been considered as the most pious act. In Agni Purana it has been said that people should not cut the trees and rather if they plant trees, it will bring wealth and blessings to their next generations. In Matsya Purana, one tree has been considered equal to ten sons. Dasha putrasamo drumah. [18]

These examples again emphasize inter-generational equity which is one of the important principles of dharma. In Varahapurana, we find one interesting reference of beautiful bonding between human beings and natural elements by emphasizing that those clean the environment and preserve nature then natural elements bring glory in their life. The prayer has been prescribed for people to sing that "May earth be with good fragrance, water be unpolluted, clear air, sun be with illuminating light, sky be with sweet voices shall make my day glorious and blessed". [19]

One of the important practices prescribed in puranas is charity or "Daana". Charity, sharing of resources or donation has been integral part of social rituals and customs. This concept of charity was intrinsically linked to preservation and conservation of environment as people were encouraged to donate or perform charity in form construction of ponds and gardens, planting trees, donating animals etc. In ancient India this act was named as 'Purta' (auspicious results) whose reference can be found in Rigveda.[20] It's meaning is auspicious results.[21] It (Purta) was considered as a Dharma (duty) of all the people irrespective of

17. *Yathatmani cha putre cha sarvabhuteshu yastatha*
Hitakame haristena sarvada toshyate sukham, (Vishnu Purana. 3.8.17).
18. Matsyapurana
19. *Prithivi sagandha sarastapah sparshashcha vaurjvalanah satejah*
nabhah sashabdam mahata sahaiva yachchhantu sarve mama suprabhatam,
(Vamana purana 14.26).
20. Rigveda 10.14 .8.
21. *Vaapi kupatadagani devatayatani cha*
Annapradanamaramah purtamityabhidhiyate, (Kane, PV: Dharmashastra ka Itihas, vol I pp. 450).

their castes. In Kalika purana, it is said that by construction of ponds and wells, a person not only gains many advantages but also, he can get rid of his sins. In Kalika purana it is also mentioned that yajya only gives joy of heaven but donation of ponds, gardens etc gives an individual 'moksha'(liberation).[22] Tree plantation was another form of charity or donation and in several puranas and also planting trees was considered equivalent to having a son(progeny). Also, it is mentioned that trees should be taken care of as one takes care of his or her progeny. In Padma Purana various advantages have been mentioned with plantation of different trees such as plantation of trees of pipal, tamarind, pomegranate etc. like prosperity, removal of sins and long life respectively.[23] Ancient Indian thinkers had belief that plants, like human beings can feel pain and joy and hence if someone injures them, penalty should be levied on them. In various Sanskrit scriptures of later period punishment for violating plants has been prescribed. That punishment has been of two types- in the form of penance (plant protection through religious activities) and in the form of legal penalties.

These kinds of practices mentioned in many texts of puranas, were used to inculcate sensitivity and consciousness towards environment and through these prescribed guidelines and recommendations, conservation of plants was made part of ancient social system. These acts were linked to the concept of results for future generations as well as next lives in terms of Karma theory (good results i.e., punya). The Sanskrit scriptures present the idea that earned wealth should be spent in sharing rather than indulging on oneself. This kind of philosophy advocated in the puranic texts embraces the concept of sustainable development and inter-generational equity. The intricate relationship between economy, environment and society is established by linking social acts of charity with environment friendly initiatives.

'Valmiki Ramayana' and 'Mahabharata' considered as the greatest epics of India are also important sources of ancient Indian culture. We find plenty of references of nature and its conservation in the interesting parts of main text of the epic as well as the various other texts connected with these epics. In fact, Ramayana begins with condolence of killing of one bird. In Ramayana, beauty of forests, rivers, Sun, rain, earth, mountain, forest houses (Tapovana), animals,

22. muktioradam purtam, (Kane, PV: Dharmashastra ka Itihas, vol I pp. 450).
23. Kane, PV: Dharmashastra ka Itihas, vol I pp. 474.

birds, ponds etc has been described in the way that they have become as important as characters of the epic. This kind of description of natural elements is evidence of ancient thinkers' sense of ecology and its manifestation. In Mahabharata, the description of universe presents environmental consciousness of ancient thinkers as in many parts of this text, natural entities have been described as source of inspiration for good conduct for human beings. Though Ramayana and Mahabharata, are great sources of information on ancient Indian concept of environment and ecology, it is beyond the scope of this paper to analyse these vast texts in detail from the perspective of sustainability consciousness and environmental perspectives.

Kautilyarthashastra and Dharmashastras

Kautilyarthashastra is an authentic compendium of systematic ancient Indian polity and administration. Kautilyarthashastra was compiled an objective of framing guidelines for acquisition and expansion of land for the welfare of the people in the state.[24]. Kautilya has given many administrative rules and regulations for the state to run efficiently and has embraced the concept of sustainable development. In fact, one can say that Arthashastra was the first compendium and text which focused on the concept of sustainable development by establishing linkages between the economy, society and environment in an elaborate manner. Kautilya gave importance to forests, trees, animals, birds, rivers, ponds, mountains etc along with development of society. He has emphasised on protection of environment as one of the duties and responsibilities for the king and other administrator. We find reference of a long list of superintendents of various departments including superintendent of forest and its produce, agriculture, cows, elephants, slaughter house, horses, productive land etc. These officers or superintendents were supposed to protect and preserve natural wealth (prakritik sampada). Kautilya , while acknowledging the importance of natural resources for development of society and as source of revenue, had set many rules. In order to put a limit on use of natural resources, he recommends that natural resources should be used in sustainable manner and for violation of rules, punishments in the form of physical and financial penalties were announced legally. Here we can see the evidence of 'precautionary principle' (principle 15) and 'Polluter pays principle' (Principle 16) of Rio declaration. Principle 15 i.e., 'Precautionary principle' advocates that state and local authorities must anticipate and prevent the causes of

24. *Prithivya labhapalanopayah shastramidamarthashastramiti,* (Kautilyarthashastra 15.1).

environmental degradation. The 'Polluter pays' principle (principle 16) of Agenda 21, Rio declaration on SD advocates to make polluter liable not only for the compensation to the victim but also for the cost of restoring the environmental degradation. These principles and other aspects of SD are very much evident in the rules laid in the Arthashastra.

Kautilya has laid down rules for cattle numbers as he put cap on milking animals. Specific seasons or time periods were prescribed for extracting milk from animals and who ever breaches or violate the prescribed time was liable for physical punishment in the form of cutting his thumb from King[25]. Here the principle 8 of Agenda 21 which emphasis the elimination of unsustainable patterns of production and consumption is evident.

