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CONTENT

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CONTENT

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PREFACE

Human Rights and Human Rights education is of utmost importance in today's world. Almost every nation espouses to its tenets and none that defies it gains any respect from both outside its territories or from its citizens. Thus, it is important to realize that human rights overwhelm popular ideas of nationalisms, discriminating attitudes to gender, caste and class and dispel the superiority of any individual over another when it comes to living in a shared world.

Human Rights are the way forward to question the established status quo and open up the margins to become more inclusive of every kind of eccentricity and representation. The University is a space for identifying the battles of Human Rights that are to be fought in the real world through a multidisciplinary and multi-ethnic teaching and learning atmosphere. Noida International University upholds its responsibility as an educator to build a space open for debate, discussion and conferences on diverse subjects and disbands nothing as illegitimate. This is an effort on the part of the University to provide dignity to several seminal subject matters so that even if there is some conflict, a seat at the table and a voice that is sure to be heard, ensures resolution of them all and respect for each concern.

Noida International University is committed to reinforce the basic principles of human rights development and education and this journal is an attempt to widen our scope of deliberation. We wish to remain an active element in this effort and thus engage ourselves in this knowledge and research producing venture of a journal on International Human Rights. It is hoped that the journal offers a space for introspection and constructive transformations in important decision making endeavours of policy formations or simply living as a more thorough and aware personality that can stand and make a difference.

Prof (Dr.) Kum Kum Dewan
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From the desk of the Editor-in-chief

In this day and age, Human Rights has become a subject of tremendous significance and consideration. It is ironical that in a world that espouses a globalised outlook, many wars are still being fought on sectarian lines and the violation of basic rights of human beings is appalling. Although, various platforms are working towards building an equitable atmosphere for citizens of the world, there is no dearth of issues to be focused upon. It is clear as may be experienced upon reading the papers that this journal presents that mere formulation of laws is not enough. It is also of supreme importance that institutions are committed towards an efficient administration and proper implementation of these carefully worked out posits.

One of the indispensable aspects of building a culture of Human Rights understanding and activism is that of nurturing young minds to grow with value education and of providing respect to each citizen irrespective of their status as a national, migrant, artist or legally accused, etc. There is a need to build the perspective that each individual is questionable and accountable to each other whether they occupy top rungs of power or defy the odds to survive in this era. With that in mind, Noida International University is committed to imbibe in its methodology of teaching the fearless attitude to stand tall to power and advocate for the rights of the wronged, every step of the way. We believe in inculcating among our students an inclusive spirit which is inherent in its very milieu of operation of the University which is literally international.

This journal comprises of issues in the past, present and future through in depth discussion that opens fields for further interrogation and research. Some of the subjects like force feeding of prisoners is quite unheard of in general discourses around human rights and other civil, political, economic and agrarian matters that our contributors have pulled the attention towards in the hope of creating a more aware surrounding. I hope that the journal is a fruitful venture and valuable area of exploration for all who are interested in the enhancement of Human Rights.

My thanks and gratitude to Hon'ble Pro VC, Prof (Dr.) Vikram Singh and Hon'ble Vice Chancellor Prof(Dr.) Kum Kum Dewan for providing the opportunity and guiding me through.

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A Tale of Two Minorities: The Struggle for Education in Sri Lanka and the United States

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"*Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family*."- Kofi Annan[1]

Abstract
This paper discusses race in education from two varying perspectives. The first part discusses the formation of the Liberation of Tamil Tigers Eelam (LTTE) in response to the legislative changes of Sri Lankan government in marginalising Tamils. The second part chronicles the discrimination and racial segregation faced by African Americans during the Civil Rights Movement. Lastly, the paper aims to draw parallels between these two situations and analyse the differences and similarities in their approaches to their respective issues, so that history does not repeat itself.

Keywords: *Right to Education, Civil Rights, Sri Lanka, LTTE, Racial segregation*

Introduction

Education is a basic necessity for the liberation of human thought. This has been a common theme in the words of leaders who have represented the oppressed masses. Nelson Mandela opined that education is the most powerful weapon that can change the world.[2]

The right to education was first conceptualized in 1948, with the passing of the Universal Declaration of Human Rights.[3] The Declaration has since become a part of customary international law[4]. Later, treaties such as the International Covenant on

1. Press Release, United Nations, http://www.un.org/press/en/1997/19970623.sgsm6268.html (Jun. 23, 1997, 12:30 PM).
2. Valerie Strauss, Nelson Mandela On the Power of Education, Washington Post, (Dec. 5, 2013) https://www.washingtonpost.com/news/answer-sheet/wp/2013/12/05/nelson-mandelas-famous-quote-on-education/?utm_term=.a60add98e118
3. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec.10, 1948).
4. Hurst Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, 25 Ga. J. Int'l & Comp. L. 287 (1996).

Economic, Social and Cultural Rights[5] and the Convention against Discrimination in Education[6] consolidated this right.

Many nations have made education compulsory and free, at least, at the primary school level. According to the database of the Constitute Project[7], 134 have provisions for free education and 118 of those make it compulsory. Even in the United Kingdom, which lacks a written constitution, the right to education is protected in the Human Rights Act of 1998.

The Right to Education and Minority Interest

It is common knowledge that one of the most notable methods of oppression in history was keeping the mass uneducated and uniformed. Controlling the ignorant masses is easier than controlling those who know their rights. Denying access to education is a means of oppressing minorities. In some circumstances, it appears as an institutionalized part of society. In others, it is a deliberate political effort on the part of a majority. The motivations for this may be varied, but they share one thing in common; it is always done through the framework of policy. The issue is that such discrimination comes with consequences, often unforeseen by the policy makers.

However, as always, oppression has been short-lived. The drive for self-determination is a weapon often proven greater than any intellectual marginalization. Mahatma Gandhi was unwittingly educated by the enemy. Booker T. Washington fought his civil rights battle by educating as much of the black community as he could. History has shown that men have fought for equality and have been successful. However, peaceful protests and political lobbying are not the only ways to achieve success. The organization, Liberation Tigers of Tamil Eelam, or LTTE, was born of the same intellectual oppression and marginalization that brought forth men such as Gandhi and Washington. However, they allegedly grew to be by far, the world's most dangerous terrorist group.

If education is the key to freedom, man will fight for it with vigour. This is sometimes exactly the problem, as was in Sri Lanka, where legalized denial of a right to education for racial minorities was sanctioned by the government and ratified by the judiciary. More importantly, the paper aims to analyse the differences in the approach of racial minorities in the face of the same oppression and in what way the reasons behind the same create a ripplean impact. This will be done with a comparative analysis of the situation in the United States as the Civil Rights Movement fought for de-segregation vis-a-vis Sri Lanka with the rise of the LTTE in response to denial of education on the basis of race.

5. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.
6. Convention against Discrimination in Education, May 22, 1962, 429 U.N.T.S. 93.
7. The Constitute Project, Available at https://www.constituteproject.org (This website contains the constitutions of 190 nations and has a search tool used to sift through the constitutions.)

This paper is concerned with two models of educational oppression in particular: the policy of standardization implemented by former Sri Lankan Prime MinisterBandaranaike[8] and the era of segregation in the United States prior to Brown v. Board of Education[9].

Politico- Historical Background of the Communities of Sri Lanka

Historically, Sri Lanka (formally known as Ceylon) was populated by communities migrating from its northern neighbour, India.[10]This consisted of two distinct groups, the Sinhalese and the Tamils, who settled in different parts of the island.[11] In terms of ethnicity, language, race and religion these two groups were and still are at a stark contrast. The Sinhalese speak Sinhala and are primarily Buddhists, and the Tamils speak Dravidian Tamil and are prevalently Hindu.[12]This extends even to their Indian origins, with the Sinhalese originating from the northern regions of India[13] while the Tamils originate from the southernmost region, largely from what is now called, Tamil Nadu.[14]For those unfamiliar with the cultural milieu of India, the people of the North and South vary greatly in their culture, race and character, a difference that has clearly been translated into the cultures of the two communities even in Sri Lanka. The Tamils form a clear minority, making up 11 to 18 percent of the population of Sri Lanka, while the Sinhalese make up 75 percent.[15]

It is perhaps human nature to ostracize the minority, given their inherent cultural and linguistic differences. The system of democracy vests the majority with the power to undermine the minority, if the majority so desires. It is rare that the majority does not capitalize on that power when there are no foreseeable consequences, especially when the minority in question can be viewed as overly successful.

There are multiple reasons the Tamils gained this status of an overly successful minority. The British colonial rule favoured the Tamils in terms of jobs and education. [16]The use of the English language by the British gave an inadvertent advantage to the Tamils, who focused on their education. Living in areas without agricultural opportunities, and the advent of missionaries in the north and east, encouraged the Tamils to educate themselves in order to get white collar government jobs.[17] Further, Tamil culture has historically put more emphasis on imparting of education to their children, as it was felt that that was the most useful and permanent contribution a

8. Asoka Bandarage, The Separatist Conflict in Sri Lanka, 54 (2009).
9. Brown v. Board of Education, 347 U.S. 483 (1954).
10. K.M. De Silva, A History of Sri Lanka, 8-9 (1981).
11. Id.
12. Joanne Richards, An Institutional History of the Liberation Tigers of Tamil Eelam (LTTE) (Centre for Conflict, Development and Peacebuilding, Working Paper No.10, 2014).
13. Id.
14. Sarah Wayland, Ethno nationalist Networks and Transnational Opportunities: The Sri Lankan Tamil Diaspora, 30, Rev. Int'l. Stud., 405, 412 (2004).
15. H.P. Chattopadhyaya, Ethnic Unrest in Modern Sri Lanka: An Account of Tamil-Sinhalese Race Relations, 10-12 (1994).
16. Neil DeVotta, The Liberation Tigers of Tamil Eelam and the Lost Quest for Separatism in Sri Lanka, 49 Asian Surv, 1021, 1025 (2009).
17. Richards, supra note 14.

parent could make.[18] The Tamils thus held 60 percent of government jobs under British rule, causing tension between them and Sinhalese, who began to gain interest in government jobs.[19]

This formed the basis of a series of political and legislative moves in order to marginalize the Tamil community.

Legislative Policies Affecting the Tamils' Educational Opportunities

After Independence, the coalition government United National Party (hereinafter UNP) tried to disenfranchise Tamils,[20] a drastic step, yet characteristic of many oppressive majority regimes throughout history. They enacted the Citizenship Act of 1948 and 1949, which required them to prove a two- generation connection to Sri Lanka, and if not proved, took away the Tamil voting rights.[21]This caused them to split from the UNP and form the Federal Party.[22] The Federal Party, as the name implies, lobbied for a federal system with high levels of autonomy such that the Tamil majority areas could be relatively self-governing. At this point, they did not wish for a separate state.[23]

The UNP agitated for switching the official language from English to Sinhala and Tamil, which later evolved to only Sinhala with 'reasonable provisions' for Tamil. This caused backlash amongst the Tamils and belied the Sinhalese attempts at curbing Tamil opportunity.[24]This was realized via the Official Language Act No. 33 of 1956, which is known as the Sinhala Only Act in common parlance, which clearly implies its nature.[25]This Act was aimed at detaching the Sri Lankans from their British roots, but also effectively imposed the language of the majority on the minority, which spoke Tamil. The Sinhala Only Act essentially removed the use of the Tamil language from the education, public service and legal fields. Tamil civil servants were expected to learn Sinhala in order to be promoted, which obviously proved difficult for many and impossible for some, permanently stymieing their progress.[26]In fact, a large number of Tamil public servants accepted compulsory retirement because of their inability to prove proficiency in the official language, now Sinhala.[27]Sinhalese civil servants were posted in Tamil dominated areas.[28]Court proceedings were conducted in Sinhala, even in areas in which the Tamils were a majority.[29]

The Standardisation Policy of 1971- adopted by the government, also displaced the Tamils. Prior to 1971, Sri Lankan students gained admission to universities through

18. Wayland, supra note 16, at 412.
19. Richards, supra note 14.
20. Id.
21. P. A. Ghosh, Ethnic conflict in Sri Lanka and role of Indian Peace Keeping Force (IPKF), 30 (1999).
22. Richards supra note 14.
23. Robert N. Kearney, Ethnic Conflict and the Tamil Separatist Movement in Sri Lanka, Asian Surv., 25, 898, 904 (1985).
24. Richards, supra note 14.
25. DeVotta, supra note 18.
26. DeVotta, supra note 18, at 1026.
27. Walter Nubin, Sri Lanka: Current Issues and Historical Background, 63 (2002).
28. DeVotta, supra note 18, at 1026.
29. Id.

national level competitive examinations.[30] Those individuals who scored the highest in the test, got into universities without prejudice to their ethnicity or residence.[31]Post 1971, new systems of educational selection were introduced which stunted the Tamils educational opportunities greatly. The number of seats were allotted in proportion to the number of Sinhalese and the number of Tamils in the population, rather than solely based on merit. Therefore, being a minority, the Tamils would have significantly less availability and many would compete for a handful of seats. Sinhalese students of the same capacity as Tamil students, had to get significantly lower marks to get into university; however, more meritorious Tamils had to struggle even with higher grades.[32]

Further, Tamil students in particular who wished to go to India or other foreign universities to study were denied the requisite foreign exchange.[33]This hindered the Tamils from getting into University and getting Government jobs. Having always been favoured in terms of employment by the British, they began to feel marginalised.

Ill-treatment of the Tamils on the whole permeated the Sinhalese government policies. Buddhism was given supremacy over the other religions. The Tamils were ill-treated by the Sinhalese soldiers, who ate and drank at their establishments without paying and sometimes taunted them with insults.[34] Eleven people were killed by police at an International Tamil conference in Jaffna without forewarning.[35]

This pattern of oppression and the lack of efficacy of non-violent methods ultimately lead to the birth of the organization known as the LTTE.

Liberation Tigers of Tamil Eelam: How Educational Discrimination spawned a shrewd terrorist organization

The Tamil students were understandably disillusioned with the policies of the ruling government. Being denied education at university level and jobs despite high scores in their tests disheartened them. These educational and professional setbacks germinated the thought of a separate Tamil state, which they called Eelam. Their educational oppression and fall from high positions caused them to desire taking up arms against the government as they felt, that their peaceful non-violent protests achieved nothing.[36]The Government did not pay heed to their protests. The Tamils way of going about achieving their ideal of Eelam, however, involved much bloodshed.

TheTamilpeople, attempted to win Eelam peacefully and through political action prior to the rise in power of the LTTE. Thus was born the Tamil United Liberation Front from a merger of the Federal Party, which previously was against Eelam, and several other

30. SasankaPerera, The Ethnic Conflict in Sri Lanka: A Historical and Socio-political Outline, World Bank (Feb. 2001), http://documents.worldbank.org/curated/en/727811468302711738/pdf/677060WP00PUBL0io0political0Outline.pdf
31. Id.
32. Richards, supra note 14.
33. DeVotta, supra note 18, at 1026.
34. Id.
35. DeVotta, supra note 18, at 1027.
36. S.R. Hussain, Liberation Tigers of Tamil Eelam (LTTE),Criterion Quarterly, 2012, http://www.criterion-quarterly.com/liberation-tigers-of-tamil-eelam-ltte/

Tamil political parties.[37] In the 1977 general elections, they garnered mass support which resulted in concessions for the Tamil Language, but by this point it had been, a little too late.[38] In retaliation for the separatist agenda of the TULF, the Anti – Tamil Pogrom on the part of the Sinhalese began.[39] The riots took 300 Tamil lives40 and tapped into the fury of the Tamil people.

In 1978, Prime Minister Jayawardene, rewrote the Constitution. He changed the post of Prime Minister into an executive President, giving the President almost dictatorial powers. [41] The President was above the authority of the Parliament and the judiciary. [42]This is the kind of power structure within which the Tamil minority tried to assert their rights.

It is in this context that the Liberation of Tamil Tigers Eelam (LTTE) formed; from this disillusionment with peaceful, non- violent methods and for the ideal of achieving their own country, where Tamils could be free and rule themselves. The LTTE constitution stated that members would fight to establish the total independence of Tamil Eelam.[43] They sought to establish a sovereign and socialist democratic people's government, to abolish all forms of exploitation, to establish a socialist mode of production, and to uphold armed revolutionary struggle as an extension of the political struggle.[44] They rationalised their guerrilla warfare as being a war of liberation and self-determination.[45]

The first order of the newly formed LTTE in 1976 was to cull any Tamil elite leaders who stood in their way, who they considered traitors to their cause. [46]In 1983, the LTTE killed 13 army personnel, creating more Anti-Tamil rioting and violence, which ultimately sparked the war.[47]The Government estimate is 387 deaths and possibly more.[48]The growing Anti-Tamil milieu of Sri Lanka furthered the LTTE's agenda in their pursuit for Eelam.

Finally, a full blown civil war erupted in Sri Lanka, causing many Tamils to migrate to India, Europe and the West. President Jayawardene tried to acquire help from America and Britain to quell the insurgents but was rebuffed.[49]Others chose to join the insurgence, migrating to the north east.[50]Despite India attempting to assist via The Indo-Lanka Peace Agreement and the Indian Peace Keeping Force (IPKF), it was forced

37. Kearney, supra note 25.
38. Kearney, supra note 25, at 906.
39. Edmund Samarakkody, Behind the Anti-Tamil Terror: The National Question in Sri Lanka, Workers Vanguard(New York), No. 176, Oct.7, 1977, at 6
40. Kearney, supra note 25, at 907
41. Bandarage, supra note 10, at 90.
42. Id.
43. T. Sabaratnam, Pirapaharan, Sangam (2011), http://sangam.org/Sabaratnam/index.htm
44. Id.
45. Id.
46. DeVotta, supra note 18, at 1027.
47. DeVotta, supra note 18, at 1028.
48. Kearney, supra note 25, at 908
49. A.J. Wilson, Sri Lankan Tamil Nationalism: Its Origins and Development in the Nineteenth and Twentieth Centuries, 138-139 (2001).
50. DeVotta, supra note 18, at 1028.

to withdraw in 1990 after the assassination of former Indian Prime Minister Rajiv Gandhi, at which time the LTTE assumed control of the entire region.[51]

The reign of terror of the LTTE was not only brutal but clever in orchestration of its agenda. Taking away education from a hitherto erudite culture resulted in them utilizing their wits for more illicit activities. The LTTE cadres were honed in discipline and rigour. The concept of "sacrifice" for the sake of Eelam was a major part of LTTE ideology and was used to justify the struggle for the same.[52] They shunned corruption, and abstained from sexual relations and alcohol consumption.[53] They showed their steadfastness to the cause by carrying cyanide capsules to avoid capture by the military.[54] The FBI named them a terrorist organization in 1997[55] and held them responsible for perfecting the "use of suicide bombers," inventing the suicide belt and mobilising "the use of women in suicide attacks".[56] The FBI noted that the LTTE was the only terrorist organization to have assassinated two world leaders, former Indian Prime Minister Rajiv Gandhi and Sri Lankan President RanasinghePremadasa. [57]

This only goes to show the power of human ingenuity in times of desperation. The LTTE was finally defeated in 2009, but it still stands as an example of how quickly and devastatingly a fight for equal education can escalate. The authors are not in favour of violence as a method of securing rights, but it is important for humanity to learn from such examples that oppression can beget violent results and not always, will the oppressed be civilized in their struggle.

This brings us to the next situation that we will be discussing in this paper, that of the Civil Rights Movement in America.

Socio-political Background of Education during the Civil Rights Movement

Despite the freedom afforded by the 13th Amendment, public sentiment towards the African Americans changed little for many decades. Beginning with the Black Codes of the 1860s[58,] to the Jim Crow Laws enacted after the Reconstruction[59,] the lives of free men became only slightly better than their lives in servitude.

Despite the effort of the Republicans and various Presidents -- such as Ulysses S. Grantthrough the Enforcement Acts and the Reconstruction amendments[60,] racial discrimination was still the norm. The Black Codes and Jim Crow Laws existed to marginalise these new rights as far as possible. The primary tool used accomplish this objective was in the form of institutionalized segregation.[61]

51. Sumantra Bose, States, Nations, Sovereignty: Sri Lanka, India and the Tamil Eelam Movement (1994)
52. DeVotta, supra note 18, at 1029.
53. Id.
54. Id.
55. Taming the Tamil Tigers,FBI (Jan 10, 2008), https://archives.fbi.gov/archives/news/stories/2008/january/tamil_tigers011008
56. Id.
57. Id.
58. Donna Lee Dickerson, The Reconstruction Era: Primary Documents On Events From 1865 To 1877,44 (2003).
59. Id.
60. U.S. Const. amend. XIII; U.S. Const. amend. XIV.
61. Dickerson, supra note 60.

The segregation took many forms, ranging from literacy tests to prevent black voters from exercising their franchise, and by extension, the ability to be elected or to sit on juries; to separation in public transport, education, federal employment, public facilities, bathrooms, even participation in sports events and the like.[62]

The judicial support for such a segregated system was Plessy v. Ferguson[63]. The ratio decidendi was simple; it legitimized segregation on a federal and constitutional level through the "separate but equal" principle. This principle continued well into the 20th Century, where most would argue it did not belong.

From the perspective of political philosophy, Jean Jacques Rousseau's General Will Theory[64] seems particularly relevant. The majority of the people subscribed to this ideology as evidenced by the Jim Crow laws. Thus, despite any laws or constitutional protection, racial discrimination could not be avoided. It was the result of the force created by the general will, which cannot be opposed. Such a state of affairs could not be borne by the African-American populace, and thus began the Civil Rights Movement.

Despite the educational setbacks that they faced, literary movements arose in the 1920s, known as the Harlem Renaissance[65]. This was a period characterized as the birth of the "New Negro Movement" which was in itself a precursor to the modern Civil Rights Movement.[66] The Renaissance was accompanied by political philosophy such as Garveyism.[67] This in turn birthed national protest organizations such as the National Association for the Advancement of Coloured People (NAACP)[68].

The catalyst for the modern Civil Rights Movement was Brown v. Board of Education,[69] which struck down the precedent of Plessey v. Ferguson[70]. This marked the beginning of a wave of non-violent protests and civil disobedience in the style of Mahatma Gandhi. Though Brown v. Board of Education laid the basis for desegregation, this movement, actually gave it life.

The Approach of the Civil Rights Movement

Martin Luther King Jr. advocated peaceful resistance in the Civil Rights Movement. He summarised his approach thus, "If the American Negro and other victims of oppression succumb to the temptation of using violence in the struggle for justice, unborn generations will live in a desolate night of bitterness, and their chief legacy will be an endless reign of chaos."[71]

62. Aldon D. Morris, A Retrospective on the Civil Rights Movement: Political and Intellectual Landmarks, 25 Annu. Rev. Social. 518,519 (1999).
63. Plessey v. Ferguson, 163 U.S. 537 (1896).
64. Jean-Jacques Rousseau, On the Social Contract, 74 (G.D.H. Cole trans., 2003).
65. Aldon D. Morris, supra note 64 at 520.
66. George Hutchinson, Harlem Renaissance, Encyclopædia Britannica (Oct. 6, 2016), https://global.britannica.com/event/Harlem-Renaissance-American-literature-and-art
67. Garveyism is a noun used to describe the ideology of Marcus Garvey of Jamaica who formed organizations such as the Universal Negro Improvement Association and fought for improvement of the black community.
68. Oldest and Boldest, NAACP, http://www.naacp.org/oldest-and-boldest/
69. Brown v. Board of Education, 347 U.S. 483 (1954).
70. Plessey v. Ferguson, 163 U.S. 537 (1896).
71. Martin Luther King Jr., Nonviolence and Racial Justice, Christian Century, Feb. 6, 1957, at 120.

Inspired by Mahatma Gandhi[72,] Rev. King and many of his colleagues espoused this view of non-violence and it became the image of the Movement. The evidence of non-violence is prevalent in the most prominent events of the Movement, from Philip Randolph's March on Washington, to the Montgomery Bus Boycott and the numerous sit-ins.[73]

This served the purpose of pushing authorities to engage in dialogue. The March on Washington is a prime example of this power. While the event occurred in 1963, its organizer, A. Philip Randolph, had proceeded to organize another similar march in 1941.[74] This supposed March was for the purposes of protesting discrimination in the defence industry.

However, the March never happened. President Roosevelt, afraid of the real possibility of such a March occurring, passed an Executive Order on June 25th, 1941,[75] banning discrimination in the defence industry outright. This shows the power of even the threat of a non-violent action. When the March actually occurred in 1963, it led to the Johnson Administration passing the Civil Rights Act of 1964, which, in addition to a few other acts passed thereafter, effectively ended discrimination on a federal level.[76]

Thus, the approach of the Civil Rights Movement is clear (was towards-please explain) its oppression: one of peace and non-violence in contrast to the violence they were subject to.

There were many reasons for this approach, one of the major ones being the wisdom of the movement's leaders. Men such as Philip Randolph and Rev. King strongly influenced the masses[77,] just as Gandhi had, and such influence proved enough to drive them towards non-violence. This incidence of positive role models may be attributed to the strength of moral and religious values of peace, the advantages of the socioeconomic situation in a country such as the U.S.A. in comparison to less developed countries. Clearly, the leaders of a community play a large role in shaping the views of the public on offences such as discrimination and oppression.

Another major reason for the leaders' approach would be the impact, it would have on the public. In a background of violence, the use of non-violence made those of the movement, the figurative "bigger person". It made stark the differences between oppressor and the oppressed: the oppressed would not stoop so low. The movement used this greatly to their benefit. Due to advances in technology, it was possible to disseminate news faster than ever and it was not possible for the white power structure to employ open violence without the repercussion of social judgment.[78]

One factor that greatly influenced men like Rev. King was that of religion.[79] In his views, non- violence was central to Christianity, and it was only natural that he should adopt it.

72. Id.
73. The Greensboro Sit-in, History, http://www.history.com/topics/black-history/the-greensboro-sit-in; Montgomery Bus Boycott, History, http://www.history.com/topics/black-history/montgomery-bus-boycott
74. Aldon D. Morris, supra note 64 at 521.
75. Id.
76. George Burson, The Black Civil Rights Movement, 2 O.A.H Magazine of History, Summer 1986, at 39.
77. Id.
78. Aldon D. Morris, supra note 64 at 522
79. Martin Luther King Jr., Nonviolence and Racial Justice,Christian Century, Feb. 6, 1957, at 122.

Malcolm X, despite being Muslim, was known for advocating the granting of rights "By any means necessary", including violence.[80] However, even he was noted to have become more measured in his approach over time.

The crux of the movement was the steadfastness in its non-violent approach. Such an approach proved problematic as the oppressive power structure found this creative approach difficult to handle. Also, the approach was effective in ensuring the preservation of lives while simultaneously achieving the goals they set out to achieve.

Judicial Attitude toward Desegregation

The judiciary of any nation is vital in ensuring that the letter of the law is effectively applied and understood, not only for the lawyers but for the law-makers as well. The judiciary has the power to affirm the policies of the Government or declare them unconstitutional. In the Civil Rights Movement, the judiciary played a key role in lending credence to the black communities' goals. Few authorities other than the judiciary were accessible to a marginalized minority and had the power to make a difference.