Kautilya prescribed financial penalty of 1000 panas (currency at that time) for entrapping and killing of people, animals or birds under state protection.[26] Crime of killing nonviolent animals attracted double penalty.[27] Kautilya mentions the term Abhayavana, 'the forest without fear' which covers the animals, birds, trees, humans etc. Abhayavanavasinaam. He recommends that the forests which are productive and enrich the humans in many ways are to be protected and penalty has been fixed for cutting off such forests.[28] There were different penalties were fixed for different plants.[29] Thus, we can see that the concept of sustainable developed was very much embraced in Kautilyarthashastra.

Dharmashastra texts like Manusmriti and Yajyavalkyaasmriti have also emphasised on issues of ecological conservation and sustainability consciousness. In Dharmashastra texts, penance has been prescribed for cutting off the plants. In Manusmriti and Yajyavalkyasmriti it is said that if someone cuts off the plants which yield the flowers and fruits, he should chant Rigvedic

25. *Varshasharaddhemantanubhayatah kalamduhyuh shishiravasantagri manekakalam. Dwitiyakaldogdhura gushthachchhedo dandah,* (Kautilyarthashastra 2.29).
26. *Pradishtabhayanamabhayavanavasinam cha m gapashupakshimatsyanam bandhavadhahinsayamuttama dandam kuryat.* (Kautilyarthashastra 2.26).
27. *Apravrittvadhanam matsyabandhavahinsayam padonsaptavi shati panamatyaya kuryat, mrigapashunam dvigunam,* (Kautilyarthashastra 2.26).
28. *Dravyavanachchhidram cha deyam atyayam cha sthapayed anyatra apadbhyah,* (Kautilyarthashastra 2.17).
29. Kautilyarthashastra 3.19.

mantras for hundred times.[30] Another type of penance was 'giving up food and drinking only milk and taking care of cow for cutting off the medicinal plants without relevant reason. [31]

The main purpose of compilation of Dharmashastra and Arthashastra texts was to make rules for the society and some of these rules promoted environmental consciousness and sensitivity. Penance was mild provision for violating mandates to preserve natural elements and at the same time in order to create serious consciousness towards nature, severe punishments were also recommended.

Classical Sanskrit Literature

Classical Sanskrit literature is a profound source of environmental consciousness. Classical Sanskrit literature has focused more on beauty of nature and there are plenty of vivid descriptions of rivers, forests, flora and fauna. Famous poets like Kalidas and Bhaasa have based their literary work on the human-nature relationship. Some of the famous classical texts which have described nature and relationship with human beings are 'Ritusamhara', 'Meghadootam' , 'Raghuvansham' and 'Abhijyanashakuntalam'. Kalidas not only in his famous literary work on nature and seasons 'Ritusamhara' describes nature and but defined all aspects of ecological concerns. All his literary works are based on human ethical values and concern for nature. In his famous drama 'Abhijyanashakuntalam' plants are described as 'svajana' (family) of Shakuntala. Shakuntala, the leading female character of the drama, lives in tapovana (home in forest) and take care of plants and trees as her own progeny.[32] In the Meghadootam poetry we find reference of treating a tree as son.[33] In another two poems of Kalidasa viz. Ritusamhara and Kumarasambhava, he portrays how changes of the natural world affect the human emotions and nature's participation in human happiness, sorrow and joy. The vivid description of various types of plants, animals, mountains, hills, rivers, lakes, flowers as well as some living and non-living elements of nature are not only the hallmarks of the poetic creation of this great poet but also reflect the sensitivity towards nature and the natural environment. In other of Kavyas of Sanskrit literature like

30. *Phaladanam tu vkishanma chhedane japyam rikshatam,* (Manusmriti -9.142).
31. *Vrithalambhe anugachchhedgam dinamekam payovratah,* (Manusmriti -9.144).
32. *Patum na prathamam vyavsyati jalam yushmasvapiteshu yaa….* (Abhijyanashakuntalam' 4.9).
33. *Yasyopante kritakatanayah kantaya vardhito me,* (Uttara Meghadootam 12).

Baanabhatt's Kadambari & Harshacharitam, Bhaasa's various plays, Bhaaravi's Kiratarjuniyam,etc. nature and its relationship with human beings is described splendidly.

Classical Sanskrit literature promotes concepts of environmental conservation in not so prescriptive ways as the ancient Sanskrit literature but by evoking the sensitivity in humans towards nature through immersive experiences of drama, poetry and other literary works. Classical Sanskrit literature reveals many aspects of human life, so the nature, environment and ecology have been presented as inseparable aspect of human life. Sanskrit poets established a beautiful communion with nature and this kind of literature develops sensitivity and environmental consciousness.

Thus, we can see that the environmental and sustainability consciousness has taken different forms in Sanskrit Literature. The worshiping of nature in the early texts i.e., Vedas evolved into ritualistic conduct and purifying the natural environment with Yajya becoming prominent feature in Vedic period.

In order to synchronize environmental consciousness with the society and preserving natural resources for next generations, the concept of charity (Daana), was introduced and was made integral part of the social values by the ancient Indian thinkers. In Puranic period sustainability consciousness became inseparable part of human life and economy with the act of charity in the form of donating ponds, gardens etc. The idea of promoting conservation of nature for the next generations (Right to inter-generational equity) was linked with this. In Smriti literature and Arthashastra period, environmental conservation evolved into a legal arrangement which was mandatory to follow. Violation of the norms set up for conservation of various aspects of nature attracted punishment. In the classical Sanskrit literature, concern for the nature and concept of sustainability consciousness continued but it was in a new form of sensitivity and love for nature. Thus, every phase of Sanskrit literature has lot to offer for ecological consciousness.

Concluding Remarks

This paper has examined and analysed various Sanskrit texts with an objective to understand how the concepts of environment, sustainable development and environmental and sustainability consciousness are represented in these texts. This section presents some observations made on the basis of the analysis. It is found that sustainability has been an important concept as well as context in the Sanskrit literature. Right from the understanding of origin of universe and cosmos and the theory of 'one origin', Sanskrit literature establishes deep, continuous and cyclical relation between human being and nature. The Sanskrit literature from Vedic to classical literature have subscribed to 'Eco-centric' philosophy as opposed to 'Anthropocentric' philosophy of industrialized, modern societies. The concepts of sustainability, right to a sustainable future and other third generation human rights are articulated in the Sanskrit literature in both prescriptive as well as suggestive manner. However, these rights are

intrinsically linked with duties(dharma) of human beings to protect, nourish and cherish environment. The analysis of the texts also gives a peep into the kind of sustainable practices and sociocultural norms adopted to conserve and preserve environment in various time periods. The five pillars of SD i.e. 'People', 'Planet', 'Prosperity', 'Peace' and 'Partnership' is also articulated in the Sanskrit literature, while embracing the concept of sustainable development.

Research in the areas of ecology and environmental studies is interdisciplinary and indigenous knowledge of cultures across the world can help in addressing the contemporary challenges of sustainable development and environmental issues. Research into the Sanskrit literature has gained global interest due to the popularity of 'Vedanta', 'Yoga', 'Ayurveda' etc in the western societies. The systematic study and meta-analysis of Sanskrit literature may offer philosophical, spiritual, meta physical and practical insights needed to address some environmental and sustainable developmental challenges and issues we are facing today.

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Understanding the Rohingya Refugee Crisis in light of Mohammad Salimullah v. Union of India (decided on 08. 04. 2021)

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Abstract

India has a long history of giving shelter to refugees and it has had to handle refugee issues ever since the mass migration triggered by its partition in 1947. During the time of partition, refugees were automatically the citizens of newly independent India, the question of a threat to 'national security' due to their presence was out of the question. The next major refugee crisis India faced during Bangladesh's war of independence in 1971. However, this time the government approach was different, and Bangladeshi asylum seekers are seen as a security threat. It is interesting to note that, despite India being a recipient of refugees from its neighbouring countries, it does not have any domestic legislation in place to deal with the issues that come along with the said refugees. In the absence of specific legislation dealing with refugee issues, on various occasions, the government responded to asylum requests purely based on political interest. Therefore, the legal framework concerning refugees in India is a state of undefined and unsettled.[1] Moreover, India is neither a signatory of The 1951 Refugee Convention nor of the 1967 Protocol Relating to the Status of Refugees. However, India's ad hoc refugee system has made it possible to treat foreign migrants seeking refugee status as per their requirement and in accordance with the government's interest. One can see this changing face of asylum policy in case of treatment given to Tibetan refugees in India[2] and approach towards the recent Rohingya refugee crisis.

Key words: *Deportation, Mohammad Salimullah case, Myanmar, Non-refoulement, Rohingya refugee.*

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1. Rajeev Dhawan, *Refugee Law and Policy in India* (PILSARC, 2004) 32.
2. Bhairav Acharya, *The future of asylum in India: four principles to appraise recent legislative proposals* NUJS Law review, (2016) 177.

Introduction

In absence of specific domestic legislation to deal with the refugee problem, most of the time the government of India inferred its power from general legislation which regulates the entry of migrants from foreign countries, for instance, the Foreigners Act, 1946 is the prime legislation that is often used to regulate the entry of foreigners in India. In addition to that, the Passport Act, 1967, National Security Act, 1980 also empowered the government of India to regulate the presence of foreigners in Indian territory. A close analysis of all these legislation reveals that power conferred to the government in these laws is very wide and discretionary in nature. It will be relevant to quote Hans Muller v. Superintendent, Presidency Jail case[3] wherein Hon'ble Supreme Court (SC) upheld, that the Government has 'unfettered power' to expel any foreigner from the territory of India under the Foreigner Act. Further, the same power has been reiterated in case Mr. Louis De Raedt v. Union of India[4], while scrutinising the provision of the Foreigners Act, the court held that the government has 'unrestricted power' to expel the foreigners. Consequently, on many occasions, this unlimited power of government got recognition in numerous judgments.[5]

In this context, it is also necessary to highlight that in 2019 Indian Parliament brought a new law called The Citizenship (Amendment) Act, 2019 (referred to as 'CAA' hereinafter). However, an analysis of CAA reveals that it is enacted to recognise illegal migrants from a selected group of countries belonging to Hindu, Buddhist, Sikh, Christian Jain, and Parsi minority communities. Therefore, Rohingyas are not covered in CAA.[6] Now, the recent case Mohammad Salimullah v. Union of India (referred to as 'Mohd. Salimullah case' hereinafter)[7] decided by the Supreme Court of India once again ignited the debate on refugee policy in India and existing legislation to regulate the migrants from foreign countries.

Focus of the paper

In this background, this paper will try to analyse Mohd. Salimullah case in light of the key issues that came up before the Supreme Court (SC) of India. The

3. (1955) 1 SCR 1284.
4. *Mr. Louis De Raedt v. Union of India*, AIR 1994 SC.
5. *State of Arunachal Pradesh v. Khudi Ram Chakma*, 1994 Supp (1) SCC 615 and *Bawalkhan Zelanikhan v B C Shah* 1958 SCC OnLine Bom 46
6. Dr. Anita Yadav & Shambhavi Srivastava, Analysis of India's Citizenship Amendment Act, 2019 and its Implications for the South Asian Neighbourhood, <https://niice.org.np/archives/6278> accessed 21 July 2021.
7. (2021) SCC OnLine SC 296.

paper will also highlight some of the important laws and their lacunae to deal with the current refugee crisis in India. In order to conceptualise international obligation on India, this paper will also discuss the binding nature of non-refoulement principle in the context of 'national security' concerns.

Background of the Case

The Mohammad Salimullah v. Union of India[8] case pertains to the deportation of Rohingya refugees. It came up before the SC as a reaction to an official order issued by the government on 8th August 2017 by the Ministry of Home Affairs.[9] The present order highlighted the concern and need to identify many illegal migrants who have entered into the Indian territory from neighbouring countries due to economic and political disturbances occurring in their respective countries.[10] As per this official order, all the States and Union Territory (UT) administration in India are directed to locate all the illegal migrants in their respective territory and deport them back to their country of origin without any further delay in the interest of 'national security' Pursuant to this order, as per the news report,[11] around 150 to 170 Rohingya migrants seeking refugee status in India have been detained in Jammu to deport them back to their country of origin in Myanmar.