The United States judiciary played this role effectively during the movement, but the nature of their role transformed greatly. Initially, it served the role of building the roadblocks that made the movement necessary. Plessey v. Ferguson[81]is largely responsible for legitimizing institutional racism and discrimination, particularly in education. It gave the authorities a ground for such laws, establishing the "separate but equal" doctrine.[82]

To this effect, Justice Brown had said of the 14th Amendment, in the nature of things, it could not have been intended to abolish distinctions based upon colour, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other. [83]

When the plaintiff argued on the unconstitutionality of separate railway coaches, he commented "The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro, except by an enforced commingling of the two races. We cannot accept this proposition."[84]

This illustrates the image of equality the Supreme Court of the time projected, a notion repeated throughout by the many benches that came after for almost 60 years. A great example of this is Cumming v. Richmond County Board of Education[85.] This case claimed there was discrimination in the allocation of taxes for education.[86] As expected,

80. Malcolm X, Malcolm X Speaks: Selected Speeches and Statements 96 (George Breitman ed., 1990).
81. Plessey v. Ferguson, 163 U.S. 537 (1896).
82. Id.
83. Id.
84. Id.
85. Cumming v. Richmond County Board of Education, 175 U.S. 528 (1899).
86. Id.

the appeal was not allowed. However, the strange aspect to be noted is that the majority opinion was penned by Justice Harlan, known as "The Great Dissenter" for his dissents in the cases of Plessey[87], Berea College v. Kentucky[88] and the Civil Rights Cases[89] of 1883. His majority opinion was entirely uncharacteristic of his pro-civil rights stance.

The judiciary protects the law, but this instance shows that public opinion can sway the views of judges. In this backdrop, Brown v. Board of Education[90] shines through as particularly remarkable. Justice Warren, whose court became well-known for their decisions protecting civil rights, delivered the unanimous judgment in apt words:

In the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.[91]

The argument could be made that this was brought on partially by the Cold War and the negative publicity the U.S. was receiving from the international community. However, public sentiment closer to home was not in the favour of such a drastic and yet progressive step in the right direction. The fact that the justices could take such a step for the common good and use the law as intended, of their own volition, without the pressure of government or society was monumental.

US A vis-a-vis Sri Lanka

The approaches of the Civil Rights Movement and the Tamils' liberal movement exemplify how differently the struggle for the equal right to education can develop. In the U.S., the mostly peaceful protests achieved their equal rights objectives without loss of life or limb. The defiance of the black leaders stirred public sentiment without turning them violent. In fact, this peaceful defiance, being met with violent retaliation from the white populace, lent credence to their cause. Sri Lanka's position juxtaposes this, with the loss of around 70,000 lives and the use of women and children as suicide bombers.[92] A reported figure of 3830 human rights violations, were committed by the LTTE from 2002 to 2007 in the Sri Lankan civil war. [93] The government also committed 351 human rights violations during that period. [94] The reasons for this stark contrast are many, of which the authors have enumerated the most compelling ones.

The first is the social and structural differences between a developed nation and a developing one. In the U.S.A., The African American community had the capability and

87. Plessey v. Ferguson, 163 U.S. 537 (1896).
88. Berea College v. Kentucky, 211 U.S. 45 (1908).
89. Civil Rights Cases, 109 U.S. 3 (2883).
90. Brown v Board of Education, 347 U.S. 483 (1954).
91. Id.
92. Bandarage, supra note 10, at 1.
93. Id. At 191.
94. Id.

the opportunity to actively engage with the authorities and to fight for their cause. There was an effective, if not always fair, judicial system which served as a forum for the movement to be represented and heard. They had some measure of support from within the white power structure, be it on the part of the federal government, the judiciary, or even the general populace.

In comparison, in Sri Lanka there was no authority or forum for the Tamils to appeal to. Any political lobbying was futile as a minority can only achieve so much through a democratic process. The apathy of the majority and the structures of the state drove the Tamils into a corner. The reason for such a structure allowing abuse of power is simple: The executive had and still has absolute control.[95] The power was concentrated in the head of State, especially after President Jayawardene had the constitution rewritten, effectively giving him powers not subject to the authority of the judiciary and the legislature.[96] The Presidents of Sri Lanka, along with a good portion of the Sinhalese majority, had a specific agenda of marginalizing Tamils, which was a combined legislative and executive effort. At a juncture where the Tamils needed support, the Sri Lankan Supreme Court did not have the disposition or power to help them.

This is one prime difference between developed and developing nations. The U.S.A. had developed a truly exemplary, separation of powers. While the authorities did not always act in favour of the minority, they could still be heard because power was not concentrated. Sri Lanka on the other hand was dealing with issues of the majority imposing their will over the minority. The limbs of the state were not developed to such an extent, that there were sufficient checks and balances on this power.

Thus, this failure of the structure of the state, an example of the imperfect nature of democracy, is one prime reason for the escalation of the conflict. If the Civil Rights Movement had not been able to produce results in a peaceful manner, the possibility of it resulting in large scale violence would have been present.

The next reason is that of the severity of the law. In the case of America, Jim Crow Laws were severe and discrimination and segregation were indisputable issues. However, as unwilling as the authorities may have been, thanks to the 13th and 14th Amendments, the black community did have irrefutable rights. These laws and policies were an attempt to circumvent or undermine those rights, but largely, they could not be denied[97]. While schools were not as good or as well-funded, they still existed and students in the black community were allowed to enrol.

This differs from the law in Sri Lanka. There, the laws passed, such as the Sinhala Only Act[98] (which was even declared constitutional under the 1947 Constitution by the Supreme Court[99]), Citizenship Act[100] (which disenfranchised thousands of Tamils in the

95. Bandarage, supra note 10, at 1.
96. Bandarage, supra note 10, at 191.
97. Sweatt v. Painter, 339 U.S. 629 (1950); McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).
98. Official Language Act, No. 33 of 1956.
99. A.G. v. Kodeeswaran (1967) 70 NLR 121 (SC).
100. Ceylon Citizenship Act No. 18 of 1948.

40's and 50's[101] and was upheld by the Supreme Court[102)] or even the Policy of Standardization (the proportional representation of seats based on language), did not pretend to be equitable. No such rights for Tamils existed, and even if they did, the power structure could easily circumvent them. Evidence of this was the easy disenfranchisement of Tamils.[103] Buddhism and Sinhala were, in fact, incorporated into the constitution, purposefully leaving out Tamil and undermining other religious minorities.[104] Such being the situation, Tamil students were denied education. They were denied jobs. It was not a situation of inequality; it was one of deprivation. Such deprivation assisted by the law caused a loss of faith in any state authority, whereas in the U.S., the courts played in important role in fulfilling the Movement's goals.

The last of the differences were the goals of the movements in both cases. The Tamils wanted something more than equal rights. They felt that even if they acquired equal rights, they would still face marginalization and never be at par with the majority.[105] After a point, the LTTE's agenda became less about uplifting the disadvantaged Tamil society and began to focus on the political gain in having a separate state for themselves. This can be seen from their lack of engagement with the Sri Lankan government, even when they were called for peace talks.[106]

The African American approach to their setbacks did not call for a separate state to be formed, only for the black community. They simply wanted to be integrated into the already existing system and be given equal treatment with their white counterparts. The backing of at least some part of the white power structure also helped them to amalgamate into the society, with the help of the judiciary.

On one hand, the Sri Lankan Tamils did not have the luxury of a sympathetic state and thus resorted to violent means to frighten their powers into submission. However, with the more military success they achieved, the less inclined they were to peaceful settlement of disputes. This, coupled with their human rights violations and illegal activities ultimately led to their international downfall. [107]

Concluding

As has been established, the two movements stand as examples of man's struggle for racial equality. More importantly, they show to what extent the struggle can evolve for those engaged in it. The Civil Rights Movement became the historic benchmark that it is today for being a shining example of the power of human perseverance in the non-violent path. In contrast, the Sri Lankan Civil War will always be a blot in history and a botched paradigm of the consequences of abusing power to oppress a minority. It is a

101. JayampathyWickramaratne, Fundamental Rights in the 1972 Constitution, in The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice 736, 739 (2012).
102. Mudanayake v. Sivagnanasunderam (1953) 53 NLR 25 (SC) .
103. Richards, supra note 14.
104. DeVotta, supra note18, at 1026.
105. DeVotta, supra note 18, at 1023.
106. DeVotta, supra note 18, at 1040.
107. Id.

sad commentary that in the current democratic structure of governments, the tyranny of the majority still overwhelmed the fundamental rights and needs of the minority. The Sri Lankan government itself has been found wanting in that it refused to uphold the rights of the less privileged.

What is to be learned from this comparison is simple: The Right to Education is an integral right for all men, more so as time passes and we move closer to universal education. However, as with any right, when it is denied to a community, it is only a matter of time before the community begins to demand what is rightfully due. These demands may not always be non-violent. Thus, the crimes of the Sri Lankan Civil war stand testimony to man's inhumanity to man.

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Force-feeding Prisoners under International Human Rights Law

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Abstract
With the recent hunger strikes by Palestinian prisoners lodged in Israeli jails showing no sign of subsiding, the issue of force-feeding has come into prominence. There still exists no uniform rule in international law on how to address this particular issue, with different countries and courts interpreting the documents according to their legal system. Jurisprudence on this issue is also limited and this could become a major cause of concern with regards to the violation of an individual's human rights if decisions are taken arbitrarily. This paper looks at the existing rules and the positions of various countries on the issue of force-feeding. Alongside, it delves into the arguments presented both for and against the practice to analyse which range from the best interests of a detainee to a form of torture and tries to analyse whether it could be a human rights violation and to see what standards could be adopted to regulate this practice and ensure that, it is not misused by governments to deny a detainee of his rights.

Keywords: *Force-feeding, Human Rights, Detainee, International Law Jurisprudence, Torture*

Introduction and Background

Hunger strikes have been used by political prisoners around the world to oppose prison policies, and violations to their basic rights, and treatment incompatible with their human dignity in various contexts. Hunger strikes and force-feeding were used as early as 1897 in the context of the British Suffragettes movement, where the British government resorted to force-feeding through the use of a stomach pump, a tube in the stomach, or a nasal tube against hunger-striking British women imprisoned for political activism demanding women's right to vote.108 The role of hunger strikes as a form of protest and resistance for political prisoners was further reaffirmed by Irish republicans in Northern Ireland.

108. History Learning Site, Force-feeding of Suffragettes, (2015), http://www.historylearningsite.co.uk/the-role-of-british-women-in-the-twentieth-century/force-feeding-of-suffragettes/ (Last visited on May 01, 2018).

In the earliest known cases of force-feeding in Guantanamo Bay however, the victims had been sedated rather than restrained as in the case of the more recent strikes. By September 2005, a reported 200 prisoners in Guantanamo Bay went on hunger strike in protest of being held without trial and of the conditions of their detainment. The force-feeding which followed resulted in the use of special chairs in December 2005 to thwart the detainees from vomiting the force-fed nutrition. For most hunger-strikers, force-feeding occurred multiple times throughout the day to compensate for the meals the prisoner would refrain from receiving.109

Palestinian detainees and prisoners have resorted to mass and individual hunger strikes to protest the policies applied against them in Israeli prisons since as early as 1968 in order to improve the living conditions inside prisons and detention centres. A recent round of hunger strikes has led to Israel coming up with a new legislation in 2015 which authorizes force feeding.[110] While this was challenged and subsequently upheld, it remains to be seen whether internationally, force feeding is seen as a violation of the human rights of an individual or not.

Arguments in Favour and Opposed to the Practice

A range of arguments have been debated both favouring and opposing the practice.

One of the primary arguments in support of the practice is that of the state's responsibility towards detainees. The State has a responsibility towards prisoners in its custody and needs to maintain the sanctity of life. A significant number of countries permit the artificial feeding of a prisoner in extreme circumstances that present a real danger to his life.[111]

The purpose behind force-feeding is protecting the life, physical integrity, and health of a hunger striking prisoner who is under the direct charge of the State, while minimizing the harm that may be caused to his quality of life as a result of the medical harm that may suffer. The government has a duty to protect and care for those within its custody.[112] This duty includes providing for the medical and dietary needs of prisoners.

Force feeding is also contended to be in the best interests of the detainee. Although a hunger strike is not itself a medical problem or an illness, its continuation inevitably leads to severe, at times irreversible, medical problems for the hunger striker, and may even lead to death if medical care not be given. A measure which is considered to be medically necessary - such as force-feeding a detainee to save her/his life cannot in principle be regarded as inhuman and degrading and hence not prohibited under international and regional human rights instruments.[113]

109. Miami Herald, 2 held at base prison fed by force; They refused food 30 days, (2002), available at http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article1958943.html (Last visited on May 01, 2018).
110. The Telegraph, "Israel passes law to force feed fasting prisoners", (2015), available at https://www.telegraph.co.uk/news/worldnews/middleeast/israel/11772938/Israel-passes-law-to-force-feed-fasting-prisoners.html (Last visited on May 01, 2018).
111. Joel K. Greenberg, Hunger Striking Prisoners: The Constitutionality of Force-Feeding, 51 Fordham L. Rev. 747 (1983).
112. Estelle v. Gamble, 429 U.S. 97, 103-04, 1976 (US Supreme Court); Hendrix v. Faulkner, 525 F. Supp. 435, 519 N.D. Ind., 1981 (United States Court of Appeals, Seventh Circuit).
113. Nevmerzhitsky v. Ukraine, No. 54825/00, §78, 93-99 and §102-106, 5 April 2005 (ECtHR).

Force-feeding can be applied to protect the detainee from the harmful mental and physical consequences of his hunger strike. It can also be used as a means of giving the hunger striker time to rethink his decision. Often, hunger strikers are not aware of the serious physical and mental consequences of a hunger strike, especially in the long term.

One purpose of force feeding is to protect the security of the public and of the State from the harmful consequences of the hunger strike itself. Hunger strikes can greatly disturb the internal order and security of the prison or the other place of detention. Death of a hunger striker can incite riots within and outside the prison or other place of detention.[114]

History shows that a hunger strike can be an important means for leading figures of resistance movements to further their political cause. The case of Bobby Sands[115] in the Northern Irelands is well known for creating a martyr out of the death of prisoners on hunger which subsequently spurred a public resistance and led to large scale disorder and loss of property and life which could have been avoided by force feeding. A similar situation nearly occurred with Juan Inaki[116] in Basque

A hunger strike is more often than not a political statement such as the case of Mark David Chapman, convicted in the 1980 killing of former Beatles band member, John Lennon. Chapman broke a 26-day fast in 1982 only under a New York court-ordered threat that he would be force-fed. Chapman had said he wanted to draw attention to starving children, but the court ruled the state's obligations to protect life and maintain order in its institutions outweighed Chapman's rights to free expression and to privacy.[117]

It is in the State's interests to ensure good order in prisons and other places of detention. As shown above, hunger strikes often cause a great deal of turmoil, both within and outside the prison or the other place of detention. Hunger strikes can greatly disturb the internal order and security of the prison or the other place of detention. Massive hunger strikes can be employed as a direct means of protest against the custodial authorities.[118] A hunger strike not only causes turmoil and distress among the other prisoners and detainees, but, may arouse the same feelings among the people working in prison or the other place of detention. It can be argued that even individual hunger strikes should be ended to preserve the internal order, security and discipline within a prison or other place of detention. By force-feeding protesting prisoners or detainees, authorities show that disruptive behaviour will not be tolerated. Hence the

114. Jacobs, P., Force-feeding of prisoners and detainees on hunger strike: Right to self-determination versus right to intervention, Antwerpen: Intersentia, pg. 129 (2012).
115. The Guardian, Thirty years on, Bobby Sands's stature has only grown, (2011), available at https://www.theguardian.com/commentisfree/2011/may/05/bobby-sands-1981-hunger-strikes, (Last visited on April 15, 2018).
116. State Watch, Iñaki de Juana Chaos hunger strike raises the political temperature, (2007), http://www.statewatch.org/news/2007/apr/04spain-euskadi-juana-choas.htm, (Last visited on April 15, 2018).
117. Prison legal, Hunger Striking NY Prisoner may be Force fed to prevent suicide, (2007), available at https://www.prisonlegalnews.org/news/2007/may/15/hunger-striking-ny-prisoner-may-be-force-fed-to-prevent-suicide/, (Last visited on April 15, 2018).
118. Supra 7 at 131.

state has a duty to not let disruptive behaviour by detainees continue and not give in to their manipulation.

Another argument in favour of force-feeding during pre-trial detention is that it may prevent the hunger striker from dying, and information on his alleged offence from being lost. The suspect in pre-trial detention is often the only person with useful knowledge on past or planned criminal activities, motives and the full facts of the case, which is valuable information for criminal investigation and prosecution.[119]

In contrast the arguments against force-feeding are majorly based upon it being a form of torture as well as violating the detainee's right to protest and self-determination.

The concept of personal autonomy in general and the right to self-determination in particular require a patient's informed consent before medical treatment can be performed. On the basis of the right to self-determination, force-feeding prisoners and detainees on hunger strike is therefore not acceptable[120]

The methods of force-feeding are of a very invasive nature and entail a great deal of force to constrain the non-cooperative hunger striker. Because of the invasive methods of force-feeding, and the force that must be used to restrain the hunger striker, it is frequently argued that force-feeding is a form of torture or inhuman or degrading treatment or punishment as prohibited under various treaties such as the ICCPR.

Hunger strikes are mostly used by people in a powerless position, when they have exhausted all legal means and other possibilities to protest. It is often the last resort to voice certain opinions or desires for individuals or groups of people when no other mechanism is available. Alongside being a method of protest, they also serve as a method of communication, both with the authorities and other prisoners or detainees and with the outside world. Even if a hunger strike itself is not intended as a form of communication, once the purpose of the hunger strike is made known, it undoubtedly becomes a communicative act.[121] Hence, the argument is in favour of recognizing it, as freedom of expression.

It has been argued that it causes medical complications to the detainee, as the procedure of force-feeding is usually carried out with the insertion of a rubber or plastic tube into the stomach through the mouth or nose. Another method involves the injection of nutrients into a vein or into the stomach through surgically cutting open the abdominal wall. However Nasogastric feeding is a common procedure used thousands of times a day by doctors and nurses in hospitals.

The arguments for force feeding make a much more compelling case however any act of force feeding must be executed only when necessary and with as minimum severity as possible so as to respect international law and the human rights of the hunger striking detainee.

119. Supra 7 at 133.
120. Joel K. Greenberg, Hunger Striking Prisoners: The Constitutionality of Force-Feeding, 51 Fordham L. Rev. 747 (1983).
121. Supra 7 at 135.

Whether it is a violation of International Human Rights Law

No specific rule in international law prohibits the providing of treatment in general, or artificially feeding a hunger striking prisoner against this will, as a matter of principle.

However, the amount of pain and suffering, as well as the subjection to a medical procedure without the consent of the prisoner or detainee, may deem force-feeding to be an act of torture or cruel, degrading and inhuman treatment and a violation of obligatory international legal instruments such as the International Covenant for Civil and Political Rights which prohibits torture and reaffirms that "no one shall be subjected without his free consent to medical or scientific experimentation",[122] as well as the Convention Against Torture which states in Article 2 (2) that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be revoked as a justification of torture".[123]

But in 2006, the U.Nwar crimes tribunal for the former Yugoslavia ordered the force-feeding of Serbian warlord Vojislav Seselj, who was protesting his prosecution. “The trial… should not be undermined by the accused’s manipulative behaviour,” the U.N. judges declared in a statement, adding that under international law force-feeding is not “torture, inhuman or degrading treatment if there is a medical necessity to do so… and if the manner in which the detainee is force-fed is not inhuman or degrading.”[124]

The International Committee of the Red Cross (ICRC) has traditionally taken a stance in favour of hunger strikers and sought to play the role of mediator between the striking prisoner and the detaining authorities.[125] Furthermore, the ICRC opposes force-feeding and clearly states that:

“It is essential that the detainees' choices be respected and their human dignity preserved. The ICRC's position on this issue closely corresponds to that expressed by the World Medical Association in the Malta and Tokyo Declarations, both revised 2006. The latter states: ‘Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner.’”

Regional human rights courts and the UN Special Rapporteur on Torture, Juan Mendez has consistently held that forced feeding may amount to torture or ill-treatment.[126] In a

122. Article 7, International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
123. Article 2(2), Convention Against Torture, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
124. The Guardian, War crimes tribunal orders force-feeding of Serbian warlord, (2006), available at https://www.theguardian.com/world/2006/dec/07/balkans.warcrimes, (Last visited on May 01, 2018).
125. International Rehabilitation Council for Torture Victims, IRCT against force-feeding of Palestinian prisoners, (2014), https://irct.org/index.php/media-and-resources/latest-news/article/827 (Last visited on May 01, 2018).
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similar sense, the World Medical Association's (WMA) Declaration of Tokyo (2006) states that "where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially."[127] In addition, the revised Declaration of Malta (2005)[128] stipulates that forcible feeding is never ethically acceptable and that coercion is a form of inhuman and degrading treatment.

However a commonly stated belief in discussions of the WMA guidelines for treatment of hunger strikers is that most hunger strikers do not intend to harm themselves or to die. It is extremely difficult for clinicians to judge whether individual hunger strikers are making autonomous decisions or are under orders from superiors to participate in a hunger strike.[129]

Hence there exists no uniformity in the legal doctrine on whether force feeding is a violation of human rights as evidenced by the jurisprudence across tribunals and courts in various countries. The accepted precedents at present have all come up with variations of the guidelines and observations of the international bodies along with interpreting their national laws.

Position across Countries

A review of the relevant legislative provisions and case law from across the world reveals that countries as well as international tribunals are divided on the question of the legitimacy of artificially feeding a prisoner on a hunger strike. Despite the position of the World Medical Association on the matter, it seems that a significant number of western countries permit the artificial feeding of a prisoner in extreme circumstances that present a real danger to his life.

The strongest prohibition on coercive feeding exists in England. There, legislation and case law mandate that life extending treatment – including artificial feeding should not be provided to a prisoner, regardless of the medical harm, when the person is competent to make decisions regarding his medical condition.

Canadian law, too, prohibits the artificial feeding of prisoners, in principle. This is because sec. 89 of the Corrections and Conditional Release Act of 1992[130] stipulates that a medical team is prohibited from force-feeding an inmate by any method, as long as the prisoner has the capacity to understand the consequences of the fast he has undertaken. However, it should be noted that on April 27, 2015, the Canadian Prisons Commissioner published a concrete instruction as to handling prisoners on hunger strikes ("Hunger Strike: Managing an Inmate's Health"). Under section 2 of this instruction, in light of the risk posed by an extended hunger strike which may cause

127. World Medical Association, Declaration of Tokyo, 2006.
128. World Medical Association, Declaration of Malta, 2005.
129. Tracey M. Ohm, What They Can Do About It: Prison Administrators' Authority to Force-Feed Hunger-Striking Inmates, 23 Washington University Journal of Law & Policy 151 (2007).
130. Sec. 82, The Correctional and Conditional Release Act (Canada), 1992.

medical harm or even death, the medical team must intervene for the purposes of saving a prisoner's life at the stage where the prisoner is unconscious or lacks the ability to make an informed decision as to wanting medical treatment.

On the other hand, in France, the United States, Australia, Germany, and Austria, the law permits artificial feeding of a prisoner against his will in extreme cases, which change from state to state.

In France, regulation D.364 of the Criminal Procedure Regulations establishes a specific arrangement for treating prisoners on a hunger strike, which permits treating a hunger striking prisoner against his will, but only when the prisoner is in immediate, serious danger.[131] In 2012, the French ministries of justice and health issued instructions for treating prisoners. The instructions state that once it becomes known that a prisoner is on a hunger strike or refuses to drink, the medical unit must be updated as soon as possible, and that the health of the prisoner must be monitored according to the Public Health Law. It is also stipulated that, under section R4127-36, medical treatment will not be given to a prisoner without his consent except in cases of an extended hunger strike leading to immediate and serious risk to his life, and only upon medical request.

In the United States and Australia, the situation is somewhat more complex, inter alia, because of the differences between the federal and state laws on the matter. However, there, too, there are arrangements that permit coercive feeding of a hunger striking prisoner under certain circumstances. American Courts in a majority of cases have consistently permitted force-feeding, holding that state and prison interests outweigh the inmate's right to hunger strike.[132]

In Germany, section 101 of the Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty (1976), which concerns "Coercive Measures in the Field of Medical Care", states as follows:

1. Medical examinations and treatment under coercion, as well as forced feeding, shall be permissible only in case of danger to life, in case of serious danger to the prisoner's health, or in case of danger to other persons' health; such measures must be reasonable for the persons concerned and may not entail a serious danger to the prisoner's life or health. The prison authority shall not be obliged to execute such measures as long as it can be assumed that the prisoner acts upon his own free will.
2. For the purposes of health protection and hygiene, a coercive physical examination shall be permissible in addition to that in subsection (1) if it does not involve an operation.
3. The measures shall be carried out only upon orders from, and under the supervision of a medical officer, except where first aid is rendered in case a medical officer cannot be reached in time and any delay would mean danger to the prisoner's life.

131. Sec. D.364, The Criminal Procedure Regulations (France), 1810.
132. Michael B. Mushlin, Rights of Prisoners, 224-25 (3rd Ed., 2002).

Thus, under German law, involuntary medical treatment of a prisoner, including forced feeding, is possible when there is a significant risk to the health or life of the prisoner or the life of another. Such treatment is permitted only at the instruction of a medical officer and under his supervision, unless urgent intervention is necessary, the medical officer is unavailable and any delay may cause harm to the prisoners' life. Still, it should be noted that German law empowers the authorities to provide such treatment, but does not require doing so as long as it may be assumed that the prisoner is acting of his own free will.[133]

In Austria, section 69(1) of the Prisons Law of 1969 – Strafvollzugsgesetz (StVG) – mandates that in a case where a prisoner refuses to cooperate with a medical examination or with medical treatment, force may be employed in order to compel treatment, provided that the treatment is reasonable and does not pose a risk to life. It also states that the advance approval of the Minister of Justice must be secured, except in urgent cases. Section 69(2) of the statute states that a prisoner on a hunger strike shall be under medical supervision, and should it become necessary, it is permitted to force-feed the prisoner in accordance with the instructions and under the supervision of a doctor.[134]

The European Committees have also given a neutral viewpoint and have not opposed involuntary feeding and intervention by medical authorities.[135] Nobody should die in detention and Member States should ensure that every detainee is afforded the basic human dignity of dying outside of prison. Member States should ensure that all persons in detention receive the same level of medical care obtainable by other members of society.[136]

Jurisprudence from the European Court for Human Rights

The European Court for Human Rights (ECHR) has reviewed multiple cases that involved hunger striking detainees. A number of these cases involved force-feeding to terminate hunger strikes. Due to the fact that force-feeding was not particularly addressed in international and regional legal instruments, the court based its decisions on Article 3 of the European Convention for Human Rights which prohibited the use of torture.

In Nevmerzhitsky v. Ukraine[137], the case involved a prisoner who was force-fed through a tube, while restrained to a chair, with a mouth widener attached to his mouth.

The Court adopted a test comprising three cumulative conditions under which forced feeding would not be considered a violation of the European Convention.

i. First, there must be medical necessity for the forced feeding.

133. Sec. 101, The Act Concerning the Execution of Prison Sentences and Measures of Rehabilitation and Prevention Involving Deprivation of Liberty (Germany), 1976.
134. Sec. 69(2), The Prisons Law (Austria), 1969.
135. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) CPT Standards p. 42 (2002-2015).
136. Report on The fate of critically ill detainees in Europe, (Committee on Legal Affairs and Human Rights, 13 November 2015).
137. Nevmerzhitsky v. Ukraine, No. 54825/00, §78, 93-99 and §102-106, 5 April 2005 (ECtHR).

ii. Second, the decision must be made in a proper procedure and according to the procedural framework established in state law.

iii. Third, the method of forced feeding must not exceed the minimal extent of severity permitted by the Convention, that is – does not amount to humiliating or degrading treatment or penalty.