The Petitioner, Mohammad Salimullah, a Rohingya Muslim refugee from Myanmar, has challenged the legality of deportation of detained Rohingyas in Jammu by the Union of India (Respondent in the case) based on various grounds. The main contention raised by the petitioner is that the government order of deportation will lead to clear violation of the cardinal principles of the Indian Constitution that have been enshrined under it as Article 14 (right to equality) and Article 21(right to life). Both, articles 14 and 21, accord the protection not only to Indian citizens but also to non- citizens. Further, the petitioner of this case also relied on the international law principle of the right of non-refoulement which prohibits the expulsion or return of any refugee under certain circumstances.[12] The argument relating to the obligation of India arising under various international human rights instruments is a signatory to these instruments has also been substantiated in the present case in the light of Article 51 (c) of the Indian Constitution. Article 51 (c) creates an obligation on the state to encourage respect towards international law and any treaty obligation. It has

8. ibid
9. Ministry of Home Affairs, notification (8 August, 2017) <https://www.mha.gov.in/sites/default/files/advisoryonillegalmigrant_10092017.PDF> accessed 12 June 2021.
10. ibid
11. Pallavi Sareen, Nearly 150 Rohingya Detained in Jammu, Raising Spectre of Deportation <https://thewire.in/rights/nearly-150-rohingya-detained-in-jammu-raising-spectre-of-deportation> accessed 15 June 2021.
12. Article 33 - Prohibition of expulsion or return ("refoulement") of Refugee Convention, 1951.

been argued that since the government of India is party to human rights treaties, it is therefore under an obligation to protect the refugees as per provisions enshrined in the Universal Declaration on Human Rights (UDHR) 1948, International Convention on Civil and Political Rights (ICCPR-1966), Convention on the Elimination of all forms of Racial Discrimination (CERD-1965), Convention against Torture and Other Cruel, and the Inhuman and Degrading Treatment or Punishment (Torture Convention-1984) etc.

The respondent here based their argument on a similar writ petition filed in Jaffar Ullah and Another v. Union of India case[13] wherein the SC had dismissed the prayer and legitimised the order of the government to deport Rohingyas from Assam. The respondent further opposed the contention of the petitioner regarding the applicability of the non- refoulement principle stating that India is neither the party to Refugee convention 1951 nor its protocol, 1967, therefore, the principle of non- refoulement is inapplicable in India. The respondent also relied on section 3 of the Foreigner Act, which empowered the government to expel the foreigner from Indian Territory. Hence, deporting illegal migrants from foreign countries is well within the power of government according to law. The threat to national security due to the massive exodus of Rohingyas has also been raised in this case to justify the deportation order on the part of the government.[14] With regards to the violation of the fundamental rights of petitioner guaranteed under Article 14 & 21 of the Indian Constitution, the respondent placed their argument on Article 19 (1) (e) which gives the fundamental right to only Indian citizens to settle and reside in any part of this country.

Issues involved in the case

In the light of the facts of this case, the Hon'ble court has been asked to analyse the Constitutional validity of the deportation order passed by the government and its implication on the international obligation arising from various International human rights law treaties. Therefore, the following questions have risen for the consideration of the court:

1. Whether the official order for deporting Rohingya migrants issued by the Ministry of Home Affairs on 8th August 2017 violates the fundamental rights of the Rohingyas?
2. Whether the Government of India can claim exemption from the application of the international law principle of non-refoulement, since it is not a signatory to the Refugee Convention, 1951?
3. Whether the signing of numerous International human rights instruments can oblige the Indian government to provide protection and grant refugee status to the Rohingyas?

13. 2018 SCC OnLine SC 3674
14. Mohammad Salimullah (n 7).

An Overview of Rohingya Refugee problem in Myanmar

In order to analyse and conceptualize the Judgement of Mohd. Salimullah in detail, it is necessary to have an overview of the Rohingya plight in Myanmar. This section of the paper will highlight the major events responsible for the current situation of the Rohingya refugee crisis. In Myanmar Majority of the population belongs to the Buddhist community, whereas Rohingya are the ethnic Muslim minority community majorly residing in Rakhine district of Myanmar.[15] In pre-colonial times, Buddhist and Rohingya Muslims were living peacefully.[16] However, the relations between the Buddhist majority group and the Rohingya Muslims minority community have been strained since the post-coup military regime in Myanmar came to power in 1962.[17] Thereafter, the political turmoil and unstable democratic transition in Myanmar escalated the mass level of violence against the ethnic group of Rohingyas. The systematic religious persecution of Rohingyas led to the mass exodus of the Rohingya Muslim population. About 700,000 refugees were displaced, mainly in 2017.[18] The recent military coup in Myanmar on 1st February 2021[19] which has overthrown the elected government, further escalated the violence further worsen the situation for Rohingyas.

Moreover, enactment of the discriminatory 1982 Citizenship Law in Myanmar

15. Myanmar Rohingya: What you need to know about the crisis, <https://www.bbc.com/news/world-asia-41566561> accessed 15 June 2021.
16. Arnab Roy Chowdhury, *An 'un-imagined community': the entangled genealogy of an exclusivist nationalism in Myanmar and the Rohingya refugee crisis, Social Identities*, (Journal for the Study of Race, Nation and Culture 2020) 2.
17. ibid 1.
18. Arnab (n 16) 3.
19. 828 people killed so far in Myanmar since February 1 military coup, https://www.business-standard.com/article/international/828-people-killed-so-far-in-myanmar-since-february-1-military-coup-121052700092_1.html accessed 10 June 2021.

further denied the citizenship rights to Rohingyas, continuing to prompt displacement of Rohingyas, and eventually they were made stateless.[20] Therefore, Rohingya migrants who crossed the border to seek refugee status in neighbouring countries, denied refugee status, since in order to claim refugee status one has to hold the citizenship of the country.[21] The plight of Rohingyas Muslims also got international recognition in the recent case of Gambia v. Myanmar[22] filed by Gambia against Myanmar in the International Court of Justice (ICJ) under the Genocide Convention. ICJ in this case passed a provisional order stating that Rohingyas are the "most persecuted minority" in Myanmar and directed the government of Myanmar to prevent genocidal acts against the Rohingya Muslims till the outcome in this case.[23] Further, in order to respond to the humanitarian crises that occurred in the recent military coup in Myanmar the United Nations High Commissioner for Refugees (UNHCR) requested all the neighbouring countries to provide the asylum person in need including Rohingyas fleeing to save their life amidst this violence.[24] An analysis of the above facts reveals that the plight of Rohingyas is not a recent creation but it has been prevailing for a long time in Myanmar, which is also responsible for illegal migrants entering neighbouring countries including India.

Judgement of Court

After hearing both sides of contention, the Court acknowledged that, even though India is not a signatory to the Refugee Convention, still Indian courts can take inspiration from the International convention as long as it does not conflict with the national legislation. In furtherance to that court agreed to the petitioner claim regarding protection provided to non- citizen's fundamental right under article 14 and 21 respectively, nonetheless, the court also pointed out article 19 (1) (e) of the Constitution does not provide absolute protection from deportation of a foreign migrant in case of necessity like a threat to national security. The

20. Discrimination in Arakan, Human Rights Watch<https://www.hrw.org/reports/2000/burma/burm005-02.htm> accessed 15 July 2021.
21. Arnab (n 16) 2.
22. <https://www.icj-cij.org/public/files/case-related/178/178-20200123-ORD-01-00-EN.pdf> accessed 25 June 2021.
23. Marko Milanovic, *ICJ Indicates Provisional Measures in the Myanmar Genocide Case* https://www.ejiltalk.org/icj-indicates-provisional-measures-in-the- myanmar-genocide-case/ accessed 12 July 2021.
24. UNHCR calls on Myanmar's neighbours to protect people fleeing violence <https://www.unhcr.org/en-in/news/press/2021/3/60648c304/news-comment-unhcr-calls-myanmars-neighbours-protect-people-fleeing-violence.html> accessed 12 July 2021.

court also relied on its previous judgment in the Jaffar Ullah case[25] wherein the court allowed the deportation of Rohingyas from the state of Assam. Finally, the court passed an order in favour of the Indian government by allowing the deportation of Rohingyas migrants after following the due procedure prescribed by law.[26]

Though the SC judgement settled the deportation issue in the wake of 'national security' of the country, yet the issue of India's refugee policy towards foreign migrants is still undefined and ambiguous. Further, the binding nature of the non- refoulement principle on non-signatories states needs more deliberation. It is also important to assess international obligation on India under various International human rights treaty laws towards migrants seeking refugee status.

Transformation of International Law into the National Law

According to Article 51© of the Constitution of India, states are obliged to foster respect towards international law. However, it is pertinent to discuss Article 51© falls under the ambit of Part IV of the Constitution, which means all rights falling under part IV are non-justifiable in nature. Therefore, these rights are not enforceable in the court, nevertheless, they are fundamental in the governance of the country as per Article 37 of the Constitution. As far as transformation of International law into national or domestic law is concerned, it is necessary to highlight that, Indian Constitution does not have any provisions which give supremacy to international law over national legislation like the Constitution of the United States.[27] On many occasions. the Indian judiciary had also clarified that, in case of inconsistency between international and national law, the latter will prevail. Therefore, international law can be used to draw inspiration and to supplement the national legislation as per need and the circumstances of the case.[28]

Understating the binding nature of the Non-refoulement principle:

As discussed in Mohd. Salimullah case, India is not a party to Refugee Convention, 1951 and therefore, India is not obligatory to follow the principle of non-refoulement. In this context, it becomes significant to analyse the binding nature of non-refoulement in order to understand its applicability on non-signatory states. The principle of non-refoulement prohibits the states from deporting foreign migrants if there is reasonable apprehension to believe that his life and liberty will be threatened in his country. This principle is enshrined in

25. *Jaffar Ullah and Another v Union of India* 2018 SCC Online SC 3674
26. Mohammad Salimullah (n 7).
27. Art. 6 clause 2 of The Constitution of the United States
28. *Vishakha v State of Rajasthan* AIR [1997] SC 3011.

Article 33 (1) of the Refugee Convention 1951, which clearly states that "no contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".[29] However, the second part of Article 33 (2) recognised certain exceptions to this principle. It states that, in case of threat to the 'national security' of the country, this provision will be inapplicable. . Therefore, a complete reading of Article 33 reveals that the principle of non-refoulement is not absolute in nature.

International and Regional human rights instrument and India's obligation towards Non-refoulement principle

Various International and regional human rights instruments have reiterated the principle of non-refoulement. Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984 prohibit the states to expel, return or extradite to any person if there is reasonable ground to believe that upon his/her return he/she will be subjected to torture.[30] Interestingly, CAT recognised the principle of non-refoulement without any exception and made it applicable to everyone regardless of personal status. However, India is yet to ratify the CAT.[31] In such a scenario, it will be difficult to argue that India is bound to follow the principle of non-refoulement. Similarly, India has also not ratified International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED), 2006.[32] It also prohibits refoulement on the ground of enforced disappearance in article 16 of ICPPED.[33] In the International Covenant on Civil and Political Rights ('ICCPR'), article 7 of the covenant prohibits torture in any form and any derogation from this provision is prohibited according to article 4 of this covenant.[34] Therefore, deportation of unwilling migrants can be amount to one form of torture, and India being party to ICCPR, the obligation can be inferred form aforementioned provisions. Apart from these international treaty laws, the obligation of non-refoulement has also been recognised by various regional human rights

29. The Refugee Convention, 1951 <https://www.unhcr.org/4ca34be29.pdf> accessed 12 July 2021.
30. Convention against Torture <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> accessed 11 July 2021.
31. <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN> accessed 09 June 2021.
32. <United Nationhttps://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4> accessed 09 June 2021.
33. Convention for the Protection of All Persons from Enforced Disappearance <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx >accessed 09 June 2021.
34. ICCPR <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> accessed 23 July 2021.

instruments like the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa and the 1969 American Convention on Human Rights and Cartagena Declaration on Refugees 1984.[35] Since being a regional convention its applicability is limited to their specific region-wise and not in India.

Customary nature of the Non-refoulement principle

As per the above analysis, it is clear that the principle of non-refoulement is recognised in various treaty laws. However, India not being a signatory to most of the treaties under no obligation to follow this principle. Therefore, it is necessary to discuss non-derogability features of non-refoulement norms under 'customary international law'. Once it is established that non-refoulement principle is a 'customary international law', it will oblige the non-state party to adhere to this principle irrespective of the fact, whether or not they are a party to the refugee conventions or other human rights treaty laws.[36] According to article 38 of the statute of the International Court of Justice (ICJ) "international custom, as evidence of a general practice accepted as law". Hence, in order to identify customary international law, there are two essential elements required for a norm to become part of customary international law: (a) state practice and (b) opinio juris.