The Court held that using such means, while the patient resists and through the use of force, may amount to a violation of the Article when it is not medically justified. Further on, the court found that the said treatment was provided without medical justification and without due process, and therefore constituted a violation of Article 3 of the Convention.

On the basis of those tests, the Court similarly found in Ciorap v. Moldova[138] that forced feeding in that case amounted to a violation of Article 3. First, it found that there was no medical justification for the treatment. Second, it found that the procedure by which forced feeding was decided upon was improper because the physician who performed the forced feeding did not explain why he did so. It was held that the one purpose of the forced feeding in that case was to limit the prisoner's right to protest through a hunger strike. Because the treatment caused him great physical pain and humiliation, it was held that this was prohibited torture under the Convention.

Similarly, in Rappaz v. Switzerland,[139] the Court dismissed the complaint in limine, once it was found that the decision to force-feed the prisoner against his explicit will that ultimately was not implemented as he ended the hunger strike was made according to the above three-pronged test: the decision was made out of medical necessity; it was made through a proper process in accordance with the limits established in law, by a judge, and only after it was found that the complainant's condition was serious and it was determined that the treatment would be provided by a professional medical team; and there was no reason to assume that even were the decision implemented, the manner of its implementation would have amounted to humiliating treatment or penalty.

According to the court, the minimum level of severity is relative and can vary from one case to another depending on the circumstances. The court's opinion on this matter was further reaffirmed in the case of Özgül v. Turkey where it stated that "they [the defendant] had then acted in the applicant's interest, with the aim of preventing irreversible damage".[140]

Although the court clarified its stance as being in favour of saving the applicant's life, the court did not deem a state's lack of reaction to the condition of a hunger-striker's health after 115 days on hunger strike as a violation of Article 3 of the European Covenant of Human Rights in the case of Pandjikidzé and Others v. Georgia.[141] In this case, the court reportedly stated that "even though the applicant's state of health must

138. Ciorap v. Moldova, No. 12066/02, §84-85 and §88-89, 19 June 2007 (ECtHR).
139. Rappaz v. Switzerland (Dec.), no. 509/02, 31 May 2013 (ECtHR).
140. Özgül v. Turkey (Dec.), no. 7715/02, 6 March 2007 (ECtHR).
141. Pandjikidzé and Others v. Georgia (Dec.), no. 30323/02, 20 June 2009 (ECtHR).

have declined, it did not appear from the case file that his life had been exposed to an obvious danger as a result of the authorities' attitude, and therefore that force-feeding would have been justified by any 'medical imperative'."

In a German case, the law provided the possibility to force-feed hunger strikers, if, as a result of their hunger strike, they would be subject to injuries of a permanent character. The feeding was carried out by the use of the force necessary to overcome the applicant's resistance. Furthermore, the measure of force-feeding was carried out during a relatively short period, and was taken with a view to securing the hunger striker's health or even saving his life. It did not subject the applicant to more constraint than necessary to achieve the goal.

The European Committee on Human Rights has also agreed with the application of force-feeding to a prisoner to prevent injuries of a permanent character and was satisfied that the authorities acted "solely in the best interests of the applicant" by securing his survival through force-feeding.[142]

The conclusion from the above jurisprudence is that the European Court does not prohibit forced feeding as long as it meets the three standards described above: necessity, due process, and that the concrete method of forced feeding does not exceed the minimal severity possible.

IMA v. Knesset, the Landmark Israeli Judgement

The amendment to the Israeli Prisons Act entitled "Law to Prevent Harm Caused by Hunger Strikers" was approved by the Israeli Knesset on 30 July, 2015. It was passed in the aftermath of numerous individual and collective hunger strikes initiated by Palestinian detainees and prisoners in recent years.

It authorizes the Israeli District Court to approve and instruct the force-feeding of a hunger-striking prisoner, or to provide the prisoner with forced medical treatment as stated in the law itself, without his or her consent. It was then challenged by the Israel Medical Association which led to a landmark judgement which upheld the validity of the law with respect to both the national laws and international requirements and obligations.[143]

The court held that the Law comprises an element of saving a life and prioritizing the principle of the sanctity of life. This is reinforced by the fact that the person concerned is in the custody of the State, which is duty-bound to provide him with proper medical treatment. It reached the conclusion that the Law, including section 19N(e), passes the constitutionality tests by delicately balancing the sanctity of life, the State's responsibility toward prisoners in its custody, and national security, against the right of the individual to dignity, including autonomy and freedom of expression. This is the case given the graduated procedure established by the Law, which includes several medical, judicial and legal mechanisms of supervision.

142. X v. Germany, App. No. 10565/83, 7 E.H.R.R. 135, pp. 152-154, 9 May 1984 (EComHR).
143. IMA v. Israel Knesset, 5304/15, Sept. 11, 2016, (Israel HC).

Inter alia, it was held that the dominant purpose of the Law is protecting the life of a hunger striking prisoner, subject to the exceptions designed to ensure protecting the dignity of the prisoner, with close supervision and monitoring by medical and judicial bodies. The secondary purpose is security based. Its concern is preventing risk to the lives of others aside from the hunger striking prisoner, or preventing serious harm to national security. This purpose is expressed in section 19N (e) of the Law, under which the court may consider non-medical considerations in making its decision whether to permit involuntary medical treatment.[144]

It was also noted, inter alia, that the arrangement in section 15 of the Patient Rights Law, addressing a situation of a patient who refuses to accept treatment, does not sufficiently and fully respond to situations of hunger strikes in general, and to such strikes by prisoners or detainees in particular, in terms of the State's responsibility for them, the complexities of autonomous will in cases of hunger strikes by prisoners who are willing to die, or in regard to such cases where the group circumstances of those on strike prevents them from ending the strike, as well as in terms of the consequences of the hunger strike for national security. Therefore, this is a specific, supplementary arrangement for the purpose of addressing situations where the arrangement established in the Patient Rights Law is to no avail.

In terms of the proportionality strictosensu test, it was found that the amendment provides a graduated, balanced arrangement that seeks to minimally infringe the prisoner's autonomy while protecting his life through mechanisms of close supervision and monitoring – both medical and legal – of the proceedings and its employment as a last resort. This arrangement represents a proper relationship between the benefit which may derive from the Law and the potential harm to constitutional rights due to its implementation.

In conclusion the Israeli law[145] states that force feeding should take place only after "a significant effort must be made in order to secure the prisoner's consent for treatment, and in the course of such effort he must informed about his medical condition and the consequences of continuing the hunger strike for his condition in detail, in a manner that is understandable to him under the circumstances, and that the prisoner continued to refuse medical treatment".

A key observation made in the judgment is, *"A hunger strike, if prolonged, may lead to a loss of life. In the absence of life – where is the person and what is the source of human dignity?"*

Conclusion

The variations in the jurisprudence across countries, courts and documents show that there has been no evolved doctrine to classify force feeding as a violation of international human rights law.

144. Sec. 19N (e), The Law to Prevent Harm Caused by Hunger Strikers, (Israel), 2015.
145. Yoav Kenny, Force and Feeding: From Bioethics to Biopolitics in Recent Israeli Legislation about Force-Feeding Hunger-Striking Inmates.

Conventions and laws are interpreted case to case. However in any such scenarios there needs to be a balance between the State's responsibility toward prisoners in its custody, and national security along with the right of the individual to dignity, including autonomy and freedom of expression.

There must exist a necessity for involuntary medical intervention and the state must follow due procedure and use as minimum severity as possible in the act. While forcible feeding in theory may not amount to torture or cruel treatment which is prohibited under international law, it could turn out to be a violation if not implemented as per strict guidelines.

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Women and International Humanitarian Law

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Abstract
Women in armed conflicts: Susceptible or prey?
Women, who become the severe victims of war whether they participate in conflicts or not. International humanitarian law (IHL) is a set of rules that pursue to limit the effects of armed conflicts. It aims at protection of those persons who are not, or are no longer participating in the conflicts, without discrimination based on sex. These persons can be men, women, or children. But since the time immemorial, it can be seen that during or after the armed conflicts, the effects of conflicts were severe to women in the form of sexual violence causing risks to their health but their partaking in armed conflicts involves much more than fortification from sexual violence. IHL provides the general as well as specific protection to women from sexual slavery, abusive arrests, forced transfers, torture and many other forms of sexual violence, discounting if they are civilians or combatants. IHL has number of provisions providing special protection to women who are the part of civilian population. The purpose of the paper is discussing these provisions of International Humanitarian Law and also weighing importance to some more norms of safety that ought to be approved during these armed conflicts taking into account the special needs of women. The paper will also throw the light on how women can possibly be categorized as susceptible or prey and if being a woman is a greater threat than being a soldier?

Keywords: *International Humanitarian Law (IHL), armed conflicts, Sexual violence, Article 3 of 'the fourth Geneva Conventions, special protection, etc.*

Introduction

There are different laws for different fields. Similarly, there is International Law which is the name for a governing body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other[146]. International Law (IL) is also known as "Law of Nations". It has four parts, one of which is International Humanitarian Law (IHL). The International Humanitarian Law is that law which pursues to limit the effects of armed forces and conduct towards opposing

146. S.K. KAPOOR, INTERNATIONAL LAW AND HUMAN RIGHTS 29 (20th ed. Central Law Agency 2016).

forces, civilians and combatants during war time. Since, anyone can be the victim of wars irrespective of gender, colour, race, religion, creed, etc. But since the time immemorial, women are the most vulnerable group and become victimized.

The International Humanitarian Law not only contains the provisions for general protection of every group of society but also special protection of women who are disproportionately affected from the effects of armed conflicts. The combatants die or are wounded in the armed conflicts but the civilians also suffer.

Armed conflicts are majorly male dominated are male domain wisdoms while the women are directly exposed to a lesser amount, yet they suffer more than the men. Women are the mothers by right, but also, they act as doctors, in a practical sense, as well as chauffeurs, teachers and counsellors.

The author will discuss the condition of women and their protection in International Humanitarian law. The author being a daughter, personally thinks that women must be appreciated, especially those who try their best to protect their family members by putting waves in harm's ways during and even after the wars and work diligently to survive in the warzones. The author will overview international legislation having as its main objective protection of women in armed conflicts, in search for any evolution of that legal framework.

Status of Women in Armed Conflicts &International Humanitarian Law

The status or say condition of women during or after the armed conflicts is seen to be abysmal. It's not that the women can only remain behind the four walls of house and only be categorized as civilians, they can also accompany the male dominated wisdom of armed conflicts. Women can be non-combatants, serving the combatants in war. The point is that whether a woman is civilian, combatant or non-combatant, they are the severely and disproportionately affected section of any state during or after the armed conflicts.

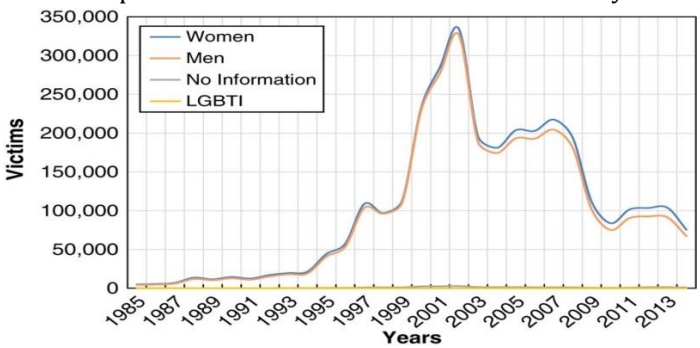
Since the time immemorial, woman is serving men as his best assistance at home and she is considered to be somewhere weak and emotional which makes her the most vulnerable group and which ultimately victimizes them. In armed conflicts, civilians are the eventual targets and 90% victims are civilians and out of these, most are women and girls. In World War II, women who participated in conflicts are in greater record, while they did not normally bear arms. In addition, there were many more civilian victims than in the earlier conflict. Of the 50 million persons killed, it was estimated that 26 million were in the armed forces while 24 million were civilians, including many women.

According to a study of 2009 by Peace Research Institute of Oslo, men are more likely to die during conflicts, whereas women die more often of indirect causes after the conflict is over. Data[147] on violent deaths shows that men are more often victims of violence

147. https://www.prio.org/Publications/Publication/?x=7207.

during wartime, whereas several studies that also take into consideration the post conflict period report, a high number of female deaths after the conflict is officially over. Women are harmed in various different ways. They are the primary victims of war and suffer horrendous consequences of War. The majorly seen harm to the women during wartime is the sexual violence. Sexual Violence is the superfluous sexual act against a person without the person's free consent. Women who suffer sexual violence whether during wartime or peace time, face a range of physical and psychological consequences and hence, they suffer in this way disproportionately. Men only die in war but the women face death after being stripped off their basic dignity. The heinous harms inflicted upon women includes rape, sexual abuse and assault, deliberate infection with HIV/AIDS, sexual mutilation, medical experimentation on sexual organs, forced marriages, forced impregnations, "forced pregnancy and abortion", enforced sterilization, trafficking of women and girls, enforced prosecution and many more which cannot be enlisted on the premises of a single paper. Sexual violence targeting women and girls has been used in all recent conflicts, including in the former Yugoslavia, Sierra Leone, India (Kashmir), Rwanda, Sri Lanka, the Democratic Republic of Congo (DRC), Angola, East Timor, Liberia, Algeria, the Russian Federation (Chechnya), and northern Uganda.[148]

Due to this gender based abuse and criminal offences faced by women, the women also suffer deprivation of cultural, economic and social rights. A woman can be victim but a man can never be a victim. The women face house destruction, shortage of food, malnutrition, loss of education and employment after getting sexually assaulted, increased burden of responsibilities if the bread earner of the family dies in war.



[149]Source: Palgrave Communications

From the above figure, it can be seen that at every point, number of women victims is always greater than the other groups of society.

But all this does not stop when the war ends. There are also post conflict effects of gender based abuse including marriageability, discrimination of mothers of children produced by conflict related rapes, the practice of honour killings, suicides, and self-

148. Lashawn R. Jefferson, In War as in Peace: Sexual Violence and Women's Status https://www.hrw.org/legacy/wr2k4/download/15.pdf.
149. https://www.google.co.in/search?q= palcomms201614-f1.

inflicted harm following sexual abuse or rumours of such abuse, impunity for perpetrators of gender-based harms, the perception of women as "secondary" victims of conflict, the increase in so-called ordinary violence against women, shame and the rumours in the society which lead to “suicides”.

Often overlapping discriminations, such as those based on race, culture, and religion frequently stimulate and perpetuate violence against women in conflict. Post war, when a man goes back to his job sector, government boycotts a woman from her job and sends her home. It’s not that only international conflicts affect women and girls, also the internal conflicts take huge trolls on girls.(Good point, please illustrate with an example) The problem is that the Human Rights of women are not given respect.
Muhammad Ali Jinnah had rightly said,
“No nation can rise to the height of glory unless your women are side by side with you. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women.”[150]
It is generally believed that women are the pillars of society. The protection of Human Rights of women is the necessity for a nation and healthy nation building. Because after an armed conflict, women’s role attains utmost importance in rebuilding communities destructed in these conflicts. There are many provisions in International Humanitarian Law for protecting the women from the consequences of armed conflicts, which not only gives general protection to women in wartime but also grants special protection.

Women In International Humanitarian Law
GRASS

“Pile the bodies high at Austerlitz and Waterloo.
Shovel them under and let me work -
I am the grass; I cover all.

150. https://www.brainyquote.com/quotes/muhammad_ali_jinnah_372006.

And pile them high at Gettysburg
And pile them high at Ypres and Verdun.
Shovel them under and let me work.
Two years, ten years, and passengers ask the conductor:
What place is this?
Where are we now?
I am the grass.
Let me work[151]"

These words of Sandburg here, are conveying a solemn theme, which is that however war may be terribly cruel, we frequently recall only imprecise old accounts while forgetting the viciousness and grief, which are often covered over, much in the same manner the grass covers disfigured and burnt grounds of battle, along with the bones of those lose their lives there. It is a fact that in many regions across the world, the women are allowed to participate in the wars by joining the military and engage equally in the conflict alongside men. However, there are many women who are non-combatants and do not partake directly in the wars. These women have been jailed, detained and brutalized. Now, this raises the question of whether the International Humanitarian Law is actually guaranteeing the rights of women, and if it is doing so, then what is the best manner in which these rights can be implemented so as to provide justice to those deprived of it. To best answer these questions, the contents of the International Humanitarian Law and treaties drawn within the International Humanitarian Law need to be analysed, which we shall now undertake.

Defining International Humanitarian Law

International Humanitarian law (IHL) is the law that governs opposing forces, civilians, and non-combatants during war time. It prohibits some of the methods of warfare in conflicts. International humanitarian law is also known as 'Jus in Bello', 'Law of armed conflicts', 'Law of wars'. IHL codified at Hague Conferences of 1899 and 1907. The Hague Conventions proposed a group of international treaties that were designed to, among other objectives, ban certain weapons of war and regulate the conduct of nations and their military forces during war. At the request if the IRCC, nations of the world met in Geneva, Switzerland in 1929 to draw up a convention designed ostensibly to provide for the treatment of prisoners of war. This was known as the Geneva Convention of 1929. IHL not only contains the provisions for general protection of

151. "Carl Sandburg [1872—1967] reminds us that although we, as the grass, may have cleverly managed to obscure the horrid truth, the nineteenth and twentieth centuries, in terms of human blood spilt on scorched fields of battle and in the rancid gutters of urban streets, were the bloodiest in recorded history. Many accounts number the dead at one-hundred million for the twentieth century alone. That great number includes only war related fatalities and not those several million more who were victims of non-military action. Nor does that number count the wounded millions; and certainly, it offers no tally of the tens of millions who endured brief to interminable mental anguish through the tragic loss of a loved one, or of an entire extended family." B.H. Frazier, NEW PERSPECTIVES OF HUMAN EMBRYONIC STEMCELL RESEARCH: What You Need to Know About the Legal, Moral & Ethical Issues 250 (B.H. Frazier, ed., 2009).

women in wartime but also for special protection.[152]The adoption of this new legal instrument considered the factors of civilian victims more than the armed forces and today despite the provisions on the treatment of prisoners set out in the Hauge conventions of 1809 and 1907, the IHL has Four Geneva Conventions of 1949 out of which the Fourth Convention is related to the protection of civilian persons in times of war "without any adverse discrimination"[153] based on sex. Articles 3,27,34,49[154] and some more like article 14[155] provide the general protection for men and women. International humanitarian law is based on treaties, in particular the Geneva Conventions and their two Additional Protocols of 1977 out of which protocol, I deal with the International Armed Conflicts and Protocol II deals with the Non-International Armed Conflicts, and a series of other conventions on specific topics.

There is also a substantial body of customary law that is binding on all States and parties to a conflict. In the year 1929, the Authorities which espoused the Geneva Convention relative to the Treatment of Prisoners of War[156] sought after to takeinto account a new spectacle: the participation of a relatively large number of women in the war of 1914-1918.

What kind of protection is given to women?

This international legal instrument contained two provisions of particular interest: "Women shall be treated with all consideration due to their sex"[157]. "Differences of treatment of physical or mental health, the professional abilities, or the sex of those who benefit from them".[158] Legislative steps were taken within the Fourth Geneva Convention to ensure the eternal principles, such as the following:

i. Article 32 forbids physical assault on any human being, such as torture, defamation and harsh treatment
ii. Articles 34 and 49 forbids taking hostages
iii. Article 27 forbids assaults on private integrity, including slandering, humiliation and discrimination, crimes against women, and other offenses
iv. Article 72 provides that, "Accused women shall have the right to present evidence necessary to their defence and . . . witnesses.

The article 2[159] makes it clear that if the conflict is between two agreed parties the agreeing parties should abide by their agreement to uphold the provisions of the Geneva Conventions, even if one of the parties might see the conflict as something other than a state of war.

152. https://www.theguardian.com/global-development-professionals-network/2016/mar/25/international-humanitarian-law-is-unravelling-before-our-eyes.
153. FIRST &SECOND GENEVA CONVENTIONS, art.12.
154. FOURTH GENEVA CONVENTION.
155. THIRD GENEVA CONVENTION.
156. "Feminist interventions in international law: Reflections on the past and strategies for the future", Adelaide Law Review, Vol. 19, 1997, 15-18.
157. Article 3.
158. Article 4.
159. Geneva Conventions I, II, III and IV.

Women: The Rule 134 of the customary IHL. State practice established this rule as a norm of customary International Law applicable in both international and non-international armed conflicts. The practice collected with regard to the specific needs of women is reinforced by and should be viewed in the light of the specific practice relating to the prohibition of sexual violence[160]and the obligation to separate women deprived of their liberty from men[161,] as well as the protruding place of women's rights in human rights law.

A breakthrough Article 3[162] provides collection and care for every sick and injured in wars and 3(c) outrages upon personal dignity. In addition to general protection of "non-discrimination", women are protected with **special protection rules** which are categorized in the gender-specific protection. According to the ICRC[163,] out of the five hundred and sixty articles comprising the law of Geneva, approximately fifty provisions from the Conventions and Protocols deal with non-discrimination or otherwise provide "special protection for women". A particular category of women are provided protection with such as Separate quarters and conveniences for detained and interned ones, special treatment of mother and pregnant women and not making them an object of attack. Also the acts of sexual violence remain outlawed in all places and in all circumstances, and any woman of any religion, age, marital status, race or social condition has an unconditional "right to respect" for her honour, dignity and modesty of being a woman.

Protection from capital punishment

Everyone knows that one of the main provisions of Human Rights is the "right to life" Pope Francis had justly said,

"The right to life is first among human rights"

Without any argument, it is one of the simplest rights for the human being to have. Protecting this right becomes the fundamental duty for the soul is the property of God, hence one does not have the right of waste the soul of one's as no one other than God has the actual possession of it, "Thou shall not kill".

The revolution: Article 100[164,] which provides the following:

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power. The crimes that might be deemed worthy of capital punishment are such crimes including murdering another prisoner, a prison guard of the detaining power, or perhaps escape. Other offences shall not thereafter be made punishable by the death

160. RULE 99 of Customary IHL.
161. RULE 119 of Customary IHL.
162. FOURTH GENEVA CONVENTION.
163. International Committee of the Red Cross.
164. FIRST GENEVA CONVENTION.

penalty without the concurrence of the Power on which the prisoners of war depend. Since the accused is not a nationalist of the detaining power, he/she is not bound to it by any duty of fidelity. Since, women are brutally beaten and put to death without any solid reason; their vulnerabilities make them the victims of illegal acts done by the detaining powers. Therefore, Capital punishment is not recommended unless the accused is a convicted spy, or a terrorist that has engaged in operations against military institutions. The law's main goal is to achieve and accomplish the goals of UN and Human Rights law that demand for respect for all, and the right to life for all individuals.

Case Examples: Maltreatment of Iraqi and Palestinian Female Prisoners[165]

As discussed above, International Humanitarian Law stipulates that all prisoners have the right to be treated respectfully, irrespective of religious beliefs and rituals, or country of origin, and they should be protected from any physical harm or threats. Further, as mentioned in the Third Convention, Article 14, women should have the same right to respect as men, and they should be treated as fairly as men, despite their gender. However, due to their gender, women should have specialized treatment and protection, as mentioned in the Fourth Geneva Convention, Article 27. Yet despite these provisions, which seem ample enough to provide protection for women and young girls, females across the globe have suffered unspeakable horrors at the hands of not only invading armies, but have often been victimized by their own countrymen. Following are examples of the realities faced by women prisoners in Iraq and Palestine. Taa'mim al Izzawi, an active Iraqi attorney working for women rights, documented the physical abuse that women face in Iraqi prisons in a four-page report. According to al Izzawi, women prisoners were raped in Abu Ghraib Prison, where they became pregnant, and had to give birth in their cells. When the Iraqi tribe leaders were informed of the abuse of women inside the prison, they threatened to storm and destroy the entire prison if the women were not released immediately. The threat was thought to be so grave that some of the families living next to the prison vacated their homes to escape the danger that may have followed. Iraqi women also suffered extensive persecution and torture during the previous regime. For example, in 1988, the crimes at Al Anfal occurred, where 80,000 Kurds, including men, women, children and elderly people were killed. In Palestine, the Palestinian women detainees are exposed to many methods of torture. Israeli policemen and women provoke female Palestinian prisoners by every means possible. Some of the methods they employ include cursing at them, restricting visitations from family members, tearing off the women clothes, beating, and locking them in cells where only Israeli women prisoners are detained, knowing very well that the Israeli women would attack the Palestinian woman. They were beaten with hot iron bars, leaving scars all over their bodies, burned with cigarettes, tortured with

165. https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1043&context=theses.

electricity, and raped. AblahTaha, a Palestinian woman prisoner, relates to her attorney, ValanciaLangar, when Israel was holding her prisoner:

"I was locked up in a cell where Jewish prostitutes were detained. One of them attacked me and beat me severely until I was unconscious. Also, they tore off my clothes in front of the other police officers, and I was naked without any clothes for eight days in a single cell without a toilet. For three days, they would not allow me out of my cell to use the bathroom. Officer Dweik kicked me and cursed at me while I was down, unconscious from the severe beatings. I was two months pregnant. I started bleeding, and I asked for a doctor to treat me. They refused and threatened me that if I say anything, they will take my baby out of me. Both torture and mistreatment are violations of the first paragraph of Article Three of the Fourth Geneva Convention, which orders all parties involved in a military conflict to treat all prisoners and civilians humanely. The Magazine of the Palestinian Studies states that there are several problems that female Palestinian prisoners suffer from while

i. being detained
ii. being searched naked, and the consequent humiliation
iii. being beaten and attacked with tear gas
iv. being medically neglected, there are hundreds of sick and wounded detainees, and a lack of doctors, delaying the performance of medically necessary surgery.
v. Being collectively punished; for example, prisoners are uprooted from where they live in the West Bank, and exiled to the Gaza Strip.
vi. Being served expired and unsanitary food Subjecting prisoners to a deteriorated health environment is abuse.

The accounts mentioned above are only some examples of clear violations of the International Humanitarian Law and its principals. Every case is a crime against humanity, because it violates Article Seven of the International Criminal Court. Such practices strip women of their self-worth. All treaties insist that the rights of women should be preserved and protected at all times. These laws and treaties must be enforced by the authorities in both Iraq and Israel. For when warring parties attack, assault and rape women, tarnishing their honour and dignity, those parties are clearly violating provisions of the Fourth Geneva Convention, as well as several other international agreements. Of course, irrespective of the clarity of a law, people may choose not to act within its constraints; therefore, rather than continuing to write, and rewrite laws hoping people will not violate them is often a futile exercise. Something more is needed; perhaps severe sanctions against anyone violating laws to which they have agreed. There will be later discussion about this possible solution.

All the heinous crimes against women during the wartime lead the makers of law to make the provisions for special protection of the women in International Humanitarian Law. Women themselves have the right to live with dignity, in freedom from want and in freedom from fear. Although women's human rights are very considerable in the developing stage as regards both framework and substance, with the passing of every

year, it is further seen that guiding principles of substance and framework are elaborating. So far, the alarm of the present situation is that despite concern which is being paid to women's human rights and the impression, notwithstanding small, the issue so far made on Humanitarian Law has not led to the general heading that women's human rights permit a special place within the field of International Humanitarian Law. This is, still, only a staple of time. Let us hope that such acknowledgement, whenever it comes, will be convoyed with a reconsideration of Humanitarian Law that takes into interpretation the actual conducts in which women are involved in armed conflict.

Conclusion

One can come up with many questions like "why woman is the primary victim of armed conflicts?", "What is lacking?", "Do we need any new law?", "Are women becoming endangered or prey?" But the most important question that remains is "what do we need to do?"

The first need of the hour is to stop the sexual violence against the women in armed conflicts, because only then the protection of women in armed conflicts will commence. The problem arises in not recognizing the human rights of women. When there will be recognition of their rights, when there will be a proper investigation of the gender specific crimes against the women during wartime as well as during peace time and this will hopefully lead to depreciation of sexual violence cases. As for example, in the last ten years, the U.S military in Iran and Afghanistan had recognized the importance of every gender in war and respect for the rights of women. However, The International Committee of the Red Cross (ICRC) observed a clear reduction in the impact of the internal armed conflict on the civilian population in Colombia in 2016[166] (establish how your examples of US and Colombia connect. Structurally, the two examples don't connect. If you wish to give the example of U.S or Columbia or both, in each case, you have to follow up on the same point. E.g.U.S has seen recognized the rights of women in war so there is a positive impact and a reduction in crimes against them is seen, etc.) Also, the effective implementation of the provisions of IHL for the general as well as special protection of women will be a step towards protection of women in praxis.

The question of whether the position of women in the armed conflicts has changed since the Second World War unfortunately, remains an ambiguous one. Although it seems that women's rights in armed conflicts are now protected by formulating the appropriate and sufficient laws but these rights are hardly implemented in spirit.[167] On the one hand, violence against women during armed conflicts is no longer concealed and international society speaks of it openly. The positive evolution of the legislative framework as well, is incontestable. From the legislative point of view, the position of women in the armed conflicts has improved significantly, during past decades after the

166. https://www.icrc.org/en/document/icrc-releases-report-humanitarian-situation-colombia- 09 MARCH 2017.
167. https://ac.els-cdn.com.

end of the World War II. However, in contrast to improving legal position of women, their actual situation has pointedly worsened. Violence against women has not only been not abolished but is increasingly omnipresent. At the same time, the methods and purposes of its transaction has extremely altered for worse. The most significant change that can be observed in terms of the use of sexual violence in the present armed conflicts is that, it is now no longer an inevitable side effect of the war but it is being used intentionally, as a weapon of war. The conclusion can be made that the joint efforts of different international actors are highly ineffective as wars and armed conflicts in the 21st century still remain the untainted and highest forms of illicitness. It seems therefore, that in order to advance the implementation of legal framework and to improve the actual position of women in armed conflict and in post-conflict situations, international society efforts should be attracted to three areas, i.e., prevention, protection and prosecution. It is terrifically important for the international society to understand the importance of conflict prevention. Thus, issues contributing to the outbreak of conflicts, namely poverty, uneven development, corruption, unstable governments, and dictatorships, extremist movements and rise of nationalisms have to be tackled efficiently. Much more effort has to be put to improve actual peacetime position of women, inter alia by changing harmful stereotypes affecting women. The rise of the awareness of dreadful, long-term consequences of violence is necessary. Furthermore sufficient medical, psychological, economic and legal assistance needs to be provided to the victims of conflict-related victims. Finally, last but not the least, the effective prosecution of perpetrators is crucial, as impunity of offenders is one of the worst 11 Convention(the word placement is not understandable entered into force on 1 August 2014. N. Buchowska International Comparative Jurisprudence 2 (2016) 72–80 78 forms of re-victimization for women affected with wartime violence.

We do not require somenew International Law, the law in existence in itself has much sufficient provisions regarding women but the actual problem lies in their implementation. Seeing the status of women during wartime, the author personally thinks that the present scenario is that becoming a soldier is not that much more threat induced/harmful than becoming a woman.

After going through all the heinous crimes against her, a woman automatically becomes either susceptible or prey. The post conflict recognition of a woman survivor even after going through the sexual violence is necessary for her to survive with the 'self-esteem'. The recognition of a woman's cultural, social, civil, political, economic rights and addressing her basic needs and her vulnerabilities such as shelter, better nutrition for her children and for her also, etc. has to consistently improve so that the circumstances of women survivors become better. What the law designed to protect women says about women and the nature of the risks they face will shape the ways in which military forces are trained, the ways in which crimes against women are understood, and whether or not those crimes are prevented and prosecuted. That law should reflect advanced understandings of violence against women. Much progress has been made in

human rights standards in reflecting the nature of violence against women, including in conflict. However, many of these advances remain ghettoized.[168]

The changes in the existing laws will not be that much fruitful than the proper implementation of these laws. Despite the deficiencies in the overall legal framework, the implementation of the laws would go a long way towards greater protection for women in conflict. If the laws in existence are not properly administered then, from where does the surety of proper implementation of those new laws come? The answer is “from nowhere”.

Hence, urgently it is required to not to make laws but to follow them.

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Human Trafficking – A Human Rights Violation

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"Human trafficking is a crime against humanity. We must unite our efforts to free victims and stop this crime that's becomes even more aggressive, that threatens not just the individuals but the foundational value of the society"- **Pope Francis**

Abstract
It is to be noted that human rights is a greater aspect which is associated with life and it should be respected and must be guaranteed to every individual and it is a state obligation that human rights must be guaranteed to everyone. But there are few socialevil concepts which survive in our society which causes grave human rights violation to the individuals. Human trafficking is one such concept which triumphs in the present day society and has caused grave human rights violation to individuals who now suffer grave injury and are miserable victims. Human trafficking is a concept which has been noted and defined in the recent era, however this was observed even in the late 1960s. This has caused various human rights violation to the individuals who are transported and forced to do certain work. The violations are seen in many forms and have caused infringement of right to life. The states do have certain obligation in this regard and are dutybound to follow them with utmost importance. Thus this paper gives a deep examination on the aspect of human rights related to human trafficking and also lays down suggestion to negate the concept of human trafficking so as to provide relief to the victims.

Keywords: *Human trafficking, Human rights, State obligation, exploitation, consent*

Introduction

Human rights are the fundamental aspects of law that enrich the human lives and enhance the liberty and dignity of life that is bestowed unconditionally. Not even by the operation of any law can these rights be side lined or subrogated. So everyone is entitled to use their freedom in exercising and implanting the human rights. But, as it is said, one's right end where another person's right starts. Thus, everyone also has a duty not to violate other's rights. The utmost unacceptable violation of human rights is

human trafficking. The existence of human trafficking is a major blot on the very concept of human rights.

Human trafficking is a global universal problem, spread throughout the continents. The persons who are trafficked, the victims, to a great extent are subjected to exploitations and abuses, both physical and mental abuses. In modern day, though there are tough laws in place but the crimes are still being staged at a greater scale. It is no longer the question of 'who' is trafficked, it is more of 'how' is it done despite laws and conventions in practise and operation.

A holistic human rights approach is needed to fight the trafficking problem, it is very critical to develop anti-trafficking that aims to preserve and protect everyone's right, i.e., preventing before it happens and to restore the rights that are lost, i.e., post rescue commitments. The combat against the trafficking problem is still evolving; we need to have a broad ambit while defining it, as it should have a universal consensus and no geographic limitations. So that all human trafficking related offences shall fall into the human rights ambit.

Judicious understanding on human trafficking

The major concern of many nations in the present scenario has been the tremendous increase in the aspect of human trafficking and the worry which is imposed by it is brought to light under the laws of human rights. In order to understand the concept of human trafficking, it is very essential to understand its meaning and definition foremost.

Meaning of human trafficking

The unadorned meaning or the basic understanding of the term is human transportation. The very meaning of the term human trafficking is transportation of humans from one place to another. The meaning of this very aspect was introduced very recently in the international instruments. However the definition and meaning of human trafficking was propounded after separation of trafficking from other practices which was frequently associated with irregular or illegal migration.

Thus according to the international trafficking protocol human trafficking is defined as transportation, relocation, recruitment and harbouring of individuals by way of threat, use of force, fraud in short without consent of individuals. Thus it clearly means transportation of individuals without their consent using the vulnerability of the individuals based on the fear which is imposed by threats. The main purpose of transportation of these individuals is for sexual exploitation, slavery and similar kinds of servitudes.

Concept of human trafficking

The concept of human trafficking can be clearly understood since the meaning of the term is unambiguous from the above protocol definition. The concept of human

trafficking is nothing but illegal transfer of vulnerable individuals without their consent with the use of force and under influence from one place to another for the purpose of exploitation in various ways. These individuals are put to bonded labour, slavery, sexual exploitation, extraction of organs and others. When the individuals are transported without their voluntary consent and exploited it leads to grave human rights violation.

History of human trafficking

It is clear that the definition of human trafficking is recently established one but the concept of human trafficking has been traced out since the colonialism and imperialism era. Human trafficking first started in the form of slavery. People were taken as slaves from one nation to another and were made to work in agriculture lands, industries and in mines. The culture of slavery was first seen in Europe and America later followed by the French. In the 1960s there were more than 20,000 individuals were held as slaves in Sahel which was a French colony. Thus human trafficking was first started in the form of slavery and led to various other practices as well. After the advent of trafficking individuals for slavery, individuals were transported for extraction of organs without their consent in the late 1970s and early 1980s and also were transferred for sexual exploitation and other such practices.

Human trafficking and migrant smuggling

The concept of human rights has always been misunderstood with the concept of migrant smuggling however these two are different concepts on the whole and there is an ocean of difference between the two concepts as discussed below.

Meaning and the nature of the two concepts

When it comes to human trafficking it involves with transportation of individuals without their consent and for the purpose of exploitation and the practices which is associated with it. The concept of migrant smuggling is considered illegal as it involves transportation without consent of individuals but for the purpose of profit. Thus the purpose differs in both the concepts which draw a clear distinction between the two.

The characteristic of transportation

In the case and concept of human trafficking transportation across international borders is not necessarily important to constitute the act of trafficking. Even within a country, several aspects of trafficking have been observed. All the more when a close relation is drawn with the definition of human trafficking as per the international protocol, harbouring and recruitment of individuals without consent is also known as human trafficking. However in the concept of migrant smuggling, transportation of individuals takes places from one country to another and both international law and

human rights law has opposed it greatly considering the consequence it has for these individuals. [169]

Violation of human rights

To understand the consequences of various violations caused to victims of trafficking, it is significant to acknowledge the authentic reason behind the concept of trafficking.

Why trafficking is a human rights violation

The concept of trafficking is clear from its definition that it is nothing but transportation of individuals. Now, why it is under the watch of laws of human rights is because of the stigma that is attached to it. The main reason trafficking has caused a grave human rights violation is can be viewed in a twofold manner. Firstly human trafficking is done without the consent of the concerned individual and secondly, it leads to exploitation of the individual.Consent is barred in human trafficking

It is rightly said by Eleanor Roosevelt no one can make you feel inferior without your consent. Consent has been a factor has been disqualified under the concept of human trafficking and instead the aspect of power and influence has dominated the sphere on a wider ground. International human rights law has time and again established and elucidated the aspect about consent which is the intrinsic and inalienable dynamic attached to the freedom of an individual and this cannot be taken away from an individual under any circumstances. However in almost every case of human trafficking, the essential feature of consent has been taken away from the concerned individual and the individuals are forcefully transported from one place to another. Most of circumstances the trafficking takes place in under influence, due to fraud and coercion with the use of power of dominance. This indeed amounts to great human rights violation. Thus when the individuals are been forcefully transported without consent it paves way for human right violation.

Trafficking for exploitation

The vital reason behind trafficking is only for the purpose of exploitation. Exploitation is done to individuals in various forms and exploitation on its front face itself is a grave human rights violation. Individuals who are transported are often put into practice such as slavery, organ extraction and sexual exploration as already discussed. This is a violation of human rights and the laws related to human rights.

Violation of various rights guaranteed under the law of human rights

The violation that has been caused by the human trafficking in grave in nature as it affects all aspects of life in a wider aspect. However the instruments of human rights

169. Obokata, T. 2005. Trafficking of human beings as a crime against humanity: Some implications for the international legal system. The International and Comparative Law Quarterly 54(2): 445–457.

have guaranteed various rights to individuals and these human rights cannot be infringed on any grounds.

Right against discrimination

Every individual has been guaranteed certain right which enriches life and makes life momentous.170 One of such rights are the one which against discrimination. The international human rights instruments have elucidated and emphasised highly that individuals must be protected against all forms discrimination. The international law has all the more elucidated on equality and not to discriminate individuals regarding Race, colour, sex, language and social order. But individuals how suffer the agony of human trafficking are often the victims of discrimination on a larger ambit, however international law do gives every individual the right against discrimination.

UN charter

The United Nation charter has provision where the right against discrimination has been elucidated on a greater ground. Ever nation of the UN has an obligation towards the UN charter and the provisions under the charter. All the more the Art. 1 para3, 55 para C and 56 are the main provisions which illuminate more on the aspect of non-discrimination and equality. Thus the individuals subjected to the aspect of human trafficking have this very right and ever state has an obligation to protect it and when the individuals are not protected it completely causes infringement to the rights.

Universal declaration of Human Rights

Not only the UN charter, the Universal Declaration of Human Rights have also emphasised the right against discrimination and elucidated more on the factor of states obligation to protect the individuals from such violations more specifically against discrimination. Art.1, 2, 4 and 7 of the declaration imposes an obligation on the states to protect the individuals against the violence and all the more to bring to a standstill the practices which cause discrimination.

International covenant

Apart from the universal declaration the international covenant also makes the states party to the convention an obligatory mandate to protect and prohibit the practices against discrimination. The International Covenant on Civil and Political Rights (ICCPR) has few provisions where Art.2 and 26 of the covenant has made greater emphasis on the features and the rights that every person has against discrimination and makes its obligatory to every state to protect the individuals against the all discrimination and equality. The international covenant Economic, Social and cultural rights (ICESCR) also contains few provisions which guarantees equality rights to individual and most importantly Art.2 and 3 completely supports and stands by equality and non-discrimination.

Specific treaties

170. Bassiouni, M.C. 2006. International recognition of victims' rights. Human Rights Law Review 6(2): 203–279

There are also specific treaties which support the stand of non-discrimination and equality it makes it obligatory to the individuals to help in the aspects Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Elimination of All Forms of Discrimination Against Women (CEDAW) are special conventions which govern the aspect of equality and non-discrimination and all the more every nation party to this has an obligation to follow it on a greater ground

Regional convention:

Not only international level also at the regional level there are various convention which governs the respective region and establish the aspects of equality and non-discrimination on the aspect. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950) Art. 14 of the convention mainly focuses and gives the state the obligation to follow it and also the American Convention on Human Rights (ACHR, 1969) Art.24 of the convention also brings a main emphasis on equality and other aspects.

Thus when the concept of human trafficking is considered on a wider aspect is just gives us clear picture that many individuals who are victims of to discriminations and international Human rights laws have guaranteed rights which rebel against discrimination. All the more the states have the obligation to protect them but however due to human trafficking discrimination has been observed and indeed hits the law in terms of violation.

Right to life:

Everyone has the right to life, liberty and security of person." Article 3 of United Nations Human Rights Declaration, 1948

Every man or woman here born have an unconditional right to decide their life and are absolutely eligible to act as per their choice. The "practices associated to trafficking" viciously impounds the liberty of person's life for once. These are prohibited and punishable activities by the law in almost all countries including international conventions.

The trafficked persons are indeed 'modern-day slaves', and any form of slavery is illegal. More than its illegality, the crueller thing is the sub-standard life conditions they are pushed into. The victims of such crimes are made to lose their dignity that they deserve, and their right to decent standards of living are abruptly snatched, forcing the victims to social insecurity. Moreover, there are often cases reported of physical abuse against the trafficked persons which further degrades the very concept of right to live with dignity, the physical abuses they endure are inhuman and wholly against the dignified treatment that they deserve.

Any form of arbitrary detention or bondage is a blot on the fundamental aspects of human rights. The victims are almost at all times subjected to enforced servitude in the form of 'forced labour' or 'debt bondage' or 'physical exploitation'. Human rights law

completely prohibits all these forms of violations especially 'forced labour'.[171]Not only it is a breach of moral and ethical conventions but also the very substance of the right against inhuman treatment and right against not to be submitted to servitude is bypassed. All of us are entitled to be treated in a favourable humane manner, any kind of ulterior treatment or conditions are a human rights violation. The first step of the trafficking itself kills all the right to be treated with dignity and favourable human conditions, hence from human rights approach, the stand is very clear as in to the very initiation of human trafficking needs to be curbed and curtailed.

Decent living and dignified treatment of a person is a bestowed right by the law of the land in almost all nations across the globe. These rights cannot be abridged at all, even by the operation of any law, then the very thought of that right being snatched away by another equal person is unacceptable. It is to be noted that the nature of such violations are still debatable as in to treat it either as a transnational crime or an international crime or else to be determined according to municipal laws of each country. But when there is a happening of such an event, it should be looked from the human rights perspective, so that the due attention is given to the victims rather than to the crime in itself. Hence, the right to life & liberty and right to dignified treatment shall to be considered within the very ambit of the human rights perspective.

State obligation to protect individuals from human trafficking:

It is an important aspect to understand that it is the state's obligation to protect the individuals from the ambit of trafficking and states must takes certain steps which will forbid the concept of human trafficking and also take measures which will safeguard the human rights which are enriched to the individuals from grave violations.

Victim identification

The first and foremost task of the states in the aspect of protection of individuals is identification of victims who are suffering. Often these victims are left unidentified and eventually become invisible in all aspects. Thus it is very vital to identify the individuals, more habitually these victims are classified as illegal migrants and been treated it that perceptive but however as already discussed before victims of human trafficking are not same as illegal migrant there is clear difference between the two.

The states are imposed with an obligation to identify the victims of human trafficking the United Nation high commission on human rights gave recommended principles and guidelines on human rights and human trafficking. According to the guideline2[172] of the very same instrument makes it a mandate and also imposes a duty on the states to take due diligences and identify the victims of human rights trafficking and also it recommends in employing governmental as well as nongovernmental organizations in

171. Defined by Convention No. 29 concerning Forced or Compulsory Labour of the International Labour Organization (ILO) as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [herself] voluntarily"

172. States are also obliged to exercise due diligence in identifying traffickers,5 including those who are involved in controlling and exploiting trafficked persons.

the process of identification of victims and protecting them herein and after. The individuals must be identified and must be protected.

Protection and support

Once the victims are identified they must be supported and protected. The protection must very particular. The victims must be protected from further exploitation and must be supported in all aspects. These victims who suffer from human trafficking are vulnerable and lack in social and economic security, it is very important that they are protected and support is given to them. Social security must be provided in the form by moving them to a safe place from the exploited place and also providing them medical supply and other requirements. It is important the states in which the trafficked individuals are located follow it with due diligence and transfer the victims to a safer environment

In this process of protection and support the states mainly have the obligation to provide right to privacy and remove risk from harm.

In the case of Rantsev v. Cyprus and Russia173 it was observed that in the European court of human rights observed that it is eve ry states obligation to protect the individuals against the harm. All the more it was also observed that the states must take few steps and measures which will lead towards the protection of the individuals from such harm. All the more guidelines 6 of the recommended principles and guidelines elucidates more on the on the aspects of protection of individuals from the harm and makes it a state obligation..

Right to privacy

The states have an obligation to provide privacy to the victims besides protecting them from the harm. The identity of the victims must be protected and must not be revived because it might cause harm to the individuals. The guideline 6[173] of the recommended principles and guidelines makes it an obligatory aspect that the individuals identity must be preserved and right to privacy much be upheld in all forms.

Not only the guidelines, the Art.6 of the trafficking protocol also makes it a mandate that every individual must be protected and privacy must be protected of every individual and every state must abide by it since it is human right. Even the regional conventions also establish the aspect of protection of privacy of individuals. Art.11 of the European trafficking convention also states and makes it a mandate that the privacy of the individuals must be protected on all forms regarding the identity of the individual.

173. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard

Legal aid:

States are also imposed with an obligation of providing legal aid to the individuals who are affected and suffer from the injury caused. Every individual must be provided with legal aid and it is an international mandate that must be given to every individuals. All the more not only the establishment of legal aid is mandatory but the process involved with it is also important with related to the aspects of admission of the suit and also help them understand the proceedings till the judgement is pronounced.

The international convention on civil and political rights Art.14 makes it an international obligation mandate that every individual must be provided with legal aid and help must be provided to them in all manners related to it. Not only international convention also regional conventions elucidate the importance of legal aid mandatory to provide them to the individuals. Art.6 of the European convention on human rights makes its mandate that legal aid must be provided to every individual.

All the more not only conventions but also declaration on basic principles of justice for victims of crime and abuse of power talk majorly about providing legal aid to the individuals. Paragraph 6 of the very declaration makes it a made that the legal aid must be provided to every individual and especially those who suffer grave human rights violation.

Providing Temporary residence and asylum

The individuals who suffer from the injury and violation of human trafficking are people who are transported from one place to another. This infers to that fact that they do not have a place of permanent residence in the place where they are transported. It is vital that the states provide temporary residence till the recovery period. These individuals are vulnerable and need a place for living and recovery from the exploitation that they have suffered. Thus it is very important that states protect the individuals by giving temporary resident and take care of them and help them to recover from the violation.

Non criminalization of trafficked

The individuals who suffer from human trafficking are often charged with crimes of illegal migrant in the state that they are transported. However these individuals are not illegal migrant but are people who are transported from one place to another and who are forced to do certain work in the place they are transported. At times theses victims are forced to do illegal work, it is also observed and it is clear that these individual do not indulge in the illegal activities with intention but are forced to do so.

Thus due to the fear imposed the victims do certain work which are illegal in the place where they are transported. The recommended principles and guidelines has made it a state obligation that the victims of human trafficking should not be criminalized for the act they have done since they don't do it with intention they do it out of fear which is imposed on them. Guidelines 2 of this are very clear about non criminalization of the victims of human trafficking. All the more not alone the guidelines but the regional conventions also advocate for non-criminalization. The European convention on

trafficking makes it a mandate that the victims are not punished and takes a clear stand in non-criminalization of the victims. The human rights bodies always follow the cardinal rule and principle of non-criminalization of victims

Ensure safe return

It is very important that the trafficked individuals who have suffered violation must be sent back to their home town. After identification of these victims and providing them with adequate needs they must be sent back to the place they are trafficked from. It is state obligation that these individuals who have suffered such grave human rights violation must be sent back safely. The prevention of trafficking protocol makes it a mandate that every state must send back the individuals who suffered from grave injury from trafficking. Not only the international protocol even the regional protocols makes it a mandate that the states are required to ensure safe return on the victims of human tracking. The European convention on trafficking also makes it a mandate in ensuring safe return of the individuals who have suffered violation.

Suggestions

It has been a grey area and a matter of debate of determining and recognising the nature of human trafficking, whether as an international or a transnational or to leave it to the local authority of each State. This has led to the watering down of the offences to an extent. So the fixation of the nature of the crime is very essential in order to combat human trafficking.

In many a times, the real offenders and the criminals and the persons who are abetting the crime go scot free, because of the existing plethora of anomalies in legal response across countries. Human trafficking always originates in one place and the place of crime is in another. As the legalities vary from one country to another the prosecution of the traffickers becomes very difficult. A new set of all-pervasive measures should be introduced, so that any legal apprehensions in the investigation of cases of trafficking and prosecution shall not be a hindrance in the path of justice. Thence, there lies an immediate need to enhance cooperation between countries, especially between countries of origin and countries of destination of the crime. This cooperation shall be used to pin down the criminals and any country is able to identify them and prosecute in the courts of law. This shall ensure the offenders do not exploit the loopholes in the law. The cooperation amongst country shall be with regard in "including request for assistance, search, seizure, attachment and surrender of property, measures from securing assets, and service of judicial decision, judgments and verdicts."

The human trafficking crimes need to be dealt with a more evolved human rights perspective. Human rights approach means that the victims of such a crime are the centre of the anti-trafficking policy. Trafficking of persons is a severe violation of human rights, from the point of human rights perspective, there must be policies and programs implemented that deal with the victims of trafficking in a "comprehensive and compassionate" manner. It should start with identification of the victims to

stabilising and settling the trauma they have undergone and till the provision of counselling. These steps are required to treat the victims with 'dignity and care', which they have lost in the period when the crime has happened. The human rights approach emphasises the need to establish a 'Victim cooperation' which shall be very necessary to tackle these crimes in a humanitarian way.

Another essential issue that needs to be addressed is that the human trafficking crimes are sparsely reported by the victims. Many factors like dependency of the victims upon the traffickers and pimps, fear or trauma, physical insecurity and language and cultural barriers, etc., are few reasons that becomes challenging to report the crime. It shall be noted that without reporting of a crime it is an onerous and an arduous job upon the authorities to curb and control such crimes. Thence, efforts need to be made to ensure that victims are able to come out open to speak against these crimes, this shall allow the law to operate and penalise the guilty and also there lies an attempt to publicise about these anti-social incidents.

Also, when the victims come out open to report the crime, the identity of the victims needs to be protected. The privacy of the victim must be protected, so that the victim does not get traumatised by the public scrutiny and is able to carry out his/her life normally.

"It is an agreeable fact that each country shall have to find its own approach in combating trafficking of persons that shall suit the specific needs of that country, as trafficking affects sending, receiving, and transit countries differently." So, legislations with regard to crime control of trafficking needs to be coupled with a human rights-based approach. It becomes easy and common in all countries/universally to combat such offences with same magnitude.

The information provided to the victims should be complete, all the entitlements and legal options must be let known to them so that they can make an informed decision about what to do further. The care and support should not be conditional and also on other hand it should be 'non-coercive'. Victims should also be able to refuse care and support. They should not be forced into accepting or receiving assistance. Hence, "the provision of care and support should be both informed and non-coercive."

The apprehensions and stipulations placed on the victims and their relief has created a doubtful myth that the victims are the primary subjects of law enforcement agency, though this might be true in certain isolated places alone. More importance is to be given in restoring and protecting the interests and rights of the victims as 'individuals'.

Conclusion

Stand up for someone's right today" – Motto of the International Human Rights Day 2017

The rudimentary framework of human rights drawn upon several international documents and covenants adds great value in protecting and restoring the rights of persons, but the efforts made to draft the policy alone has proved to be insufficient. It is

clear that they have not brought the desired effect and still there is no program to prevent the crime before it happens. The lethargic implementation and several apprehensions in legal prosecution have watered down the effective control of human trafficking. The need of the moment is to enforce comprehensive and proper implementation of already existing laws and to ensure the law is truly effective. Rather than drafting new laws, the present laws should be modified to weed out the human trafficking system.

Though the trafficking network cannot be dismantled or detached overnight but continuous and collective measures should be undertaken always to steadily remove all the traces of these crimes. More precisely the danger lies in ignoring the causes of the exploitation, so a deeper understanding is a pre requirement with regard to state's objective policy. There must be policies drafted that pro-actively defend the rights and liberty of all persons and allowing them all to be entitled to the redressal mechanisms without any discrimination. The redressal system should treat all the victims equally and to treat victims with special care and support should be the priority of the state.

Moreover, it is shall be the time to view this issue from the human rights perspective, making the whole process and mechanism 'victim-centric'. Present state policies of almost all countries view the human trafficking from a criminal legal perspective; it is ideal to approach this as a human rights issue. The big advantage to address it in such a way is that it insures that regulations do not suppress the rights but in fact supplement them. As the old saying goes, it is always better to stand up before, than to feel sorry later.