Therefore, the non-refoulement principle is part of various above mentioned international and national regional human rights convention clearly reflect consistent state practice. Furthermore, around 80 states have adopted the principle in their domestic legislation[37] shows wide acceptability of this principle. Due to this large level of acceptance of the principle, The United Nations High Commissioner for Refugees (UNHCR) also accepted that principle of non-refoulement has become a norm of customary international law.[38] It is also contested amongst the scholars that, the principle is evolving as the Jus cogens norm.[39]

35. <https://www.refworld.org/docid/438c6d972.html> accessed 22 July 2021.
36. Dabiru Sridhar Patnaik and Nizamuddin Ahmad Siddiqui, *Problems of Refugee Protection in International Law: An Assessment Through the Rohingya Refugee Crisis in India*, (Socio-Legal Rev. 1 2018) 14.
37. Dina Imam Supaat, *Escaping the principle of non- refoulement*, International Journal of Business, (Economics and Law, Vol. 2, Issue 3 June, 2013) 89.
38. UNHCR Advisory Opinion <https://www.unhcr.org/4d9486929.pdf> accessed 21 July 2021.
39. Shirley Llain Arenilla, *Violations to the Principle of Non-Refoulement Under the Asylum Policy of the United States*, (Anuario Mexicano de Derecho Internacional, Volume 15, Issue 1, 2015) 288.

National Security Vs. The Non-refoulement Principle: Inconsistent State Practice

Having established the aforementioned, the principle of non-refoulement is customary international law, it is necessary to take note that few of the scholars argued that customary principles developed in international refugee regime and human rights law are different. Concerning customary rule in the refugee regime, it allows the exceptions to non-refoulement in the form of 'national security'. Whereas human rights law customary principle does recognise any exception to the principle.[40] In this regard, it is also interesting to discuss some the inconsistent state practices wherein many countries have denied the absolute and non-derogable nature of the non-refoulement principle. In order to fight global terrorism, the United States of America heavily relied on the exception provided in Article 33 of the refugee convention and on many occasions denied giving refugee protection due to national security issues. Further, the Supreme Court of Canada in the case of Suresh v Canada[41] upheld that, in case of serious security threat of the country, deportation can be justified. Therefore, there have been state practices wherein states justified their deportation policy in the light of national security concerns.

Conclusion and Suggestions

The states being a primary subject of international law, endowed with power and with supreme authority to protect their territory from any kind of unlawful intervention. The cardinal principle of state sovereignty is a well-established principle both in national as well as in international law. The Charter of United National (UN) in Article 2 recognises the 'sovereign equality of all the member nations'. Therefore, any kind of compromise in 'national security' can directly impact the sovereignty of any particular nation. One cannot deny the fact that Rohingyas migrants, already a vulnerable group, can be a soft target for terror activities. The presence of the large number of Rohingyas migrants at Jammu, itself raises suspicion considering the fact that Jammu has often been in news due to cross-border terrorism. Further, Article 33 (2) of the Refugee convention, 1951 does not define the concept of 'national security' and its standard of proof. The only limitation imposed by this provision is that the threat to national security should be based on 'reasonable ground'. The current Rohingyas refugee crisis and their presence in Jammu could be reasonable grounds to believe the

40. <https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=7754247 &fileOId= 7767311> accessed 25 July 2021.
41. (Minister of Citizenship and Immigration), [2002] 1 S.C.R. 3, 2002 SCC 1

future potential threat to the security of the nation. Therefore, the court decision in Mohd. Salimullah's case to deport the illegal Rohingyas migrant to Myanmar is in the best interest of 'national security' and holds adequate justification. Further, it is also important to note that, due to security reasons it will not be possible for any sovereign government to give all substantive evidence in the public domain relating to national security issues.

Considering all the points discussed above, the author would like to make the following suggestions for effective resolution of the Rohingya refugee crisis:

- The current Rohingyas Refugee problem is now a global problem. As discussed in this paper ICJ in the Myanmar genocide case upheld that, Rohingyas are one of the 'most persecuted minority'. Therefore, in order to tackle this problem cooperation from all the nations is the need of the hour. The author believes that the famous environmental law principle 'common but differential responsibility' (CBDR) approach can work well to address the refugee problem, keeping in mind the economic, resources disparity between developed and developing countries.
- The government needs to adopt the principle of proportionality in order to strike the balance between national security and the person seeking refugee status in a foreign country.
- It is the need of the hour that the Indian government should come up with its own domestic law to effectively deal with the refugee problem in order to avoid any future controversy.
- A mutually acceptable cooperation between India and Myanmar to curb Rohingyas migration will be helpful to prevent any illegal migration.

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Marriage Migration and the `Right to Work': The Case of Indian Dependent Spouses in the US

Tasha Agarwal*

Abstract

There have been several academic discussions on the intersection of marriage migration and engagement in labour market in case of internal migration. However, when the nature of migration changes from internal to international, the right to work becomes an important concern. Several recommendations at the international level in the form of Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights propagates for respecting the human rights. These conventions lay down several rights which must be guaranteed by the nation state and suggests that there should be no discrimination between citizen and lawfully admitted immigrant. Taking US as the country under study and immigration laws concerning H4 visa as the specific case, the paper highlights how the destination countries compromises with such international conventions and recommendations. Further, using primary data collected through interview with 30 women located in US on H4 visa, the paper brings out the heterogeneity of experiences of being in US on a dependent visa where their right to work has been withheld.

Key words: - *Conventions, Dependant, Human Right, Immigration, Migration, Visa.*

Introduction

Marriage has often been cited as one of the major reasons for migration, for both internal as well as international. In case of internal migration within India, marriage migration has been one of the major reasons for the migration of female (GOI, 2011). The association of marriage migration and work has often not been contested in case of internal migration because there are no legal and binding principles which stand applicable in such cases. Internal migration of

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women is, at times, been associated with the opportunities for the women to participate in the labour market. Even of the women are not employed, there is no legal mechanism which restricts the labour market participation of these women by the virtue of them being a migrant, post marriage.

Interestingly, when the nature of migration changes from domestic to international the aspect of work becomes one of the major causes of concern. Not that the women are unable to establish their credentials for being eligible to apply for a particular work profile, their legal status as a 'dependent' restricts them from participating in the labour market. This may vary as per the immigration laws of different countries but what is uniform is the differential treatment of the dependent spouse from their counterpart. Such differentiation undermines the individual capabilities and overemphasizes their derivative identity[1].

This, to a large extent, reflects on the societal understanding of the spouse where their identity is considered to be tied down to that of their husband. The problem arises when such ideas are legitimized through law. While doing so it sabotages the individual choices and agency of the person under concern and questions the rights of humans as immigrants which have been recommended under international laws and conventions.

In this light, the paper discusses about the aspect of right to work among the immigrant women whereby different countries impose their set of restrictions when it comes to dependent spouses, undermining the right of an individual to be treated equally and to participate in the labour market. The following section deals with the aspect of right to work for immigrants under several international laws and conventions Taking USA as the case, the next section describes its set of restrictive policies towards its dependent spouse migrant. The following section, using primary data from 30 women, provides anecdotal evidences of the experiences of women who migrated as dependent spouse in US and had to surrender their right to work. The last section concludes the paper with the remark on how the ethos of human rights has been compromised upon through the set of immigration laws for certain category of individuals.

Rights of work for Immigrants: International Conventions and Declarations

Among several other rights conferred to the immigrant, right to work has been one of the rights which have been directly or indirectly addressed by several international conventions. (International Justice Resource Center. 2020). Article 23 of Universal Declaration of Human Rights (UNDR) confers that

1. Derivative identity is an identity which is derived from someone else's identity i.e. X's wife or Y's children

"…Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment". Though not legally binding, it is expected that all the nations accepts the UNDR as the fundamental document and considers all humans to be "born free and equal in dignity and rights irrespective of nationality, place of residence, gender, national or ethnic origin, colour, religion, language, or any other status".

According to UNDR, irrespective of the nationality of the individual, an individual will be conferred with certain sets of rights. Hence, this stands to be applicable for the immigrant population residing in any country. Among the 48 countries, USA was one of the countries which voted in favour of the policy document. The context of USA is even more important here because US is the highest migrant receiving country in the world (IOM, 2020).

Further to this, the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, adopted in 1966, recognises that "…in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights". Therefore, the UN recognizes the economic right as one of the indispensible right to protect human dignity. Article 1 of Part I further mentions "…In no case may a people be deprived of its own means of subsistence." Article 6 discusses of Part III adds that "…recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right." Recognizing the importance of a family unit, the document also mentions "…The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society"

The UN document named 'General Comments No 15: The position of aliens under the Covenant' gives a detailed comments on the rights of the aliens under International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. According to the document, the covenant does not recognize the right of an individual to enter the country. Such rights can be made conditional by the participating state. However, once they are allowed entry within the state, they are entitled to the rights set out by the state. Here, it is important to consider the term 'allowed' which also signifies the legal permission to enter the state, as per the immigration laws of the state. This implies that the illegal, undocumented, those who had overstayed their visa and those with similar cases, does not qualify for the rights. Hence, once an individual is legally permitted to enter the state, they are entitled for the rights which are mentioned in the covenant. The Human Rights committee has also states it clearly that barring article 25 of ICCPR, regarding political participation, all the rights are applicable for the migrants (International Justice Resource Center, n.d.).

All these conventions talk about equal treatment of nationals and non-nationals, the Committee on Elimination of Racial Discrimination (CERD) General

Recommendation XXX on Discrimination Against Non-Citizens (para 29) adds "Remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens". Further para 35 mentions "Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights…once an employment relationship has been initiated until it is terminated". By using the term 'allowing work permit' the convention further shifts the power towards the state which uses this as the tool for enforcing differential treatment and further the non-citizens are left on the prerogative of the state to decide on their rights; despite being legally admitted to the country.

The international Justice Resource Centre further reiterates that when it comes to economic and social rights, many nations are less willing to maintain equality between the nationals and non-nationals. This is also evident through the American Convention of Human Rights wherein the chapter III on economic, social and cultural rights, just mentions an abstract form of these rights in a single paragraph (OAS, 1969). The paragraph mentions:

"The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires."

-Organisation of American States (1969)

Nothing has been mentioned on the economic rights of citizens and non-citizens in either the American Convention on Human Rights of OAS (1969) or the Charter of the Organisation of American States (1948), despite the USA being the country which has attracted immigrants from decade.

The paper intends to see the US immigration policy concerning H4 visas in light of the aforementioned international conventions and UN documents. H4 visa holders are the one among many visa holders who are legally admitted to stay in US. However, the immigration policy, not just differentiates between the citizen and non-citizen in case of H4 visa, but has further created an additional layer of differential treatment which is within the non-citizens; all of which does not fall in sync with the international conventions ratified by the US.

Immigration Policy of the USA: Women on H4 visa

In USA, the maximum number of visa allotted to the foreigners is the work visa. There is different type of work visas varying as per the kind of work one is engaged in and the nationality of the individual. Some of these categories of visa are the H-visa, L visa, TN visa etc.; where H1B visas are one of the maximum allotted visas in H category visa. The spouse and minor children of H1B visa is allotted the H4 visa. The H4 visa is also a dependent visa where the visa holder does not have the authorization to work, until one applies for the green card.

Green Card application can only be filed after one has stayed in the USA for at least 6 years. So once a dependent spouse is in the US, they cannot be engaged in any kind of paid employment. The H4 work permit, also known as H4 EAD, authorizes them to engage in the labour market but the visa status stands valid only till the primary visa holder's status stays valid. Once the visa status of the primary visa holder expires, the H4 visa expires as well and hence needs to be renewed along with the H1B renewal.

As for the allotment of H1B visa, there is no point based system. The allotment happens through lottery method where every year among lakhs of applicants, 85000 applicants are selected via lottery. Most of the women are structurally excluded from filing the H1B application which is also visible through the data on gender wise male and female H1B applications petition filed. In the fiscal year 2019, 78% of the H1B applications were filed by male as compared to 22% by female (USCIS, 2019). Similarly in 2018, 79% of the applications were filed by male as against 21% by female (USCIS, 2018). With women forming the major chunk of migration, in the form of spouses or family members, majority of people to migrate on H4 visa tends to be women. Despite the fact that the female counterparts of the H1B visa holders are equally qualified and experiences but have to trade off their immigration with the opportunity of economic participation (Amurgis et al, 2021).

The dependency garnered by H4 visa is not just in terms of financial dependency but also in terms of their right to stay in the US. The right to stay in the US is tied down to that of the primary visa holder. Due to such dependency on the primary visa holder, there are several cases of domestic violence and destitution reported among the H4 visa holders (Amurgis et al, 2021). In the scenario of divorce, the H4 holder is no longer authorised to stay in US and the custody of the child born out of the marriage is handed over to the principal visa holder. Due to such state authorized dependency and dispossession of rights, the women are sometimes left vulnerable to adapt to the existing situation.

Lived Experiences amidst Forced Unemployment

Where the international conventions talks about uniformity of rights between the nationals as well as non-nationals, women on H4 visa, by the virtue of being on a dependent visa, faces additional challenges which originates from their identity as being immigrant and as a dependent. Apart from the insecurities associates with new place and new governmental framework, exclusion from participation in labour market comes as a major shock affecting the understanding of their own identity and belongingness.