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Role of Indian Judicial System in Enforcing Human Rights: Case Analysis of Bhopal Gas Tragedy

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Abstract
The law of torts, though uncodified in nature, forms an essential part of governance in the Indian Judicial System. A tort pertains to a civil wrong committed against a person by breach of a duty primarily fixed by law, and whose remedy involves damages. The duty centrically being that of the protection and preservation of human rights of oneself and that of others. Torts encompass a wide ambit of civil wrongs within which the concept of absolute liability falls. Absolute Liability is the principle that has no defence available to the wrongdoers and therefore holds the party at fault liable for the damage occurred. The Bhopal Gas Tragedy (1991) 4 SCC 548, is one of the gravest disasters India has ever witnessed. But does the judgement passed and the after-effects of the case mock the legitimacy and the efficiency of decisions passed by the esteemed Courts of India? The author aims to critically assess and analyse the judgement of the case and draw conclusions as to whether the judgement was essentially effective in providing justice to the lakhs of people whose rights were affected and continue to be affected due to the untoward happenings. The paper further comments upon whether the judgement passed stands as a mockery of the Indian Judicial system protecting Human Rights, as an entirety.

Keywords: *Absolute Liability; Human Rights; Enforcement; Law of Torts; Violation*

Absolute Liability is the principle that mandates an industry taking up any type of inherently dangerous activity to be absolutely liable in case of any damage that occurs due to the functioning of the same. That is, the defendants will have to compensate the aggrieved parties and not be entitled to any defence unlike the case under the principle of Strict Liability.[174] This principle was introduced in M.C Mehta v Union of India (1985) wherein it was stated that "An enterprise which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, owes an absolute

174. Rathanlal&Dhirajlal, pg.422

and non-delegated duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such an activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer for the enterprise to say that it has taken all reasonable care and that the harm occurred without any negligence on its part."[175]

In R v Metro News, Justice Martin wrote:

"(A) absolute liability is commonly used to describe offences in which it is not open to an accused to avoid criminal liability on the ground that he acted under a reasonable mistake of fact which, if the facts had been as the accused believed them to be, would have made his act innocent. Even in offences of absolute liability, other defences such as insanity, automatism or duress are open to the accused."

This principle of Absolute liability has been applied in this case by the judges to determine the liability of the defendants, i.e. Union Carbide Corporation (or Union Carbide India Limited).

One of the gravest tragedies unfolded in the nights of 2nd - 3rd December 1984, when a very poisonous gas, named methyl-iso-cyanide leaked through the portals of the industry of Union Carbide of India Corporation, out into the open. This created a huge havoc when the residents in and around the factory area woke up in the middle of the night with a burning sensation in their lungs. The gas proved to be so deadly that many of them died that very instant, while the ones who survived have major bodily defects and continue to give birth to children with physical anomalies. [176]

The Union Carbide India Ltd. (UCIL) is a subsidiary of the US based, Union Carbide Industries, which set up its Methyl-Iso-Cyanide177 plant in India in the year of 1969. The Methyl-Iso-Cyanide gas in the Union Carbide Plant was primarily used for the production of carbaryl, which is a pesticide. It is alleged that most of the safety systems were not functioning and that most of the safety valves were in poor condition around the time the incident took place. During that, large amounts of water entered into a tank which contained about 42 tonnes of methyl isocyanate. At the time, workers were cleaning out pipes with water, and some claim that owing to bad maintenance and leaking valves, it was possible for the water to leak into the tank. This resulted in an exothermic reaction which caused the temperature and the pressure inside the tank to increase. Due to this urgent venting of pressure, large volumes of Methyl-Iso-Cyanide gas along with products of hydrolysis and pyrolysis were released into the atmosphere. Due to the temperature being around 10 degree Celsius on that night, it led to the

175. 1987 SCR (1) 819
176. *Union Carbide Corporation v. Union of India and others*, AIR 1992 SC 248, AIR 1990 SC 273
177. A type of pesticide

concentration of the gas and caused it to move downwards, towards the ground thereby leading to more deaths. [178]

Many inhabitants filed civil suits in the District Courts of Bhopal but it was the inaccurate forum to file these suits in. Justice Keenan encouraged Union of India to take part and represent the Indian population. As a result, all petitions were dismissed and in March 1985, the Bhopal Gas Leak Disaster (Processing of Claims) Act was passed which enabled the Central Government to be the sole representative, illustrative of the considerable number of casualties in a wide range of cases with the goal that interests of the casualties of the debacle are completely ensured and the cases for compensation are sought after expediently. Therefore, the Indian Government filed a suit in the U.S Court on behalf of all the aggrieved parties requesting for compensation worth $3.3 billion from Union Carbide Corporation (UCC) in 1985. However, these cases in the U.S were transferred to India on the basis of the provision of non conveniens, directing that these litigations should be heard in a more convenient forum. In the year of 1987, cases were filed in the Bhopal District Courts requesting for a compensation worth Rs. 350 crores from UCC as interim compensation. This was refused to be paid by UCC as the order could not be decreed. The case then went to the Madhya Pradesh High Court, where the compensation was reduced to 250 Crores. Both parties challenged this verdict and appealed to the Supreme Court under the provision for Special leave. [179]

Finally, in 1989, in a rather shocking judgement, the following was passed:

"This settlement shall finally dispose of all past, present and future claims, causes of action and civil and criminal proceedings (of any nature whatsoever wherever pending) by all Indian citizens and all public and private entities with respect to all past, present and future deaths, personal injuries health effects compensation, losses, damages and civil and criminal complaints of any nature whatsoever against UCC, Union Carbide India Limited, Union Carbide Eastern, and all of their subsidiaries and affiliates as well as each of their present and former directors, officers, employees, agents representatives, attorneys, advocates and solicitors arising out of, relating to or concerned with the Bhopal gas leak disaster, including past, present and future claims, causes of action and proceedings against each other"[180]

The Government agreed to a worth of $470 million to limit the company's liabilities and clear its name. All criminal and civil charges against UCCI were to be dismissed. This order was called the settlement order that was struck between UCC and the Government of India and was highly opposed.[181]Several review petitions were filed by the citizens as well as the aggrieved parties questioning the validity of the judgement passed. There were several issues raised regarding the compensation awarded, quashing of criminal offences of Union Carbide Corporation, interests of people affected

178. *Supra* 3
179. *Supra* 3
180. *Supra* 3
181. *Supra* 3

etc. The compensation was argued to be extremely inadequate when compared to the initial compensation demanded worth $3.3 billion dollars. It was hardly a quarter of the damages expected to be received by the aggrieved parties. Further, all civil and criminal proceedings against the Corporation were quashed on agreement of payment of the compensation amount, which was unjustifiable according to law. Criminal proceedings, unlike civil proceedings is not compoundable, i.e the element of negotiation to arrive at a compensation for criminal offences is not valid in the eyes of the Indian law. Therefore, criminal offences of Union Carbide Corporation could not be quashed. It was also argued that the principle of 'Absolute Liability' mentioned in the M.C Mehta[182] case was not applied in computation of damages. The interests of the aggrieved parties were not taken into account while consenting to this settlement order. It was stated that these parties should have been informed regarding the order and its implications before agreeing to it. In furtherance of the same, it was also contended that this order went against public policy by stifling it and limiting the liability of Union Carbide Corporation.[183]

The Supreme Court clarified these arguments by holding the judgement passed to be legitimate and constitutionally valid, not illegal. It clarified further that all nuances of the judgement except for the quashing of the criminal accusations which was not lawfully justifiable. As regards the applicability of the principle of absolute liability laid down in the M.C Mehta case to determine the compensation amount, the Court held that the principle need not apply to all cases. The compensation amount, if would fall short, would be compensated by the Union of India and UCC was to be held not responsible for compensation of any amount other than the amount stipulated under the settlement order. It further substantiated saying that the judgement was required to be passed immediately due to the urgency to meet the demands of compensation of the public.[184]

The Bhopal Gas incident is proof of the poor enforcement of legal principles to ensure efficient and effective deliverance of justice in the Indian Judicial System. The aggrieved parties continue to suffer despite the judgment for their 'well-being' that was passed by the Supreme Court in this respect. In fact, the judgment of the 'Settlement Order' can be blamed for their grave condition. The Indian judiciary, yielded to the foreign firm as if it were obligated to do so by settling for a meagre compensation that the company stipulated. What worsened this decision of the Court was that an inadequate amount of compensation was accepted in return for cancellation and withdrawal of all civil and criminal charges that the Union Carbide Corporation was accused of. The Company took measures to further reduce its liability and responsibility with respect to its industry established in India. If UCIL had made efforts to inform the factory regarding the effects of water coming into contact with the gas and regarding the ill-condition of the

182. 1987 SCR (1) 819
183. UpendraBaxi; Danda, Amita Valiant Victims and Lethal Litigation: The Bhopal Case,(publishers-new delhiindia law house 1990)
184. UpendraBaxi, Inconvenient Forum and Convenient Catastrophe

pipelines, such an incident could have been avoided by adopting control measures. The lean compensation amount was then distributed among the victims in a very arbitrary and ambiguous manner which further led the public to lose confidence in the judicial system. This leads us, as citizens, to question the legitimacy of the proceedings conducted by the Courts. The Judiciary is to function as an enforcer of law and rule rather than make one question it's functioning. The 1989 decision portrayed scepticism and obscurity on the part of the law enforcers, thereby leaving this judgement as a black mark on the entire existence of the Indian Judicial System.

This case comment draws attention to the ever-growing tragedy of violation of human rights in the Indian society. The poor and underprivileged find themselves being excessively targeted since time immemorial, at such events when the judiciary undergoes and undertakes drastic measures that manipulate them and their rights to basic necessities. Every individual deserves to have their rights protected, irrespective of their religion, sex, caste or place of birth. The above right is denoted as Right to Equality under Article 14 of the Indian Constitution. Article 15, Article 16 and Article 17 of the Constitution of India further elucidate the same. Citizens of a country place their utmost confidence in the three organs of the nation namely, the Legislature, the Judiciary and the Parliament. These organs are entrusted with the duty of protecting and preserving the dignity and basic rights of citizens by ensuring that absolutely no violation of any sort occurs. However, we, as citizens of India, find ourselves to be let down when an incident of such a magnanimous magnitude failed to draw the attention of the 'just behaviour' of the judiciary in ensuring the victims of the tragedy, an equivalent or higher compensation for their losses. The judgment passed by the judiciary in this case portrays the kind of behaviour that was present during the colonial times wherein the Judiciary accepted the meagre compensation amount offered by the foreign company, Union Carbide Corporation, in return for the elimination of all civil and criminal charges against their company in India. The amount of compensation, in proportion with the number of victims, proved to fall short owing to the large number of victims. This amount was not only ambiguously accepted but was also arbitrarily and ambiguously distributed among the victims leaving most of them with very little compensatory amount or with no compensatory amount at all. The numerous families affected by this gas leak struggled for many years after the incident and continue to do so even during the present times. Their human rights were violated and justice was not adequately served to them. This leads us to question the basis of application of the laws and principles that the Constitution makers so profusely included in the Constitution of India in furtherance to the protection of rights of citizens and non-citizens of India. Obscurity was highly noted in the judgment passed above. In conclusion, the Indian Judiciary has passed various commendable judgments in the fields of Triple Talaq, Right to Privacy and various other areas but certain judgments such as the one discussed above need to prove as examples so as to ensure that such inadequacy is not encountered in the near future and to ensure that the human rights of

all citizens as guaranteed by the ICCPR, ICESCR, UDHR and the Constitution of India are guaranteed.

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Branding the Birds' in Retail Outlets

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Abstract
The purpose of this paper is to examine how the organised retail sector makes brands out of frontline workers to gain the trust and maintain the loyalty of customers towards the firm. The main focus of the paper is to see the mechanisms used by the firm to use the emotion of frontline workers and convert them into utilized commodity for the customers. The paper tries to examine the role of management in converting the services of frontline workers into a pleasant brand in the market.

Keywords: *Organised Retail Sector, Shopping Mall, New Work Culture, Frontline Workers*

Introduction
In the contemporary scenario, brands play the vital role in catching the attention of customers. Apart from the 'state of class', the term 'brand' has become the synonym to 'trust'. The faith of customers lies on specific brands in selection of the products. The marketing strategy adopted by the existing capitalist has deeply inserted the notion of brand in the sub-conscious mind of customers. In the name of brand, customers are ready to pay high price and tolerate the error (Avery and Marion, 2007). Typically, to target the upper and middle class customers the capitalist has started branding the services. Though mechanization of labour has been propounded by Taylor long back in his scientific management, the relevance of his theory is still clearly visible in the modern-day interactive services. The command of management to brand the services and to sell the labour as commodity for satisfying the customer's anxiety and pleasure is very much visible in the organized retail sector. This work is an attempt to emphasize the role of management in controlling labour and building the image of brand services among customers.
Though, large volumes of work have been produced on labour process, there still remains a gap in literature. The roles of management in controlling labour have been analyzed by many renowned scholars but very less emphasis is given on the role of management in controlling labour and converting their services into brand in the

interactive service sector. I proposed branding the birds[185] to conceptualise the mechanism and to depict how the frontline workers get transformed into brand images of the firm? How the labour of frontline workers gets commodified as a pleasing brand for the customers? And how their brand image is used as a part of production? To answer these questions, I collected the data from the Hyper-mart located in one of the Shopping Malls of Delhi -NCR region.

Methodology

The data collected was part of my first pilot filed survey for PhD dissertation. The outcome is largely based on the field observation, filed notes and open ended discussion with the frontline workers. Nearly, 30 frontline workers were interviewed of which 5 were female and 25 were male candidates. Among the 30 workers, 7 were promoters and 23 were firm employees. The workers were interviewed outside the premises to avoid any influence of management. The field work conducted in between September 2014 to February 2015. To select the Shopping Mall for conducting field work, snowballing method was used. After interaction with known person working in shopping malls, the pilot survey was conducted in respective shopping malls. After two weeks of observation (in gaps) and contributory interaction with the workers of three shopping malls one was selected for conducting the extensive field work. The selected shopping mall comes in the south-east zone of Delhi NCR region. It is home to many retail outlets of national and international importance. It is a well-established mall and attracts a large number of footfalls from nearby areas. It is well connected with Delhi Metro and Bus Stop. It also provides huge space for parking facilities. It fulfils all the typical characteristics of shopping mall like – provides multiplex, dining, entertainment, and banquets.

The survey was conducted in one of the hyper-marts of that selected shopping malls. The big retail shop or the hyper-mart is one of the largest retail chain group markets of India which attracts the customers from higher and middle class families. During the survey, it was found that the selected hyper-mart is one of the main attractions in all the three shopping malls visited in the first round. The whole unit of selected hyper-mart is spread over a large area of the shopping mall. The unit is itself divided into 11 to 12 small departments like Fashions, Food, Home & Kitchen, Chill Station, Electronic Bazaar, Footwear &Jewellery, Furniture Bazaar, and Other Services. All these sections are further sub-divided into small sub-sections like formal wear, casual wear, night wear, personal care, toy zone etc. The department stores of the selected hyper-mart, employs more than 250 frontline workers[186]. Overall, the selected hyper-mart has employed more than 3500-4000 frontline workers[187].

Scheme of the paper

185. The term Bird I used to denote the frontline workers irrespective of their sex.
186. Information gathered during the field visit
187. Ibid.

The ensuing pattern is followed: Section III provides the brief introduction of frontline workers. Section IV will provide how the frontline works present themselves in front of customers. How the outer body is interacting with the customers. How with the help of their body and emotions they perform their work responsibilities. Section V will introduce the labour process methodology used by the management to convert the labour of workers into commodity and to present workers as firm's own brand. Section VI is conclusion of the paper.

Frontline Workers

In the era of a highly technocratic world and self-service mode of shopping technology, nothing that the workplaces draw unique attention; specialised skills, leadership quality or highly commendable job for which frontline workers get recruited. It has been found that people with effective interpersonal skills are getting appointed to this profession (Guptoo, 2009). A simple XII pass candidate can apply to this job. There is no hard specialisation or technical education required for this job. During the field work it has been observed that the firm uses many standardized techniques to lessen the cost of production and to maximize the profit. Hiring less educated people is one of the prominent techniques in this regard. Since the job of frontline workers is highly relied on mass service providers and flexible in nature, the employer hires less educated workers on low salary to cut the cost of production. Interestingly, in management hierarchy also they get calculated at the bottom step and get the less responsible job.

The frontline workers basically get recruited to occupy the daily footfalls in the retail outlet. Their work is to please the customers through their gestures and help them to locate and select the products if required (Gurys, 2012). In addition to this, they help the customers by providing value added information regarding the products when shouted (means? Can the word call be used instead?) for it. Though, in neo-liberal economy or new work culture, (what is new work culture?)The frontline workers may materialize as white collar worker and be a contributor in management ideas, in pragmatics they are blue collar workers. (Please explain this line) They are the workers on conveyor belt. Their main work is just to contribute in production by using their emotional or commodified labour. Interactions with people to sell the product are their raw material in this process (explain) (Lan, 2003).

Presenting Self

As per their previous work experiences and the level of interest or knowledge regarding the products they are able to present in the interview, the frontline workers get appointed in their respective departments. It is worth mentioning here, that categorically there are two types of sales person – one directly recruited by the firm and another recruited by the company to represent their products in the premises allotted by the hyper-market or discount stores to promote their products in the

allotted shelves. These salespersons are termed as promoters. Their nature of work and service contract, are directly managed by the company responsible. The hyper-mart or the discount stores just allot the space for the sale their products. Although, the terms of services of promoters are managed by the companies rather than by hyper-mart or discount stores, their discipline are directly under the command of management agents of hyper-mart or discount stores. The dress code of the promoters, vary from those of the firm employee, but the regulation falls under the command of firm's management team.

On the notion of Disney's Modal 'a clean, wholesome family environment' (Avery and Marion, 2007) the frontline worker tried to present themselves in front of customers. All the frontline workers wear the uniform dress to look the part of a single family. They have to maintain the decency and hygiene and represent themselves neat and clean. If any male worker wants to keep a beard, it must be well trimmed, the nails of the workers their shoes and hire-style should be tidy and catchy. If the frontline workers are appointed in cosmetic departments, their responsibility is to apply silent make-up on their face to catch the attention of customers. The frontline workers are responsible to greet the customers with their loud smile and explain the product related inquires in decent and polite manner. In the process of production, their first work responsibility is to present them in customer friendly manner. They have to impress the customers through their dapper look. They have to convey the message to the customers without saying that they are in a caring and comfortable atmosphere. Through their services, the customers should feel that they have taken the right decision to select the store and services for shopping.

Another vital work responsibility in the production is that the frontline workers have to introduce the products and its quality to the customers. They have to impress the customers through their communication skills to sell the products. In this process the frontline workers have to make themselves ready for higher competition between the firm employees and promoters. They even have to prepare for tough competition with their colleagues to earn higher incentives by quickly achieving the sales targets. To perform this work and responsibilities, the frontline workers have to control their negative thoughts and anxiety. They have to use their emotional labour to sell the products. Even when customers are in bad mood and the fellow competitor are showing better performance to catch the attention of customers, the frontline workers have use their 'surface-acting' or 'deep-acting' as propound by Hochschild to catch hold of customers.

Branding of the Labour

On the line of manufacturing, blue collar workers like the frontline workers also going through the labour process, to ensure maximum production at minimum cost. Based on the field observation and evidences, it seems that management uses all the means of technique to mechanize the labour of workers. The first step in this regard, began with

the hiring process. During the field work, it has been found that the management largely targets the less educated and young labour force. They target the less educated people to lessen the cost of production. The less educated people are ready to work on less pay for more hours. It also seems that to manage the highly flexible nature of work force, they prefer to hire less educated people. Since, the work of frontline worker is highly flexible in nature and to cope-up with the issue of labour retention it was found that the management hires extra labour force. This extra labour force gets managed by distributing less salary among the workers. Another technique they use is to hire young potential labour. Since, in interactive service its bodily looks that matter in self-presentation and to attract customers (MacDowell, 2009) management largely prefer youth for satisfying the pleasure impulses of the customers.

To make workers highly accountable towards their work on the similar line of Tayloristic approach the management uses supervision techniques to control the movement and production of workers. During the field work, it has been found that the frontline worker has to note their timing of entry through punch machine and report to Assistant Store Manager (ASM). During the whole working hours, they have to keep active and standing to accomplish the work. It has been generally found that to take rest or for some urgent calls or for puffing, the workers go outside the firm premises. It is because inside there is no sitting arrangement. But to do so, they have to register their timing of going out and returning in the register. This timing directly influences the performance of the workers (source-how?). Other technique the management uses to control the level of production is multilayer supervision. During the field work, it was found that to deskill the work force or to use the already acquired skills of interaction in a set channel, the management distributes the work responsibilities of frontline workers into small departments. These departments get controlled by team leaders. Further, the Assistant Store Manager (ASM) and Store Manager (SM) keep wandering on the shop floor to see the work production. Interestingly, along with manual supervision the CCTV cameras are also there, to capture the level of production.

The frontline work gets control through harmonious and alarming atmosphere by the management to make brand out of their labour and services. The former is related to socialization of workers and later is largely related to enhance the potential of the workers. It is interesting to note here that the harmonious atmosphere is largely visible in nature whereas the alarming atmosphere is invisible. For socialization of the work force, management adopts many strategies, but the purpose of this study for which I used dress code, is one of the potent methods. Though the respondents feel they have been provided uniforms to look different from general public and workers of single family, pragmatically, it seems that either the workforce get commodified as the products of the firm or unified for direct control. Providing dress code with company's logo itself resembles the branding of workforce as product of a firm. It also makes the workers accept that his internal emotions and external services, bodily gestures and performance belongs to the firms. The acceptance of getting branded with firm's logo

shows that labour has admitted the dominance of firms over to its impulsive sentiments that are being controlled by the management for production.

To affirm their control over lab our and to enhance the labour productivity management, uses Tayloristic approach of labour control. To socialised labour as per firm's norm, they provide them informal and specific training generally on shop floor. Interestingly, the social interaction skill which was inherent in the person gets modified as per the requirement of the firm as a part of training. The frontline workers modify only those limited interactive skills which are required for sale. It is generic /obvious that the superimposition of some skills and its regular utilization will suppress the other skills. In case of frontline workers also, they suppress the skill of leadership quality and command and cultivate the soft skills. These soft skills are related to submissive nature to please the customers. To make them adopt this soft skill constrictively, the management uses the stimulus of incentives on achievement of targets and promotion on the basis of performance. All these methodologies come under the ambit of visible strategies adopted by the management.

The alarming mode of control is related to the invisible labour control of socializing them as per the requirement of norms of firms. In this mode, workers are unaware of being observed. But, in the invisible mode of labour control, the workers are more attentive in comparison to the visible mode of labour control. Because of this reason for the purpose of this study, I gave the term 'Panic Labour Control' to this mode of labour control. Under panic labour control, there is fear of performance and thus they act in a manner as if the norms of management are inserted in the unconscious mind of the labour, through various means of methodologies. During the field work it has been observed that the frontline workers are putting their large efforts to achieve the given targets. To keep reminding about their sales target and performance, the management uses the panic aura. The first of its kind is a performance board. The management keeps up to date the performance on board. It seems they deliberately do this to keep reminding the workers of the performance. Although many of the respondents noted that the management keep performance board only to encourage the workers. But it is one of the methodologies to keep tense atmosphere of achieving good performance and at the same-time to maintain high performance. Another important stressful issue with the workers is incentive. The incentive on wages, keeps workers motivated. The other part of incentive is that, it keeps the worker in tense and calculative mode. The workers keep counting the incentives on daily, weekly or monthly basis. According to it; the workers put their maximum efforts to earn more incentives on their salary.

Since, in the visible labour control methodology, the workers are aware that they have been continuously watched by many agents of the management, they keep improving on repetition of monotonous work. The works related to greeting the customers, politely asking and helping the customers. They keep working to enhance the production by controlling their mood fluctuation in introducing the products when asked by the customers. It generally happens that people visit in hyper-mart or

discount stores for reactionary shopping (Tuber, 1972). The reactionary shopping is generally unplanned. The basic reason is that people go to shopping malls for their day-outs with family or friends and in this process they enjoy shopping. In this reactionary shopping, they take maximum help from the frontline workers to know about the products or decide the products for purchase. During the selection of products, both the customers and frontline workers show hostile nature. The customer even shows arrogance towards the frontline workers. But as the member of 'one family' and the brand of the firm, the frontline workers have to show smiley face and control the anger. The soft skill makes the workers adaptable to control their emotion and act as per the norms and guidelines of the firm. I can sense from these that the brand name under which they are working, end up making them a brand product. They are emotional workers but with controlled emotions.

Conclusion

The case study of frontline workers of one of the shopping malls in Delhi NCR examines the role of management and the labour process methodology they adapted to make brands out of workers or labour. The main motto of the management is to satisfy the customer's expectation of brand services. The management creates its own brand service to win the trust of customers and to sell the products in the name of brand. This they do by socialising the frontline workers on the norms of firm's identity. They provide the soft skills to the frontline workers to suppress the leadership quality and brighten the submissive quality. They used their inherent interpersonal skills of communitarian by channelizing or modifying them as per the requirement of the firm. On the line of Tayloristic approach, they commodified the labour of frontline workers to use them as branded service product to sell them in the market. As the blue collar workers of modern interactive sector, the frontline worker helps the firm in the process of production. They use their soft skills to maximize the profit of the firm. In the pressure of brand name, they bodily present themselves as branded products. They use their emotional skill to suppress the anxiety and anger to produce the amicable environment for customers in the firm's premises.

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Rights of the Elderly in India

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Abstract
Through this paper, the researcher seeks to throw light upon the problems faced by the elderly in India and observes the social realities concerning the life of the elderly. Then the paper provides a glimpse of various laws dealing with the maintenance of the elderly, and finally a comprehensive and critical analysis of the new act- The Maintenance and Welfare of Parents and Senior Citizens Act of 2007, is attempted. Although the government has come up with other welfare and social assistance schemes such as the National Policy on Older Persons, National Policy on Senior Citizens, the Annapurna Scheme, The National Social Assistance Scheme, etc. these state initiatives are outside the scope of the paper as the focus is on the social problems affecting the elderly, their right to be maintained and the viability of the new Act.

Introduction

"A child is like a sapling you plant. It will grow into a tree, and in your old age you can sit under it for shade."[188]

Growing old or 'ageing' is a natural and unavoidable phase of every human life. It comes with a lot of problems that may be due to physical, emotional and social changes taking place in life. Ageing involves a decline in the abilities of the people because of which they are not capable of looking after all their needs by themselves and need some form of assistance from others. Although traditionally, the old members were looked after by the family, with the coming of modernisation, urbanisation, industrialization, etc. the conservative system of values has been replaced by defiance and lack of respect for the elderly which has divested them of the authority they earlier had. Social changes have also transformed the way care has been given, to the elderly.

SOCIAL REALITIES

Over the past few years, Indian society has been going through some gradual but radical transformations. Cultural shifts such as the emergence of the nuclear family set up and fading away of the joint family system is one of the popular changes that we witness

188. J.M. Kalavar& D. Jamuna, *Interpersonal Relationships of Elderly in Selected Old Age Homes in Urban India*. 2(2), INTERPERSONA, 193, 195, (2008) (Last visited on November 10th, 2013)

today. Traditionally the old people in the family were viewed to be an integral part of the family. There was a latent idea of rights and duties binding the different generations in a joint family in economic, social and emotional ways. But now the values of intergenerational reciprocity and respect for elderly have also eroded and children have started viewing their old parents more like a burden.[189]

The increasing migration of the children to other cities and abroad for better economic opportunities is a major factor contributing to the breakdown of joint family setup and resulting in growing insecurity amongst the aged.[190] Also, with an increasing number of women now working, there is not enough time for them to take care of the old members of the family.[191] This kind of transformation in the living arrangements of the family has threatened the traditional fabric and norms of society. The life of the aged has been jeopardised since more people are abandoning their parents and giving up their duty to maintain them. This has been attributed by some to the growing urbanisation, influence of westernisation and the emergence of new values that are contrary to the joint family system.[192]

Due to the reducing levels of infertility and the increasing life expectancy, there is a rise in the number of senior citizens in India.[193] This is accompanied by an increase in the problems faced by them. There are economic problems such as lack of financial security due to retirement and insufficiency or absence of pension, lack of retirement benefits, no savings or income from investments, etc. accompanied by reliance on financial support from family with possibly a small income and many dependants.[194] One must also note that since a significant percentage of older population resides in rural areas and relies on agriculture for income, the increase in mechanisation also results in deterioration of income of the elderly. [195]Also there is a change in priorities and there is a trend of intra- family distribution of financial resources in favour of the young generation.196 Social problems such as social isolation, increasing dependency on the children and elder abuse, health problems, etc. also exist. Even those parents who are living with their children are usually neglected, disrespected, have no decision making power and have to compromise and adjust to continue living with them without any interference.[197]

Thus there is an urgent need to ensure that children fulfil their responsibility to support their old parents. The attitude towards the aged can be improved by increasing sensitisation of the needs of the elderly and by inculcating values of service to the

189. S.B. Desai *et al*, HUMAN DEVELOPMENT IN INDIA : CHALLENGES FOR A SOCIETY IN TRANSITION , 143, (2010) (Last visited on November 10th, 2013)
190. Desai, SUPRA note 2, at 138.
191. J.M. Kalavar& D. JAMUNA, *supra* note 1, at 195.
192. S.K .Kuthiala, *Caring for the Elderly: New Dimension in India*, 17(1&2), HEALTH AND POPULATION- PERSPECTIVES AND ISSUES, 86, 87 (1994) (Last visited on November 10th, 2013)
193. Desai, *supra* note 2, at 138.
194. Desai, supra note 2, at 141.
195. D. Jamuna, Ageing in India: Some Key Issues, Ageing International,16, 19 (2008) (Last visited on November 10th, 2013)
196. J.M. Kalavar& D. Jamuna, supra note 1, at 195.
197. S.B. Devi, Attitudes towards *Old Age*, 21(3), INDIAN JOURNAL OF GERONTOLOGY, 294, 299 (2007) (Last visited on November 10th, 2013)

elderly while bringing up children. The young need to realise that ageing involves helplessness and it is our duty to assist our old parents.[198]

Right to Maintenance of Parents under VariousLaws

Chapter IV of the Constitution of the India has looked into the concerns of the elderly. Article 41 of the Constitution of India that forms a part of the Directive Principles of State Policy and takes the form of a social security initiative directs the State to make provisions enabling old people to have access to public assistance.[199] Under Article 46 also, it is envisaged that the State should protect the economic interest of those belonging to weaker sections of the society and prevent them from injustice and exploitation.[200] However, since this is not enforceable as it is not a justiciable right but merely a positive obligation[201], a statutory provision for the protection of the elderly was made in Hindu Law. The Hindu Adoption and Maintenance Act, 1956 is the first statute in personal law to impose a duty on children to look after their parents.[202] Section 20(3) of The Hindu Adoption and Maintenance Act deals with the maintenance of parents and Section 23 deals with the ascertainment of the quantum of maintenance that is to be awarded and it is interpreted to be real and substantial.[203] Section 20(3) imposes an obligation both on sons and daughters to maintain their old parents who are incapable of looking after themselves from their personal income and property unlike the earlier law under which only the son was obliged to maintain his parents since he would be the one succeeding to their property and the daughter did not have her own personal income from which she could support her parents.[204] This Act equips both the mother and father with an equal right to make a claim for maintenance. A significant feature of this provision is that it applies only in case the parents are monetarily incapable of maintaining themselves, hence for those children whose parents are financially sound to look after themselves, the obligation to maintain such parents is only moral and not legally required.[205] There is no consideration of the financial capacity of the child to maintain his or her parents like it is in the Criminal Procedure Code and the child is merely 'bound' to maintain.[206] It has also been held that a son is responsible to maintain his mother irrespective of the fact that he does or does not inherit property from his father.[207] In a significant judgement the apex court has also ruled that the right of a parent to be maintained does not imply a right to reside with the child and it observed that: "morally they (sons) are obliged to take care of the

198. S.B. Devi, *supra* note 10, at 301.
199. Art. 41, THE CONSTITUTION OF INDIA, 1950.
200. Art. 46, THE CONSTITUTION OF INDIA, 1950.
201. Art. 37, THE CONSTITUTION OF INDIA, 1950.
202. Kusum, FAMILY LAW LECTURES, 228 (2003)
203. Sec. 20(3), The Hindu Adoption And Maintenance Act, 1956
204. Kusum, *supra* note 15, at 228.
205. B.M. Gandhi, FAMILY LAW, 294 (2012)
206. Kusum, *supra* note 15, at 228.
207. Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479.

aged mother by accommodating her in their house, yet in law we cannot enlarge that obligation to legal duty to provide her residence in the house along with their family."[208]
The Muslim Law also provides for maintenance of the elderly. According to Mulla, "Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves. A son in stressed circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm. A son, although poor, is earning something, is bound to support his father who earns nothing."[209] As per the Hedaya, a child has to give maintenance to their parents, including step mother, and grandparents if they are in impoverished circumstances. Although the Hanafi Law imposes such obligation to maintain parents on both the son and the daughter, it depends on them having access to the means to do so. The Shia Law on maintaining parents differs from the Hanafi Law because under the former, the right of maintenance of the mother and father is equal (like in Hindu Law as well) but under the latter, the mother has a preferential right to be maintained by her children as against the father.[210]
The Christian and Parsi Law make no provision requiring children to maintain their parents. Thus, for parents who intend to seek such maintenance are required to do so under Section 125 of the Criminal Procedure Code.[211]
The Criminal Procedure Code applies to all Indians, irrespective of their religion as it is a secular law.[212] Provision for maintenance of parents was in this code too, because before 1973, there was no provision dealing with the right to maintenance of parents who were not Hindus or Muslims and hence there was a need to put in place a uniform provision that could be invoked by all parents to seek maintenance.[213] Section125 guarantees parents unable to support themselves with a statutory right to maintenance and it permits an allowance of rupees five hundred.[214] Not only can the parent seek maintenance from either child on proving that the offspring has adequate resources to maintain him[215] but both sons and daughters are liable to maintain their parents who are incapable to do so.[216] The Law Commission was not happy with such a provision being made in a criminal code and it went on to say that, "The Criminal Procedure Code is not the proper place for such a provision. There will be considerable difficulty in the amount of maintenance awarded to parents amongst the children in a summary proceeding of this type. It is desirable to leave this matter for adjudication by the Civil Courts."[217]

208. Anandi D. Jadhav v. NirmalaRamchandraKore AIR 2000 SC 1386
209. Kusum, *supra* note 15, at 229-230.
210. *Id.*
211. B.M. Gandhi, *supra* note 18, at 297.
212. *Id.*
213. Kusum, *supra* note 15, at 230
214. Sec. 125, The Code of Criminal Procedure, 1973.
215. PurshottamBhatra v. Family Court NO.1 Jaipur AIR 2007(NOC0 898 (Raj)
216. Vijay ManoharArbat v. KashiraoRajaramSawai (1987) 2 SCC 278
217. P.K. Kuruvilla, Old-age Insecurity: *How Far Does The "Parents and Senior Citizen's Act of 2007" address the problem?*,52(4), INDIAN JOURNAL OF PSYCHIATRY, 298, 299 (2010) (Last visited on November 10th, 2013)

Critical Analysis of The Act the Maintenance And Welfare of Parents And Senior Citizens Act, 2007

In order to ameliorate the condition of the elderly, the Parliament framed an Act called "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007" to provide effective mechanisms to ensure a life of dignity to the elderly. It has to be enforced by the state governments individually.[218] The Act was inspired by the Himachal Pradesh Maintenance of Parents and Dependants Act, 2001.[219] It was needed in the light of rising cases of elder abuse and neglect by relatives, including children, and also to cure problems of insecurity faced by the elderly by ensuring they have a right to get maintenance.[220] The Act has an underlying expectation that children will gradually take up the role of care giving. This assumption is itself founded upon the cultural values requiring children to perform this role and the Act by embodying these moral principles enables parents to enforce their legal right by giving a legal basis to the traditional values of society and by imposing an obligation on children to fulfil their duties towards their parents.[221]

The idea behind providing maintenance is to grant financial autonomy and an independent dignified life to aged parents and senior citizens.[222] It aims to solve the problems of those senior citizens who are abandoned by their children and do not have any monetary, psychological or physical support.[223]The act fastens the means to claim maintenance such as food, clothing, shelter, medical assistance, etc. by limiting the time for disposing cases of maintenance within 90 days.[224]It simplifies access to maintenance by instituting conciliation officers who will attempt to settle the matter before taking it to the tribunal.[225] The Act also allows for installing tribunals and old age homes in every district, to help the elderly who are in distress.[226] The tribunals are empowered to take suomoto cognizance of cases if it discovers that the senior citizens are not being looked after their adult children or even their legal heirs such as grandchildren or those who are due to inherit their property.[227] In case it is observed by the Tribunal that the child or relative called upon to provide maintenance is deliberately avoiding or neglecting the tribunal, then ex parte proceeding can be conducted.[228] Given the fact that the major cause of concern for senior citizens is health and medical related problems, the Act requires the state government to provide special facilities for senior citizens, in terms of

218. Central Statistics Office- Ministry of Statics & Programme Implementation of Government of India, SITUATIONAL ANALYSIS OF THE ELDERLY IN INDIA, 24 (June 2011) (Last visited on November 10th, 2013)
219. Hitoshi OTA, *India's Senior Citizens' Policy and an Examination of the Life of Senior Citizens in North Delhi*, 16, (Discussion Paper No.402, Institute of Developing Economies, 2013) (Last visited on November 10th, 2013)
220. A. Thakur, *Care of Senior Citizens and Role of The State*, 43(17), THE ECONOMIC AND POLITICAL WEEKLY, 11,11 (2008) (Last visited on November 10th, 2013)
221. Thakur, *supra* note 33, at 13.
222. Dr. R.M. Thakur, *Philosophy of Maintenance and Welfare of Parents and Senior Citizens in India: An Appraisal*,1(4), INTERNATIONAL JOURNAL OF ADVANCEMENTS IN RESEARCH AND TECHNOLOGY, 1,2 (2012) (Last visited on November 10th, 2013)
223. G.B. Patil, *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007: A Critique*, THE KARNATAKA LAW JOURNAL, 17, 20 (2008)(5) (Last visited on November 10th, 2013)
224. Sec. 5(4), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
225. Sec. 6(6), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
226. Sec. 7(1) and Sec. 19(1), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
227. P.K. Pandey& P. Mishra, *Legal Protection of Elderly Persons in India*, 4(1), VIDHIGYA: THE JOURNAL OF LEGAL AWARENESS, 49, 53. (Last visited on November 10th, 2013)
228. Sec. 6(4), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

medical assistance such as separate queues, beds, facilities for geriatric care, etc.[229] The Act also obligates the State Government to spread awareness about the Act, give training to the concerned personnel involved in implementation of the Act and also ensure coordination between different agencies to ensure effective welfare of senior citizens.[230] In order to ensure the Act is effective and to deter children from abandoning parents, it not only provides for stringent punishment such as imprisonment for a maximum period of 3 months or a fine up to Rs. 5000 or both,[231] but it also allows the tribunal to disinherit the children at the wish of the senior citizens. [232]The children are further prevented from appealing against the punishments given by the tribunal to prevent unfair advantage to the young who may have more financial resources against the older parents.[233]

The Act is enabling because it advocates the establishment of old age homes, provide need based support, give access to better medical facilities and it also seeks to protect the property of senior citizens.[234.] The Act reduces burden on courts and ensures quick disposal of cases by the establishment of Tribunals.[235] It allows the parent to revoke transfer of property made to a child or relative on the assurance of receiving maintenance if the child fails to provide such maintenance, thus ensuring that the elderly can prevent themselves from being exploited.[236] Allowing a third party to file for maintenance on behalf of the aggrieved party and by providing for suomoto cognizance of cases, is also a welcome provision since it enables those senior citizens and parents who are even below 60 years to seek maintenance who may not be physically or financially capable to compel their children to do so on their own.[237]

The Act makes up for the deficiencies of Section 125 of the CrPC. Under the CrPC, a childless senior citizen cannot seek maintenance; the proceedings are long, costly and complicated; advocates can participate; there is no opportunity for conciliation; there is no specified time to dispose the appeal, etc. But the 2007 Act, gives the right to seek maintenance to even a childless senior citizen, sets a time limit to decide the case; bars advocates from participating to reduce the cost of proceedings; gives scope for amicable resolution of disputes by conciliation between parents and children; broadens the definition of parents and relatives; and also allows a cost effective and speedy remedy.[238]

The mere existence of a legal forum available for senior citizens to seek redressalitself, is a positive measure. However the question remains whether this is sufficient to adequately respond to concerns about the welfare of the elderly. This Act fails to do so,

229. Sec.20, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
230. Sec. 21, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
231. Sec. 24, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
232. Sec. 23(1), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
233. P.K. Pandey& P. Mishra, *supra* note 37, at 53.
234. *Supra* note 32, at 16.
235. R.M. Thakur, *supra* note 35, at 5.
236. Sec.23 (1), The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
237. Patil, *supra* note 36, at 20.
238. R.M. Thakur, *supra* note 35, at 3.

firstly, because it extends to those who own some property or wealth or have children, thus ignoring the needs of the childless senior citizens who do not own any property.[239]
In addition the Act says that the State 'may' establish old age homes and not that it 'shall' do so. Thus it is not mandatory for the State Government to set up old age homes, the Act merely permits it to do so. In doing so it circumvents the Constitutional directive given under Article 41 that instructs the State to extend public assistance for the elderly. [240]
Also the Act is inadequate because it does not give any measure to deal with children who are financially incapable of supporting their parents or grandparents. [241]
Although the Act says that the children are obliged to maintain the senior citizen so that he can lead a 'normal life', it fails to define what would be considered to be a 'normal life'. Also the maximum maintenance allowance of Rs. 10,000 granted under the Act is an insufficient amount for those living in cities.[242]
It is unfair and irrational to impose an obligation on a relative of a senior citizen just because he may inherit his property. The said relative may not even have any interest in such inheritance. Also, since wills can be modified and the senior citizen has the option to sell his property to another person, there is no assurance that the said relative will only inherit the property. There should be a rule preventing parents from willing their property to third parties when they are being maintained by their children or relatives.[243]
Although the Act is oriented to providing welfare to the parents, it is slightly unjust towards children. It only allows the parents to go in appeal against the verdict of the tribunal. It does not consider both sides to a story. For instance, it fails to account for a situation where a child may have unsatisfied parents who may misuse the Act to get more from the child despite being provided with whatever the child could afford.[244]
Although the fear of penalty would be successful in s ecuring maintenance, it does not guarantee a family life of care and dignity to the elderly.[245]
It is unlikely that parents will take their children to a Tribunal for maintenance in the light of the social pressures they face.[246] The solution to this would be to invent social security schemes that provide financial security through pensions, etc.[247]
While, the Act seems to cater to the needs of educated and propertied senior citizens and parents belonging to metropolitan cities. [248] It has been suggested that the Government should expand the scope of the Act so that it covers even those who are

239. Thakur, *supra* note 33, at 13.
240. http://lawandotherthings.blogspot.in/search?q=parents (Last visited on November 10th, 2013)
241. R.M. Thakur, *supra* note 35, at 4.
242. *Id.*
243. http://lawandotherthings.blogspot.in/search?q=parents (Last visited on November 10th, 2013)
244. R.M. Thakur, *supra* note 35, at 4.
245. Parker PN, Parents *and Senior Citizen's Act, 2007*. PRS Legislative Research Centre for Policy Research, *available at* http://www.prsindia.org/uploads/media/1182337322/legis1182407018_Legislative_Brief_Senior_Citizens_FINAL.pdf (Last visited on November 10th, 2013)
246. *Id.*
247. http://lawandotherthings.blogspot.in/search?q=parents (Last visited on November 10th, 2013)
248. Standing Committee on Social Justice and Empowerment (2007-2008), TWENTY EIGHTH REPORT : THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS BILL, 2007, 5 (August, 2007) (Last visited on November 10th, 2013)

illiterate, come from financially weaker sections or small towns, and those who suffer from long term illness by enacting schemes such as a Group Health Insurance system for their benefit.[249]

A major deficiency of the Act is that it deliberately ignores the role of pension which could act as a social security measure just because it could have serious financial consequences. This is unjustified if we keep in mind that the essential goal of the Act is the welfare of aged persons. Also, it is not rational to allow different states to have different standards to determine eligibility or even amount of pension. Hence there should be sufficient and uniform old age pension.[250]

It has been a major contention that the right to be represented by a legal practitioner was barred to both parties probably keeping in mind the financial instability of some senior citizens and to prevent them from being disadvantaged for their inability to appoint a lawyer which their children might be able to afford. But denying the right to such legal representation seems irrational sometimes because allowing one would not result in any violation of any principles of natural justice.[251]

Another important point to note is that the Tribunal has to be presided over by an officer who should belong at least to the level of a sub-divisional officer of a state who already has a variety of other responsibilities entrusted to him and thus he may not be very efficient in fulfilling his duty in this area. Hence this job should be allocated to some other independent authority.[252]

Also, leaving Jammu and Kashmir out of the ambit of this legislation seems unreasonable since it is a merely welfare initiative aimed to benefit the aged population of the country and there is no reasonable excuse for excluding the citizens of Jammu and Kashmir from its purview. The Act has also not yet been adopted by all the states and of those who have adopted it, only some have made rules for its implementation. Hence there is a need for all states to adopt this legislation and frame necessary guidelines to implement it so that senior citizens all over the country can benefit from it.

Finally, the Act ignores the psychological problems of old age and does not provide for it. It is urged that the government should set up helplines and counselling camps to cater to the emotional needs of the elderly who are often neglected and lead a lonely existence. [253]

The Act also fails to address questions such as what would happen if a parent has only daughters. Would it mean that the son-in-law is obliged to maintain the aged parent? And how many such senior citizens can a person be compelled to look after, by virtue of being a relative? Is it even fair to impose so much burden on a person who may not have the adequate means to fulfil this role towards multiple persons? In case a child

249. *Supra* note 56, at 25.
250. *Supra* note 56, at 31.
251. Patil, *supra* note 36, at 25.
252. Patil, *supra* note 36, at 25.
253. *Supra* note 56, at 33.

does not intend to maintain his or parents then it is possible that the child would be tagged as being abusive/immoral. For instance there are cases where the children regard parents to be only a source of finance and when they have reached a stage where they are no longer capable of extending economic support to their children, the children may not think they are useful and thus if they do not support their parents now they may be viewed as having violated the provisions of the bill. Such a scenario challenges the purpose of the Act and one may wonder whether the law can successfully transform the character of the said child from being abusive to caring. It appears that the Act is an attempt of the Government to evade its duty of putting into place a decent social security system for the elderly by transferring this responsibility to the citizens while the State continues to use the taxes it has accumulated for its own benefit.

The Standing Committee on Social Justice and Empowerment (2007-08) recommended that the Government should not restrict its role to merely issuing directives to the State Government and the Act should explicitly define the function of the Union Government as well. The committee even suggested more coordination between voluntary organisations, corporate agencies and the private sector for ensuring effective implementation of the Act.[254] It also threw light on the fact that a provision should be made in the Act for extending financial grants to the state government to establish the required infrastructure such as tribunals, old age homes and recreational facilities for the elderly in it to give effect to the Act.[255] The government should also ensure that private hospitals receiving concessions and benefits from the government should provide senior citizens with treatment and consultation at concessional rates.[256] In order to protect the life of the elderly from criminal elements in society, a provision could be made allowing a parent the right to reside in the house of the children or making registration of senior citizens mandatory and even stipulating visits by non-governmental organisations.[257] The Government can encourage children to look after their aged parents by extending tax sops to those who maintain the senior citizens or old parents, since the maintenance extended by the child can be viewed as social security which was essentially the role of the government which it failed to perform. There is insufficient number of old age homes in India and there is no separate budget for them either.

Although the Act suffers from various loopholes, it is a landmark legislation for the elderly in India. It is a commendable initiative that would help in bettering the basic values of society and also in giving hope to older people who have been deserted by their children or are unable to look after themselves. Hence it not only aids in removing some insecurities of old age but also helps in promoting the well-being of the aged population.

254. *Supra* note 56, at 10.
255. *Supra* note 56, at 20.
256. *Supra* note 56, at 26.
257. *Supra* note 56, at 28.

Conclusion

Ultimately, the welfare of the elderly is determined by their family conditions. But with the erosion of the joint family, weathering of family bonds and a marked decline in respect for the elderly, one can conclude that the issues of the elderly require urgent redressal. The rights of the elderly should be granted the status akin to a fundamental right since the right to life also includes a right to live with dignity and this will be possible only if the aged are able to enforce their rights legally. The state cannot be allowed to escape its duty towards the old population. The role of the state does not end by framing a mere legislation. In fact the State should be constitutionally mandated to act for the welfare and protection of the senior citizens through policy measures and further legislations catering to their needs. The Parliament, vide the 2007 budget, has already introduced the reverse mortgage scheme and the new pension scheme in order to supplement the financial income of the elderly.[258] More such measures would be welcome as they would help ameliorating the lifestyle of the older generation in the light of the increasing problems faced by them. However, it is often seen that the beneficiaries of the various government initiatives are very insignificant in comparison to the high number of people it seeks to benefit. Hence the government should be careful and proactive to increase awareness of senior citizen friendly schemes to ensure that the policies are effectively implemented and reach more people. For welfare of the aged, appropriate social security system needs to be put in place and the family setup should be strengthened so that it can fulfil its responsibility and extend support to the elderly. The increasing number of professional welfare services such as counselling, elderly care-giving, etc. should also be encouraged.

Also, one needs to understand the viability of providing for old age homes in India. The society views those children who send their old parents and relatives to old age homes as being incompetent adults who have failed to fulfil their duty towards their parents. One wonders if this attitude still persists, given the changes taking place. Also, is it fair to look down upon these children who due to job constraints are unable to themselves look after the aged and in good faith send them to old age homes where they feel their parents would have a better life? At the end of the day, the elderly are looking for some kind of compassion and human interaction so if the children are unable to provide this and they keep caregivers or substitute their presence with outside help or even resort to old age homes, is it justified to blame them?

The need of the hour is to re-examine the attitude of the society, particularly the younger generation towards the elderly. They need to be more sensitive to the requirements of the elderly- these needs could be physical, emotional or financial. The concerns of the elderly needs to be compassionately, addressed. The state has an all-important role to play in securing the dignity and fundamental rights of the elderly by way of legislation and effective implementation of the guidelines given in the Directive

258. P.K. Kuruvilla, *supra* note 30, at 300.

Principles relating to the elderly. Thus, we should have a holistic attitude while devising policies for the elderly, keeping in mind the socio-economic and cultural changes taking place in our society.

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Ban on Movie: An anathema to the Theatre goer Box Office and movie maker (Anathema or Anesthetize?)

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Introduction

The Cinema came into India in the year 1896, when AugusteLumiere and Louis Lumiere presented the first show at Watson Hotel in Bombay. The first film in India, Raja Harishchandra, was produced by DadasahebPhalke in 1913[259]. The Central Board was in operation even at that instance, but it was then under the supervision and control of Police chiefs260. It is noteworthy that the regional censors that were in effect during pre-independence era were abolished post-independence. Thereafter, the Cinematograph Act, 1952 came into force as the Central Board of Film Censors. Further, in 1983 the Cinematograph (Certification) Rules were revised and since then the Central Board of Film Certification (CBFC) is autonomously regulating the exhibition of films in India[261].

India is the largest film producing country in the world. It produces over 1250 feature films every year in more than 20 languages. About 15 million people see films every day, in India[262]. The country has the second highest footfalls in the world of an estimated $2.1 Billion behind only China which witnesses around $2.2 Billion viewers. This is a clear depiction of the amount of revenue collected worldwide through this medium.

The movies i.e. motion pictures sway people's mind to an extent that they influence their way of life, habits and thinking capacities, significantly. It means that it impacts the people a lot because while watching a movie, people are more than watching the scenes, they are living those moments. Through motion picture, the producer, the director and all others involved in film-making, express their idea and opinion as it is a potent tool of expression. It has been accepted as a medium of expression through which the artist depicts a society on the screen in a way he or she perceives.

259. Central Board of Film Certification, Home Page <https://www.cbfcindia.gov.in/main/> accessed 06 January 2018
260. PreethaKhadir, 'Film Censorship: How does it work?' *The Hindu* (4 February 2013)<http://www.thehindu.com/todays-paper/tp-in-school/film-censorship-how-does-it-work/article4376371.ece> accessed 06 January 2018
261. ibid
262. Central Board of Film Certification, Home Page< https://www.cbfcindia.gov.in/main/certification.html > accessed 10 January 2018

In the following headings and sub-headings, the reader will get to know, the role of Censor Board and how it works. Further the article testifies the validity of the bans of movies in Indian Cinema in the light of Right to Freedom of speech and expression and right to freedom of trade or business. Thus, it presents various controversies of motion pictures, highlights relevant judgements and some legal provisions and ultimately verifies the legality of such bans along with some recommendations.

Furthermore, the author shows and suggests the delicate balancing approach between the freedom of expression and the imposition of reasonable restriction. In this way, the author comes to the conclusion that the Censor Board should be regulated through law so as to maintain the Fundamental Right of expressing idea and opinion for the benefit of society in the domain of public interest. Hence, no one shall be deprived of his Fundamental Right of speech and expression which is enshrined in the Constitution.

Cinema: A Medium of Expression

No one shall be infringed of his right to freedom of speech and expression because it is the most sacrosanct fundamental right enshrined in the Constitution under Article 19(1) (a) though it is not an absolute right and has reasonable restrictions under Article 19(2). Cinema as the medium of expression is the potent tool of presenting formed opinion, idea and perception of society, an individual, group, special class, etc.[263]In the contemporary world, cinema serves as one of the most significant contrivance of the propaganda of free idea, thought, perception and reasoning. It is widely agreed that the cinema in the form of expression gets construed under the ambit of protection of Constitution under Article 19(1)(a). Internationally. Article 19 of the UDHR and ICCPR and Article 10 of the European Convention of Human Rights endorse this right.[264] However, unlike the U.S.A., these rights are not an absolute, that is, certain reasonable restrictions are imposed on it. As per international law, the imposition of restrictions on the freedom of speech and expression must conform to three tests; it should be under ambit of law, aim should be pursued as legitimate, and there should be proportionate accomplishment of that aim.[265] The pursuing of aim recognized legitimate should include protection of rights and reputation, public order, morals and national security. With respect to India, the term 'reasonable' plays a crucial role in deciding what should be restricted from exhibition. The reasonability is a much wide term having subjective aspect which is not exhaustive. The reasonability of any act would be verified by the Supreme Court on the sole discretion of judges. In the case of ChintamanRao v. State of Madhya Pradesh[266], it was proposed that the social control and the rights of the individual must be balanced. The reasonability of restrictions includes the grounds like interests of the sovereignty and integrity of India, the security of the state, friendly

263. SubhradiptaSarkar, 'Right to free Speech in a censored Democracy'
264. IrumSaeedAbbasi&Laila Al-Sharqi, 'Media censorship: Freedom versus responsibility' [2015] AcademicJournals 21
265. SubhradiptaSarkar&ArchanaSarma, 'Banning films or Article 19(1)(a)' [2006] LSI
266. [1950] SCR 759

relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence[267].