Amrita, 37 years old, from Andhra Pradesh narrates her story as

I got married in a hush because my father had a heart stroke and wanted me to get married. So his [husband] profile came in and we just agreed. I even met him on the day of marriage. I didn't have much time to enquire anything about any visa. So once I moved to US and things started settling in, I was like – What

have you done to your life? Why are you here? What are you doing to do now? I couldn't work, I had no one to talk to and the place where I stayed [Austin, Texas] used to be unbearably silent. It was literally killing me from inside. I felt like I no longer knew who am I.

These women with adequate skill and job experiences, when confined to private space with limited interaction in the public domain, often experienced social and psychological distress. These emotions emanates from a sense of dispossession which they experienced due to the restrictions imposed by the immigration laws.

Akriti, 32 years old, mentions:

I was always a workaholic person. I was never very homely. I loved going to office and coming back late in the evening…but here there's no work for me. Most of the time, I stayed at home and will be on the call throughout the time looking for someone to talk to. I had no social circle here. My parents would also get tired sometimes and would ask if I have something new to say. I just wanted a human touch, which I was missing out the most here. For anything to everything I had to wait for my husband so that it can be done. It was like I was no one. I have never asked for a penny form my parents since the time I left home for college and now here I stand

Many a times, the fetish and fascination among the masses for being in USA, often undermines the heterogeneous experiences which the women face. Often when the American Dream is associated with the enhanced career opportunities, it often ends up being the celebration of present opportunities for men and probable future opportunities for women. It has been marked as 'probable' because many a times a gap of certain number of years make their skills out-dated in the labour market and the re-entry often forces them to tone down their expectation and restart way below from the position which they last left.

Rohini, 31 years says:

I was doing pretty well in India with my own team where I was heading the entire section. And then I came to US on H4…I explored all possible things where I can engage myself. They say the US is the land of opportunities but where are these opportunities for people like us? Finally I started the volunteering work…at least it will keep me updated and add to my credentials when I have my work permit.

Gaurika, 34 years, adds:

…so when I got my work permit, it was like such a relief because I could earn and have my own career. But reality hit me hard…I realized that my expectation of equivalent pay and profile will not lead me anywhere. I have to be open up for anything and everything under the sun. Even though I did not liked this down gradation of myself, but I had to pick up anything which came my way – be it the hourly pay work, piece rate work or fresher's work. I just had to start.

Sometimes, even after having the work permit, it often leads to hours of negotiations with the employer, trying to prove their credentials of having a valid work permit as the work permit amendment concerning H4 has been a

recent change, which not many employers were aware of.

Krishna, 42 years old, brings up:

…So one you get your H4 EAD and start applying for job, they will call you and confirm your visa status. They just want to hear it from your mouth. Once you say that it's a H4 EAD, it's the most common response that they will ask what's a H4 EAD? Once you explain it to them, they will show their apprehension towards employing someone on H4 visa whose visa status is tied down to that of their husband. Especially of it's a long term project, we have no chance of getting through it.

The constant home isolation experienced by women with limited social network around, often leads to manoeuvring themselves within the existing framework to make their time productive. Few women prefer to move towards higher education with the anticipation of transforming the same into their H1B application. There are other few who are expected to perform the social reproductive role as the social division of labour automatically confers the reproductive role to the female counterpart; non-participation in labour market further provides social legitimacy for the same. Therefore, right from biological reproduction to social reproduction in terms of cooking, cleaning, feeding, nurturing and other care work are shifted to women, with no choice whatsoever.

Rani, 34 years old, was a software engineer. She mentions that she was never fond of handling the household chores. She loved her job as an associate engineer in one of the leading MNCs in India. She enjoyed her routine where she went to office in the morning and came back by the evening, where weekends were reserved for relaxing at home or meeting friends and where managing her finance was something that used to excite her. Post marriage, she moved to US and is now handling the entire household chores all by herself. She talks about the helpless of not having an edge to negotiate on what are her choices of work that she would like to engage in. She mentions – "It's not that I have been asked to do this, but it's something I am expected to do, since I need to contribute in some way to this family that we are building together."

Conclusion

Equality of treatment among all individual has been treated as fundamental right in several international laws and conventions. One of the rights which have been discussed at the international level is the right to work for the individual and that there should be no discrimination based on the nationality of the individual. The convention further mentions that the right mentioned in the document does not ascertain an individual the right to enter a country, however, if they are legally allowed to enter, the right holds true to them. In case of USA, every year thousands of individuals are recruited and are legally permitted to enter in the country as skilled immigrants and their spouses follow them to US on dependent visa i.e. H4 visa. Despite they being the legally permitted individuals, the right to work are withheld from the H4 visa holders, which stands in contradiction to

the Universal Declaration of Human Rights. Here, the discrimination is not just by the virtue of being a non-citizen, but also within the non-citizens.

Despite the H4 visa holders being educated, skilled and experienced, equivalent to their counterparts, they are unable to engage in paid employment because the immigration policy restricts the right to work for the individuals immigrating on the H4 visa. The forced unemployment has led to social and psychological distress and has also made them vulnerable to domestic abuse. Such dispossession of their rights, identity and belongingness has altered and redefined the way an individual experiences their life in the destination country, which goes against the ethos of the Universal Declaration of Human Rights.

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   III. Contains no more than 8,000 words (including references, notes, tables and figures).
   IV. Does not contain page numbers.
   V. Use ‘s’ spellings instead of ‘z’ spellings. This means that words ending with ‘-

ize', 'ization', etc., will be spelt with 's' (e.g., 'recognise', 'organise', 'civilise').

VI. Use British spellings in all cases rather than American spellings (hence, 'programme' not 'program', 'labour' not 'labor', and 'centre' and not 'center').

VII. Use single quotes throughout. Double quotes only to be used within single quotes. Spellings of words in quotations should not be changed. Quotations of 45 words or more should be separated from the text and indented with one space with a line space above and below.

VIII. Use 'twentieth century', '1980s'. Spell out numbers from one to nine, 10 and above to remain in figures. However, for exact measurements, use only figures (3 km, 9 per cent, not %). Use thousands and millions, not lakhs and crores.

IX. Use of italics and diacritics should be minimised. Tables and figures to be indicated by numbers separately (see Table 1), not by placement (see Table below). All figures and tables should be cited in the text. Source for figures and tables should be mentioned irrespective of whether or not they require permissions.

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Authors are responsible for ensuring that the information in each reference is complete and accurate.

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