The above restrictions are same in the Cinematograph Act, 1952[268] through which the certification is to be done. These restrictions are articulated by certain guidelines provided in the Act. As far as the legislative power of the Union and State legislature over cinema is concerned, the regulatory power is vested to the Parliament under Entry 60 of the union list of the VIIth schedule. Thus, under Article 246(1) the Parliament has exclusive power to make a law on the subject-matter in list I, to which respective states must have no objection.[269] Despite that, the states have limited jurisdiction over cinema in the regulation of motion pictures under Entry 33 of the list II which is further subject to the provisions of Entry 60 in the list I. Hence, the power to make legislation regarding cinema is more or less vested with the centre.[270]

CBFC: Emergence, Role and Critics

In India, the censorship legislation was introduced in 1918 when the British felt that cinema could and should serve their colonial interests, unflinchingly. At that time there was no established film industry but the rule of censorship was imported from the West, especially the US.[271] After two years, the Regional Censor Boards were constituted in 1920 in respective territorial jurisdiction as autonomous bodies. These Boards outlined certain guidelines regarding "sensitive issues", "objectionable subjects" and "forbidden scenes".[272]

By the mid-1920s, as the sign of burgeoning film industry emerged, the needs to align more with the censorship matters were felt. Further the censorship decisions were kept beyond judicial scrutiny i.e. non-justiciable. However, the people in power after independence felt in the new age that, movie needed to be purged as they associated it with the harmful western influence[273]. Several meetings were held between the representatives of the film industry and the bureaucracy. They discussed the matters and agreed that the moral and ethical standards were indeed a priority in exhibition of film. Also, the industry decided to renovate the existing structures and overhaul the philosophy of film censorship. But the bureaucrats were in no mood to abide by the demands of industry. Subsequently, the Government of India appointed a film enquiry committee on August 29, 1949 under the chairmanship of S K Patil (a member of constituent assembly). The main directives of committee came to the conclusion upon the measures that should be adopted so as to promote national culture, education, and healthy environment and outlined further development through motion picture.[274] The

267. PM Bakshi, *The Constitution of India* (14th edn, Universal Law Publishing, 2017)
268. Cinematograph Act 1952, s 5B (1)
269. Durga Das Basu, *Introduction to the Constitution of India* (22nd edn, LexisNexis, 2015) 529
270. M.P. Jain, *Indian Constitutional Law* (7th edn, LexisNexis, 2016)
271. Someswar, Bhowmik, 'From Coercion to Power Relations: Film Censorship in Post-Colonial India' [2003] EPW 3148
272. ibid
273. ibid
274. < https://www.mediaclassification.org/timeline-event/report-film-enquiry-committee-india/> accessed 15 January 2018

committee also showed confidence to regulate and control the industry. The abolition of functional autonomy of the regional censor boards was also included. However, those boards were brought under the unified command of Censor Board of Film Censors in 1951.

Thereafter, the bureaucrats felt that an enhanced utilization of motion pictures could be made in order to develop the national culture. The centralization of film censorship was a defiantly to the principle of federalism guaranteed in the Constitution, 1950. (The leaders thought their broad political objectives like democracy, citizenship and nationalism could be served through motion pictures. In this manner, they preferred a uniform code of control which must be formulated by the bureaucrats and exercised by the Central Board of Film Censors. Again, the Regional Censor Boards were constituted with reduced power and subordinate to Central Board of Film Censors. After some time, the industry people expected further concessions and revocation in the regulation and control of film industry.[275] The new legislation was passed by parliament that marked a landmark legislation in the era of film industry when it came in July 1952. The Cinematograph Act, 1952 came into force which repealed the Cinematograph Act, 1918.[276]

The Central Board of Film Certification (CBFC or Censor Board) is a statutory body regulated under the Ministry of Information and Broadcasting (I& B), Government of India.[277] The Board was constituted to regulate the exhibition of films under the provisions of the Cinematograph Act, 1952. The ShyamBenegal Committee was constituted for the purpose of specific regulations in the cinema. The Board comprises of 25 members and 60 advisory panel members as per section 5 of Cinematograph Act appointed by I & B Ministry which constitutes many artists like actors, writers, scholars, composers, singers, politicians and industrialists.[278] The Board works on various aspects, the main objectives are to spread national culture, ensure healthy environment, revoking the traditional mind setups, modernization and education. The directives shall serve its purpose when the certification process becomes transparent, independent and responsible.[279] The role of Regional officers is also to take part in verification and granting of certificate to the film. When Board receives an application for certification being considered for public exhibition, the regional officer appoints an examining committee which when satisfied with the content of the movie and post studying its impact on society, grant the certificate.[280] If Board examines the film in the prescribed manner, the Board considers that the film is suitable for unrestricted public exhibition[281], it shall grant to the person applying, a "U" certificate[282]. If Board considers

275. *Supra* note 13
276. Cinematograph Act 1952, s 18
277. PragatiGhosh, 'Essay on the Film Censorship in India' < http://www.shareyouressays.com/essays/essay-on-the-film-censorship-in-india/116176 > accessed 18 January 2018
278. ShyamBenegal Committee (Ministry of I&B, 26 April 2016) <http://pib.nic.in/newsite/PrintRelease.aspx?relid=142288> accessed 25 January 2018
279. Analysis of Working of Censor Board in India <http://iasscore.in/national-issues/analysis-of-working-of-censor-board-in-india> accessed 20 January 2018
280. ibid
281. Cinematograph Act 1952, s 5A
282. Cinematograph Act 1952, s 5A(1)(a)

that the film seems to be under the parental guidance for the children below twelve years of age, it shall grant to the person applying for a "U/A" certificate[283]. If Board finds that the film is not suitable for unrestricted public exhibition but restricted to adults, it shall grant to the person applying, an "A" certificate[284] and if the Board considers that the film is suitable for exhibition restricted to the special class of persons like doctors, scientists, lawyers, etc., it shall grant to the person applying for certificate a "S" certificate[285]. According to section 5B(1) of the Cinematograph Act which is in consonance with Article 19(2) of the Constitution, if the competent authority considers that the film or any part of it is against the interests of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, defamation or contempt of court or likely to incite the commission of any offence, then the applicant shall not be granted certification for public exhibition.[286] After examination of film, either the Board directs to carry out relevant modifications or sanctions the film for restricted or unrestricted exhibition or refuses to grant certificate for public exhibition. Mostly, the Board considers that the film is not suitable for exhibition unless the applicant shall make certain necessary changes or cut the scenes which Board finds unacceptable for the society. In this way, Board puts list of "suggested changes" which applicant must adhere to, otherwise certification shall not be granted. However, if the applicant is not satisfied with the Board's list of suggested changes, he can apply to the Revising Committee.[287] The similar process would be followed in the revision and the final word rests with the chairperson. Further again, if the applicant is not satisfied with the Revising Committee, then the matter goes to the Appellate tribunal.[288] It is further specified that applicant can prefer appeal, that is. Aggrieved by the order of Board.[289]Furthermore, if the dispute is not resolved then the applicant can approach the court.

The decision of Central Board is not the final verdict but the final words rest upon the Central Government, though the Board is an expert body for granting of certificate of exhibition of film.[290] Also, some instances are found where Board and Central government both approve the film for exhibition but State government or state-owned channels like Doordarshan refuse to exhibit movie[291]. In such cases the role of CBFC becomes quite confusing and the question arises as to the importance of Board's decision? However, the constitution of advisory panels can only make recommendations to the Board in examination of films, despite the Boards invitation to people from respective spheres for verification and examination of film who have the final say whether to execute its decision or not. This has been witnessed in the case of

283. ibid
284. Cinematograph Act 1952, s 5A(1)(b)
285. ibid
286. Cinematograph Act 1952, s 5B(1)
287. *Supra* note 7
288. Cinematograph Act 1952, s 5D
289. Cinematograph Act 1952, s 5C
290. *Supra* note 21
291. Director General, Directorate General of Doordarshan v. AnandPatwardhan, [2006]8 SCC 433

Rang De Basanti and Da Vinci Code where Board invited the defence minister and people from the armed forces and the representatives of Catholic Bishops, respectively. If the Board invites people like these to verify the authenticity of the film, then what is the rationale behind having an expert body like the CBFC? The main shortcoming of the Board which is guided under Cinematograph Act is that if board considers that the film is not suitable for public exhibition, then it directs the person applying for certificate to exercise necessary modifications in the film as it thinks necessary, before sanctioning the film for public exhibition.[292] It means that the Board is authorized by the central government to act in an arbitrary manner. The judicious scrutiny of film is nowhere directed by the Cinematograph Act, and thus the Board is free to exercise in a manner in which officials want. But as far as freedom of expression of the applicant under Article 19(1)(a) is concerned in the aforementioned manner, there is high chance of infringement of the fundamental right of the person applying for grant of certificate when Board deems fit film to be unsuited for exhibition.(this portion can be eliminated/erased as the reference to earlier sentences makes the point self-explanatory) Also, the advisory panel members and the core members are neither the judicial body nor applying the judicial mind in verification of film for exhibition, then how they can exercise their power in the judicial manner. It is ultra vires and mandatorily proceeds in an unconstitutional manner. Further, the power is vested with the central government to guide competent authority in granting of certificates and direct in a manner as it may think fit.[293] Here also, the arbitrary power of central government can be seen in wide manner. As far as the Constitution of Appellate tribunal is concerned, the central government may appoint the secretary or other employees for the functioning of Tribunal as it may think necessary under the Act.[294] The arbitrary power of the central government could be seen in the Appellate Tribunal as well. Taking the context from the beginning of functioning of examination of film, firstly CBFC acts arbitrarily to grant a certificate as it thinks fit. After that, the revising committee is appointed by the central government where absolute power is vested to the central employees and ultimately the tribunal has retained the secretary or such other employees with the sole discretion of central government for performance, as it deems fit. Hence, throughout the verification and examination of film received by the Board, there is no judicial minded person who interprets Constitution in a way judiciary does, but they are appointed by the government who acts as a judicial body. This is unconstitutional in itself. It bars the individual's freedom of speech and expression.

Whether Censorship Is Tenable?

The legacy of the ban story is quite interesting and confusing. The motion picture which is shown on the large screen is something enthusiastic. The viewers are not only

292. Cinematograph Act 1952, s 4(1)(iii)
293. Cinematograph Act 1952, s 5B(2)
294. Cinematograph Act 1952, s 5D(7)

watching it but live those moments and all these depicted scenes impact the viewers. Thus this is the reason why pre-censorship is allowed, in case of movie only. No other medium of expression entails the subject of pre-censorship.[295] If the Censor Board finds that film is indulged in stronglanguage, gender taboos, obscene scenes, substance abuse, Kashmir issues, religion sentiments and various others sub-issues like fiction, showing riots, communal violence, serial killers, etc. which have the potential to disturb the harmony of the society which is in consonance with the restriction under Article 19(2) of the Constitution then it shall refuse to grant certificate and ultimately, the film can get banned. Now, an analysis of the controversies regarding banning of movie in Indian cinema can be taken. Bandit Queen (1994) was a movie where straight up offensive scenes including vulgarity, nudity, and explicit sexual content were shown. The Board banned this ShekharKapoor's movie which was based on the life of Phoolan Devi, though it bagged various awards worldwide. Subsequently, Supreme Court in the case of Bobby Art International v. Om Pal Singh[296]permitted some violent scene and frontal nudity on the ground that it would serve larger social purpose of creativity. In the similar way, the High Court stated that the audience is mature enough to view Udta Punjab, where the problem of drug abuse was telecast in the movie. Sins (2005) was banned by the Board because it included an erotic journey of a priest from Kerala who gets sexually involved with a woman. The Board recognized nude scenes and finally refused to give certificate for public exhibition. Water (2005), a Deepa Mehta movie got attention from the Censor Board because it depicted the dark insights on the life of an Indian widow. The movie attracted controversial issues like ostracism and misogyny.[297]Parzania (2005) was a movie based on missing of boy called Azhar during Gujarat riots in 2002. Though it received various national award, it was not screened in Gujarat as political parties deemed a ban necessary.[298]Black Friday (2004), an AnuragKashyap movie which was based on the Bombay Bomb blasts in 1993. The Censor Board refused to grant certificate for exhibition. Not only this, Bombay High Court stayed the release of film for some time until the trial related to bomb blast got over. The Pink Mirror (2003) was Sridhar Rangayan's movie based on trans-sexuality. The story revolved around the two transsexuals and a gay teenager attempt to seduce a straight man. The Censor Board banned it though it received worldwide awards. Paanch (2003) was an AnuragKashyap movie based on the Joshi Abhyankar serial murders in 1997. The movie was filled with prude language, drug abuse and high octane violence. So, Censor Board banned the movie. Urf Professor (2000) was a PankajAdvani movie that got much attention from the Censor Board as it objected to the vulgar scenes and bold language used in the black comedy. Fire (1996) was a Deepa Mehta movie which gathered much appraisal from all over the world but was unable to impress political

295. SomeswarBhownik, 'Politics of Film Censorship: Limits of Tolerence' [2002] EPW 3574
296. [1996]4 SCC1
297. SubhradiptaSarkar, 'Right to free Speech in a Censored Democaracy' <http://www.law.du.edu/documents/sports-and-entertainment-law-journal/issues/07/right.pdf > accessed 28 January 2018
298. ibid

party like Shiv Sena who claim to stand for Hindu community as it screened lesbian relationship between two sisters-in-laws in a Hindu family. The Board finally banned the movie in the country as India is a Hindu majority country. Kama Sutra- A Tale of Love (1996) was a Mira Nair movie which depicted lives of four lovers in the 16th century. The Censor Board found it to be explicit, unethical and immoral. Ultimately it got banned. Gaandu (2010) was a Bengali movie in black and white format which had lot of oral sex scenes and nudity and thus got banned by the Board. Inshallah, Football (2010) was a documentary about a Kashmiri Boy who wanted to travel abroad to became a famous footballer. His father was a militant, thus the boy could not be sent abroad. The movie attracted the Kashmir issues due to insurgency and militancy and therefore the Board denied it a certificate. Unfreedom (2015) was a movie based on lesbian love story which brought two taboos in one passage; the Censor Board found it to be vulgar, thus the board banned it across all over India except a few states. War and Peace (2002) was the documentary created by AnandPatwardhan based on nuclear testing. It constituted communal violence. The board suggested modifications with 21 cuts. AnandPatwardhan objected by saying that those cuts would be unreasonable and ridiculous that would not hold up in court also.If those cuts were made then freedom of expression would have been curtailed. The Supreme Court permitted the release of documentary uncut in the case of Director General, Directorate General of Doordarshan v. AnandPatwardhan[299]. Lipstick under my Burkha(2017) was a movie produced by PrakashJha and directed by AlankritaShrivastava. It consisted of sexual scenes, audio pornography, nudity and abusive words. Thus censor board banned the movie though it received worldwide awards and applause. When the case went to the Film Certification Appellate Tribunal, "A" grade certificate was granted. Padmaavat(2018) is a recent Sanjay LeelaBhansali movie which attracted a lot of controversy though it got certificate to release in India after many modifications in the scene. The movie based on the Muslim and Rajput conflicts for getting the Rani Padmini. The movie got banned as the Rajput KarniSena protested that the movie is full of distorted fact, portraying RaniPadmini in a bad light and demeaning the Rajputana community. Due to vandalism and threat to public order, movie got banned in Gujarat, Madhya Pradesh, Haryana, Himachal Pradesh, Uttarakhand and Rajasthan. But when movie is released in other states it is found that there is no way to degrade the Rajputana community though this allegation could be acceptable, if Muslim community would have protested. In this recent controversy, Supreme Court stated that it is the role of state to tighten the security in the particular region if the public order is disturbed or seems to be disturbed. It would not be accepted that movie has been banned in the particular state because it caused public disorder. The maintenance of public order is the state subject; it would not exempt the state officials who claim that there is threat to vandalism due to exhibition of movie. Also, the state officials or executives cannot violate fundamental

299. [2006]8 SCC 433

right of the movie maker in this manner. If the film attracts protest in a heat of passion like in the latest controversial movie "Padmaavat" then the violent groups ransack theatres against the screening, damage private vehicles, shops and houses which violate the right to property under Article 300(A) of the constitution. Thus, the ban on movies is not on the constitutional ground but to serve the interests of people in power whether socially, economically, or politically. The emergence of public disorder in the above manner would more or less indicate the recklessness of functioning of the state and this would directly or indirectly affect the Article 19(1) (a) of the movie maker. In the case of Superintendent, Central Prison Fatehgarh v. Dr. Ram ManoharLohia[300], it was proposed that the public order is maintained unless it is instigated by a class of persons to disturb harmony of the society or induces to do an act which is against the public interest.

In the aforementioned films, it has been shown that so many films did not get certificate for public exhibition and the applicant's violation of fundamental right to expression in those instances could be seen. However, in the case of State of Madras v. V.G. Row[301,] it was held that if the restriction on screening of film would have been done with reasonably, though there is no specific or standard pattern of reasonableness then the violation of fundamental right shall not be questioned. But it should be noted that reasonability is the sole factor in determining what should be shown and what should not, in case reasonability is proven unreasonable by the judicial mind then all the violation of fundamental right would be felt. Thus, in the case of RomeshThapar v. State of Madras[302,] the reasonability test has been given very much importance as to avoid someone's fundamental right from infringement. In the case of K.A. Abbas v .Union of India[303,] the Supreme Court had given the test of ordinary man; the test of reasonability should be as per common sense and prudence of ordinary man not the hypersensitive man. The Censor Board applies their mind and reasoning to determine what is suited for the society but once again it is said that they are not judicial minded person. It would be possible that what they think of unreasonable could be reasonable in greater extent. Also, the Central Government has given too much power to the executive, it has become impossible to perform impartially in the examination of a film. The legislation is full of arbitrary acts. In a democratic country like India, everyone has freedom to express his views which might not be accepted by majorities but does that mean their views should be restricted; it was stated in the case of Maneka Gandhi v. Union of India[304.] In the same way, movie is made for everyone but everyone is not bound to watch it. It depends on the person who opts to watch it or stay away from it. Movie is not screened for everyone but available to the people who want to watch it and buy a ticket and go to theatres. Even if large number of people are not willing to watch it, it is

300. [1960] SCR (2) 821
301. [1952] SCR597
302. [1950] SCR 594
303. [1970]2 SCC780
304. [1978] SCR (2) 621

available for those who want to watch. With the above rationale, the director or producer make a movie with their hard works, efforts, time and money. They have full opportunity to exhibit their message through any medium. Also, the director, producer and all others who involved in the exhibition of movie have so much desire to collect revenues as they invest handsome amount of money in a movie. Thus, by banning of film, the loss of revenue is also suffered. As far as banning of film by Censor Board is concerned, it should be noted by the Censor Board that there is large distinction between the mindset of traditional people and the people of today's world. What seems to be vulgar or against the public policy to the person living years ago, now seems to be obvious or general to the same person with modern outlook. This means it is very subjective and the perspectives of lay man obviously differ from one another. The same reasoning has been given by the Supreme Court in the case of ShriChandrakantalyandasKakodkar v. State of Maharashtra[305], the board has to take all these into account and ensure in-depth analysis in the way society perceives the contemporary world. Only then can banning of films be justified and act in bonafide for the society. Otherwise the people involved in the film would confronts with the violation of fundamental right to freedom of speech and expression. The obscenity ground for banning of movie is considered to the extent when the matter goes in the hand of people who are not extra-influential in determining what is obscene or what is not. Also, the vulgar and obscenity are two distinct term. Former is legal to an extent but the latter is not. Former arouses the feeling of contempt, disgust, boredom and revulsion but latter would amount to depravity, corruption and debasement of morals of the viewer. The above contention has been stated by Supreme Court in the case of Samaresh Bose v. AmalMitra[306]. The test of obscenity has been stated in the Hicklin's case where it was held that-

"Whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. If is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character.[307]

Once a movie is released and gets banned, mainly it is so because it fell from the taste of the people in power. In the case of UshabenNavinchandraTrivedi v. BhagyalaxmiChitraMandir[308], it was claimed that the movie "Jai SantoshiMaa" should be banned as it indulged with the contents of conflicting ideas of mythology between goddesses but the appeal was dismissed by the court saying that if religious sentiments of some people who are extra-obedient god believers get hurt, the movie cannot be banned. Restricting movie without justification would violate the right of the viewers as

305. [1962] (2) SCC 687
306. [1985] SCC (4) 289
307. Ranjit D. Udeshi v. State of Maharashtra, [1965] SCR (1) 865
308. AIR [1978]Guj 13, (1977) GLR 424

well, because they also have right to receive idea and information[309]. Thus, banning of movie shall not only violate right of the maker but also right of the viewer[310]. Hence, Article 19(1)(a) includes right to expression and right to acquire information and disseminate to the public at large[311].The total prohibition of film by Censor Board is declared unjustified by the Supreme Court in the case of State of Gujarat v. MirzapurMotiKureshiKassabJamat[312]. In this case, it was held that the total prohibition under Article 19(2) to (6) must satisfy the test that a lesser alternative regarding exhibition of film would be inadequate. After all, banning of film would not only affect the fundamental rights of the director or producer but also the economical aspect of many people. Film making, collection, distribution, promotion, screening are essential of film industry business which is guaranteed under Article 19(1)(g) of the Constitution. Also, if the movie on Gujarat massacre got banned which was based on real facts then why did the movie like Gaddar based on wild imagination consisting of so much violence between India and Pakistan get immense approval. Why this discrimination? In the case of Ajay Goswami v. Union of India[313], the Supreme Court held that by considering the adult content in newspaper which would somehow be readable by the minor, individual freedom of the people who are 18 plus to receive information (adult content) cannot be restricted. No guidelines were given by the court which ensures the particular content to be suitable for publication. In the same manner, if movie contains few shots of adult content, it must not be banned by saying that it harms the societal approach of watching movie.

What are the grounds or criteria upon which determination of what is within the restriction of public order, obscenity, sovereignty, integrity, defamation etc. and what is not? In the case of S. Ragarajan v. P. Jagjivam Ram[314], the Supreme Court has said that the restrictions under Article 19(2) must have direct nexus and proximate to the peril to the society. The ban would not be appreciable unless it is not far-fetched. Under no circumstances in the above facts and reasoning, ban on movie is justified. It leads to the violation of fundamental rights, legal rights and constitutional rights.

Need for Reformation In Cinematograph Act& Board

In the above heads, it is lucidly established that loopholes exist in the Cinematograph Act itself. If the Act would have been made more specific and non-arbitrary, then the question of flaws would not be debated. As per author's recommendations, the arbitrary power given to the members of board should be curtailed to an extent. It is the absolute power which enables the movie maker to suffer and coerce him/her to raise questions like what reasoning is applied in not banning of one film and what justification is given in banning of other film. The other recommendation is that the

309. L.K. Koolwal v. State of Rajasthan, AIR [1988] Raj 2, 1987 (1) WLN 134
310. Ministry of I & B v. Cricket Association of Bengal, [1995] SCC(2) 161
311. India Express Newspapers Pvt. Ltd. V. UOI, [1986] SCR (2)287
312. [2005] (8) SCC 534
313. [2007] 1 SCC143
314. [1989] SCC (2) 204

delegated legislation must be exercised. That is the principle of federalism should be followed so as to empower both Union and State though State has limited power to legislate upon matters with respect to movie. The members of Board should consider the modern mentality. The public centric approach must be taken into consideration. This means what the people of today want to see cannot be compared with the people living in the ages of decades ago. Otherwise the terms like modernization, globalisation, and awareness have no meaning. It should be noted that what seems to one person unreasonable may be reasonable to another. Thus it is very subjective to decide what must be shown or restricted. Hence, disregard of few people cannot make the film unsuitable for all. It is the choice of the viewer. The people or community who feel humiliated can stay away from it. It is the choice not the inducement. The group of less than 100 people cannot decide what the people of country of second largest population in the world want to see and also it is ambiguous which scenes debase and corrupt the moral of the viewer. Thus survey mechanism must be brought to an extent, in the Cinematograph Act. As there is so much money, time and assets invested in making of films, one more investment regarding survey cannot be problematic. On analysing the composition of members of Board or advisory panel, it would be found that not many belong to the judicial bent of mind or background. The author is not saying all the members must be Retd. Judges of High Court or Supreme Court or Advocate General or the person having professionals in law but endeavour to put that some members within the Board must possess judicial mind as there is excessive requirement of the judicial application because the interpretation of Constitution is necessary and important. Till now, the emphasis is on the restrictions which are given in the Cinematograph Act and it continues to be. The interpretation of Art.19 (2) is done directly or indirectly because it is guaranteed by an Act also, the officials cunningly bring the word 'reasonable' before restriction and exercise arbitrary power. However, nowhere in the Act, Art.19 (1) (a) and 19 (1)(g) have been emphasised. Thus the right to freedom of expression can be easily curtailed and for this the officials or members have been given absolute power. Thus it is recommended that there must be emphasis on Art. 19(1) (a) and 19(1) (g) in the Act. Consequently, the author wants to state that there is urgent call for the legislation in the amended form of Cinematograph Act, 1952; otherwise it is proposed that judicial activism be exercised in this matter by considering the principle of "social want".

Conclusion and Suggestions

What the people of today's world want to see cannot be compared with the people living in the ages of decades ago. Otherwise, the terms like modernization, globalisation, and awareness have no meaning. The reasonable restriction on the various freedoms is quite acceptable unless it has not been twisted as per the wills of people in power. The term 'reasonable' is itself inclusive, thus it exposes its meaning the way it gets interpreted. One major restriction is public order. If the movie is banned due to

disturbance of public order in a particular State, then it should be thought that it is not the producer or director who is responsible for disorder, but the duty of state to maintain public order. The curtailment of Right to freedom of expression in this manner is not tenable at any cost. Also, the country is developing and advancing at a high pace. Talking about the hurting of religious sentiments and violence with few adult content are simply ridiculous. The projection of reality like Kashmir issues, Gujarat riots, partition, discrimination and backwardness through audio visuals must be appreciated because it depicts true stories. Also, it is the easiest way to acquire information. An illiterate person can also understand the reality through common sense and no other medium can serve the purpose. General public may be devoid of basic education but not of common sense. They can make their own opinion. Also, the movie and reality are two binary complements. On the one movies show the reality from which people get information and on the other hand, the person follows the character in the real life. That's why it is called that movie is the medium which has large potential to influence and thus pre-censorship is allowed in this medium only. By restraining the movie would not serve the purpose because pirated version is easily available for people to watch. For example, Udta Punjab (2016) was a movie by AnuragKashyap which was available on torrent site with watermark "censor" on the top of screen. So even banning of movie is not the solution but it does impact terribly on the revenue collection. In this way Article 19(1)(g) would be infringed surely and the purpose of restraining people from watching it would not be served. Also, if the movie is tagged with title and people make their view on it then changing of title and afterwards release has no meaning. For example, changing the title from Padmavati to Padmaavat has no essence but the ridiculous act done by Supreme Court because people depict the movie in the same sense as depicted earlier.

Consequently, the bill of amending Cinematograph Act, 1952 must be brought and passed as soon as possible. It must include broad reformations in the current way of working Central Board of Film Certification.

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Human rights and its seminal importance in today's World

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Abstract
Human beings as members of the Earth play a substantial role when compared to the other subsisting living organisms. The reason being, their cognitive capability and intellectual capacity. With the use of these two powerful skill sets, man has dawned upon himself unimaginable tasks and challenges. Nevertheless, he has found feasible solutions to them too. Well at least most of them.
At present, with growing industrialization and competition in the economy, each country is dwelling into different means to ensure its permanence on the global stage. It has resorted to diverse and even many condemnable practices such as war, armed conflicts, unrestricted and unregulated use of the Earth's limited resources etcetera to gain superiority. All of these have proven to shake the very foundation of human existence. The Human Rights.
The aim of the author in this article is to convey to its readers, how everyday practices which start at the grassroots level of a single citizen and which expands to even policy making in government institutions, has either a direct or an indirect detrimental effect on the human rights for every member of this world.

Keywords: *Human Rights, Economy, Slavery, War, Education*

Introduction

After Europe had plunged into the Second World War, a clear conclusion that something had terribly gone wrong in the Western civilization was drawn. One of the most horrendous wars which resulted in the death of thousands of soldiers and civilians, the barbaric murder of millions of Jews in gas chambers by the Nazis. The sheer brutality in the atrocious killing of the enemies, finally led to some introspection.
Can the world sustain itself, if events such as these concurrently take place? Would it be permissible and humane on our part, to watch strangers die in cold blood? Are these acts justified or do they warrant some sort of an intervention?
Thus, as an answer to these questions, came the establishment of the United Nations in the year 1945. Recognizing the importance of the value each human being possesses, the Universal Declaration of Human Rights was passed in the year 1948. Till date, this international declaration has been recognized by numerous countries all over the world

and has been incorporated into various international treaties, economic transfers, constitutions and Bills.

The raison d'etre of the Human Rights Declaration was to protect the basic intrinsic right of every human being to lead a dignified and humane life. Though initially human rights was recognized only in the context of prevention of violence, it is pertinent to realize that these rights are necessary for a better and fair distribution of necessary resources such as health, education, economic opportunities and most important of all, justice.

The Foundation of Human Rights

Eleanor Roosevelt, in the formulation of the Universal Declaration of Human Rights recognized three steps to achieve the protection of human rights. Namely,

i. A set of general rules and principles.
ii. The codification of the said rules and principles.
ii. A practical implementation of the same.

The preamble of UDHR seeks to achieve a world free of slavery, inequality and just treatment of all members of the world. Specifically, slavery, restrictions on freedom of speech and association as well as inaccessibility to education are to be regulated and controlled.

The aforementioned restrictions and illegal practices result in a cycle of poverty, injustice and vulnerability that subsist for eternity. A strong international response, with the consensus of members of the world including the support and cooperation of each citizen will prove to be beneficial in achieving a better and just society by protecting the sacred human rights.

In order to bring home the necessity of human rights and their percolation into various socio-economic fields, let us understand the four obstacles that the UN Declaration seeks to curb.

Anti-Slavery and Anti-Torture Laws

Slavery refers to the owning of one person by another by means of superior economic and social standing and exploitation of the person held in such condemnation. Slavery hinders the basic right to freedom and choice of livelihood. Forced employment due to indebtedness or preceding obligations, victimize the poor and turn them into slaves.

Torture implies the use of force, fear or coercion into inflicting pain and suffering on people. Torture here does not necessarily refer to physical harm or injury. It also includes psychological and social torture. Examples would include forced abortion, genital mutilation, sex trade and prostitution.

The above two atrocious categories of acts need to be eliminated or at least curbed to a great extent in order to strive for a humane society that seeks to protect human rights.

Restrictions on Freedom of Speech and Association

The right to speech, association and movement are called expression rights. Various international conventions, the ICCPR (International Covenant on Civil and Political Rights) and the ICESCR (International Covenant on Economic Social and Cultural Rights) also give prime importance to these rights.

Every person has the right to state his opinions and associate with members of his choice. The same right can be restricted, if and only if, it is necessary to protect the public order, national security or if it poses a considerable threat to the public. The imposed restriction has to be necessary, reasonable and just. The situation at hand must be grave enough to warrant the restriction of the expression rights. It cannot be arbitrary.

Education

An often neglected source of empowerment is education. It is a fundamental human right and a prerequisite as it helps an individual to pull him(her)self out of poverty, procure knowledge regarding the manipulative tactics used by those in power and also to achieve a better socio- economic standard by raising one's standard of living.

The main barriers that prevent every citizen of this world in achieving formal education are a lack of investment and inadequate financial resources, gender-based discrimination and patriarchy which prevent women and young children from acquiring their right to education.

Human Rights and its Ascendancy on Various Fields

Though human rights have been recognized by countries worldwide to be of vital importance, in the age of globalization and technological advancement, innumerable changes have taken place. The rampant spread of technology and competition has resulted in countries taking drastic measures in keeping up with their rivals. These acts have caused a direct threat to human rights.

In the following section, we will be looking at the changes taking place in various field and the manner in which they have had a direct bearing on the violation of human rights.

Civilian Wars in the Modern day

Wars, which gave the impetus in establishing the UDHR have once again made their presence. The civilian wars taking place in countries such as Syria, Myanmar, Sudan and Bosnia to name a few, have resulted in the most atrocious crimes.

In the Syrian conflict, according to reports there has been a dislocation of 2,50,000 civilians from their homes under forced circumstances. The use of chemical weapons with agents such as Sarin and Sulphur havehad a tremendous impact, damaging and taking away the lives of millions.

A common tactic used by the armed soldiers as well as militants is rape. Sexual violence against women is used as a warfare tactic. This deeply impacts the dignity of women

and the control they hold over their body. It degrades a woman's autonomy in every way possible. [315]

Taking cognizance of this gross form of exploitation, the UN has mandated countries to legalize abortion for war victims when their life is in danger. Many countries in Latin America, such as Chile, Nicaragua and Malta have strict laws and even today do not allow for abortion of any kind under any circumstance.

The situation in Myanmar is not too different. The main concern here is the human rights violations of the minority ethnic Muslim community, the Rohingyas.

An attack that killed nine police officers was presumed to be carried out by the Rohingyas and therefore the government launched a clearance programme to find the culprits. But what resulted was a brute misuse of power by the military. Summary killings, rape and sexual violence, torture and arson were the major crimes that were carried out by the military. Arbitrary firings and gunshots coupled with unwarranted arrest infringed their basic rights. Restrictions imposed by the government hindered access to humanitarian aid, health care as well as food and water. Custodial rape by the officers has also been noted.[316]

What has to be observed in these conflict situations is that rape and other forms of violence are treated as a tactic or a framework of retaliation against the enemy. A tit for tat strategy. It results in not just a gruesome physical impact on the victims, but also puts them through severe mental agony and trauma.

Health

There has come a time when health needs to be considered as a human rights issue more than an economic or development related issue. Inequality that results from discrimination on the grounds of sex, age, gender, lack of money and ethnicity has a tremendous impact on access to health care.

Individuals belonging to the lower strata of the social hierarchy as well as weaker sections of the society are often socially excluded. Owing to lack of financial resources, these vulnerable groups find it hard to access basic healthcare. The instances of communicable and deadly diseases such as HIV/AIDS, Tuberculosis and Zika have increased on a large scale. But due to their social position they succumb to such diseases without any recourse.

A woman plays a considerably important role in the society. Through her, procreation takes place, which results in the growth of future generations. Inevitably women are necessitated to approach medical services more than men. This is because of biological and sociological reasons.

Childbirth and pregnancy are two of the major issues that concern only women. A woman's body is biologically created to procreate and to nurture and nourish a healthy child that would lead to the growth of a salubrious member of the society. But by

315. Lucy Rodgers and David Grittens, *Syria : The Story of the Conflict*, BBC News (11th Mar 2016)http://www.bbc.com/news/world-middle-east-26116868
316. Soe Zeya Tun, *Burma – Events of 2016*, Human Rights Watch (11th Oct 2016)https://www.hrw.org/world-report/2017/country-chapters/burma

denying her an access to adequate health care might cost both her health as well as the infant's health. On an individual basis, a single case of maternal or infant mortality might not appear to be a major eye-catching issue; but when infant or maternal mortality deaths occur on a large scale, during the process of childbirth or pregnancy, it can endanger human livesAnd also the lives of the generations to come.

Therefore, it is the duty of the state governments to ensure that affordable and accessible healthcare is made available to its citizens.

The root cause of unequal distribution of health care resources and medical opportunities is due to marginalization. In order to attack the root cause, governments and international bodies dedicated for such purpose need to create mechanisms that prevent marginalization of certain sects of the society based on gender, sex and ethnicity. Women, children (especially girl children) and indigenous groups have been positioned in the social strata in such a manner, so as to not possess the power to voice their discontent or the unjust treatment that is vetted out to them. Due to this, acts of early child marriage, alienation of the concept of family planning and sex trade have become an everyday occurrence. Chances of protracting deadly diseases such as HIV and other STD's has increased exponentially.

Access to the basic necessities of life including clean drinking water, sanitation, food for subsistence etc. need to be provided to every member of the society regardless of their economic and social standing. Only then can fairness in the form of justice be achieved. This in turn would help in an equal access to health care, which is fundamental to human rights.

Human Trafficking

Human rights are an ideal. An ideal that many hope for and an ideal that is a reality for many others. Members situated in the top of the hierarchy ladder are hardly aware of the existence of human rights, as the world provides it for them owing to their position in the society.

But for a destitute individual, suffering from a deadly disease and living in either an extremely unhealthy or unsafe environment, existence on a daily basis becomes harder and harder. Human rights are not tangible and cannot be empirically proved to exist. They are the beliefs that, a human existence entails certain requirements without which a human being cannot live.

Trafficking refers to the recruitment, hiring or harbouring of an individual for the purpose of exploitation. Trafficking occurs through coercion, fear of death or injury or through any form of deception. Usually two types of trafficking are recognized, including by the UN; Sex Trafficking and Labour Trafficking.

Sex trafficking mainly involves the forced participation of people (mostly women) in sex acts and forced prostitution. There are underground chains that interlink various mafias which primarily deal with selling young girls and women for the purpose of money.

Labour trafficking mostly takes the colour of slavery and servitude. There have been numerous instances of men and young children being caught up in bonded Labour without any legal or moral obligation to work for the people that have held them in such bonds. For example, a Bangladeshi construction worker in the United Arab Emirates was made to work for a minimal wage until he repaid his recruitment fee because his employer had confiscated his passport. For the purpose of cheap labour and efficient skills, young children are trapped into the business of trafficking. They are objectively sold as commodities with no consideration for their human rights.

The problem that has risen, is the distinction created between sex and labour trafficking.

These two forms have been made disjoint by the international community. But in actuality, there is almost always an overlap. First, a person employed in perpetual domestic work can be forced into sexual activities either with the employer or his accomplice. Second, there is a stigma and preconceived notion that is attached to sex work and sex trafficking. Anybody who is involved in the business of sex work, whether voluntarily entered into or not, are considered to be victims of sex trafficking.

But this is highly problematic and unacceptable in a growing world of liberalization and democracy. A person has a right to choose his field of employment or livelihood as long as it does not portray a threat to the public order or the security of the state. A woman who voluntarily enters into the profession of prostitution, should not be considered to be a victim of sexual trafficking.

Human trafficking needs to be given a human rights approach because, it puts the victim of such trafficking at the centre stage of right violation, irrespective of the form of trafficking. We usually award more attention to sex trafficking compared to other forms of trafficking. There is always a gendered bias in providing aid and institutionalized support for such victims. As a result, our policies too centre primarily on prostitution and sex trade.

Moreover, trafficking is usually viewed as an organized crime. The institution to award protection to victims of trafficking was provided under Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. But even this protocol takes the approach of recognizing trafficking as an organized crime that entails punishment and trials; not as a human rights issue.

This causes the intervention of criminal investigations that make victims of trafficking a compulsory part of such investigation. Their choice of taking or not taking part in such investigations is completely negated. Sometimes when trafficked individuals refuse to testify against their traffickers, an adverse inference is drawn and they are persecuted for the same.

By bringing in a human rights approach, primacy is given to the protection of the rights of individuals ad human beings; not according to their gender, race or the form of exploitation that they have been put through. The entire process of looking at

trafficking from the criminal lens is avoided, and a more just system of human rights and its violation is given supremacy.

Human Rights and Sustainable Development

The idea of sustainable development was born at the UN Stockholm Convention of 1972 and later, the Rio Earth Summit of 1992 brought together countries around the world in recognizing the importance of protecting the environment while harnessing developmental goals.

In the wake of rapid globalization, the emphasis of a human rights approach while achieving a sustainable development has gained sufficient importance. The two are interlinked and cannot be viewed as disjunctive entities. They are not mutually exclusive. As a matter of fact, recognition and acknowledgement of human rights is a necessary precondition for achieving any of the sustainable development goals.

There are several factors that come into play while considering sustainable development and human rights.

Understanding the Human Rights Approach

The Human Rights approach acts as a conceptual framework in formulating the various policies, regulations, discussions and convention that center around sustainable development. To imagine a Right to Life without having a Right to clean water, air and environment would be futile and meaningless. This framework helps to shape the contents of various policies and legislations of the government.

At present, economic growth and globalization has been given extensive support and encouragement. In order to 'fuel the economy', rapid production and consumption of resources is encouraged. Though the developed countries might have the capability and the necessary resources to carry out such vast activities on Earth's limited resources, vulnerable groups in the developing countries including young women, children, indigenous and ethnic communities get further marginalized.

Therefore, it becomes necessary to take the Human Rights approach.

In September 2015, the UN along with its member countries adopted seventeen sustainable development goals that had to be achieved by the year 2030, in order to overcome poverty, inequality and to ensure a prosperous life for all of Earth's inhabitants.

They are,

1. No poverty
2. Zero hunger
3. Good Health and Well-being
4. Quality Education
5. Gender Equality
6. Clean Water and Sanitation

7. Affordable and Clean Energy
8. Decent Work and Economic Growth
9. Industry, Innovation and Infrastructure
10. Reduced Inequalities
11. Sustainable Cities and Communities
12. Responsible Consumption and Production
13. Climate Action
14. Life Below Water
15. Life on Land
16. Peace, Justice and Strong Institutions
17. Partnership for the Goals

It is quite apparent on the face of it, that these goals do not look at the problems or obstacles concerning a particular country or continent. The goals mentioned above, if ignored, have the capability of affecting the entire world due to their enormity and immediacy.

Right to Clean Environment as a Human Right

The right to life, privacy and dignity are called 'derivative rights'. They are considered to be paramount rights which cannot be alienated. States and their governments should strive to ensure that these rights are safeguarded under any given circumstance.[317]

Though a Right to clean environment is not explicitly provided under many constitutions, including India's, it definitely comes into play when we talk about the Fundamental Rights. In order to ensure that a dignified and wholesome human existence is observed, it is necessary to interlink the emphasis of a clean environment to that of human rights.

Right to Life

This right is considered to be the backbone behind all other rights as it ensures the existence of a human being. Only after this right is guaranteed, can a person invoke his other rights as guaranteed by his state and the international institutions. The UNDHR and its two covenants, the ICCPR and ICESCR deem this right to be fundamental and have mandated its member states and signatories to give it a wide interpretation.

A narrow interpretation of Right to Life, in providing just physical security in the form of, absence of arbitrary killing or detention is not sufficient. A dignified human existence in order to lead a humane life includes the Right to have access to clean drinking water, unpolluted air, nutritious food and shelter. When an access to these resources is denied or curtailed, human existence comes under a threat.

For this reason, the idea of Environmental Justice has set foot.

317. Linda HijjarLeib, *Human Rights and the Environment*, 72-79, Brill (2011)

What is Environmental Justice?

It is a type of justice that seeks to ensure that the consequences of exploitation of nature's resources carried out for the purpose of development, are not disproportionately borne by vulnerable and marginalized groups. Most times, these groups do not reap any form of benefit from such developmental activities, but are made to face the detrimental effects of the same.

For example, at the beginning of the century when globalization was in its infancy, iron and steel factories, medical labs producing hazardous biochemical wastes were usually built in and around areas where the black community used to reside. Owing to their social and economic oppression, they did not have the opportunity to voice out their discontent and the hardships they were facing as a result of such activities.318

Environmental degradation poses a potential threat to life. There have been numerous instances of arsenic and lead poisoning in water due to which hundreds of lives were taken. Taking cognizance of the growing issue of environmental threat to human life, various countries and their judicial systems have necessitated certain changes in the way such matters are approached.

The Hague Declaration on Environment created in 1989, is an important non-binding document which has linked environment and its protection to a valuable human existence. Various countries have taken inspiration from it. For example, in India, the Supreme Court has been proactive in defending the environment by expanding the right to life. It has given its decisions on such matters, both an anthropocentric and eccentric dimensions.

Education

Education was always considered to be a privilege. I might have to correct my statement here; Education is considered to be a privilege. Until recently, the idea of spreading knowledge and awareness was solely viewed from the economic lens. The monetary gains that would accrue to an individual after completing education was the sole incentive for enrolling oneself into educational institutions.

Naturally when anything is considered to be a privilege, it is entirely accessible only to the elites and socially well-off members of the society. Men, boys and a few women from rich developed countries had access to education. Women, youth and various marginalized indigenous groups in developing countries were deprived of basic education. As a result.They remained illiterate and ignorant for generations. Various social practices that went contrary to the very existence of human lives were practiced.

In recognizing the atrocious practices that were carried out against women particularly, and to protect their dignity, the importance of education to every member of the society was stressed upon. Education finds itself hard to percolate and penetrate into rural

318. Supra

areas and peripheries due to lack of resources such as finance and labour in the form of efficient teachers who teach poor women and young kids.

The practices of child marriage and Female Genital Mutilation (FGM) are rampant even today, in many parts of the world. These two acts in particular, degrade the dignity of a woman and deprive her right to protect her basic bodily integrity. It is mainly carried out to curb a woman from having premarital sex and to maintain the family's honour in the eyes of the society.

The practice of FGM not only includes excruciating physical pain but also various health hazards attached to it, such as haemorrhage due to mental shock, death due to excessive bleeding and loss of blood as well as infections caused due to unhygienic processes.

Education acts as a tool in educating people about these various factors and how it can affect all of them both individually and as a society as a whole. By getting the women of a society educated, they can not only gain employment and contribute to the economy but also marry and have kids at a later age, provide them with basic necessities such as nutritious food and education. This will benefit the society in achieving a healthy future generation. It makes the world sustainable in the future by drastically reducing infant a maternal mortality rates due to lack of education as a primal cause.

Therefore, education should be viewed from the human rights perspective as it is a fundamental tool in achieving a sustainable and prosperous world in today's world of threats.

Climate Change and Human Rights

The Intergovernmental Panel on Climate Change, consisting of the world's leading environmentalists as well as nature scientists, has affirmed that climate change is occurring and it is attributable to the various changes that are taking place across the globe, which are directly or indirectly affecting human life.

In the age of modernization and globalization, industrialized nations have resorted to excessive use of harmful modes of production that have resulted in the emission of Green House Gases (GHG's). These emissions over the years have led to the depletion of the Ozone layer, which surrounds the Earth's atmosphere. As a result, detrimental effects in the form of increased temperature, flooding, melting of snow-caps and indiscriminate natural disasters. The lives of many, and particularly those of vulnerable and marginalized groups gets affected.

Here are a few instances of the effects climate change can have on the lives of people.

- Increased temperature - Increases the instances of several diseases such as diarrheal diseases and other mosquito borne disease. Death due to excessive heat has also been noted in many states of the world.
- Rising Water Level - This is one of the greatest concerns. An increased water level causes flooding, salinization of fresh water bodies and population displacement. It also causes submersion of small island nations and poses the greatest threat to their life.

- Changing precipitation patterns affects the access to water, which is used both for consumption and for the purpose of irrigation. It therefore affects not only a person's life, but also his livelihood.
- The increased occurrence of unnatural events such as floods, droughts etc. endangers life and also housing of many.

Since the era of Industrialization (from 1850 to the present), developed countries have been the largest contributors of global warming and climate change. Though their combined population does not account to even 15% of the Earth's population, their emissions amount to 45% of the total emissions. Developing countries on the other hand, being hosts of large populations do not contribute substantially to climate change on account of their lack of technological and financial resources. It is the developed countries that are mainly responsible for the anthropological emissions that have resulted in global warming and climate change.

Therefore, it has been recognized by the OHCHR (Office of High Commissioner of Human Rights) and the recent negotiations that have taken place under the UNFCCC (United Nations Framework Convention on Climate Change) that States need to protect human rights not only in the form of civil, political, social or cultural rights but also from the ill effects of climate change.

Human consequences of climate change should be given utmost importance if the sanctity of human rights have to be preserved. By reason of greed, as more and more developed countries adopt exploitive methods that release harmful toxins and GHG's, the probability of such effects harming the present and future generations has increased tremendously.

The linkage between climate change and human rights was not initially accepted by member states or international organizations. Several oppositions came from developed countries, as it would hamper their trade and productivity. But the Inuit Conference, Male Declaration and the study carried out by the OHCHR confirmed the linkage. Human Rights which are fundamental to the existence of man was under severe threat due to the climate changed caused by his own action.

The ground situation of the Inuit Tribes in the Arctic region showcases without a doubt, the link between climate change and human rights.

The Innuit Tribes are nomads who habitat in four different locations, one of them being the Arctic. Due to global warming there has been a four-degree centigrade increase in its temperature in the last few decades. Rising sea levels and melting glaciers and snow caps have posed a great threat to their life, their dietary cycles and their economy. The Innuitshave traditionally consumed only sea mammals, sea weeds and berries. But owing to rising sea levels and a hotter environment, many of the walruses and seals have died. The Innuits' main source of food is growing scarce due to climate change. Situated in the Arctic, the Innuits have harpooning and fishing as their main source of occupation and livelihood. Traditional bowheads and other local fishes are growing

extinct because of which harpooning is becoming increasingly difficult. These indigenous tribes have sentimental value attached to the lands that they reside on. They hold it with great reverence. Global warming poses a threat of flooding. Low lying lands and coastal areas are prone to such disasters. As such, displacement of the Innuit tribes becomes necessary. Therefore, it is quite evident that a change in climate poses a threat to mankind, whether immediately or in the future.

The main issue concerning the world was, that many of the firms from developed countries which were operating in other developing countries paid no heed to the emission or toxins they produced. As they were not the direct victims of such activities, they claimed that climate change is not recognized as a human right either nationally or internationally. This gave them a leeway in exploiting the Earth's resource, in producing harmful toxins and an opportunity to get away with it.

UNFCCC and the Kyoto Protocol

In light of the gross abuse of power and economic standing that certain firms and countries hold over others, the UN stepped in to form a framework to curb such activities. It had been confirmed historically that the developed countries owing to their economic superiority, have since the beginning of industrialization, been responsible for the cumulative changes occurring in the global climate conditions. Though there was a dispute regarding the 'blame game' as to which particular state or states were responsible for these changes, the UN found it just to take into consideration the historical events that have led to the present state of affairs.

The UNFCCC along with the Kyoto Protocol, which was ratified by many countries has mandated countries to reduce their levels of GHG emissions. The concepts of carbon credit and carbon trading have been introduced, which help in reducing the emissions of the GHGs. The UNFCCC also requires that developed countries transfer technology and financial support to developing countries in coping with the ill effects of climate change while it adapts and mitigates such changes.

The UNFCCC takes a Human Rights approach for various reasons. According to statistics and studies conducted, it is estimated that populations in developing countries are estimated to double by the end of 2050. In light of that growth, it is only natural for such countries to have a parallel economic and social growth. This requires investment and production. There would be an increase in the emission levels. On the other hand, developed countries are estimated to either remain the same or grow by a margin. It is only fair on their part to reduce their present level emissions and to give space in the global atmospheric sphere. Only this can help developing countries grow economically in the future.

The alternative would be for the developed countries to share technology and finance to developing countries in building energy efficient technology and equipment, which would drastically reduce the level of emissions in the atmosphere.

Recognizing the importance of international human rights and the devastating effects climate change can have on human lives, the UNFCCC has been made legally binding on all its signatory bodies.

The Real Question and Implementation

Human Rights, the importance of which gained considerable importance after the catastrophic effects of the Second World War and the humanitarian crisis thereafter, has been a debatable issue since its inception.

The source of origin of these rights has been constantly questioned by members all over the globe. Is it based on Natural Law or Positive Law? Natural Law leans more towards the feeling of empathy and pity to the victims who have been subjugated and stripped of their basic dignity. Positive Law on the other hand rests solely on the written law. The state shall carry out only what has been laid in its Constitution or any other legislation which it has codified and enforced.

With over 194 member states at present, the United Nations finds it a herculean task to persuade and motivate members to sign and ratify treaties of human rights. A right, by its definition involves the use of force. For a right to be enforceable, there needs to be an external agency which can legitimately force its withholders to perform their duty. This seems to have caused the major issue in the process of implementation of human rights by the UN.

Each state in this world is an acclaimed sovereign. The UN when it formulates these rights under different conventions and treaties enforces them on member states. This directly contravenes the sovereignty of those states. Though few members might concede to accepting such rights, many might oppose it. Hence it cannot be effectively enforced. Moreover, for any change to materialize, an effective action by all those involved is a necessary precondition. But the UN has no way of forcing any country to sign a treaty or ratify the same. It can only motivate and persuade its members by showing the necessary statistics and ground reality. For example, the Kyoto Protocol was primarily formulated to address the issue of climate change and in a reduction of the Green House Gases emitted by countries. The United States of America, is one of the largest producers of GHGs. Yet, its decision makes are under a delusion as to whether climate change is an issue that has resulted because of industrialization or whether it is natural phenomena that does not warrant any drastic human action. Therefore, it has not signed the UNFCCC or the Kyoto Protocol.319

When developed countries take up the initiative and lead others in adopting and implementing varied human rights, it acts as a source of motivation for the developing and underdeveloped countries. It acts as an incentive, if financial and technological help is provided to them. But if the developed countries themselves are averse in recognizing and adopting such measures, we can only expect little or no efforts on the

319. Peter Drahos, *A Regulatory Perspective on International Human Rights System*, 358-360 Anu Press (2017)

part of developing countries to take the initiative of adopting fundamental rights such as the human rights.

Therefore, one can conclude that human rights is not a choice. It is a necessity that needs to be recognized and adopted. Women, children, indigenous and ethnic groups who have been discriminated and exploited, need to be given a chance to level their status in the society. They should be given an opportunity to voice out their opinion as they too form a substantial part of humanity in today's world.

A sustainable and secure world which we all wish for, cannot be achieved if the lackadaisical attitude of indifference is continued. We as human beings need to come together, state the issues and problems we are facing as human beings, and with the help of international and transnational authorities achieve an amicable solution.

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